

The Texas Natural Resource Commission (agency or commission) adopts an amendment to §101.1 and the repeal of §§101.6, 101.7, 101.11, 101.12, and 101.15 - 101.17. The commission also adopts new §101.201 in new Division 1, *Emissions Events*; new §101.211 in new Division 2, *Maintenance, Startup, and Shutdown Activities*; new §§101.221 - 101.224 in new Division 3, *Operational Requirements, Demonstrations, and Actions to Reduce Excessive Emissions*; and new §§101.231 - 101.233 in new Division 4, *Variances*. The amendment and repeals are being adopted in Subchapter A, *General Rules*, and the new sections are being adopted in new Subchapter F, *Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities*. The commission adopts the amendment, repeals, and new sections as revisions to the state implementation plan (SIP) which will be submitted to the United States Environmental Protection Agency (EPA). The primary purpose for this rulemaking action is to incorporate the statutory requirements of House Bill (HB) 2912, §5.01 and §18.14, 77th Legislature, 2001, into the commission rules. Sections 101.1, 101.201, 101.211, 101.221 - 101.223, and 101.233 are adopted *with changes* to the proposed text as published in the April 26, 2002 issue of the *Texas Register* (26 TexReg 3475). Sections 101.6, 101.7, 101.11, 101.12, 101.15 - 101.17, 101.224, 101.231, and 101.232 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

During the 77th Legislative Session, the legislature adopted HB 2912. The bill became effective on September 1, 2001. One change resulting from HB 2912 was an amendment to Texas Health and Safety Code (THSC), Subchapter B, Chapter 382, which is the Texas Clean Air Act (TCAA), by adding new §382.0215 and §382.0216. Section 382.0215, Assessment of Emissions Due to Emissions Events, addresses the commission's assessment of emissions due to emissions events. A new term,

emissions event, was introduced and defined to mean an upset or unscheduled maintenance, startup, or shutdown activity resulting in the unauthorized emission of air contaminants from an emissions point. Section 382.0215 also established recordkeeping and reporting requirements for sources which had an emissions event that resulted in emissions of a *reportable quantity* (RQ) or greater; established reporting requirements for certain boilers and combustion turbines which burn certain fuels and have continuous emission monitoring systems (CEMS); and mandated that the commission centrally track all emissions events. Section 382.0215 also requires the commission to develop the capacity for electronic reporting by January 1, 2003 and to place such reported information into a centralized database accessible to the public. Furthermore, §382.0215 requires the commission to annually assess the information received concerning emissions events, including the actions taken by the commission in response to the emissions events, and report this information to the legislature.

THSC, §382.0216, *Regulation of Emissions Events*, requires the commission to establish criteria to determine when emissions events are considered excessive. Section 382.0216 also requires that the following six criteria must be included when determining if an emissions event was excessive: 1) the frequency of the facility's emissions events; 2) the cause of the emissions event; 3) the quantity and impact on human health or the environment of the emissions event; 4) the duration of the emissions event; 5) the percentage of the facility's total annual operating hours during which emissions events occur; and 6) the need for startup, shutdown, and maintenance activities. Under the requirements of §382.0216, once the commission determines that a facility has had excessive emissions events, the commission must require the owner or operator of the facility to take corrective action to reduce these types of emissions. The owner or operator of the facility must then either file a corrective action plan

(CAP) or file a letter of intent to obtain an authorization for the emissions. The owner or operator of the facility may only file a letter of intent if the emissions are sufficiently frequent, quantifiable, and predictable. Furthermore, §382.0216 provides action dates for both the commission and affected facilities for the submittal and approval of the CAPs and required authorizations. Finally, §382.0216 establishes that the burden of proof is on the owner or operator of the facility to claim a defense to commission enforcement action and that the commission must consider chronic excessive emissions events when reviewing an entity's compliance history.

Based on the legislative changes in HB 2912, concerning assessment and regulation of emissions events, the commission is adopting the revision of its current upset, maintenance, startup, and shutdown (U/M) rules (i.e., amending current rules and providing new rules) to reflect the requirements of HB 2912. The statutory notes of HB 2912, §18.14 state: "The purpose of Sections 382.0215 and 382.0216, Health and Safety Code, as added by this Act, is to add new or more stringent requirements regarding upsets, startups, shutdowns, and maintenance. Those sections may not be construed as limiting the existing authority of the Texas Natural Resource Conservation Commission under Chapter 382, Health and Safety Code, to require the reporting or the permitting of the emission of air contaminants or to bring enforcement action for a violation of Chapter 382." Therefore, the commission is adopting the requirements provided in HB 2912 to enhance the existing rules and upset/maintenance program.

SECTION BY SECTION DISCUSSION

The primary purpose of this rulemaking action is to incorporate the statutory requirements of HB 2912. Because some sections of Chapter 101 are being opened for revisions, the commission is taking the opportunity to revise the general format of Chapter 101. Currently, Chapter 101 is divided into Subchapter A, *General Rules*, and Subchapter H, *Emissions Banking and Trading*. Subchapter A contains §§101.1 - 101.30 which pertain to a wide variety of topics, whereas the rules in Subchapter H pertain only to emissions banking and trading. The commission intends that as rules in Subchapter A are amended, the different sections (or rules) will be moved to more topically specific subchapters, except for the definitions in §101.1, which will remain in Subchapter A. In this rulemaking action, the commission is adopting the repeal of §§101.6, 101.7, 101.11, 101.12, and 101.15 - 101.17, and adopting the move of the rule language contained within these sections into a new Subchapter F. The rule language contained in repealed §101.6, *Upset Reporting and Recordkeeping Requirements*, is moved to new §101.201, with the title being changed to *Emissions Event Reporting and Recordkeeping Requirements*. Rule language found in repealed §101.7, *Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements*, is moved to new §101.211, with the title being changed to *Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements*. Rule language found in repealed §101.11, *Demonstrations*, is moved to new §101.221 and new §101.222 with revised section titles of *Operational Requirements* and *Demonstrations*, respectively. Revisions to the language being moved into §§101.201, 101.211, 101.221, and 101.222 will be discussed later in this section of the preamble. A new §101.223, *Actions to Reduce Excessive Emissions*, will also be discussed later in this section of the preamble. The rule language found in repealed §101.12, *Temporary Exemptions During Drought Conditions*; repealed §101.15, *Petition for*

Variance; repealed §101.16, *Effect of Acceptance of Variance or Permit*; and repealed §101.17, *Transfers*, will be moved to new §§101.224, 101.231, 101.232, and 101.233, respectively, and the new sections will retain the original titles, with the exception of §101.233 which will be retitled *Variance Transfers*. The changes being made to language of these sections are purely administrative, and will also be discussed later in this section of the preamble.

Section 101.1 - Definitions (Administrative changes)

Due to the addition of new terms, the numbering of the terms defined in this section has been revised. Furthermore, there are numerous administrative corrections which are made to definitions. These changes are being adopted so that the rule language will conform to commission and *Texas Register* formatting and style standards. Generally, no change in the meaning of these definitions is intended by this rulemaking action, except where updates are based on changed facts. These definitions are: fuel oil; maintenance area; and nonattainment area (lead). The adopted administrative definition changes are as follows. The acronym VOC is deleted from the definition for *carbon adsorber* because it is not used again in the definition. The phrase “(See incinerator)” is deleted from the definition for *commercial incinerator* for formatting and style purposes. The acronym VOC is expanded to volatile organic compound and the acronym deleted because it is only used once in the definition for *component*. The words in the definition for *criteria pollutant or standard* are lowercased because they are not a proper noun, and the acronym CFR is deleted because it is not used again in the definition. The definition for *de minimis* is italicized because the term is a Latin term. The acronym ERC is deleted from the definition for *emissions reduction credit* because it is not used again in the definition. In the definition for *federal motor vehicle regulation*, the acronym CFR is expanded to Code of Federal Regulations and

the acronym deleted because it is not used again in the definition. In the definition for *federally enforceable*, the acronym CFR is expanded to Code of Federal Regulations and acronymed because it is used more than once in the definition. In addition, the words “pursuant to” are changed to the word “under” to reduce the legalistic style of writing. The phrase “as defined in this section” is added to the definition for *flare* because the definition refers to the definition for *vapor combustor*. The definition for *fuel oil* is updated by changing the citation for the American Society for Testing and Materials (ASTM) to reflect the current ASTM specifications and to add two new grades of fuel (1 (low sulfur) and 2 (low sulfur)) as listed in the current specifications. In the definition for *gasoline* the words “vapor pressure” in the phrase “Reid Vapor Pressure” are lowercased because they are not proper nouns, the acronym kPa is expanded to kiloPascals, and the acronyms RVP and kPa are deleted because they are only used once in the definition. In the definition for *high-volume low-pressure (HVLP) spray guns*, the acronym HVLP is deleted because it is only used once in the definition. In the definition for *leak*, the acronym VOC is expanded to volatile organic compound and the acronyms VOC and ppmv are deleted because they are only used once in the definition. In the definition for *liquid fuel*, the acronym Btu is expanded to British thermal unit and the acronym deleted because it is only used once in the definition. A new maintenance area is added to the definition for *maintenance area* which is the Collin County lead maintenance area. In the definition for *maintenance plan*, the word “Plan” is lowercased because it is not a proper noun, the acronym SIP is expanded to state implementation plan, and the acronym SIP deleted because it is only used once in the definition. In the definition for *Metropolitan Planning Organization (MPO)*, the acronym MPO is deleted because it is only used once, and the acronym USC is expanded to United States Code. The acronym MERC is deleted from the definition *mobile emissions reduction credit (MERC)* because it is only used once in the definition. The

acronym CFR is expanded to Code of Federal Regulations and the acronym deleted from the definition for *municipal solid waste landfill* because it is only used once in the definition. The words in the definition for *national ambient air quality standard* are lowercased because they are not proper nouns, and the acronyms NAAQS, CO, Pb, NO₂, O₃, PM₁₀, PM_{2.5}, and SO₂ are deleted because they are only used once. In the definition for *nonattainment area*, the words “national ambient air quality standard” and the word “dioxide” are lowercased in two places because they are not proper nouns. In addition, the acronym CFR is expanded to Code of Federal Regulations and the acronym deleted; the acronym FR is added to the term *Federal Register* because it is used more than once; and the acronyms ELP, NO₂, HGA, BPA, DFW, and SO₂ are deleted because they are used only once. Finally, in the definition for *nonattainment area*, the Collin County lead nonattainment area text is deleted and the text “No designated nonattainment areas” is added to subparagraph (C) because Collin County has been officially redesignated as a lead maintenance area. In the definition for *particulate matter emissions*, the acronym CFR is expanded to Code of Federal Regulations and acronymed because it is used more than one time; and the acronym SIP is expanded to state implementation plan and the acronym deleted because it is only used once. In the definition for *PM₁₀*, the acronym CFR is expanded to Code of Federal Regulations and acronymed because it is used more than once, and the number “10” is changed to the word “ten” to conform with *Texas Register* style. In the definition for *PM₁₀ emissions*, the acronym CFR is expanded to Code of Federal Regulations, the acronym SIP is expanded to state implementation plan, and both acronyms are deleted because they are only used once in the definition. In the definition for *polychlorinated biphenyl compound (PCB)*, the acronym CFR is expanded to Code of Federal Regulations and the acronyms PCB and CFR are deleted because they are only used once in the definition. In the definition for *reasonable further progress (RFP)*, the acronym SIP is expanded to

state implementation plan, and the acronyms RFP and SIP are deleted because they are only used once in the definition. The acronym USC is expanded to United States Code and the acronym deleted from the definition for *solid waste* because it is only used once. The acronym kPa is expanded to kiloPascal and the acronym deleted from the definition for *standard conditions* because it is used only once in the definition. In the definition for *submerged fill pipe*, the acronym cm is expanded to centimeters because it is only used once in the definition. In the definitions for *sulfuric acid mist/sulfuric acid* and *total suspended particulate*, the acronym CFR is expanded to Code of Federal Regulations and the acronym deleted because it is used only once in each definition. In the definition for *true vapor pressure*, the acronyms psia and VOC are expanded to pounds per square inch absolute and volatile organic compound, respectively, and the acronyms deleted because they are only used once in the definition. In the definition for *vapor combustor*, the acronym VOC is expanded to volatile organic compound and the acronym deleted because it is only used once in the definition. Finally, in the definition for *VOC water separator*, the acronym is expanded to volatile organic compound (VOC) because it is used more than once in the definition.

Section 101.1 - Definitions

The commission is not adopting the new term *authorized emissions* as proposed in §101.1(4), and is not adopting the proposed changes to the term *unauthorized emissions* proposed in §101.1(105), renumbered as §101.1(104). The commission has decided to separate these proposed changes from this rulemaking and may reconsider them in another forum such as a commission work session.

The commission is adopting the definition of a new term *emissions event* to incorporate the change in the statute. THSC, §382.0215, adds the term *emissions event*, defined as “an upset, or unscheduled maintenance, startup, or shutdown activity, that results in the unauthorized emissions or air contaminants from an emissions point.” The commission replaced *upset* with the new term *emissions event* in §§101.201, 101.211, and 101.222.

The commission revised the term *non-reportable upset* to the more correct term *non-reportable emissions event* to be consistent with the statutory language of HB 2912.

The commission revised the RQ for acetaldehyde, butenes, ethylene, propylene, and toluene from 5,000 pounds to 100 pounds for only the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) nonattainment areas. The lower RQ recognizes the important role these compounds play in the formation of ozone, and the need for the commission to collect more detailed information on the periodic releases of these compounds in its efforts to attain the ozone standard. The commission revised the RQ for nitrogen oxide (NO) and nitrogen dioxide (NO₂) from ten pounds to 100 pounds. The commission recognizes that certain uncontrolled air emissions of NO and NO₂ equal to or greater than the ten-pound RQ may rarely require a response by the commission. The acronym CFR is expanded to Code of Federal Regulations. The commission revised §101.1(85)(C) as proposed to clarify that the RQ for opacity applies only to boilers and combustion turbines that burn certain fuels. The proposed definition of scheduled maintenance, startup, or shutdown activity and reporting and recordkeeping requirements in §101.201 and §101.211 have been revised to incorporate the reporting of excess opacity events.

To be consistent with the statutory language of HB 2912, the commission revised the term *reportable upset* to the more correct term *reportable emissions event*.

The commission is defining the new term *scheduled maintenance, startup, or shutdown activity*. As previously stated, HB 2912 provided new terms when addressing emissions events. THSC, §382.0215, refers to unscheduled maintenance, startup, or shutdown activity; therefore, to be consistent with the new statutory language, the commission is defining what is considered to be a scheduled maintenance, startup, or shutdown activity. As part of this definition, the commission is also clarifying that during the special situations in which there might be an excess opacity event when there has not been a release of any unauthorized compounds or mixtures, if the notification, recording, and reporting requirements are followed, the activity would be considered a scheduled maintenance, startup, or shutdown activity.

The commission is defining the term *site* in Chapter 101 as it has been adopted in the compliance history rules in 30 TAC Chapter 60. The commission has adopted rules concerning chronic excessive emissions events based on a review of the whole site, not just each facility at a site. To be consistent in the use of terminology between the Chapter 101 rules and the compliance history rules in Chapter 60, the commission has added the same definition of *site* as §60.2(a).

The commission has deleted the proposed definition of the term *unscheduled maintenance, startup, or shutdown activity* because the term is no longer being used in the rules affected by this adoption.

The commission is revising the definition of the term *upset* by adding the clarifying word *event* to the term. Furthermore, to minimize potential confusion with the *upset event* definition, the word “unscheduled” is being replaced with the phrase “unplanned or unanticipated.” Finally, the commission has deleted the redundant phrase “emission of air contaminants.”

Section 101.6 - Upset Reporting and Recordkeeping Requirements

The commission is adopting the repeal of this section. The commission is amending the rule text from §101.6, as necessary, to conform with the requirements of HB 2912 and is adopting the amended text into §101.201.

Section 101.7 - Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements

The commission is adopting the repeal of this section. The commission amended the rule text from §101.7, as necessary, to conform with the requirements of HB 2912 and is adopting the amended text into §101.211.

Section 101.11 - Demonstrations

The commission is adopting the repeal of this section. The commission amended the rule text from §101.11, as necessary, to conform with the requirements of HB 2912 and is adopting the amended text in new §101.221 and §101.222.

Section 101.12 - Temporary Exemptions During Drought Conditions

The commission is adopting the repeal of this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is adopted in new §101.224. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.15 - Petition for Variance

The commission is adopting the repeal of this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is adopted in new §101.231. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.16 - Effects of Acceptance of Variance or Permit

The commission is adopting the repeal of this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is adopted in new §101.232. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.17 - Transfers

The commission is adopting the repeal of this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is adopted in new §101.233. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.201 - Emissions Event Reporting and Recordkeeping Requirements

In an effort to be consistent with HB 2912, codified in THSC, §382.0215, concerning emissions events, the commission is replacing the term *upset* with the newly defined term *emissions event*. The commission revised the notification requirements in §101.201(a)(2) and the reporting requirements in §101.201(b), to comply with the statutory requirement of HB 2912, requiring additional and more detailed information, when it is necessary to report an emissions event. The name of the owner or operator of the facility experiencing an emissions event and the facility's air account number are now required. When the commission changes to a central registry, the air account number will become a secondary identifier and the "regulated entity" number will become the primary identifier. Therefore, a reference to an air account number includes both the regulated entity number as well as the air account number. The owner or operator of a facility experiencing an emissions event must also provide the physical location of the point at which emissions to the atmosphere occurred. When reporting the processes and equipment involved in the emissions event, the initial notification can be limited to the common name of the process unit or area, the name of the facility which incurred the emissions event, and the common name of the emission point where the emissions were released into the atmosphere. However, the final record and report required in §101.201 should include some type of source identification. The source identification must include the common name for the equipment involved and the most precise commission recognized identifier. This identifier could include emission point numbers and facility identification numbers established for emissions inventories or preconstruction authorization requirements. An emission point number is the designation used by the agency to identify the point from which emissions of air contaminants are released to the atmosphere. Emission point numbers are typically established for a facility either through the permitting process or in conjunction

with the air emissions inventory for a facility. A facility identification number is the designation established by the agency to identify the facility that is the source of air contaminants. Facility identification numbers are also typically established for a facility either through the permitting process or in conjunction with the emissions inventory for a facility. Similar new recordkeeping and reporting requirements are being adopted for the rules concerning scheduled maintenance, startup, and shutdown activities in §101.211(a) and (b). When reporting and recording the date and time of the emissions event, the date and time recorded should be when the emissions event was discovered, not when it is believed that the emissions event started. In §101.201(a)(2)(F) and (b)(6) the estimated duration of the emissions event is required. The requirement to provide the cause of the emissions event has been relocated from §101.201(a)(2)(D) to §101.201(a)(2)(I) and from §101.201(b)(4) to §101.201(b)(10). The commission is simply reorganizing the order of the information being provided and does not intend any change to this requirement.

In the notification requirements of §101.201(a)(2) and (3) and the reporting requirements in §101.201(b), the commission is making a grammatical correction concerning the reporting of the compound descriptive type of the compounds release. The term *exceed* is replaced with a more correct phrase *have equaled or exceeded*. The commission is also clarifying the language that when reporting the estimated quantities of the compounds released, the reported numbers should be the total estimated quantities that include both the authorized emissions limit and the total amount of emissions emitted. The commission is clarifying §101.201(a)(2)(H) and (b)(8) to state that opacity must be included in notifications submitted under to §101.201. The commission recognizes that a determination of the quantity and nature of emissions are not directly obtainable when opacity readings are the basis for

determining that an unauthorized emission has occurred. Therefore, the owner or operator of the facility may use good engineering judgement, which may consist of an evaluation of air pollution control devices and other relevant process parameters, including consideration of previous stack testing results in conjunction with process knowledge at the time of the emissions event. These same corrections and clarifications are being made in new §101.211(a) and (b) regarding scheduled maintenance, startup, and shutdown reporting and recordkeeping requirements. The commission notification forms for emissions events and scheduled maintenance, startup, and shutdown activities will also be updated to reflect these requirements. For final reports, the commission requires owners or operators to provide the basis used to determine the quantity of emissions, including the method of calculation (e.g., the emission factors obtained from the EPA emissions factor document, AP-42, information from prior testing, engineering calculations, etc.). Finally, new THSC, §382.0216(b)(3)(H), added by HB 2912, requires that the owner or operator provide any additional information necessary to evaluate the emissions event. This requirement has been incorporated into §101.201(b)(12), which concerns final recordkeeping of all reportable and non-reportable emissions events.

In the proposed §101.201(a)(4), the commission replaced the word *report* with the word *provide*. This change was for clarification only and did not impose any new requirements. The change in terminology is necessary to more clearly state that the source must provide additional information upon request of the executive director. In the adoption, the commission further clarified the language to state that when requested to provide additional information, an owner or operator must provide the information in writing and within the timeframes established in the request.

The commission deleted the language that was contained in the repealed §101.6(a)(5) that stated that “Any spill or discharge required to be reported under §§327.1 - 327.5, and 327.31 of this title (relating to Spill Prevention and Control), is not required to be reported under paragraphs (1) and (2) of this subsection.” In its place, the commission has continued to allow the initial notification required to be submitted under these new rules to be satisfied by reporting under 30 TAC §327.3 (relating to Notification Requirements) in recognition of the spirit of HB 2912 provisions relating to minimization of duplicative reporting where that is possible, and because the data elements required to be included in the notification under both rules are compatible with such combined reporting. The commission is requiring the report, that is to be submitted within two weeks after an emissions event, be submitted electronically as the required data elements of the spill rules and these new emissions events rules vary considerably, and because HB 2912 expressly requires electronic reporting related to emissions events. The commission has retained the exemption to the requirement to report electronically for small businesses.

The commission is clarifying §101.201(b) to specify that an owner or operator of a facility must create a final record of all reportable and non-reportable emissions events. This revision reflects the commission’s existing practice and is consistent with guidance that staff has provided to members of the regulated community.

New §101.201(c) and (f), as adopted, incorporates the language in repealed §101.6(c) and (e), respectively, with minor changes to reflect the new terminology in HB 2912.

The commission is making three revisions to the language in §101.201(d) and §101.211(d). First, the language concerning data return was revised to make it clear that a CEMS must have a data return such that the CEMS completes at least one operating cycle in each successive 15-minute interval. An operating cycle includes sampling, analyzing, and recording of the data. Second, the rule language was revised to clarify that this exemption is only for boilers and combustion turbines which are fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight. Finally, the subsection was revised to implement a provision in HB 2912, THSC, §382.0215(c), and now provides that an owner or operator of a combustion turbine or boiler burning the previously listed fuels, and that is equipped with a CEMS, is exempt from creating, maintaining, and submitting final records of the reportable and non-reportable emissions events under subsections (b) and (c), as long as the initial notification submitted under subsection (a) contains the information required under subsection (b).

Opacity measurements of emissions alone cannot be used to predict the quantity or nature of the air contaminants being emitted. Facilities that experience an excess opacity event which does not also have unauthorized emissions of compounds or mixtures will have a difficult time complying with the reporting requirements to report the nature and quantity of air contaminants emitted as required by HB 2912. Requiring separate reporting for these excess opacity events (no unauthorized emissions of compounds or mixtures) will allow for appropriate reporting based on the information of the event available to the owner or operator of the facility. Because the commission acknowledges that there are special situations in which there can be an opacity exceedance when there has not been a release of any unauthorized compounds or mixtures, the commission is adding new §101.201(e). This subsection

describes what an excess opacity event is and establishes a notification requirement for such events when the owner or operator of the facility is not already required to provide a notification under §101.201(a)(2) or (3). The data elements for this notification are similar to those required by §101.201(a)(3) for boilers and combustion turbines that burn certain fuel. An excess opacity event is an event with an opacity reading equal to 15 additional percentage points above the applicable opacity limit, averaged over a six-minute period. An emissions event with excessive opacity must be reported as an emissions event under §101.201(a).

The commission is adopting new §101.201(g) to implement the requirement of THSC, §382.0216(k), that on and after January 1, 2003, final reports required under §101.201 must be submitted electronically to the commission. The commission is currently developing a method by which this data will be received and will provide updates as the 2003 deadline approaches. Until January 1, 2003, businesses may provide notifications and reports by any viable means, which meet the time frames required in the rules. Consistent with the statutory language in THSC, §382.0215(f), the rule includes an exemption from electronic reporting for businesses which meet the small business definition in THSC, §382.0365(g)(2). Although exempt from electronic reporting, a small business will still be required to provide notifications and final reports in accordance with the requirements of the rules. The commission invited comments and specific suggestions for an alternative reporting scheme to be used in times of technical difficulty of the electronic reporting system once it is established.

To facilitate a smooth transition into electronic reporting, the commission has established a phased approach to the requirement for submitting emissions events information by electronic means. This

approach will enable affected businesses in Texas to establish procedures for electronic submission of required information related to emissions events. The first phase, starting on January 1, 2003, establishes that reports required to be submitted within two weeks of the end of the event under §101.201(c), and notifications required under §101.201(e), be submitted electronically using an online form via a commission-established secure web server. The second phase, starting on January 1, 2004, establishes that notifications required to be submitted within 24 hours of discovery under §101.201(a) be submitted utilizing that same electronic means. Although the requirement for initial reports to be submitted electronically begins in 2004, an owner or operator of a facility which experiences a reportable emissions event which also requires an initial notification under §327.3 of this title, is not required to report the event electronically provided that the owner complies with the requirements in §327.3 as well as the requirements of subsections (a) and (c).

The commission is adopting new §101.201(h) to implement THSC, §382.0216(i), which requires the commission to initiate enforcement actions against owners and operators who fail to report an reportable emissions event, for such failure to report, and for the underlying emissions event itself. New §101.201(h) also includes the statutory language in new THSC, §382.0216(i), that the requirement to initiate enforcement does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely, unless the owner or operator knowingly or intentionally falsified the information in the report. The commission also clarifies that incomplete, inaccurate, or untimely reports are not sanctioned by this language and continue to be violations of §101.201(a)(2) and (3), (b), and (e), and the commission may initiate enforcement for such violations.

Section 101.211 - Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping

Requirements

In an effort to improve readability and to be consistent with the statutory requirements of HB 2912, the commission has replaced the phrase “maintenance, startup, or shutdown” with the newly defined term *scheduled maintenance, startup, or shutdown activity*, found in THSC, §382.0215(a). The commission has made this change in several places in §101.211. The change reflects the intentional distinction between scheduled and unscheduled maintenance, startup, or shutdown activities.

In addition to the changes to §101.211 discussed earlier in this preamble, the commission changed the language in new §101.211(a) to clarify that any event for which notification required by this section was not submitted, or which the estimated emissions submitted to the commission were exceeded, is considered an unscheduled maintenance, startup, or shutdown activity, and therefore, is subject to the reporting requirements of §101.201 and the criteria specified in §101.222(a) and (b). This clarification is consistent with the requirements of HB 2912 and clarifies the commission’s practice in place since the 1997 amendments to the rule. Because the commission acknowledges that there are special situations in which there can be an opacity exceedance when there has not been a release of any unauthorized compounds or mixtures, the commission is modifying §101.211(a). This subsection establishes a notification requirement for excess opacity events resulting from scheduled maintenance, startup, and shutdown activities when the owner or operator of the facility is not already required to provide a notification under §101.211(a)(1). The data elements for this notification are similar to those required by §101.211(a)(1) except estimated opacity is required instead of compound-specific information. An excess opacity event is an event with an opacity reading equal to or exceeding 15 additional percentage

points above the applicable opacity limit, averaged over a six-minute period. An emissions event with excessive opacity must be reported as an emissions event under §101.201(a). The commission recognizes that determinations of the quantity and nature of emissions are not directly obtainable when opacity readings are the basis for determining that an unauthorized emission has occurred. Therefore, the owner or operator of the facility may use good engineering judgement, which may consist of an evaluation of air pollution control devices and other relevant process parameters, including consideration of previous stack testing results in conjunction with process knowledge at the time of the scheduled maintenance, startup, or shutdown activity.

The commission changed the language in §101.211(a)(1)(E) to clarify that the date and time of the maintenance, startup, or shutdown in the notification of an activity is considered to be the expected date and time. For the final reporting and recordkeeping purposes, the event date and time should be the actual event date and time. Furthermore, the commission clarified that final records must be completed as soon as practicable, but not later than two weeks after the end of the activity instead of the start of the activity. For shutdowns, the end of the activity would be the cessation of operation of a facility for any purpose.

The commission modified §101.211(b) to clarify that the requirement to submit a final record also applies to opacity exceedances from boilers and combustion turbines referenced in the definition of RQ, and not just to activities that result from unauthorized emissions.

The commission added new §101.211(c) to clarify that if the information provided in the initial notification is different than what is recorded as the final record, the owner or operator must submit the revised information within two weeks after the end of the activity. The owner or operator of a source must submit a final report for any scheduled maintenance, startup, or shutdown activity where an initial notification was provided even if the unauthorized emissions did not actually exceed an RQ. Final reports are necessary to track information collected about maintenance, startup, and shutdown activities in the commission's centralized database, and to provide closure to initial reports of such activities.

Section 101.221 - Operational Requirements

As explained later in this preamble, the commission is not adopting proposed §101.221(a), which was proposed as, "No person shall cause, suffer, or allow unauthorized emissions."

As previously stated, Chapter 101 was reformatted. Thus, the commission moved the language in repealed §101.7(a) to new §101.221(a) without any changes. New §101.221 primarily concerns operational requirements of sources; therefore, the language relating to the operation of pollution emission capture equipment and abatement equipment in repealed §101.7(a), was moved to new §101.221.

The commission modified §101.221(a) by renaming the word "normal" to clarify that pollution capture equipment and abatement equipment must be maintained in good working order and operated properly during all facility operations.

The commission moved, without any changes, the operational requirements concerning smoke generators and other devices used to train inspectors in the evaluation of visible emissions from repealed §101.11(c) into new §101.221(b); and moved the operational requirements concerning equipment, machines, devices, flues, and or contrivances to be used at a domestic residence from repealed §101.11(d) into new §101.221(c). Similarly, the commission moved the rule language concerning sources which cannot be controlled or reduced due to a lack of technological knowledge from repealed §101.11(e) into new §101.221(d). The existing rule language relating to the burden of proof to demonstrate that the exemption criteria have been met is on the owner or operator of the source, was moved from repealed §101.11(f) into new §101.221(e), with the addition of a sentence to cover opacity events. The minor changes concern revision of rule citations and replacement of the term *upsets* with the new term *emissions events*. The commission also revised §101.221(e) to clarify that the owner or operator of a facility must satisfy the burden of proof as a condition to unauthorized emissions being considered not excessive and exempt from compliance with authorized emissions limitations. The commission moved the rule language relating to the commission's power to require corrective action as necessary to minimize emissions from repealed §101.7(g), into new §101.221(f), without revisions.

Section 101.222 - Demonstrations

The commission moved the rule language from repealed §101.11(a) and (b) to new §101.222(b) and (c), respectively. As done in other sections of this rulemaking, the commission replaced the terms *upset* and *maintenance, startup, or shutdown* with the terms *emissions events* and *scheduled maintenance, startup, or shutdown activity*, respectively, to be consistent with the statutory changes of HB 2912.

The commission added new §101.222 to establish criteria to determine when a facility has had excessive emissions events, to determine whether emissions events that are not considered excessive are exemptible, to determine when emissions from scheduled startup, shutdown, and maintenance activities are exemptible, and to establish the criteria for exempting opacity events, and opacity events that result from scheduled maintenance, startup, and shutdown activities. THSC, §382.0216(b), requires the commission to establish criteria to determine when emissions events are considered excessive. The criteria must include: 1) the frequency of the facility's emissions events; 2) the cause of the emissions event; 3) the quantity and impact on human health or the environment of the emissions event; 4) the duration of the emissions event; 5) the percentage of a facility's total annual operating hours during which emissions events occur; and 6) the need for startup, shutdown, and maintenance activities.

The commission incorporated these criteria in §101.222(a) as the criteria the executive director will use to evaluate when emissions events are considered excessive. The executive director will conduct evaluations on a case-by-case basis to determine if a facility has excessive emissions events. Case-by-case determinations are necessary because the rules in Chapter 101 apply statewide to all types of facilities. The commission does not have the resources to develop case-specific criteria limits for each of the different types of facilities in the state which have the potential to emit air contaminants. In addition, case-by-case reviews allow for a more thorough evaluation of all relevant information about an emissions event.

Furthermore, THSC, §382.0216(f), states that "The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission

rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1) - (6).” This affirmative defense parallels existing commission practice of evaluating factors previously listed in repealed §101.11(a). In reviewing the criteria provided in HB 2912, which was codified in THSC, §382.0216(b)(1) - (6), the commission determined that most of those factors used to determine when emissions events are excessive were already included in the rules. These criteria are incorporated directly from repealed §101.11(a)(1) - (9). New §101.222(b)(1) includes the requirement that the emissions event must be properly reported, which was part of repealed §101.11(a). New requirements in §101.222(b)(2) - (9) are identical to repealed §101.11(a)(1) - (8). Section 101.222(b)(10) is a statutory requirement from HB 2912 that requires the facility owner or operator to review the percentage of a facility’s total annual operating hours during which unauthorized emissions occurred to determine that the percentage was not unreasonably high. The language in repealed §101.11(a)(9), which was a test of whether the emissions from an event caused or contributed to a condition of air pollution, was expanded to include a prohibition of exceeding the national ambient air quality standards (NAAQS) or a prevention of significant deterioration (PSD) increment, and codified in new §101.222(a)(11).

The commission moved the criteria for scheduled maintenance, startup, or shutdown activities from repealed §101.11(b) to new §101.222(c), with two minor changes, both comparable to those previously discussed with respect to §101.222(b)(1) and (11). Under new §101.222(c)(1), the commission restated the requirement of proper reporting originally found in §101.11(b), moved repealed §101.11(b)(1) - (8) to new §101.222(c)(2) - (9), and added the prohibition of exceeding the NAAQS or a PSD increment to parallel the same requirement in §101.222(b)(11). In an effort to remove redundant

rule language, the phrase “air emissions limitations established in permits, rules, and orders of the commission, or as authorized by TCAA, §382.0518(g)” was replaced with “authorized emission limitation.”

The commission is adding new §101.222(d) and (e) to establish the criteria for exempting opacity events and opacity events that result from scheduled maintenance, startup, and shutdown activities. The criteria are similar to the exemption criteria in §101.222(b) and (c), except they do not include the criteria that the event was caused by a sudden breakdown of equipment or process beyond the control of the owner or operator, and the event did not cause or contribute to an exceedance of NAAQS or PSD increments, because opacity can occur without a sudden breakdown or without contributing to such exceedances. In addition, the criterion regarding the percentage of a facility’s total operating hours during which unauthorized emissions occurred was not included in these new subsections because opacity is not an air contaminant.

The commission is adding new §101.222(f) to clarify that if the commission finds a frequent or recurring pattern of emissions events; scheduled maintenance, startup or shutdown activities; opacity events; and opacity events that result from scheduled maintenance, startup, and shutdown activities, the commission may pursue enforcement notwithstanding the exemptions described in §101.222(b) - (e). If a frequent or recurring pattern develops, the commission is specifically retaining its authority to seek corrective actions and penalties, as appropriate, for not just the event that leads the commission to find a frequent or recurring pattern, but also for each of the events that is a part of the frequent or recurring

pattern. A frequent or recurring pattern of events may include events with emissions that were previously individually exempt.

Section 101.223 - Actions to Reduce Excessive Emissions

Since the proposal of this rule, the commission has changed the title of the section from “Excessive Emissions Events” to “Actions to Reduce Excessive Emissions.” New §101.223 also establishes the framework in which the commission will determine that a site has had chronic excessive emissions events.

When the executive director determines that a facility has excessive emissions events, the executive director will provide written notification to the owner or operator, providing a description of the emissions events that caused the determination to be made and the time period during which the evaluation of those emissions events took place. The owner or operator must then take action to reduce emissions, either in the form of a CAP; or, if the emissions are sufficiently frequent, quantifiable, and predictable, the owner or operator may file a letter of intent to obtain authorization from the commission for the emissions.

The commission set minimum requirements for a CAP in new §101.223(a)(1). At a minimum the CAP must identify the cause or causes of each emissions event in question, including all contributing factors that led to each emissions event; specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future; identify operational changes the owner or operator will take to prevent or minimize similar emissions events; and specify time frames

within which the owner or operator will implement the components of the CAP. The time frame, or implementation schedule, of the CAP will be enforceable by the commission. The commission is requiring in §101.223(a)(2) that in any case, the owner or operator must obtain commission approval of an approved CAP within 120 days of initial filing of the original CAP.

THSC, §382.0216(d), requires specific dates concerning the review and approval of CAPs. If the commission does not disapprove a plan within 45 days, the plan is deemed approved. Within this 45-day period, if the commission provides written notification of disapproval, the owner or operator will have 15 days to respond, unless another deadline is specified. Written notification by the commission should identify deficiencies in the CAP and reasons for disapproval of the CAP. The owner or operator may request a written approval of the CAP, in which case the commission must take a final written action within 120 days. Finally, if the commission determines that the approved CAP is inadequate to prevent or minimize emissions and emissions events, the commission may request that the owner or operator revise the CAP. An approved CAP under §101.223(a)(2) is not an authorization for unauthorized emissions.

THSC, §382.0216(c), specifies timelines for the filing of a permit application or obtaining authorization if a permit by rule or standard permit is feasible. The owner or operator will have 30 days to file a letter of intent to obtain authorization for the emissions. If authorization is to be obtained by a permit application, the application must be filed within 120 days after filing the letter of intent. If the permitting option is chosen, the emissions must meet permitting criteria established in 30 TAC Chapter 116. If permitting criteria cannot be met, the owner or operator must file a CAP. For emissions

authorizations through a permit by rule or a standard permit, the authorization must be obtained within 120 days after filing the letter of intent. If the commission denies any of these requests for authorization, the owner or operator must file for a CAP within 45 days after receiving notice of the commission denial.

Finally, the commission adds new §101.223(b) to describe when a site may be considered to have chronic excessive emissions events. The executive director may forward excessive emissions events determinations to the commission for consideration of whether to issue an order finding that the site has chronic excessive emissions events. This section establishes the following criteria for the commission to consider in determining whether a site has chronic excessive emissions events: 1) the size, nature, and complexity of the site's operations; 2) the frequency of the emissions events at the site; and 3) the reason or reasons for excessive emissions event determination(s) at the site. THSC, §382.0216(j), requires the commission to account for and consider chronic excessive emissions events and emissions event for which the commission has initiated enforcement in its review of an entity's compliance history.

THSC, §382.0216(g), states: "A person may not claim an affirmative defense to a commission enforcement action if the person failed to take corrective action under a CAP approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure." The commission added new §101.223(c) to incorporate this statutory language.

The commission added §101.223(d) to clarify that nothing in this section limits the commission's ability to bring enforcement actions for violations of commission rules, including enforcement actions to require actions to reduce emissions from excessive emissions events.

Section 101.224 - Temporary Exemptions During Drought Conditions

The commission moved the language in repealed §101.12 into new §101.224, without changing the intent of the rule. The commission made only two minor revisions to the language. First, the name of the commission's air permitting division was revised from Office of Air Quality, New Source Review Division to Office of Permitting, Remediation, and Registration, Air Permits Division. Second, the word "utilize" was replaced with the more grammatically correct word "use."

Section 101.231 - Petition for Variance

The commission moved the language in repealed §101.15 into new §101.231, without changing the intent of the rule. The only revision to the section was to replace "Texas Natural Resource Conservation Commission (TNRCC or commission)" with "commission" to facilitate the commission name change required by HB 2912, §18.01.

Section 101.232 - Effect of Acceptance of Variance or Permit

The commission moved the language in repealed §101.16 into new §101.232, without changing the intent of the rule. The only revisions are grammatical and stylistic and include: changing "pursuant to" to "under;" changing "TNRCC" to "commission;" and "Act" to "TCAA."

Section 101.233 - Variance Transfers

The commission moved the language in repealed §101.17 into new §101.233, without changing the intent of the rule. The only revisions to the existing language were to replace the phrase “Texas Natural Resource Conservation Commission (TNRCC or commission)” with the term “commission,” to facilitate the commission name change required by HB 2912 and to revise the title of the section from “Transfers” to “Variance Transfers” to avoid confusion with provisions relating to transfer of permits.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory impact analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a “major environmental rule.” Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). A “major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments implement certain requirements of HB 2912. Specifically, the amendments require additional reporting for each emissions event; require excess emission reports from certain boilers and combustion turbines to have all required reporting information to satisfy as final reports; establish an affirmative defense to an emissions event, including statutory limitations as to when that defense is unavailable, and clarify that the burden of proof for an affirmative defense is on the person claiming the defense; incorporate statutory requirements for filing a CAP or intent to obtain authorization for emissions, and associated required deadlines; create provisions for required contents

of CAPs and commission approval and enforcement of CAPs; establish criteria for determining when emissions events are excessive; and define a process for the executive director to determine when excessive emissions events have occurred and criteria for the commission to consider in determining when an owner or operator has chronic excessive emissions events. In addition, the amendments revise the definition section, including a change to the RQ for seven specific compounds and revise the general format of Chapter 101. The amendments which implement HB 2912, §5.01 and §18.14, add new or more stringent requirements, and do not limit the commission's existing authority requiring reporting or permitting of emissions and authority to bring enforcement action under the THSC and Texas Water Code (TWC). The amendments will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an commission 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 commission instead of under a specific state law. The amendments do not exceed a standard set by federal law or exceed an express requirement of state law. Further, there is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. As discussed in the STATUTORY AUTHORITY sections of this preamble, this rulemaking was not developed solely under the general powers of the commission, but is authorized by

the provisions cited in those sections to implement certain requirements of HB 2912 and modify the reporting requirements for specific air contaminants. Therefore, this rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the adopted rules do not meet any of the four applicability requirements.

The commission invited public comment regarding the draft RIA determination during the public comment period. No specific comments were received.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for this rulemaking action. The specific purpose of this rulemaking is to implement certain sections of HB 2912, modify the reportable quantities of ethylene and propylene, and revise the format of Chapter 101, as discussed elsewhere in this preamble. The amendments specifically implement the requirements of THSC, §382.0215 and §382.0216, regarding the reporting of upset and maintenance emissions. Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the amendments do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, these rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicited comments on the consistency of the proposed rulemaking with the CMP during the public comment period, however, no specific comments were received.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 101 contains applicable requirements under 30 TAC Chapter 122, *Federal Operating Permits*; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the permit revision process in Chapter 122, revise their operating permits to include the revised Chapter 101 requirements for each emissions unit at their sites affected by these revisions.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin, Texas, on May 21, 2002, at 10:00 a.m., at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210. Five persons attended the hearing, but none registered to speak. The comment period was scheduled to close at 5:00 p.m. on May 28, 2002, however, at the request of the EPA, the comment period was extended until 5:00 p.m. on June 10, 2002. Written comments were received from the following commenters: Environmental Defense and Public Citizen on behalf of the Alliance for Clean Texas (ACT); Association of Electric Companies of Texas, Inc. (AECT); Alamo Cement Company, Ltd. (Alamo); Association of Texas Intrastate Natural Gas Pipelines (ATINGP); Birch & Becker, L.L.P. on behalf of the City of Garland, Greenville Electric Utility System, and San Miguel Electric Cooperative, Inc. (Birch); BP Products North America, Inc. (BP); Brown McCarroll, L.L.P. on behalf of the Texas Oil and Gas Association and other clients (Brown McCarroll); Capitol Aggregates (Capitol); Thompson & Knight, L.L.P. on behalf of Chaparral Steel Midlothian, L.P. (Chaparral); City Public Service of San Antonio (CPS); Dow Chemical Company (Dow); Eastman Chemical Company, Texas Operations (Eastman); EPA; ExxonMobil Production Company (ExxonMobil-Production); ExxonMobil Downstream/Chemical (ExxonMobil-Downstream); Harris County Public Health and Environmental

Services Pollution Control Division (Harris County Public Health); Occidental Chemical Corporation (OxyChem); Reliant Energy, Incorporated (Reliant); the Honorable Scott Hochberg, Texas State Representative, District 132 (Representative Hochberg); Sierra Club, Houston Regional Group (Sierra-Houston); Texas Chemical Council (TCC); Baker Botts, L.L.P. on behalf of the Texas Industry Project (TIP); and TXI Operations, L.P. (TXI).

RESPONSE TO COMMENTS

ACT, Birch, EPA, Harris County Public Health, and OxyChem expressed general support of the proposal. None of the commenters expressed general opposition to the proposal. ACT, Alamo, AECT, ATINGP, BP, Birch, Brown McCarroll, Capitol, Chaparral, CPS, Eastman, EPA, ExxonMobil, ExxonMobil-Downstream, Harris County Public Health, OxyChem, Reliant, Representative Hochberg, Sierra-Houston, TCC, TIP, and TXI suggested changes and/or stated concerns regarding the rule language. In addition to their individual comments, BP endorsed the comments of the TCC; Eastman and ExxonMobil-Production endorsed the comments submitted by TIP; OxyChem endorsed the comments submitted by TCC and Brown McCarroll; and Reliant endorsed the comments submitted by AECT and TIP.

As a general comment, ACT stated that the proposed changes to Chapter 101 will do little, if anything, to improve the SIPs in HGA and BPA, and urged the commission to reconsider its proposal in light of the needs to further reduce emissions in these nonattainment areas.

The commission has not made any changes in response to these general comments. The primary goal of this rulemaking is to incorporate the statutory requirements of HB 2912, and revise definitions as necessary. Because some sections of Chapter 101 are being opened for revisions, the commission is taking the opportunity to revise the general format of Chapter 101. In addition, the definition of reportable quantity is being revised so that the commission can receive more timely data with regard to emissions of five highly-reactive VOCs. The commission disagrees that the rules will not improve SIPs in HGA and BPA because the commission expects additional reporting required by these rules to assist in the evaluation of ozone formation, including the sources of these emissions, so that appropriate emission levels and control strategies can be adopted to achieve attainment of the ozone standard in those areas. Further, the commission's position is that the rules provide an incentive to reduce emissions because emitters who do not timely report or do not meet the criteria of §101.222 may be subject to enforcement action and a determination that the emissions events are excessive, which may also form the basis for a determination that an owner or operator has had chronic excessive emissions events.

Brown McCarroll commented that it is surprising that the current rule proposal goes much further than the legislative mandate and, in fact, attempts to redefine the mandate to require the commission to add minor revisions to the existing rules, to implement a new set of rules and criteria for identifying and correcting excessive emissions events, to provide for the consideration of chronic excessive emissions events in an entity's compliance history, and for the commission to focus its regulatory attention on those persons who fail to report emissions and provide protection for persons who make a good faith attempt to report emissions and who attempt to correct emissions events. The rules actually would

make fundamental changes that call into question virtually all prior commission permits, rules, or other authorizations granted under THSC, Chapter 382 (TCAA). Brown McCarroll commented that the proposed rules also provide for additional, burdensome requirements for reporting emissions events, none of which were mandated or supported by HB 2912. Finally, the proposal would dramatically increase the number of required records without any recognized benefit to the environment or any specific statutory mandate to require such records. Brown McCarroll stated that many of these proposed rule amendments are beyond the scope of HB 2912 and, thus, would violate the procedural requirements of the Texas Administrative Procedure Act (APA).

The commission disagrees with the commenter and has not made any specific changes in response to this comment. The primary author of this portion of HB 2912 has explained the intent of the legislation was to, at a minimum, have the commission evaluate all emission events according to the criteria of proposed §101.222. The commission does not consider the inclusion of new designations of excessive and chronic excessive emissions events to be only minor revisions. Although the commenter did not explain how these rules call into question virtually all prior commission permits, rules, or other THSC authorizations, the commission disagrees that these rules make fundamental changes to existing permits or other authorizations, nor any rules other than those which are the subject of this rulemaking. The rules as adopted do not affect air authorizations or other rules concerning permits, rules, or orders of the commission. The APA establishes the minimum standards of uniform practice and procedure for state agencies in rulemaking, and the commission has met those legal requirements.

As discussed elsewhere in this preamble, the commission acknowledges that there will be an increase in some reporting, particularly reports related to releases of the five compounds for which the RQ was lowered to 100 for the HGA and the BPA in §101.1(85)(A)(iii). As discussed earlier in this preamble, the commission finds that there is a recognized benefit to the environment by receiving such additional information. An increased number of reports as a result of changes to the rules will enable the commission to better evaluate the types of emission releases of concern when it receives timely information for the reportable emissions. The commission's concept is consistent with the protection of public health because it provides for incentives to reduce unauthorized emissions and minimization of emissions which are excessive emissions events.

Brown McCarroll commented that Texas Government Code, §2001.024(b), requires that a notice of proposed rulemaking which "amends any part of an existing rule" must set out the text of the entire part of the rule being amended, new language must be underlined, and deleted language must be bracketed and stricken through to ensure that persons potentially affected by the proposed changes can determine exactly the changes proposed by the commission. Brown McCarroll requested that the commission re-propose the amendments and revisions in a format that conforms to the statutory requirements of the APA and allow for additional consideration of public comment.

The commission disagrees that the format used to propose these rules does not conform to any requirements in the APA and therefore declines to re-propose the amendments. The commission followed *Texas Register* rules regarding formatting of the changes. Further, reorganization of the

chapter was the result of the commission's quadrennial review of the chapter. That review suggested that the chapter be reorganized to have a more logical format, which necessitated repeal of old rules and proposal of new sections as explained in the proposal preamble. Further, a redline/strike out version of the commission's existing rules was available at all stakeholder meetings that clearly illustrated the specific proposed changes.

EPA commented that the public record should explain what safeguards are in place to prevent permitted facilities experiencing emissions events from substituting the reporting and recordkeeping provisions of Chapter 101 for reporting and recordkeeping requirements under the PSD and new source review regulations.

Through this rulemaking, the commission does not suggest or allow that Chapter 101 reporting act as a substitute for or in lieu of reporting required by federal permit or rule. The commission is sensitive to the burden of duplicative reporting and seeks to minimize any duplicative reporting whenever possible.

AECT, Brown McCarroll, and TCC agreed with the commission's initial estimate that not more than five emissions events would be considered excessive annually, while ACT objected to the low number. All commenters requested that the commission explain how it arrived at the estimated number of excessive emissions events of five to better understand how the commission plans to determine whether excessive emissions events have occurred. ACT urged the commission to reconsider its interpretation of the requirements of THSC, §382.0216 (b) and (c), in light of the language in HB 2912, §18.14.

TCC expressed concern that if the rules are not substantially revised, most chemical plants will be labeled as having excessive emissions events and suggested that the commission consider complexity of the plant, age of the equipment, and other factors as deemed appropriate by the legislature before making this determination, and classify events as "excessive" or "chronic" at the highest level of the commission. TCC further commented that the regulated entity should be afforded the opportunity to appeal the decision, and that the commission should clarify that for any isolated event to be "excessive," it would be an event that posed significant threat to health or the environment, excluding *force majeure*.

The commission revised §101.222 since proposal and expect that significantly more than five emissions events at facilities will be classified as excessive. The proposal contemplated that excessive emissions events would be limited to those that posed an imminent threat to public health or the environment. Based on historical examples, five of these types of events per year was a reasonable estimate. Since proposal, the commission has reconsidered its approach to determining when an emission event is “excessive.” The commission intends to evaluate all emissions events against the criteria of §101.222(a) to determine whether an event or events are excessive. While more events are likely to be classified as excessive, the commission anticipates that not every nonexemptible event will rise to the level of being excessive. Based on past experience, the commission expects to receive several thousand notifications of reportable emissions events annually, and it would be impractical for the “highest level” of the commission to evaluate each emissions event. Each emissions event will be reviewed on a case-by-case basis primarily at the regional office level considering the criteria as adopted in §101.222.

HB 2912 did not contemplate a separate appeal process regarding the executive director's decision on whether each emissions event is excessive. Rather, the intent was for facilities with excessive emissions events to quickly implement a CAP. Owners and operators who disagree with these determinations can seek review with commission staff. The commission declines to make other changes to criteria suggested by these comments because the commission finds that the criteria in HB 2912 is sufficient for determining whether an emissions event is excessive.

Section 101.1 - Definitions

Birch commented that the commission uses the term "facility" in several places in the proposed rules. For convenience and to improve the readability of the rules, Birch suggested that the commission also add the THSC definition of "facility" to the definitions in §101.1.

The commission declines to make the suggested change because the definition of "facility" in THSC, §382.003(6), is sufficient, as are other terms defined in the statute.

ACT supported the addition of a definition of "authorized emission" in proposed §101.1(4).

ExxonMobil-Downstream, Brown McCarroll, ATINGP, and Reliant commented that the changes to the definition of "unauthorized" in proposed §101.1(106) and the new definition of "authorized" in proposed §101.1(4) are substantial changes and a significant departure from past commission practice or current permitting practices. AECT commented that the proposed new and revised definitions will increase the scope of the upset, maintenance, startup, and shutdown rules such that every unscheduled excursion of a process or operation would be an upset without providing any added protection to human

health or the environment. Brown McCarroll commented that the proposed rule “ignores and completely misconstrues” the statutory requirement that emissions of air contaminants “cause or contribute” to air pollution for such emissions to be unauthorized and recommended that the commission delete the proposed definition changes and leave the existing definitions and underlying policy in place. Dow, AECT, TIP, ExxonMobil, and ExxonMobil-Downstream suggested that the definition of "authorized emissions" be revised to include the phrase “that do not exceed any applicable air emissions limitation in a permit, rule, or order of the commission or THSC, §382.0518(g).” In addition, ExxonMobil-Production suggested that using "authorized," the term which is being defined, as part of the definition itself, does not provide a definition of "authorized" and should not be used.

In the proposed rules, the commission proposed to add a new definition of the term *authorized emissions*, to modify the existing definition of “unauthorized emissions,” and to add new §101.221(a) that would prohibit a person from causing, suffering, or allowing unauthorized emissions. The commission received extensive comments raising a number of different issues relating to these proposed revisions. Although these proposed rule changes are within the commission's authority to adopt because they would interpret and implement the TCAA, they are not required by THSC, §382.0215 and §382.0216, as added by HB 2912. Given the limited purpose of this rulemaking, the commission has determined that it is not necessary to adopt the proposed new definition of “authorized emissions” and the proposed changes to the definition of “unauthorized emissions” at this time. This bifurcation will allow for future consideration of the issues raised by the commenters as well as provide future opportunities for the commission to deliberate the issues, such as at a commission work session, if appropriate.

TIP commented that the way commission now claims to interpret "unauthorized emissions" is confusing to the regulated community and does not make sense because the total emissions of an "emissions event" that are below the level in the maximum allowable emission rate table (MAERT) may not even reach the authorized emissions "limit." ExxonMobil-Downstream commented that any emissions that do not exceed the permit MAERT are authorized emissions because these emissions have already gone through evaluation. Dow suggested that the emission rate(s) presented on Table 1(a) of a permit application are the key representations in the application. TCC requested that the definition of authorized emissions be expanded so that it is clear that all routine emissions from a facility are authorized, including startup, shutdown, and maintenance emissions, as long as the emissions are below emissions limitations established by permit, rule, or order of the commission.

The commission disagrees with the comments and declines to make any of the recommended changes. Permit limits are based upon representations made by an applicant and the representations become conditions of the permit under 30 TAC §116.116(a). The commission relies on representations to indicate the worst-case scenario in which the facility expects to operate. Physical construction and facility operations form the basis upon which a health impacts review is conducted and a permit issued with appropriate emission controls. Therefore, emissions that exceed permitted emission limits or differ in the nature of the emissions (different chemical composition and resulting compositional quantity), the method of control (fully operational best available control technology), or the source (specific location) of emissions from what was represented will potentially affect the impacts of the emissions and type of controls required, and the commission therefore does not consider such emissions to be authorized.

ACT commented that creation of a definition for "authorized emissions" is a positive step for clarifying exactly what emissions are allowed under commission's rules and authorizations. However, ACT urged that CO₂ and methane should not be on the list of presumptively authorized emissions because emissions of these gases contribute to global warming. ACT stated that Texas should at least begin to collect reliable data regarding the emission of these gases. Conversely, ATINGP commented that the list of air contaminants deemed authorized in the definition of "authorized emissions" is too narrow and limited, and recommended adding "and any other component that is not causing a condition of air pollution as defined in THSC, §382.003(3)" to the definition of authorized emissions. Chaparral commented that the commission's new definition of "authorized emissions" is misguided in limiting CO₂, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen as "authorized emissions" for purposes of Subchapter F only. Chaparral suggested that because the commission does not routinely authorize emissions of these substances in its permit actions, rules, or orders, the commission should consider them "authorized" for all of the commission's rules and modify the rule accordingly. Chaparral also recommended clarifying that authorized emissions are emissions, other than insignificant emissions, of source-specific air contaminants regulated by the commission. Finally, Chaparral suggested the commission confirm that the authorized emissions of certain classes of air contaminants, such as particulate matter and VOCs, include the unspiciated components of those air contaminants.

The commission has not made any changes to these comments. The commission adopted the list of air contaminants in the definition of unauthorized emissions in the 1997 and 2000 versions of the rule and declines to add or delete any of the listed air contaminants. The commission disagrees that determining an air contaminant to be unauthorized is the appropriate method of collecting

data for CO₂ and methane. The commission has not determined that reporting of these emissions beyond what is required in the emissions inventory is necessary for controlling the quality of the state's air. Unspeciated components of particulate matter and VOCs are similarly not blanketly authorized because the commission needs speciation information to fully evaluate whether an emissions event is excessive and to evaluate impacts.

TCC commented that the commission should also clarify in the preamble that certain emissions which are "exempted by rule" are "authorized."

Emissions may be authorized by the commission in a number of ways, including through permits by rule and other rules that allow emissions.

CPS questioned if being "exempt from compliance" means that an event is authorized, if so, would a startup, shutdown, or maintenance event that is properly reported and meets the listed demonstrations in §101.222 be considered "authorized."

The terms "exempt from compliance" and "authorized" have different meanings that relate to emissions from an event, and not the event itself. Consistent with the statute, a facility must have authorization for emissions prior to its construction or modification by one of several means identified in the statute and implemented by the commission. The commission has not included upset and many maintenance emissions in permits because of the unpredictable nature of emissions, vast range of possible events, and varying kinds of impact scenarios that could occur.

The very nature of an upset event generally precludes any emissions-specific health or environmental impacts assessment from occurring prior to the release of air contaminants. In the case of an emissions event, the commission must decide how to evaluate the unauthorized emissions that occurred during the event. Emissions that are “exempt from compliance” are not penalized by the commission after an emissions event has occurred or after a maintenance, startup, or shutdown event is complete, while emissions that are authorized are not subject to the reporting requirements and evaluation under Chapter 101. In the case of a maintenance, startup, or shutdown activity that is properly reported and meets the demonstration criteria in §101.222, the activity would not be authorized, but would be exempt from compliance with applicable emissions limits.

TIP objected to the lack of notice given by commission in the proposed rule package regarding removal of the reference to "emission limitation" found in the current definition of "unauthorized emissions."

TIP commented that the preamble does not refer to "exceeding any limitation," and did not explain the reason for its deletion, and thus, is inconsistent with the APA. Furthermore, this proposed change is inconsistent with the current permitting rules of Chapter 116, in that Chapter 116 permit applications have never required a catalogue of all possible operating scenarios that constitute "normal" operations and the regulations do not contemplate that they should. Reliant commented that the commission should not change the definition of "unauthorized emission" nor add a definition of "authorized emission."

Reliant also stated the proposed rule preamble did not address the reason for the changes to the definitions of “authorized” and “unauthorized emissions.”

The commission received extensive comments raising a number of different issues relating to the proposed definitions of “authorized emissions” and “unauthorized emissions.” Although these proposed rule changes are within the commission's authority to adopt because they would interpret and implement the TCAA, they are not required by THSC, §382.0215 and §382.0216, as added by HB 2912. Given the limited purpose of this rulemaking, the commission has determined that it is not necessary to adopt the proposed new definition of “authorized emissions” and the proposed changes to the definition of “unauthorized emissions” at this time. This bifurcation will allow for future consideration of the issues raised by the commenters as well as provide future opportunities for the commission to deliberate the issues, such as at a commission work session, if appropriate.

TIP commented that the proposed regulatory changes are directly contrary to the "primary intent" behind the 1997 revisions to the U/M rules adopting the RQ concept, which the commission explained was "to reduce the number of reports to the commission and allow the commission to concentrate on events that were more significant and had the most likelihood of affecting persons and property off-site from the source of the upset."

The changes to the rules as adopted result from implementing the statutory changes required by HB 2912. HB 2912 changed the reporting requirements to allow the commission to have increased information to evaluate emissions events and intended to curb failure to report emissions events. Therefore, the commission expects some increase in reporting as a result of these rule changes. The commission is lowering the RQ for ethylene, butenes, and propylene and establishing a 100-

pound RQ for acetaldehyde and toluene because of the important role these compounds play in the formation of ozone, and the need for the commission to collect more detailed information on the periodic releases of these compounds in its efforts to attain the ozone standard, as discussed in more detail later in this preamble. These changes may also result in increased reporting, but the need to collect this information supports this additional burden on industry and commission resources.

ATINGP requested the commission to add an effective date provision making the new definitions effective prospectively.

The requested change is unnecessary because the rules will be self-implementing and will not apply retroactively. In other words, the rules will apply to emissions events that occur on and after the effective date of the rules.

Sierra-Houston questioned if fugitive emissions are included in the §101.1(26) definition of emissions event.

Unauthorized emissions may result from fugitive emissions from a piece of equipment or component. For example, a complete failure of a component such that the component can no longer serve its functional purpose would generally be considered an emissions event. Similarly, a process degassing from a blown-out valve would be an emissions event. However, if the packing

around the stem develops a seep and gas is escaping out the hole but the component is still in service, this would not be an emissions event, but instead would be a component fugitive leak.

Sierra-Houston and HCPCD commented that the phrase “emission point” in the §101.1(26) definition of emissions event needs to be defined or clarified. HCPCD suggested that the term "emissions point" should not necessarily refer to an identified and represented emission point included in a permit application or permit by rule registration information and that may have been assigned an emission point number. Additionally, HCPCD commented that it is possible to experience an emissions event from a scheduled maintenance, startup, or shutdown activity. Dow and ExxonMobil-Downstream commented that the rule or preamble should clarify that an emission event is a single event that occurs at a facility and suggested that the words “single” or “discrete” could be added prior to the words "upset" and "unscheduled" to clarify this definition. ExxonMobil-Downstream and TIP commented that the commission should substitute the term "facility" for the term "emissions point" in the definition of emissions event. TIP also commented that if the commission is compelled to use "emissions point" because the term was used in HB 2912, then it should define "emissions point" to be a "facility."

The commission declines to make the suggested changes because the term “emission point” is a part of the statutory definition of emissions event. THSC contained a definition of “facility” at the time that §382.0215(a) was added, and the legislature chose not to use that term in defining the term “emission event.” The commission interprets the term “emission point” to mean the localized place where emissions enter the atmosphere. This could include equipment meeting the definition of a “facility” such as a compressor or flare, for example, but it could also include the

point where a pipeline break has occurred. Therefore, the commission is not making the suggested changes. An emissions event may be comprised of either a single episode of unauthorized emissions or a series of discrete episodes of unauthorized emissions over a period of time where the cause of each episode is identical or related.

A maintenance, startup, or shutdown activity is either scheduled or unscheduled. If, after a maintenance activity is conducted, the actual emissions exceeded the estimated emissions submitted in the notification, then the event would not be considered a scheduled maintenance, startup, or shutdown activity.

ACT commented that the definition of "federally enforceable" in §101.1(33) does not appear to include the limitations and conditions in federal operating permits issued under Chapter 122. ACT suggested revising the definition to read: "All limitations and conditions which are enforceable by EPA administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) Parts 60 and 61, requirements within any applicable state implementation plan (SIP), any requirements incorporated in a federal operating permit issued pursuant to 30 TAC Chapter 122, any permit requirements established under 40 CFR §52.21 or under regulations approved under 40 CFR Part 51, Subpart 1, including operating and preconstruction permits issued under the approved program that is incorporated into the SIP and that expressly required adherence to any permit issued under such program."

As stated in the proposal, various administrative corrections are being made to definitions in §101.1, so that the rule language will conform to commission and *Texas Register* formatting and style standards. Two such changes are being made to §101.1(33) as proposed and the commission does not intend any change to the meaning of this definition by this rulemaking. Because these comments are beyond the scope of this rulemaking, the commission has not changed the rule in response to these comments.

ExxonMobil-Production commented that with the proposed creation of the new term "reportable emission event," the §101.1(83) definition of the term "reportable upset" should be deleted as it is redundant and confusing.

The commission agrees and has adopted the term "reportable emissions event" and deleted the term "reportable upset."

ATINGP recommended that the RQs for the five specified compounds remain the same and not be changed by this rulemaking as these changes are premature. CPS commented that there was no rationale provided for reducing the RQ for propylene and ethylene to 100 pounds from 5,000 pounds, and wanted to know if there was new evidence that these particular chemicals are more harmful than others that are listed. TCC commented that the reduction to a 100-pound threshold is arbitrary, and expressed concern that the commission has proposed to establish 100-pound RQs for these compounds without offering modeling or other specific scientific basis or evidence for such a drastic change.

ACT requested that the commission lower the RQ for additional species to gain an even fuller understanding of the true extent and impact of upset and maintenance, startup, and shutdown emissions. Specifically, the commission should ensure that the RQ is set at no more than 100 pounds for the 12 highly-reactive VOCs. ACT supported the RQ for highly-reactive VOCs set even lower, specifically at a *de minimis* of one to ten pounds, and requested that the commission modify its proposed rule accordingly. In addition to lowering the RQs for highly-reactive VOCs to 100 pounds or less, ACT suggested that the commission lower the RQs from the current levels for other VOC species, including all C3-C10 alkanes and their isomers, as well as C2-C4 alcohols and any isomers. ACT suggested that the commission should set RQs of 1,000 pounds or less for all isomers of the following air contaminants: propane, butane, pentane, hexane, heptane, octane, nonane, and decane, ethanol, propanol, and butanol.

TIP commented that the commission should replace the number "100" from new §101.1(85)(A)(i)(III)-(-b-), (-c-), (-g-), (-n-), and (-o-), with the number "5,000" in its place. Dow suggested lowering the RQ for ethylene, propylene, and butenes to 1,000 pounds, and to retain the RQ of 1,000 pounds for acetaldehyde and toluene to enable the commission to have quick access to upset and maintenance, startup, and shutdown events in the 1,000 to 5,000 pound range and likely would not place extra burden on the regional offices and regulated community. ExxonMobil-Downstream disagreed with the proposed lowering of the RQs. ExxonMobil-Downstream suggested that the commission adopt an RQ of 1,000 pounds for ethylene, propylene, and butenes and reevaluate the justification for a lower RQ for these compounds and for toluene and acetaldehyde at a later time after evaluation of data obtained under the interim level. ExxonMobil-Downstream commented that the commission should give consideration

to what is an appropriate level of significance for each compound, and what is the degree of information obtained for the resources required.

ExxonMobil-Production commented that to be consistent with the reasoning for the proposal (lowering the RQ to 100 pounds for substances such as ethylene, and adding an RQ of 100 pounds for toluene), specific substances in EPA tables 302.4 and 355 Appendix A (found in 40 CFR 302 and 40 CFR 355, respectively) that are deemed important to air quality should instead be added to the list in §101.1(85)(A)(i)(III) and that §101.1(85)(A)(i)(I) and (II) should then be deleted because additional reporting of substances not identified as important to the commission's air quality goals is redundant with reporting already required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) for the protection of public health. In addition to being listed in §101.1(85)(A)(i)(III), reasonable RQs for these substances should be set. As an example, ExxonMobil-Production suggested that the RQ for benzene should be raised to 100 pounds.

EPA and Sierra-Houston supported the proposed reduction of the RQs for ethylene and propylene from 5,000 pounds to 100 pounds. HCPCD supported lowering the RQ of certain VOCs when appropriate, stating it is reasonable to lower VOC RQs based on ozone formation reactivities for ozone nonattainment areas.

The commission has not made any changes in response to these comments. As stated in the proposal, the lower RQ for the five highly-reactive VOCs recognizes the important role those

compounds play in the formation of ozone, and the need for the commission to collect more detailed information on the periodic releases of these compounds in its efforts to attain the ozone standard. The commission invited comment on the appropriate levels for the ethylene, butenes, acetaldehyde, toluene, and propylene RQs and the geographical location of these RQs to allow the commission to collect sufficient and meaningful data related to periodic releases. The proposal to change the RQ for five compounds reflects the default RQ of 100 pounds found in §101.1(85)(A)(ii) for any compounds not specifically listed; the default RQ of 100 already applies to the seven remaining highly-reactive VOCs. The commission's monitoring data and evaluation of ozone formation supports the need to have this information reported to the commission at these RQs so that the staff has the temporal information to evaluate releases of these compounds.

In the past year, the commission conducted a scientific evaluation based in large part on aircraft data collected by the Texas 2000 Air Quality Study (TexAQS). The TexAQS, a comprehensive research project conducted in August and September 2000 involving more than 40 research organizations and over 200 scientists, studied ground-level ozone air pollution in the HGA and east Texas regions. The study revealed that while NO_x emissions from industrial sources were generally correctly accounted for, industrial VOC emissions were likely significantly understated in earlier emissions inventories. The study also showed that surface monitors were insufficient in capturing the phenomenon of ozone plumes downwind of industrial facilities. On four separate days, ozone levels exceeding 125 parts per billion (ppb), the current one-hour ozone NAAQS, were recorded by aircraft instruments that were missed by surface monitoring equipment.

Preliminary results from the scientific evaluation of TexAQS data were summarized in a memorandum, dated February 28, 2002, which is available at ftp://ftp.tceq.state.tx.us/pub/AirQuality/AirQualityPlanningAssessment/Modeling/HGAQSE/Reports_2002Feb/TNRCC/exsummary_20020228.pdf. Analysis showed that plumes stemming from HGA's industrial areas produce ozone very rapidly due to the collocation of large NO_x and VOC emissions from industrial facilities. Initial efforts were focused on the most remarkable findings, that a select number of highly-reactive VOCs (ethylene, propylene, and 1, 3 butadiene) contributed to very large portions of reactivity observed airborne samples, and were previously under reported in the emissions inventory used in the December 2000 HGA SIP. As scientists completed more detailed analyses, other reactive VOCs, including isoprene, butenes, formaldehyde, acetaldehyde, toluene, pentenes, trimethylbenzenes, xylenes, and ethyltoluenes may be found to possibly contribute to ozone production in HGA. Other scientists have indicated that large amounts of less reactive VOC emissions have contributed to ozone production in HGA. At this time, commission staff has not been able to analyze the role of these additional VOCs in ozone production in HGA, but plans to conduct that analysis prior to the mid-course review SIP revision scheduled for proposal in 2003. Therefore, controls on upsets and routine industrial VOC emissions are necessary to address some of the elevated ozone levels observed in HGA.

Technical support documentation contains early results from ongoing analysis examining whether reductions in emissions of highly-reactive VOCs can replace the last 10% of industrial NO_x controls, while maintaining the integrity of the SIP by ensuring that the air quality specified in the approved December 2000 HGA SIP continues to be met. Several detailed analyses provide some

directional support for the premise that it may be possible to achieve the same level of air quality benefits with additional reductions in industrial olefin emissions, specifically reductions of highly-reactive VOCs from industrial sources. See the June 21, 2002, issue of the *Texas Register* (27 TexReg 5394 and 5454) and the July 12, 2002 issue of the *Texas Register* (27 TexReg 6208) for further information about these analyses.

In addition, Dr. David Allen, professor at the University of Texas at Austin and member of the Interim Science Coordinating Committee (see http://home.tceq.state.tx.us/air/aqp/airquality_techcom.html#topic2), has performed sensitivity analyses using a simple photochemical “box” model designed to replicate ambient air conditions in HGA. These analyses indicate that episodic emissions of approximately 100 pounds of highly-reactive hydrocarbons can cause localized (one square kilometer area) increases in ozone concentration of approximately 50 ppb. Because the background of normal emissions is approximately 90 ppb, an increase of 50 ppb can contribute to an exceedence of the one-hour standard. Thus, 100 pounds is a sufficient quantity to make a difference in formation of both ozone and transient high ozone events. Therefore, as discussed later in this preamble, requiring reporting of these compounds of particular interest at 100 pounds supports the lower RQ to assist the commission in its efforts to understand ozone formation and events and to develop appropriate controls for emissions of ozone precursor compounds. This information is necessary for both the current proposed HGA SIP revision and the mid-course review of the HGA SIP, a commitment made by the commission and a part of the federally-approved HGA SIP. The commission is not

aware of any scientific information that supports the need at this time for an RQ in the range of one to ten pounds for highly-reactive VOCs.

While one of the principal reasons for the 1997 amendments to the rules which established the concept of a “reportable quantity” was to allow the commission to concentrate those resources on releases of unauthorized emissions that were the most significant, the monitoring data and evaluation of ozone formation supports the need to have additional information reported to the commission for these specific compounds so that the commission has the temporal information to evaluate releases of these compounds. Specifically, the commission needs detailed information which shows the emissions changes in hourly time frames (as opposed to reports stated in terms of daily, weekly, or annual time frames) to further the research in causation of ozone formation, including what kinds of releases cause transient high ozone. Without the detailed timely reporting of information about each release, the causes cannot be determined and will harm the commission’s efforts to control them effectively. Information regarding quantity and duration of the release, in addition to details regarding type of facilities and compounds involved, how the release happened (such as at high or low pressure or temperature, etc.), needs to be immediately available for the commission’s technical staff to use in this research rather than commission staff gathering information that is normally kept only on site under the requirement to record information. Under the current reported quantities, the technical staff has been unable to show a positive correlation between reported emissions and high ozone readings. By lowering the RQ, staff should be able to do a better job of predicting high ozone in the future to protect human health and the environment. Specifically, the commission primarily needs the information which

shows the emissions changes in hourly time frames but reports stated in terms of daily, or weekly time frames will also further the research in causation of ozone formation. Although the reporting per event could be on a hourly, daily, weekly, or monthly basis, the earlier reporting of dates and duration of these emissions is critical in timely evaluation of these releases. Requiring reporting of these compounds of particular interest does not mean that the commission is no longer interested in the reporting of the substances on the lists referenced in §101.1(85)(A)(i)(I) and (II). The list of RQs, which is the basis of episodic emission reporting, is established using criteria for the protection of health and the prevention of nuisances, and the commission will continue to require reports of releases at or above these quantities.

The commission does not have data that supports lowering the RQ for other VOC species, including all C3 - C10 alkanes and their isomers, as well as C2 - C4 alcohols and any isomers, nor lowering RQs to 1,000 pounds or less for all isomers of the following air contaminants: propane, butane, pentane, hexane, heptane, octane, nonane, and decane, ethanol, propanol, and butanol. The C3 - C10 alkanes have a much lower reactivity level than the 12 identified highly-reactive VOCs, and therefore additional reporting of those would not assist in the evaluation of ozone formation and transient high ozone events. Further, the commission has not found data to demonstrate that alcohols play any significant role in ozone formation. Finally, the commission has not found that its concern regarding benzene releases warrants an increase in the RQ at this time.

ExxonMobil-Downstream commented that its evaluation for ethylene and propylene showed that a 1,000-pound RQ option would capture 78% of the data that a 100-pound RQ option would, but that 56% fewer reports would be required. Brown McCarroll commented that contrary to prior determinations, the proposal will increase the frequency of reporting and the amount of information required to be reported, and commented that the preamble fails to evaluate the costs and benefits of the increased reporting and does not compare those to the previously required staff report. Brown McCarroll also commented that the commission should have a means to utilize the information at the time it is reported and that the commission should provide evidence that small quantities of the compounds will result in measurable changes in ozone formation. Oxychem commented that the current rules require that facilities maintain records of non-reportable emissions events, therefore, data should already be available for review by commission staff. Oxychem suggested that a review of the existing non-reportable emission event data be conducted, instead of raising the RQ's in this rule package.

The commission disagrees that there is no benefit to any increased reporting. For example, as discussed elsewhere in this preamble, the commission expects to receive useful data related to ozone formation by increased reporting of the emissions of the five compounds for which the RQ was lowered to 100 pounds in evaluating the issue of ozone formation. Achieving attainment in HGA as quickly as possible will benefit the health of all persons in HGA. The numbers provided by ExxonMobil-Production suggest that the commission may get a considerable amount of release data for evaluation from that company but no information was provided to show that other owners and operations would have similar reporting percentages. In particular, temporal

reporting will save the commission and owners and operators resources necessary to make potentially numerous inspections of records to get hourly emissions data and other emissions data of concern for certain types of releases. The commission has conducted reviews of recordable data, but annual reviews of highly-reactive VOCs do not provide the commission's technical staff with timely data in a usable format for data analysis and photochemical modeling of ozone episodes.

The commission disagrees that the preamble fails to evaluate the costs and benefits of the increased reporting. There is no requirement to compare those estimates to any staff report. Further, the commission disagrees that there will be an artificial increase in paperwork requirements. To the contrary, HB 2912 requires electronic reporting.

ATINGP commented that the commission should postpone any change to the RQs for these compounds until it completes its studies on the role these highly-reactive VOCs play in the formation of ozone and then establish RQs based upon sound science, rather than adopt a default standard which would dramatically increase the amount of reporting, recording, and cost of compliance on the regulated community that will be imposed by these rules, particularly if these standards are applied statewide. TCC commented that if the commission lowers the RQ to 100 pounds for certain substances, the RQ threshold should be reduced in phases, allowing industry time to implement technology to control these low-level releases. TCC suggested the commission consider adoption of a rule with new RQs at the 1,000-pound threshold and reduce to 100-pound RQs over a period of years, if appropriate. This would provide a balance of increased, immediate reporting and the effective utilization of commission and

industry resources. Dow suggested retaining the RQ of 1,000 pounds for acetaldehyde and toluene and after a period of time, the commission could consider lowering the RQ values for these compounds to 100 pounds if it is determined that additional information is needed on these smaller events.

The commission has not made any changes in response to these comments. As discussed earlier in this preamble, the commission is committed to a mid-course review as part of the HGA SIP. To meet the deadline of mid-2004 for adoptions of a SIP revision, the commission cannot postpone the gathering of data needed to perform additional analyses. Reporting at lower RQs will only be available for about one year before SIP revisions are scheduled to be proposed.

Brown McCarroll commented that the proposal fails to provide any evidence that excess emissions of compounds in quantities ranging between the proposed RQ and the current RQ have any measurable or significant effect on ozone formation.

The commission has not changed the rules in response to these comments. As discussed earlier in this preamble, the commission has data that supports the finding that emissions of highly-reactive VOCs in amounts as low as 100 pounds have a measurable and significant effect on ozone formation. Because excess emissions can be in the range of 100 - 5,000 pounds, the commission needs the reporting of these events for the reasons explained earlier in this preamble.

Dow suggested that the commission consider collecting information on the quantity and duration of releases of these materials on a periodic basis through the existing emission inventory process and

regulations. Eastman commented that companies are already required to maintain information on all episodic events, reporting at these lower RQs within 24 hours will significantly increase the number of reports to the regional offices. Eastman suggested that reporting be done on a routine basis, such as monthly during the May to September ozone season, to provide commission with data on these constituents from all releases, instead of lowering the RQ for this rule package.

The commission acknowledges that there will likely be an increase in reports of the compounds for which the RQ is lowered in the HGA and BPA areas. Commission staff is expected to use the information in two primary ways. First, the information will be used by the staff in various ozone formation evaluations, such as calculating back trajectories to sources of releases, as well as reviewing the reports for instances where immediate investigation may be necessary, as is currently part of the regional staff's responsibilities. Both of these reasons support reporting of the five compounds within 24 hours.

ACT urged the commission to set the RQ uniformly statewide to accurately categorize the emissions events across the state. Dow and Oxychem commented that the proposed lowering of the RQs to 100 pounds for all facilities in Texas should instead only be for ozone nonattainment areas. ATINGP, Eastman, and ExxonMobil-Downstream commented that the new lower RQs should be applicable only to HGA to avoid spending unnecessary resources by both industry and the commission.

The commission has revised the rule in response to these comments. Section 101.1(85)(A)(i)(III)

(-b-), (-c-), (-g-), (-n-), and (-o-) are revised to apply only to the HGA and BPA areas. Both of these areas are nonattainment for the ozone NAAQS. Although the primary focus has been on the HGA ozone issues, the commission has similar concerns with regard to transport and formation of ozone in BPA, primarily because the types of emissions and industries which emit them are similar. Ambient monitoring data shows that, like HGA, BPA also experiences rapid increase in ozone concentration called ozone “spikes” or transient high ozone events. Since BPA also has high concentrations of industry like HGA, it is likely that the BPA ozone formation problems are very similar. Lower RQs will help the agency investigate this issue. Ambient monitoring data also indicates that transport from BPA may sometimes affect HGA; thus, emissions from industry in BPA can contribute to ozone formation in HGA.

The commission has not made any changes in response to the comment concerning phasing-in of the lowering of the RQ’s. As discussed earlier in this preamble, the reporting of these compounds is necessary to further evaluate the formation of ozone, particularly in the ozone nonattainment areas of HGA and BPA. Since industry should already be controlling low-level releases, and recording these emissions, a phased-in reporting policy is not justified.

Alamo, ATINGP, Brown McCarroll, ExxonMobil, and TIP commented that NO_x should either be exempted from RQs or should be raised, either from 100 pounds to 5,000 pounds. Alamo, ATINGP, Brown McCarroll and TIP based their comments on EPA’s recent statement that uncontrolled emissions of NO_x in amounts equal to or greater than ten pounds rarely require a government response. TIP furthermore commented that the ten-pound RQ for NO_x (the actual RQ is for NO and NO₂, not NO_x),

under the U/M rules is merely the federal RQ incorporated by reference. Since the commission has proposed to vary from federal RQs for VOCs and because of the role now understood to be played by highly-reactive VOCs in ozone formation, there is no need for such a low RQ for NO_x. ATINGP commented that the commission should consider raising the RQ for NO_x as it completes its study of NO_x and highly-reactive VOCs in the HGA nonattainment area. ATINGP commented that the commission may find as a result of those studies that NO_x does not contribute as significantly as it had thought in the past to ozone formation in that region.

The commission revised the RQ for NO and NO₂ from ten pounds to 100 pounds. EPA recognizes that certain uncontrolled air emissions of NO and NO₂ equal to or greater than the ten-pound RQ may rarely require a government response. The commission agrees with this assessment because the commission's experience has been similar. Therefore, the commission is raising the RQ for NO and NO₂ from ten pounds to the default value of 100 pounds.

Oxychem commented that in general, it supports the commission's efforts to better define and consolidate its regulations relating to authorized and unauthorized emissions events. Specifically, Oxychem commended the commission on its proposed clarifications relating to reporting requirements and definitions of "scheduled" versus "unscheduled" maintenance.

The commission appreciates the comments in support of the rules.

AECT, ATINGP, Chaparral, Dow, ExxonMobil-Downstream, TCC, and TIP also commented on the definition of “scheduled maintenance, startup, or shutdown activity” in proposed §101.1(87).

ATINGP, Chaparral, Dow, TIP, and Exxon Mobil Downstream commented that the proposed §101.1(87) is confusing, ambiguous, or unpredictable and should be clarified to address what the commission intends “scheduled” to mean. Chaparral commented that the definition of an “unscheduled maintenance, startup, or shutdown activity” in proposed §101.1(106) should be clearly limited to scheduled maintenance, startup, or shutdown activities that result in “unauthorized emissions” because as drafted, all scheduled maintenance, startup, and shutdown activities could be subject to the burdensome recording requirement in §101.211 even for routine activities that do not result in unauthorized emissions. ExxonMobil- Downsteam commented that "scheduled" should be defined as any maintenance, startup, or shutdown activity that is intentionally initiated.

No change was made in response to these comments, because the structure of the definition in §101.1(87), now renumbered as §101.1(86), as adopted was created from THSC, §382.0215(a), with some minor wording changes. The definition of “scheduled maintenance, startup, or shutdown activity” captures the statutory language describing maintenance, startup, or shutdown activities. All maintenance, startup, or shutdown activities as defined in these rules will result in unauthorized emissions. Activities that do not result in unauthorized emissions are not subject to the requirements of these rules. The commission disagrees that “intentionally initiated” is an appropriate definition for scheduled maintenance, startup, or shutdown activities because it could include all maintenance, startup, or shutdown activities.

TCC commented that the commission should recognize that requiring actual emissions to be below initial estimates for "scheduled" events will encourage over reporting as companies will likely be extremely conservative in providing estimates to the commission. TCC stated that initial reports are typically estimates based on best available information at the time, and suggested that penalizing companies for providing best available information is inappropriate. AECT requested that the commission clarify what will happen if a company predicts that a maintenance, startup, or shutdown activity will be either under all RQs or over an RQ and all reporting requirements are followed and reports a level of emissions that is greater than the actual emissions that ultimately occur.

The commission has not made any changes in response to these comments. The commission recognizes that overestimating emissions for scheduled maintenance, startup, or shutdown activities may occur as a result of owners and operators complying with the requirements of HB 2912. Continuing the commission's existing practice, the commission expects to evaluate information on notifications for scheduled maintenance, startup, and shutdown activities and may specify the amount, time, and duration of emissions that will be allowed during a scheduled maintenance, startup, or shutdown activity under §101.221(e). In the situation where a maintenance, startup, or shutdown activity generates fewer emissions than are reported in the ten-day notification, the commission expects the owner or operator to submit a final record within two weeks after the end of the scheduled activity to reflect accurate information required by §101.221(c) based on the activity as it occurred. Where emissions from the maintenance, startup, or shutdown activity exceed the predicted emissions estimates (and the reportable activity becomes an emission event, triggering the reporting requirements of §101.201, the owner or operator must

report the emissions event within 24 hours of discovery of the emissions event (i.e., within 24 hours of discovering the emissions estimates were exceeded).

ATINGP urged the commission to discuss and explain its interpretation of the ten days in advance or "as soon as practicable prior to the scheduled activity" standard. Dow requested that the commission clarify that the term "scheduled" means planned in advance even in situations where the planning period is short.

The commission has not made any changes in response to these comments, because §101.211(a) requires a ten-day advance notice unless a scheduled maintenance, startup, or shutdown activity does not practically allow ten days for prior notification, such as maintenance or startup following an emissions event shutdown. Such activities require an owner or operator to provide advance notification as soon as practicable prior to the event. The commission interprets the term “scheduled” to include activities planned in advance.

ATINGP suggested incorporating the ten-day notification and “as soon as practicable” language into the definition for clarity and uniformity. Dow suggested revising the definition of scheduled maintenance, startup, or shutdown activities to clarify the prior notice and recordkeeping requirements. ExxonMobil-Downstream suggested removing the recordkeeping and reporting requirements from the definition.

The commission has not made any changes in response to the comments. The notice and reporting requirements in §101.211 clearly describe actions expected of owners and operators prior to and

after a maintenance, startup, or shutdown activity to qualify the activity as a “scheduled maintenance, startup, or shutdown activity.” Maintenance, startup, or shutdown activities that do not meet the definition in §101.1(86) as adopted (explicitly including the requirements of §101.211) are considered not to be scheduled maintenance, startup, or shutdown activities and, therefore, are emissions events.

TIP suggested modifying the proposed definition of “scheduled maintenance, startup, or shutdown activity” to read: “For activities with unauthorized emissions which are expected to exceed a RQ, a scheduled maintenance, startup or shutdown activity is an activity for which the owner or operator of the facility provides prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the notice. For activities with unauthorized emissions which are not expected to, and do not exceed an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title.”

The commission agrees and has made the suggested change to the definition to provide additional clarity.

Birch commented that there appears to be a typographical error in proposed §101.1(87)(B). In the proposed rule the last word in this section uses the conjunction "or," whereas the implementing

language in HB 2912 §382.0215(a)(2), upon which this proposed provision of the rule is based, uses the word "and."

The rule has been revised and the commission has revised the definition of “scheduled maintenance, startup, or shutdown activity,” renumbered as §101.1(86), based on other comments as discussed elsewhere in this preamble.

AECT suggested the commission delete the phrase "or final report" in paragraphs (1) and (2) of the definition of "scheduled maintenance, startup, or shutdown activity" because proposed §101.211 does not require a final report, but instead only requires prior notice.

Section 101.211 as adopted requires a final record to be submitted no later than two weeks after the end of the scheduled activity, and the commission declines to make the suggested change in §101.1(86).

ATINGP, Brown McCarroll, and TIP expressed concern with the impact of the use of newly defined term “site” at §101.1(88), as it impacts the proposed compliance history rules. ATINGP and TIP commented that the term “site” was overly broad and not clearly delineated. ATINGP stated: “. . . there is no statutory authority to support a determination of chronic excessive emissions events on a site-wide basis.” TCC commented that the commission should clarify in the proposed definition of "site" that docks, for example, which are not physically adjacent to the operating plant are considered "connected with the regulated activity" for purposes of this rulemaking.

To address HB 2912 requirements concerning chronic excessive emissions events, the commission has adopted rule language stating that the determination for chronic excessive emissions events will be based on a review of a site. The commission does not believe that the term “site” is too broad nor is it unclear in its delineation. The term “site” has been clearly defined and is identical to the definition of “site” adopted by the commission in the compliance history rules in Chapter 60. Under the compliance history rules, chronic excessive emissions events at a site are components to be included in a person’s compliance history specific to the site under review. The commenter’s example of a dock which is not physically adjacent to the operating plant would be considered by the commission on a case-by-case basis to determine whether it is connected with the regulated activity. In this example, the review should include, but not be limited to: reviewing the operations of the dock (i.e., is the product from or to the operating plant only part of the dock’s operation); reviewing the ownership of the land between the operating plant and the dock; reviewing the staffing of the dock (i.e., is it manned by different personnel or does operating plant personnel conduct dock operations as needed); and determining if the dock has a different agency account number.

Section 101.10 - Emissions Inventory Requirements

ACT commented that HB 2912 requires that companies report total annual emissions from all emissions events in categories as established by commission rule. The commission should at the earliest possible date reflect the changes made in HB 2912 by amending §101.10.

The commission is revising the emission inventory guidance documents to reflect the fact that a total for all emissions events must be reported during the next annual emission inventory. Section 101.10 was not proposed for revision and therefore this comment is beyond the scope of this rulemaking.

Section 101.201 - Emissions Event Reporting and Recordkeeping Requirements

CPS commented that the requirement to report emissions events within 24 hours after the discovery of an event seems to be unnecessary when commission offices are closed on the weekends and holidays.

CPS recommended that it would be more reasonable to allow for reporting the event the next business day.

The purpose of the 24-hour notice is to enable the commission to assess what immediate action, if any, is appropriate for the event. In addition, the commission does respond to incidents 24 hours a day. The commission has not made any changes to the rule in response to this comment.

TCC commented that the commission should revise §101.201(a)(2) and (3), and §101.211(a)(1) and (2) from "referenced in the definition of reportable quantity" to "listed in the definition of reportable quantity" for clarity.

Due to other changes to the adopted rules discussed later in this preamble, the commission has removed the referenced language from §101.201(a)(2) and (3) and §101.211(a)(1) and (2).

AECT requested that in §101.201(a)(2)(C), the agency clarify what is meant by the term “the location of the emissions” to specify whether it refers to the name of the unit, piece of equipment, or area where the emissions event occurred; or whether it refers to the metes and the bounds description of the particular piece of equipment, or area where the emissions event occurred.

The commission has revised the rule to clarify that this data element is intended to identify the geographic location of the point of air contaminant emissions into the atmosphere. This information is necessary to allow the commission to know where the facility, or where at a large complex, the emissions point can be found. The owner or operator should provide the best available information when describing the location of the emissions to the atmosphere.

Sierra-Houston commented that it is not clear what "the most precise commission recognized identifier" is considered by the commission, and recommended that for consistency the term "emission point number" should be required.

The most precise agency recognized identifier is a three-tiered description of the source of the emissions which includes: the process unit that contains the facility, the facility which is the origin of the air contaminants, and the emission point number from which the emissions are released into the atmosphere. The commission establishes the facility identification number and the emissions point number in the emissions inventory and permitting programs.

ACT supported all of the proposed changes to the content of the initial notification for reportable emissions events. Alamo, Brown McCarroll, Dow, Capitol, Eastman, ExxonMobil-Downstream, and TIP commented that the additional information being required under the initial notification is too detailed to be included in an initial report, specifically the source identification and authorized emission limits requirements. These elements are better suited for the two-week follow-up report. In the final report, all the additional information would be provided and will provide the commission with information needed to complete a review of the release. TIP also commented that the language "and the authorized emission limits" should be deleted from proposed §101.201(a)(2)(1). Also, the language "to the extent possible," should be added to the beginning of proposed §101.201(a)(2)(J).

The commission agrees in part with the commenters and has revised the initial reporting requirements appropriately to make them more suitable for knowledge reasonably expected to be on hand shortly after an emissions event is discovered. The commission recognizes that some of the information should be more complete in the two-week report, but the commission does need to understand the situation immediately and the required information will be useful to the commission to evaluate a response to the situation. The owner or operator of the facility must know the authorization limit to recognize when an emissions event occurs and the commission retains this requirement for the initial notification.

The commission has also included the phrase "at a minimum" in §101.201(a) to clarify that the initial notification contains a subset of the final report data elements, and that a regulated entity may elect to provide all the necessary information required of a final report with the initial

notification. However, for those required to report electronically, the information required in the final report must be submitted electronically.

TCC questioned what the term "commission identifiers" means, suggested the commission should have clarified the possible options for consideration and should indicate possible options where identifiers are not typically employed (pipelines between sites, for example). TCC commented that these requirements are not dictated by any statutory provision and detailed identifying information should not be required in the initial report, but should be provided as appropriate in final reports.

The commission has revised §101.201(a)(2)(E) to add clarity to the identifiers required to be reported. The commission considers the proper identification of the facility involved in the event as a critical data element due to the need to review the events at a facility to determine if the emissions event is excessive. However, the commission agrees with the commenter that the initial notification need not contain as detailed information as what is required in the final report and has modified the rule language accordingly.

CPS commented that in §101.201(a)(2)(F), the commission asks for the date and time of the discovery of the emissions event. CPS recommended that the requirement should be the actual emission event times, thus causing less confusion and providing more agreement among the various required reports.

The commission agrees that the best report would be that which identifies the exact time that an event began and will accept that information in the report, but unless a continuous emissions

monitor is employed, that time is generally unknown. The commission has not made changes based on this comment.

Alamo, Capitol, Chaparral, and TXI expressed concern that opacity is an indicator of emissions, and therefore cannot be used directly as a determination of compliance with particulate emission limits and there is no process knowledge or testing which links opacity and emission rates. Alamo requested that the proposed rules be amended to provide that an owner or operator of a cement manufacturing facility which experiences an excess opacity must include in both the initial notification and the two-week report only the estimated opacity during the emissions event and the authorized opacity limit.

Chaparral and TIP requested the commission clarify what is intended to be reported and/or recorded when the RQ for opacity is exceeded. TXI also suggested that HB 2912 does not require quantification of emissions during opacity events.

The commission acknowledges that opacity has long been established as an indicator of emissions, and thus various rules and permits establish acceptable opacity limits from a source. When opacity exceeds the specified limit, it is unauthorized and the owner or operator must reduce or modify emissions and/or operations to bring the opacity back to an authorized level. The commission agrees that opacity cannot be used directly as a determination of compliance with respect to what is expected to be emitted or what was emitted. The commission also acknowledges that an opacity exceedance may occur without a release of any unauthorized compound or mixture. The commission interprets THSC, §382.0215, to require reporting of actual releases of compounds and mixtures when unauthorized air contaminants are emitted to the atmosphere

during emission events which equal or exceed an RQ. The commission has modified §101.201 to clarify that for emissions events that have actual releases of unauthorized air contaminants, recordkeeping or reporting of the nature and quantity of air contaminants released is required.

When an owner or operator experiences an opacity exceedance without a release of unauthorized compounds or mixtures, the commission modified the rules to allow reporting of opacity only in lieu of reporting the nature and quantity of the authorized air contaminants which were emitted during the event. The commission recognizes that a determination of the quantity and nature of emissions are not directly obtainable when opacity readings are the basis for determining that an unauthorized emission has occurred. Owners and operators of a facility should use good engineering judgment, which may consist of an evaluation of air pollution control devices and other relevant process parameters, including consideration of previous stack testing results in conjunction with process knowledge at the time of an emissions event or scheduled maintenance, startup, or shutdown activity.

Capitol and TXI commented that because emissions event notification is likely to be incorporated as an applicable requirement under Chapter 122, the proposal to require sources to estimate mass emissions and to speciate emissions during opacity events puts cement operators in an untenable position.

As previously stated, because opacity exceedances can occur without a release of unauthorized compounds or mixtures, the commission modified the rules to allow reporting of opacity only in lieu of reporting the nature and quantity of all air contaminants which were emitted during the event. However, when a release of unauthorized compounds or mixtures occurs, owners and

operators should have sufficient process knowledge, testing data, and/or monitoring data to be able to make reasonable estimates of the compounds or mixtures of compounds emitted and the quantity of each, and must comply with the notification and reporting requirements of §101.201 and §101.211, as applicable.

TCC and TIP commented that reporting of total quantities rather than the amount above the RQ is inconsistent with federal requirements in CERCLA and EPCRA, and unnecessarily increases the reporting burden. TCC also commented that reporting of total quantities for all emissions events is misleading, as the interested public may not recognize that in certain cases, the bulk of the emissions reported might indeed be "authorized" emissions and if total emission reporting is required, releases at a large, complex plant with large quantities of permitted emissions will appear to be unfavorable if compared to a smaller plant with the same RQ exceedance but with lower authorized limits.

The commission disagrees with the commenters that CERCLA and EPCRA reporting only mandates that quantities above the RQ are reported. CERCLA and EPCRA both use the RQ as a trigger for reporting, but the submitted report is required to contain the total quantity of contaminant spilled or emitted. In addition, reporting requirements differ based on specific regulatory requirements, and to some extent, the needs of various governmental agencies with jurisdiction. The commission is keenly interested in minimizing reporting requirements whenever possible, but the CERCLA and EPCRA reporting requirements do not overlap with the Chapter 101 requirements in all respects.

Reporting total emissions that occur during an emissions event is a valid method of reporting. An interested person can easily use the emission limit (usually in pounds per hour), the duration of the event, and the total quantity of emissions to determine the hourly average emissions that occurred during the event. Such information is meaningful and does not tend to portray emissions events inaccurately or unfairly. Therefore, the commission declines to modify the requirement to report total emissions.

ExxonMobil-Downstream commented that the requirement in §101.201(a)(2)(I) is not practical and is not readily determinable by persons potentially making the initial notification. Given the complex nature of determining what the authorized emissions actually are, ExxonMobil-Downstream has often given conservative guidance to its operators to report upset emissions that exceed basic operating guidelines.

The commission disagrees with this comment, as knowledge of the limit is expressly needed by the owner or operator to know when an event exceeds an authorized limit or a reportable threshold.

Regarding proposed §101.201(a)(2)(J), the requirement that notifications for reportable emissions events must include "the basis used for determining the quantity of air contaminants emitted," TCC suggested the commission clarify that detailed calculations are not required for every reportable event, and recognize that quantities reported for emissions events are often based on technical judgment. TCC also commented that for calculations that involve proprietary information such as catalyst activity levels, companies do not want such information released to a public webpage and requested the

commission to clarify that confidential information does not have to be submitted to justify the basis of any calculation or estimate, or that if such information is deemed necessary, the commission should agree to hold the information confidential.

The commission concurs that providing the basis of emissions estimates is not necessary for initial notifications and has deleted this requirement from the rule. The commission will continue to hold confidential information submitted confidential in accordance with THSC, §382.041, subject to the requirements of the Texas Public Information Act, codified in Texas Government Code, Chapter 551.

ACT supported all of the proposed changes to the content of the final record of all reportable and non-reportable emissions events. AECT, Brown McCarroll, Dow, ExxonMobil-Downstream, Reliant, and TCC commented that the proposed language in §101.201(a)(2)(L) and (3)(K) which requires "any additional information necessary to evaluate the emissions event against the criteria listed in §101.222(a) of this title" is broad, vague, ambiguous, and essentially requires that entities demonstrate why every emissions event is excusable within the final report two-week time frame. TCC and TIP commented that mandatory inclusion of the demonstration criteria for every event would dramatically increase the information needed and the administrative burden for both the commission (in terms of review time) and industry.

Brown McCarroll, TIP, ExxonMobil-Downstream, and Alamo objected to the context into which the HB 2912 evaluation information requirement was proposed, citing that THSC, §382.0215(b)(3)(H),

does not attach the evaluation information requirement in any way to the exemption demonstration criteria in proposed §101.222(a). These commenters pointed out that current commission rules require that an entity provide that information if requested by the commission. Dow requested the commission revise §101.201(b)(12) and (c) to clarify that documentation of the criteria in §101.222(a) is required only upon request by the executive director. Brown McCarroll also suggested that the new requirements are purely punitive in nature and that this recordkeeping requirement is of no benefit when there is adequate authority under the existing rules for the commission to ask for such demonstrations when and if there is a need to review the information.

Accordingly, Brown McCarroll requested that the commission specify what a person must include in the initial notification and provide a rational basis as to why that information is necessary to be reported immediately. Alternatively, Brown McCarroll and TCC requested that the commission delete this requirement and continue to require this information on a case-by-case basis, based on the commission's judgment regarding the seriousness of the emission event or the cause of the event. AECT and Reliant requested that proposed §101.201(a)(2)(L) and (3)(K), and (b)(12) be deleted. AECT suggested that those subsections be replaced with a provision that either specifically states what additional information the commission will need to determine whether an emissions event meets the criteria in §101.222(a) or specifies that the commission may request additional information as it deems necessary. TCC also requested clarification to verify that submission of demonstration criteria will be on an "upon requested" basis. Alamo requested that §101.201(a)(2)(L) be amended to read as follows: "Any additional information necessary to evaluate the emissions event. For initial notifications this requirement is optional. However, if the initial notification is used to satisfy the requirements of

subsection (c) of this section, the information in this subparagraph is required.” Alamo also requested that §101.201(a)(3)(K) be amended to read: “Any additional information necessary to evaluate the emissions event. For initial notifications this requirement is optional. However, if the initial notification is used to satisfy the requirements of subsection (c) of this section, the information in this subparagraph is required.” Finally, Alamo requested that §101.201(b)(12) be amended to read: “Any additional information necessary to evaluate the emissions event.”

ExxonMobil-Downstream commented that the time required to fully develop the information required in §101.222(a) to meet the exemption will likely take longer than the two weeks after the emission event, and that the information should not be required in the final report, but should be provided to the commission in response to a follow-up request, with a time requirement negotiated as reasonable given the complexity of the event. TIP suggested that the commission include the concept of supplementing information. As proposed, TIP stated that there is no way to supplement a two-week report to provide additional information to the commission, and that HB 2912 does not preclude allowing companies to supplement the information provided in the two-week report. TIP suggested that the following language be added to the end of proposed §101.201(b)(12): "Notwithstanding this subparagraph, an addendum to the final record may be submitted to the commission within 45 days following the end of the two-week period that begins at the end of an emissions event. This time may be extended by the executive director in a showing of good cause."

The commission has made changes to the rule language in response to these comments. The commission’s experience is that for 80% to 90% of the initial reports, the information reported is

sufficient for the initial evaluation and possible investigation of impacts on surrounding areas. In those cases where additional information is needed, the commission will continue its practice to request such information. The commission agrees that the statutory provision in THSC, §382.0215(b)(3)(H), regarding initial reporting does not directly link the evaluation information requirement to the demonstration criteria implemented in adopted §101.222(a). Therefore, the commission has deleted proposed §101.201(a)(2)(L) and (3)(K). The commission also revised §101.201(b)(12) by deleting the proposed language “against the criteria listed in §101.222(a) of this title.”

The commission disagrees with the concept of adding an option to extend the two-week deadline in §101.201(b) and accordingly has not made changes to the rule in response to this comment.

Although HB 2912 did not preclude allowing supplemental information to the two-week report, the commission disagrees that an additional 45-day extendable time frame is appropriate and believes the other changes and existing mechanism to ask for supplemental information sufficiently address this issue.

Brown McCarroll commented that additional enforcement problems would be associated with the requirement in proposed §101.201(a)(2)(L) in that if a company fails to include information in the record, then the company would be subject to a violation for failing to properly report or record an emission event, failing to meet the exemption criteria, and exceeding the underlying emission limit. Brown McCarroll stated that a single event resulting in three violations would have a dramatic and unfair effect on a company's compliance history.

Failure to meet exemption criteria is not a separate violation. If an owner or operator does not meet all criteria, the violation would be for exceeding the underlying emission limit. If the emissions event is properly reported or recorded, and the event is not exempt, then only one violation results.

ACT requested that the commission clarify in the rule that any record of any reportable or non-reportable emissions event that is maintained on-site be made accessible to the public through the commission under the Texas Public Information Act upon request.

The commission has not made any changes in response to this comment. As stated in the adoption preamble to the rulemaking revising these rules in 2000, the commission currently requires and will continue to require that owners or operators of air pollution sources keep records of all unauthorized emissions. These records are available to the public through the commission. For sources subject to Title V permitting, all records of deviations will be available in commission files.

ACT commented that in §101.201(a)(4), the change from "report" to "provide" in this section suggests that it is acceptable for the information requested by the executive director to be provided in other than written form. So that such information will be accessible to the public, ACT requested that the rule be amended to read "{t}he owner or operator of a facility experiencing an emissions event must provide, in writing, additional or more detailed information. . . ."

The commission agrees that when the commission requests additional information, a response from the owner or operator of the facility should be made in writing, including documents sent via email or facsimile transmission. Therefore, the suggested wording change has been made.

ACT requested that the commission require all facilities to additionally submit, with the final record, the information described in §101.201(e), which is currently required only if requested by the executive director or any air pollution control commission with jurisdiction.

The commission has not made any changes in response to this comment. The commission's experience is that for most reports, the information submitted in the final report is sufficient to make a determination regarding the event. The commission typically issues requests under §101.201(f) in situations where additional technical study is needed to understand the underlying cause of an emissions event.

ATINGP commented that the recordkeeping and report generating requirements of the new emission event rules concerning spills and discharges will be a burden on the regulated community and a requirement to report the same event twice is overly burdensome, and urged the commission to reinstate the exemption provided in repealed §101.6(a)(5). Alternatively, ATINGP suggested the commission adopt a practical solution and modify the forms for spills and emissions event reporting to allow specific information to be provided for each program so that one form can be submitted to satisfy reports under both. Brown McCarroll commented that the proposed rules assert that this exemption is not allowed

without providing any authority or reasoning to support this assertion, and stated that nothing in the legislation or legislative history indicates this exemption should be removed.

The commission agrees with the commenter's alternative suggestion and is taking steps to make the initial notifications under §101.201 as non-duplicative as possible between initial notification and final report. Further, the commission is reinstating the option of fulfilling the initial notification required under the emissions event rules to be satisfied by proper reporting under the initial notification requirements of the spill rules in §327.3. However, final report requirements of §101.201 and §101.211 still apply and reporting under §327.3 will not satisfy this reporting requirement due to the difference in reporting requirements of the two rules.

TIP commented that the new language in §101.201(d) and §101.211(d) appears to require sources currently using federal reports to comply with the proposed emissions events rules to rewrite their federal reports to match the emissions event information requirements. TIP commented that the requirement will effectively nullify the exemption because other state and federal excess emissions reports do not, and foreseeably will not, be required to contain all of the required U/M reporting information. TIP objected to the proposed change and commented that the commission should delete the following language from §101.210(d): "Excess emissions reports that may satisfy other state or federal requirements, and which are used to satisfy this subsection must, at a minimum, contain the information required in subsection (b) of this section." CPS commented that the proposed language needs to be clear that owners or operators of boilers or combustion turbines equipped with opacity

monitors (in addition to CEMs) are covered in the exemption from reporting in §101.201(d) and §101.211(d).

The commission has reviewed the statutory language again and agrees with the suggestion to remove the last sentence of proposed §101.201(d) and has modified the rule accordingly. The commission has also modified the proposed rule to clarify that episodic event reports required by other state or federal regulations can be used for the final record/report, as long as the initial notification submitted under §101.201(a) contains all of the information required under §101.201(b). Concerning the comment about opacity monitors, reporting of opacity, which is only an indicator to emissions and cannot determine the nature or quantity of emission, does not meet the requirements set out in THSC, §382.0215.

ACT supported the ability to require technical evaluations of emissions events that include at least an analysis of the probable root cause of each emissions event and any necessary action to prevent or minimize recurrence. ACT requested that the commission describe how frequently it has requested technical evaluation of emissions events in the last five years. ACT urged the commission to make these technical evaluations a routine requirement for every event, and to require them as part of the information submitted with the final record of an emissions event under §101.201(b) to better inform the facility's management of available options and, possibly, promote voluntary actions to prevent the recurrence of similar events.

The rule requires an owner or operator to provide information about the primary cause of an emissions event. Fortunately, for most emissions events, the root cause is fairly easy to discern. The rule also requires an owner or operator to submit the results of a more detailed technical analysis when the root cause is not as readily discernable. The commission has not tracked its past history of requesting technical analyses, which are commonly requested when an enforcement action is brought against a company for an emissions event that was determined not to be exempt.

AECT, Brown McCarroll, CPS, Dow, Exxon Mobil, ExxonMobil-Downstream, Oxychem, Reliant, and Sierra-Houston all expressed concerns over the requirement to report events electronically. Most of the commenters' concerns focused on the practical problems associated with submitting initial reports by electronic means. Many of the commenters suggested that only the final report need be submitted electronically.

The commission agrees that the shift to electronic reporting is a major change, and has therefore, implemented a phased-in approach to facilitate the change in reporting emissions events. The commission will require final reports that are required to be submitted under §101.201(b) and excess opacity event notifications under §101.201(e) to be submitted electronically January 1, 2003, in accordance with the statutory directive, and require electronic reporting of initial notifications beginning no later than January 1, 2004. This phased time frame will enable the regulated community to better prepare for the new reporting mechanism and will allow the commission to better develop its system. Several commenters also stated a need for a backup plan for submittal of information in the event that the electronic interface is unavailable. The

commission has added rule language to clarify electronic reporting and to provide an alternative in case of a technical failure by the commission's equipment which might impede submittal by the regulated community.

ACT supported the commission's approach of actively pursuing enforcement for failure to report emissions events. Brown McCarroll commented that the language in proposed §101.201(g), "if an owner or operator of a facility fails to report an emissions event, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself," would subject owners and operators to enforcement for failure to report emissions events that are not otherwise required to be reported under §101.201. Brown McCarroll recommended that subsection (g) be revised to clarify that it only applies to reportable events. TCC commented that the commission's proposal contradicts the legislative language by adding in proposed §101.201(g): "Incomplete, inaccurate, or untimely reports are not sanctioned . . . and continue to be violations . . . and the commission may initiate enforcement for such violations." TCC further stated that commission should not pursue enforcement action for those paperwork errors related to good faith reporting of emissions events. In addition, TCC suggested that the commission utilize a standard reporting form, recognized by all of the commission's regional offices to provide consistency and clarity among the regions and possibly reduce unintended errors and omissions.

The commission has modified the proposed rule in response to comments to reflect that §101.201(h) applies only to emissions events that are required to be reported. The commission disagrees that the clarifying second sentence of §101.201(h) as adopted contradicts legislative

intent. The legislature clearly sought for the commission to have more information and that it be more accurate. To meet the legislative mandate for annual reporting on emissions events as established in THSC, §382.0215(g), and consistent with existing practice and the prior rule, the commission expects notifications and final reports submitted under these rules to be reasonably complete, accurate, and timely.

Section 101.211 - Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements

ACT, ExxonMobil, and TCC commented that clarification is needed in §101.211(a) to clearly determine what constitutes adequate prior notification for scheduled maintenance activities. ACT questioned the need to allow for advance notification for scheduled maintenance, startup, or shutdown activities of less than ten days, because such events are supposed to be “scheduled.”

The commission believes the current language is sufficiently clear as to what notification is expected prior to any scheduled maintenance, startup, or shutdown activities, and has not made any changes in response to these comments. Facilities having maintenance, startup, or shutdown events requiring a long lead time should easily be able to provide the ten-day notice. However, since March 8, 1991, the commission has, for special situations, allowed notifications of less than ten days prior to a maintenance, startup, or shutdown activity. The commission acknowledges that certain situations do not allow for the ten-day prior notification, such as maintenance or startup following an emissions event. These special conditions still require prior notification to be given as soon as practicable prior to the actual maintenance or startup event occurring.

AECT commented that the proposed §101.211(a)(1)(C) and (2)(C), and (b)(3) read, "the location of the scheduled maintenance, startup, and shutdown" activity. AECT requested that the commission clarify what is meant by this term, and asked if the location meant that the name of the unit, piece of equipment, or area where the scheduled maintenance, startup, or shutdown activity occurred; or if the location meant the metes and bounds description of the unit, particular piece of equipment, or area where the scheduled maintenance, startup, or shutdown activity occurred.

The commission's understanding of the term "location of the scheduled maintenance, startup, or shutdown activity" means the information necessary to geographically locate the source of the emissions into the atmosphere, such that a reasonable person could find the site and the general location of the event on the site. Specific information about the process unit, the facility, and the actual emission point (if different than the facility) further supports this concept.

TCC commented that the commission should revise proposed §101.211(a)(1)(I) to add the term "if applicable" to read, "where opacity will be estimated if applicable."

As previously stated, reporting only opacity does not provide the commission the information necessary to evaluate the event except for situations where only opacity is expected to exceed an authorized limit, and there are not any unauthorized emissions of any compounds or mixtures.

The commission has revised §101.211 to reflect appropriate opacity reporting.

ACT requested that the rules clarify that any on-site final record of scheduled maintenance, startup, and shutdown activities with unauthorized emissions be made available to the public through the commission upon request under the Texas Public Information Act.

The commission has not made any changes in response to this comment because all records of scheduled maintenance events at sources with issued Chapter 122 permits will be available publically as a result of federal operating permit requirements. As stated in the adoption preamble to the rulemaking revising these rules in 2000, the commission currently requires and will continue to require that owners or operators of air pollution sources keep records of all unauthorized emissions. These records are available to the public through the commission. For sources subject to Title V permitting, all records of deviations will be available in commission files.

ACT supported the addition of §101.211(c) to allow for better tracking of actual emissions during maintenance, startup, and shutdown activities and provide closure to initial notifications of such activities. ACT also supported the authority of the executive director under §101.211(e) to specify the amount, time, and duration of emissions that will be allowed during scheduled maintenance, startup, or shutdown activity and the authority to request a technical plan. ACT requested that the commission describe how frequently it has used this authority in the last five years and how frequently it has requested technical plans from facilities. Furthermore, ACT urged the commission to routinely exercise this authority and systematically limit the number of concurrent maintenance, startup, or shutdown activities in any single region of the state.

The commission has traditionally addressed maintenance, startup, and shutdown activities on a case-by-case basis, and the commission does not track the use of its authority in the manner suggested by the commenter. The implementation of electronic reporting and the commission's required annual reporting to the legislature on emissions events should improve the ability to track these activities in the future. After receipt of a notification, regional staff often contact the owner or operator to obtain any additional information necessary and request technical plans and emissions reductions. The commission estimates that 80% to 90% of final reports for maintenance, startup, or shutdown activities contain enough information to make an exemption determination. Therefore, the commission has not required a technical plan for every maintenance, startup, or shutdown activity under §101.211(e).

Section 101.221 - Operational Requirements

ACT, AECT, ATINGP, Brown McCarroll, and Chaparral commented on proposed §101.221(a). ACT supported the addition of §101.221(a), which codifies existing commission policy and adds clarity for the public and regulated community. Brown McCarroll opposed proposed §101.221(a), and stated the commission completely misinterpreted the statutory prohibition under THSC, §382.085(b), which only prohibits emissions in excess of a limit established by permit, rule, or order. Brown McCarroll also stated that the proposed rule is not consistent with the commission's prior implementation of the THSC and “fundamentally changes the regulatory landscape.” AECT commented that the proposed §101.221(a) is unnecessary and that “it goes without saying then, that persons are prohibited from causing, suffering, allowing, or permitting emissions that they are not authorized to emit.” AECT commented that §101.221(a) would result in an additional violation being cited by the commission in

any enforcement regarding any emissions event, and for which the reporting and recordkeeping requirements have not been met, and stated that HB 2912 does not support the proposed rule. AECT further suggested that proposed §101.222 would preclude an owner or operator from obtaining an exemption from a violation of proposed §101.221(a), and requested that the commission delete the proposed rule or specify in the preamble that §101.221(a) will not be cited in enforcement actions as an independent violation. ATINGP commented that the changes to the definitions of "authorized" and "unauthorized" make a large category of emissions previously "authorized" under prior rules and statutory provisions "unauthorized," and combined with this new regulatory prohibition against the release of "unauthorized emissions" underscores the need to study the impact of these new definitions on the air quality regulatory program as it has developed over the past 30 years. ATINGP recommended that the commission strike §101.221(a) until such time as it is able to assess the impact the new definitions of "authorized" and "unauthorized" emissions has on the air quality program as previously discussed. Chaparral commented that the provision is overly broad and that it does not take into account insignificant or *de minimis* emissions and emissions from sources that are not regulated by the commission. Chaparral also pointed out that the commission expressly exempts "insignificant increases at a permitted facility" from the definition of "modification" in §116.10(9). Chaparral expressed concern that the executive director may claim that the unspiciated components of a class of contaminants such as particulate matter and VOCs are not "authorized emissions" and thus violate this overly broad provision, and suggested that such an interpretation and action would exceed the commission's authority.

As stated earlier in this preamble, the commission proposed to add a new definition of the term “authorized emissions,” to modify the existing definition of “unauthorized emissions” and to add new §101.221(a) that would prohibit a person from causing, suffering, or allowing unauthorized emissions. The commission received extensive comments raising a number of different issues relating to these proposed revisions. Although these proposed rule changes are within the commission's authority to adopt because they would interpret and implement the TCAA, they are not required by THSC, §382.0215 and §382.0216, as added by HB 2912. Given the limited purpose of this rulemaking, the commission has determined that it is not necessary to adopt these proposed revisions at this time. This bifurcation will allow for future consideration of the issues raised by the commenters as well as provide future opportunities for the commission to deliberate the issues, such as at a commission work session, if appropriate.

ExxonMobil-Downstream commented that the concept of *de minimis* emissions is missing from this proposed regulation and that *de minimis* emissions are exempt from permitting through a permit by rule to avoid unnecessary recordkeeping and reporting for trivial emissions events and maintenance, startup, and shutdown activities. ExxonMobil-Production recommended the commission define a new term "*de minimis* emissions event" as “maintenance of ancillary equipment (as defined in 40 CFR 63.761) or other emissions events which results in a release of less than 20 pounds of any air contaminant listed in §101.1(85), Reportable Quantity, per single event because these emissions events are exempt from the recordkeeping requirements in §101.201 and §101.211.” ExxonMobil-Downstream also stated that requiring separate recordkeeping for these minor emissions events is also redundant for many industrial sites that are already subject to federal or state leak detection and repair programs. Dow commented

that a low emission rate cutoff for emissions events and scheduled maintenance, startup, and shutdown activities needs to be added to this rule, and suggested that any individual activity with an emission rate of less than 0.5 pounds be exempt from the recordkeeping requirements imposed by the existing General Air Rules and these proposed amendments.

The commission has already defined *de minimis* facilities and/or sources in Chapter 116. That authorization allows facilities or sources that meet the conditions of one or more of the paragraphs in §116.119(a) to be considered *de minimis*, which means that registration or authorization prior to construction is not required. Because this concept is already utilized in the commission air rules, a separate definition of *de minimis* emissions is not necessary for these rules and would cause confusion as to when and what emissions are *de minimis*. If any emissions are from *de minimis* sources, or facilities that are authorized by a permit by rule, then the owner or operator can calculate whether emissions from those sources meet the *de minimis* threshold or emission limit, respectively, and determine whether the emissions are authorized and reportable or recordable. Furthermore, in comments to past rule revisions concerning the commission's upset and maintenance rules, EPA has commented that all unauthorized emissions must be recorded.

TCC commented that the commission should revise §101.221(a) to strike the word "permit" for clarity as follows: "No person shall cause, suffer, or allow unauthorized emissions."

The commission removed §101.221(a) as proposed, as explained elsewhere in this preamble, and therefore has not made the proposed change.

ACT commented that the commission should modify §101.221(b) to require that pollution control equipment be required to be maintained in good working order and operated properly during all facility operations, not just during "normal" operations. TCC commented that the commission should revise §101.221(b) by deleting the word "normal" and inserting language similar to that in old §101.11(3) ("and operated in a manner consistent with good practice for minimizing emissions"), and commented that the commission should not attempt to oversimplify operations by categorizing operations as either "normal" or "abnormal" and should instead focus on "authorization" of emission.

The commission's response to these comments is much the same as provided in the response to comments made in adopting the July 23, 2000 version of the rules, in that "good practice" designates a narrower range of industry practices accepted by regulators. The commission concurs with the deletion of the word "normal" and has revised the rule accordingly.

TCC commented that the commission should clarify in the preamble that this rulemaking is not intended to force a shutdown of facility or avoidance of maintenance activities simply because of the existence of emissions.

The commission's intent regarding reduction of emissions and pollution prevention has not changed. As previously stated, the commission expects that minimization of emissions could include shutting down a facility or that portion of a facility in upset, but only if that shutdown would not result in more emissions than continued operation at a reduced level. The commission does not expect a facility to shut down if the shutdown would compromise safety or could lead to a

catastrophic failure of equipment and structures. Owners and operators must be fully prepared to justify their choice of actions and should have the means to minimize the unauthorized emissions to the extent that the source comes back into compliance with emission limitations as soon as practicable. The commission encourages the use of preventive maintenance and other necessary maintenance to result in decreased emissions events. Maintenance done with proper planning can be conducted with few unauthorized emissions.

Chaparral commented that the reference to "this section" at the end of §101.221(f) be changed to "section 101.222" because a report or record of an emissions event is not necessarily an admission that the facility emitted unauthorized emissions. Chaparral stated that although the owner or operator has the burden of proof to demonstrate that unauthorized emissions are exempt under §101.222, subsection (f) does not affect the commission's burden of proof to establish that the facility emitted unauthorized emission, i.e., this provision does not shift such burden to the owner or operator.

The commission agrees that the exemption is contained in §101.222 and has revised the rule in response to this comment.

ACT supported the commission's power to require corrective action as necessary to minimize emissions, as currently found in §101.7(g) and proposed in §101.221(g), under authority predating HB 2912. ACT requested that the commission describe how frequently it has required such corrective action in the last five years.

The commission has typically required corrective action in any case where an emissions event was cited as a violation. Corrective actions have ranged in complexity from providing training to the regulated entity's employees on proper procedures to prevent emissions events to complex engineering studies followed by a series of scheduled requirements to bring about major changes at a site. Corrective actions have traditionally been documented in response to a notice of violation (NOV) or codified in enforcement orders and have not been independently tracked outside of the enforcement process. In many cases, the commission has required the owner or operator to obtain authorization for the unauthorized emissions from maintenance, startup, and shutdown activities.

Section 101.222 - Demonstrations

Representative Hochberg commented that the commission does not have the authority to exempt any emissions from the requirements of the bill. Representative Hochberg commented that HB 2912 envisioned only two categories of emissions events, excessive and non-excessive, and stated that the intent of the legislation was to significantly reduce emissions from emissions events by requiring a facility to either correct the problem or include the emissions in the facility's permit. To avoid overburdening the commission with increased paperwork due to the more stringent requirements, THSC, 382.0216(d), provides that "a corrective action plan shall be deemed approved 45 days after filing, if the commission has not disapproved the plan." This subsection indicates that the legislation anticipated that many more than five facilities would be required to file a CAP for an excessive emissions event on an annual basis. Representative Hochberg suggested the commission eliminate proposed §101.222 allowing for exemptions, and instead evaluate emissions events above an RQ

according to the criteria of proposed §101.223 to determine whether the event, either taken alone or in combination with other events, is excessive. If the emissions event is determined to be excessive, the facility should be required to take action to reduce emissions or to include the emissions in its permit. Citing the Federal Clean Air Act requirement for continuous compliance with emission limitations, ACT stated that the commission does not have the authority to exempt emissions from compliance with emission limitations. ACT expressed a belief that the current and proposed rules are illegal and inconsistent with HB 2912 for three reasons: 1) the rules create an exemption rather than an affirmative defense; 2) the rules create an exemption to injunctive relief as well as penalties; and 3) the rules, as interpreted by the commission, exempt facilities from EPA and citizen enforcement.

The commission made changes in response to these comments. See the discussion elsewhere in this RESPONSE TO COMMENTS. Under the subheading *Section 101.222 - Demonstrations* and in the SECTION BY SECTION DISCUSSION of this preamble for a detailed description of the changes made to this section. Section 101.222 as adopted is structured to first require all emissions events to be evaluated against criteria in §101.222(a) to determine whether each event is excessive. The six criteria in §101.222(a) as adopted mirror the criteria listed in THSC, §382.0216(b)(1) - (6). Events deemed excessive will not be exempt from compliance. Events not deemed excessive will only be exempt from compliance if the owner or operator satisfies the criteria in §101.222(b). The commission intends to continue its practice of requiring owners and operators with nonexemptible events to address the cause of the event and implement measures that will minimize the recurrence of similar events in the future. The traditional method of requiring such measures is through the enforcement process. Facilities with excessive emissions

events must comply with the corrective action plan and authorization requirements in §101.223 upon notification by the executive director.

Sierra-Houston recommend that the term "all" be added after the phrase "operator complies with" in §101.222(a), to emphasize that all information must be provided or the exemption cannot be granted.

The commission declines to make the suggested change because the term “all” was already in the language of §101.222(b) as proposed.

ATINGP commented that under the proposed definition of "unauthorized emissions," unauthorized emissions could occur even if no authorized emissions limit is exceeded, and proposed §101.222(a) and (b) would not provide an exemption for unauthorized emissions that are below an authorized emissions limit. ATINGP requested §101.222(a) and (b) be revised by adding the phrase “and the emissions from such emissions events are not unauthorized emissions, as that term is defined in §101.1 of this title (relating to Definitions)” to exempt unauthorized emissions even if no authorized emission limit is exceeded.

As discussed elsewhere in this preamble, the commission is not adopting the proposed changes to the definition of “unauthorized emissions.”

EPA commented that it considers all excess emissions, scheduled or otherwise, to be violations of the emission limitation, permitted level, or regulation. EPA also recognized that emissions events may be

caused by circumstances entirely beyond the control of the owner or operator, that the imposition of penalties in these situations may not be appropriate, and stated that the regulating commission may exercise "enforcement discretion" in such cases and provide in its rules for an affirmative defense to enforcement actions for civil penalties for emissions events if the owner or operator can demonstrate that certain criteria have been met when evaluated. EPA and ACT recommended that the commission revise §101.222(a) and (b) to provide an affirmative defense for claims for civil penalties in enforcement actions for noncompliance with authorized emission limitations, if the owner or operator complies with the demonstration criteria.

The commission has not made any changes in response to these comments. The commission will review all emissions events against the requirements of §101.222(a) to determine if the emissions events are excessive, and therefore, not exempt. Facilities with excessive emissions events must comply with the CAP requirements in §101.223 upon notification by the executive director. Any emissions events which are not excessive, but do not satisfy all the criteria in §101.222(b) are not exempt and may be subject to an enforcement action, including penalties and appropriate requirements to minimize the recurrence of similar events in the future. The commission's past experience has been that the exemption criteria now located in §101.222(b) and (c) for emissions events and scheduled maintenance, startup, and shutdown activities operate much like an affirmative defense in enforcement actions.

TCC commented that the commission should not unjustly penalize companies who are making an honest effort to comply; use enforcement discretion for those events for which the regulated entity is actively

seeking commission authorization; recognize that some repairs take considerable time such as a leaking preheater, which may require fabrication of new equipment; revise the demonstration criteria; or recognize that the demonstration criteria are not necessarily applicable to planned maintenance events.

The commission has not made any changes in response to these comments. The commission encourages “honest efforts to comply” but recognizes that efforts attempting compliance do not always equate to maintaining compliance. In the context of an enforcement action, the commission’s penalty policy allows reductions in proposed penalties for a respondent’s good faith efforts to comply, depending on the timing of the efforts. The commission acknowledges that some repairs take more time to complete than others, but the owner or operator should consider such lead time in operational decisions. The duty to comply with applicable regulatory requirements remains with owners and operators of facilities. The “demonstration criteria” explicitly are applicable to planned maintenance, startup, and shutdown activities where such activities are not otherwise allowed by commission permit, rule, or order.

TCC commented that to focus on the impact of emissions rather than the number of emissions events, §101.222(a)(3) should be revised to read “the air pollution control equipment . . . was maintained . . . consistent with good practice for minimizing emissions and reducing the impact of emissions events.”

The commission agrees that the impact of emissions is an important focus but disagrees with the remainder of the comment and declines to make the suggested change. As previously discussed, the commission’s response to these comments is much the same as provided in the response to

comments made in adopting the July 23, 2000 version of the rules, in that “good practice” designates a narrow range of industry practices accepted by regulators.

Sierra-Houston and EPA commented that the terms "frequent" and "unreasonably high" in §101.222(a)(8) and (9), respectively, need to be more specifically defined to avoid inconsistencies in practice.

The terms “frequent” and “unreasonably high” are not defined by statute and are left to the commission to interpret. The most appropriate way to evaluate excessive emissions events and exemption determinations is through a case-by-case review. Thus, “frequent” and “unreasonably high” will also be determined on a case-by-case review. Case-by-case determinations are subject to internal review, and coordination between regional and central office personnel which serves to minimize any inconsistencies in practice. The commission’s practice is also to discuss the event with facility owners or operators for further information to develop the case-by-case review.

ACT commented that the “cause or contribute to a condition of air pollution” language in §101.222(a)(10) does not capture the intent of HB 2912 that the commission consider the impact on human health or the environment, and suggested that the provision be amended to read “unauthorized emissions did not cause or contribute to a condition of air pollution or otherwise adversely affect human health or the environment.”

No change was made in response to this comment. The commission agrees that THSC, §382.0216(b)(3), requires the commission to consider in determining whether an emissions event is excessive “the quantity and impact on human health or the environment of the emissions event,” and the commission will consider in its review as required by §101.222 whether the event caused or contributed to a condition of air pollution.

EPA commented that §101.221(a)(10) and §101.222(b)(8) should be revised to read, “unauthorized emissions did not cause or contribute to an exceedance of the NAAQS or PSD increments or a condition of air pollution.”

The commission agrees with the comment and has made the suggested change to §101.222(b)(11) and (c)(9) because it clarifies existing statutory requirements.

ACT commented that the provisions of §101.222(b) for exemption of unauthorized emissions for scheduled maintenance, startup, or shutdown activities are outside the commission’s authority, because scheduled maintenance, startup, or shutdown activities were specifically excluded from the definition of emissions event, and because EPA policy does not recognize an affirmative defense for scheduled maintenance, startup, or shutdown emissions. Therefore, ACT commented that the commission should delete the provisions of §101.122(b) and should make every effort to ensure that regular, scheduled maintenance, startup, and shutdown emissions are reflected in permits. To the extent they are not reflected in permits, the commission should clarify that such emissions are illegal.

The commission has not made any changes in response to this comment. Owners and operators must focus increased attention to the information provided in the notifications required by §101.211(a) for maintenance, startup, and shutdown activities. The commission recognizes that maintenance, startup, and shutdown activities are necessary and may involve unauthorized emissions, and therefore the commission's focus is requiring better estimates in advance of expected emissions and requiring increased actions to minimize and control such emissions. EPA also recognizes that all excess emissions during maintenance, startup, and shutdown activities are violations of applicable emissions limits, but takes the position that it is inequitable to penalize a source for occurrences beyond owner or operator control. EPA's approval of the 2000 revisions to these rules (65 FR 70792) states that a source has the burden of proving that the excess emissions were due to circumstances entirely beyond the control of the owner or operator. Unscheduled maintenance, startup, and shutdown activities are the equivalent of an emissions event and should be reported or recorded as an emissions event under §101.201. In a concurrent rulemaking regarding rules in 30 TAC Chapter 116, in this issue of the *Texas Register*, the commission is not adopting proposed rules for permitting of maintenance, startup, and shutdown emissions because the commission has determined that it is appropriate to pursue resolution of various issues listed in that rulemaking before proceeding with further rulemaking regarding these types of emissions.

Section 101.223 - Actions to Reduce Excessive Emissions

TCC commented that in general there should be clarity around what constitutes an "excessive" versus a "chronic" event. TCC suggested that "excessive" refers to the quantity of emissions and "chronic" refers to the frequency.

Excessive emissions events and chronic excessive emissions events are related and excessive emissions events may become chronic excessive emissions events. The commission has established a set of criteria that define when an emissions event becomes an excessive emissions event. Furthermore, when excessive emissions events become of such magnitude or frequency or cause an impact, the commission may determine that they are chronic excessive emissions events.

ACT, ATINGP, Birch, and Sierra-Houston commented that the commission should define what is excessive in a predictable and objective manner. Because these determinations are made on a case-by-case basis, the outcome is unpredictable and subject to the discretion of the executive director, and each determination is cost and resource intensive for the commission and the regulated entity. Birch and ACT further commented that to meet the intent of HB 2912, the rules should establish industry-specific objective standards for determining when emissions events are excessive to allow the regulated industry to determine its compliance status. ACT cited the Sunset Commission recommendation that the commission would set the allowable number of upsets that can occur each year and establish exemptions for events that occurred for documentable reasons. ACT urged the commission to set presumptive standards tight enough so that a substantially higher number than four facilities would be found to have excessive emissions events. ACT proposed the commission rank each facility annually in terms of total number of reported events, tons of event-related emissions, and a toxicity weighted total of event-related emissions, and consider the top 10% of facilities in each category as having excessive emissions events, unless a facility can make a demonstration that its emissions were not excessive considering the statutory criteria. Brown McCarroll, Dow, and TIP commented in support of commission's view that case-by-case determinations are necessary to determine whether excessive emissions events have

occurred. In addition, TIP supported the commission's position that developing case-specific evaluation criteria is not in the best interest of commission or the regulated community.

In making the excessive determination, the executive director will consider all the excessive emissions event criteria listed in §101.222(a) on a case-by-case basis and declines to make changes suggested in these comments. Developing records from all industries or industry types to make an objective standard for each specific type of event to serve as rule criteria would be an impossible task considering the diversity of industry types to which the rules apply and all of the possible (and by definition unplanned) scenarios which could arise. The commission will continue its practice of conducting case-by-case determinations of upset, maintenance, startup, and shutdown events because the case-by-case method is the most equitable and flexible approach to evaluating episodic emissions. The commission expects that evaluating all emissions events using the §101.222 criteria will result in more emissions events being deemed excessive than described in the proposed version of the rule.

ATINGP suggested the commission clarify its intended procedure for a regulated entity to respond and to provide information to the executive director that an emission event is not excessive.

The commission's current practice of notifying owners and operators prior to issuing written NOV's will continue. The typical situation involves discussion with the owner or operator prior to issuance of a letter from the executive director through the regional office stating that an emissions event is excessive or that enforcement action will be initiated. Owners and operators

should be forthcoming with information responsive to requests by regional office personnel so that information supporting a conclusion that an emissions event is not excessive can be appropriately and timely considered. Furthermore, an owner or operator should take advantage of the final report to document fully the circumstances of the event. Finally, an owner or operator will have ample opportunities to challenge an exemption determination through the enforcement process.

Brown McCarroll and Chaparral commented that the commission should establish an appeal process by which an owner or operator can challenge the executive director's determination that emissions events are excessive and define when a decision constitutes final commission action. Brown McCarroll commented that delegation of determining when emissions events are excessive to the executive director without an appeal process to the commission is not supported in the legislation, and explained that if an appeal is not provided, then entities subject to these staff level determinations would be compelled to file an appeal to district court to preserve their rights and obtain relief. Chaparral stated that without an opportunity for a hearing, such a determination and its ensuing requirements would constitute a taking of property in violation of the owner/operator's right to due process.

If an emissions event is excessive, the owner or operator will have an opportunity to challenge the executive director's excessive determination through the enforcement process. HB 2912 did not contemplate a separate appeal process regarding the executive director's decision on whether each emissions event is excessive. Rather, the intent was for facilities with excessive emissions events to quickly implement a CAP independent of any enforcement action the commission might take. The excessive emissions event determination is not a final action of the commission which is appealable

to district court, and therefore, owners and operators who disagree with these determinations can seek review with commission staff. Because this determination is not a final action by the commission, it cannot be considered a takings.

ATINGP requested that the commission revise §101.223(a) by adding a new criteria that relates to the complexity of the facility at which the emissions event occurred because it is easier for emissions events to occur at a facility that is more complex than at one that is not as complex.

Complex facilities should be operated, designed, and maintained with the most care because of the increased opportunities for resulting potential impacts from unauthorized emissions. The commission disagrees with the suggested modification and declines to make the change because most of the failures leading to emissions events are caused by problems involving individual pieces of equipment which would be the same for a complex or simple facility (i.e., a pump at a complex petroleum refinery is much the same as any other pump of the same type whether the pump is located at a petroleum refinery or a small natural gas pumping station). Complexity is, however, a factor for the commission to consider in finding that a site has chronic excessive emissions events under §101.223(b).

Birch commented that different regional offices might have different standards for evaluating emissions events and that the commission should provide for uniformity in enforcement of excessive emissions events. Brown McCarroll and Oxychem proposed that the determinations of excessive emissions events be made in the commission's central office, rather than in the regional offices, to ensure consistency in

the commission's interpretations and expected impact of the rules as described in the preamble.

Oxychem also suggested notification by regional personnel to the central office that a site may be experiencing excessive emissions events; notification to the site that its emissions are being reviewed; review of the potential excessive emission event(s) by a team of personnel, including central office enforcement and permitting personnel and a regional contact that is familiar with the site; and issuance of a determination, as described in the proposed rules, to the affected site.

The commission provides uniformity in enforcement of all violations through use of its enforcement initiation criteria and penalty policy. The commission declines to centralize determinations of excessive emissions events because of workload concerns and because adequate communication and interaction between the regional and central office staff exist to minimize any inconsistency. Ongoing training provided by the central staff to regional personnel keeps the regional staff updated on recent interpretations and actions of the commission. In addition, regional office staff frequently consult with central office staff to coordinate responses to ensure consistency.

Brown McCarroll requested that if the commission intends that a single emission event may be determined to be excessive, then the commission explain its rationale and basis for making that determination and make that explanation available for public comment.

As previously stated, the commission revised §101.222, and expects many more emissions events will be classified as excessive than under the proposed version of the rule. Based on the language

of the adopted rules, all reported emissions events will be reviewed to determine if they are excessive and to determine if they should be considered exempt from compliance with emissions limitations. If the commission determines that any one of the criteria listed in §101.222(a) for excessive emissions events has been met, an event would be considered excessive.

Oxychem commented that §101.223(a)(3) is not clear and should be replaced with "the actual magnitude and impact on human health or the environment of the emissions event."

Section 101.223(a)(3) has been removed and the language has been incorporated into §101.222(b)(11), which now reads, "unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards or prevention of significant deterioration increments or a condition of air pollution."

Oxychem commented that the proposed §101.223(a)(6) concerning "the need for startup, shutdown, and maintenance activities" is confusing and recommended the commission clarify the rule. Oxychem interpreted the language to mean the commission would ask whether the facility conducted adequate activities such as appropriate maintenance or shutting down to minimize the magnitude of the events, and if an event occurred during a startup or shutdown, questioned whether the facility had adequate controls in place to minimize emissions. Oxychem recommended substituting the following language in §101.223(a)(6): "the ability (or lack thereof) to control emissions during startup and shutdown events, and/or the presence (or lack of) adequate controls or procedures to control emissions from maintenance activities."

Although the commission is not adopting §101.223(a)(6) as proposed, the concept of “the need for startup, shutdown, and maintenance activities” in proposed §101.223(a)(6) has been incorporated into §101.222(b)(4) and (9) and (c)(3) and (5), which relate to maintaining and operating air pollution control equipment or processes in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events, and frequent or recurring pattern indicative of inadequate design, operation, or maintenance. The commission has not made any changes in response to these comments.

Brown McCarroll commented that proposed §101.223(b) properly provides that excessive emissions events determinations apply to a “facility,” and requested the commission to allow additional public comment if the commission intends that multiple emissions events at a site will trigger an excessive emissions event determination when emissions events are not from the same facility.

The statutory language supports the commission’s interpretation that one or more emissions events at a facility may be determined to be excessive. Evaluation of multiple emissions events at a site is limited to considering chronic excessive emissions events.

TIP and Brown McCarroll commented that proposed §101.223(b) does not provide a mechanism for submitting a revised CAP if the CAP is disapproved, amended, or revised, including instances when alternate methods would be as effective and less costly, and asked the commission to clarify a process for revising CAPs. TIP suggested adding the following language before the last sentence in proposed §101.223(b)(2): “If disapproved, the commission shall notify in writing the owner or operator of a

facility within 60 days of its disapproval determination. Such notice shall provide a list of deficiencies in the CAP and/or the basis for disapproval. The owner or operator shall revise the CAP in an effort to address the deficiencies listed in the disapproval notification or the disapproval basis, and submit to the commission the revised CAP within 60 days after receiving the disapproval notification.”

The commission agrees that the owner or operator of the facility should be notified of the reasons and basis for disapproval and has modified §101.223(a)(2) to require the executive director to identify, in a written response, any deficiencies in the CAP and the basis for CAP disapproval. Through this mechanism, the commission anticipates owners and operators will resubmit a CAP with revisions to address deficiencies and reasons for disapproval. Clear statutory timelines and the commission’s interest in achieving timely corrective actions do not support allowing multiple revisions and rounds of discussion to execute a CAP. Owners and operators must obtain approval of a CAP within 120 days after initial submission to the commission. The commission encourages owners and operators to discuss a proposed CAP prior to filing the CAP with the regional office. The commission, therefore, declines to make the other changes suggested by the commenters.

Dow suggested that the commission establish, through policy or rule, a step of notifying the owner or operator of the excessive events determination prior to the written notification contemplated by §101.223(b) and providing the facility with 15 to 30 days to appeal the decision before the time clock starts for submitting CAPs or permit amendments.

The commission's current practice of notifying owners and operators prior to issuing written NOV's will continue. The typical situation involves discussion with the owner or operator prior to issuance of a letter from the executive director through the regional office stating that an emissions event is excessive or that enforcement action will be initiated. HB 2912 did not contemplate a separate appeal process regarding the executive director's decision on whether each emissions event is excessive. Rather, the intent was for facilities with excessive emissions events to quickly implement a CAP independent of any enforcement action that the agency might take.

ATINGP, Dow, ExxonMobil-Downstream, Reliant, and TIP generally commented that the executive director should provide a facility with a positive determination of excessive emissions events within a certain period of time ranging between six and 18 months. ATINGP and Dow further suggested that events should default to a classification of "not excessive" if no determination is made within the specified time frame. Reasons given for this suggestion were the significant impact on a site's compliance history, other permit activity, and the importance that the determination of whether an emission event is excessive be made on a timely basis, (i.e., not left to uncertainty). ATINGP stated that these proposed changes would not preclude the executive director from considering an event with others at a later time to evaluate the "the frequency of a facility's emissions events," but would provide closure that at the time of a specific emissions event, no such pattern of excessive frequency exists.

An automatic cutoff time limit is not appropriate and is not supported by HB 2912 or the TCAA. Although the commission receives several thousand reports annually, many more emissions events are recorded. The commission reviews such events either when reported as deviations under Title

V or during another scheduled investigation. Events even at levels below an RQ may present a pattern indicative of inadequate design, operation, or maintenance and may be excessive. Also, some operational problems that result in emissions events that occur periodically over time are not recognized as such until a trend analysis is performed by regional personnel. The commission's review and action on recordable emissions events will not necessarily occur within the suggested time frames. Additionally, the commission is not subject to a statute of limitations for bringing enforcement actions and declines to impose such limits in this or any context. The purpose of HB 2912 as stated in §18.14 of the bill with respect to emissions events clearly was not to limit the existing enforcement authority of the commission.

TIP recommended adding the following language between the first and second sentences of proposed §101.223(b): “The written notification shall contain, at a minimum, a description of the emissions events that caused the determination to be made, and the time period during which the evaluation of those emissions events using the criteria in subsection (a) of this section took place.”

The commission agrees with the suggested additional language and has modified §101.223(a) as adopted because this information will allow the facility to quickly identify areas for improvement that need to be incorporated into the CAP.

AECT requested that the proposed §101.223(b) be revised to clarify that the described action would be focused on the emissions from the excessive emissions event and not emissions from normal operations.

The commission disagrees with the suggested change. The purpose of a CAP or obtaining permit authorization is to require changes at a facility to eliminate the cause(s) of excessive emissions events or to obtain authorization for the emissions after review for best available control technology and predicted impacts. In either case, control or modification of normal operations may be exactly what is required to meet the purpose.

TIP and TCC commented that §101.223(b)(2) should be revised or deleted, and stated that §101.223(b)(2) allows the commission to unilaterally revise a CAP if, after implementation begins, the commission finds the plan is inadequate to prevent or minimize emissions or emissions events. TCC stated that the provision goes beyond the statutory requirement and subjects the regulated entity to unreasonable second-guessing on a plan that has been negotiated in good faith, and expressed concern that commission staff could potentially use the proposed language to reopen a CAP simply because of the commission's failure to act within the 45-day time period stipulated by the legislature. TIP suggested that proposed §101.223(b)(2) needs to allow a facility to propose and submit a revised CAP within a certain time frame following an inadequacy determination by commission. Therefore, the last sentence of proposed §101.223(b)(2) should be deleted and replaced with the language, "If the commission finds, after implementation of a CAP, that a CAP is inadequate to prevent or minimize emissions or emissions events, the commission shall notify the owner or operator of a facility of the inadequacy in writing. The owner or operator of a facility shall have 30 days to submit to the commission a revised CAP. If the revised CAP remains, in the opinion of the commission, inadequate to prevent or minimize emissions or emissions events, the commission and the owner or operator of a

facility submitting the revised CAP shall work together as expeditiously as possible to develop an adequate CAP.”

The commission agrees that when the commission determines that a CAP is inadequate to prevent or minimize emissions, the commission should notify the owner or operator of the facility and provide an opportunity for the owner or operator to modify the existing CAP or submit a new CAP for approval. However, the commission declines to make the suggested change because the proposed language could lead to a potentially never-ending discussion without a deadline for resolution. The commission has changed §101.223(a)(2) to state: “The commission may require the owner or operator to revise a CAP . . .” and to clarify that deficiencies and reasons for an inadequacy determination be provided to the owner or operator in writing. Additionally, the commission has added the following sentence to §101.223(a)(2), “If the commission finds a CAP inadequate to prevent or minimize emissions or emissions events after implementation of a CAP begins, an owner or operator must file an amended CAP within 60 days after written notification by the executive director.” The commission has not changed the time frame for obtaining an approved CAP from 120 days after the CAP is initially submitted because 120 days is an adequate time for CAP development to achieve the necessary corrections.

AECT requested that the second sentence of proposed §101.223(b)(1) be revised to provide that the 60-day period may be extended as appropriate by the executive director to allow an extension of more than 15 days in limited circumstances where that may be necessary and appropriate. TCC suggested the commission extend the deadline for submitting a CAP from 60 to 90 days because placing an arbitrary

CAP deadline for any or all possible excessive emissions events without regulatory flexibility will inhibit the development of a good CAP and because the schedules for CAP development and implementation should be formed from agreed-upon expectations to meet individual case-specific situations.

The commission believes that 75 days is sufficient time to provide prompt response to address causes of the emissions events and provide remedies which meet the legislative intent. Complex CAPs can be structured in such a way that additional actions or investigations can be incorporated as actions under the CAP. Actions required to be completed under a CAP will not necessarily all be completed within 75 days.

ExxonMobil-Downstream commented that §101.223(b)(1) implies that the executive director is specifying the CAP option and should be revised to clarify that the choice of submitting a CAP or filing a letter of intent to seek authorization for the emissions is a decision made by the owner or operator.

The commission agrees that clarification to the proposed rule is warranted and has modified §101.223(a)(1) to indicate “when a CAP is required” that the provisions regarding CAPs will apply. The commission recognizes that when emissions from emissions events are sufficiently frequent, quantifiable, and predictable, the facility owner or operator has a choice between filing a CAP or requesting permit authorization. However, if the commission determines that the emissions are not sufficiently frequent, quantifiable, or predictable, the facility must file a CAP.

ExxonMobil-Downstream and TIP commented that proposed §101.223(b)(3) should allow an owner or operator of a facility to have the same amount of time to submit a CAP following an excessive event determination as following denial of authorization of emissions from emissions events. TIP also commented that the 60-day deadline for submitting a proposed CAP should run from date of the election, not the date of receipt of the written notification informing a facility of having excessive emissions events, and proposed §101.223(b)(1) should be revised to reflect this. Sierra-Houston commented that the 120-day limit for filing a permit application after a determination of excessive emissions events is too long, and suggested that the deadline be reduced to 90 days.

The time lines in the proposed rule are appropriate to allow ample opportunity to develop an effective course of action or response and the commission declines to make any of the suggested changes.

ExxonMobil-Downstream commented that the proposed rules confuse the roles of the commission and the facility with respect to requirement of CAPs. ExxonMobil-Downstream expressed a belief that the commission is authorized to decide that a CAP is inadequate, but is not authorized to revise the CAP. The commission may require instead that the owner or operator revise the CAP. ExxonMobil-Downstream suggested the commission revise §101.223(b)(2) to distinguish these functions.

The commission agrees that the owner or operator bears the responsibility to revise the CAP when required to do so by the commission or executive director, and has revised the rule to reflect this clarification.

ExxonMobil-Downstream commented that §101.223(b)(2) states, "An owner or operator must obtain commission approval of a CAP no later than 120 days after initial filing of the CAP." Similarly, §101.223(b)(3)(B) states, "If the intended authorization is a permit by rule or standard permit, the owner or operator must obtain authorization within 120 days after filing of the letter of intent."

ExxonMobil-Downstream also commented that an owner or operator has no control over commission timing and should not be held accountable for such.

The commission has not made any changes in response to this comment, because the commission believes that 120 days is sufficient time to obtain commission approval of a CAP, especially considering the 45-day automatic approval provision in THSC, §382.0216(d) that requires the commission to disapprove any unacceptable CAPs before the 45th day. THSC, §382.0216(c), requires the 120-day time frame for obtaining authorization after filing the letter of intent.

ExxonMobil-Downstream commented that proposed language in §101.223(b)(2) is confusing. Unless the request for written approval was submitted with the CAP initially, the commission could take longer to approve the CAP than the owner or operator has to obtain approval. Additionally, Exxon Mobil-Downstream stated that no one would likely submit a CAP and presume to proceed without written approval given the legal obligations of the situation, so the 45-day automatic approval assumption is of questionable value.

As provided in HB 2912, codified in THSC, §382.0216, a CAP is deemed approved if the commission does not disapprove the CAP within 45 days after it is submitted. If the commission disapproves a CAP, the facility will receive notice of the reasons and basis for disapproval.

Sierra-Houston commented that the requirement to disapprove a CAP within 45 days or it is deemed approved is too short, due to the work load of the commission.

The 45-day time frame is a requirement imposed by HB 2912 and the commission declines to change the time frame, notwithstanding the workload of the commission.

ExxonMobil-Downstream commented that with respect to §101.223(b)(3), 15 days is not sufficient time for review of the options and obtaining approval from management, especially for a more complex and extensive CAP. An owner or operator should be given at least 30 days following notification from the executive director that action must be taken to evaluate options and select whether to submit a CAP or seek authorization.

The commission concurs that 15 days may be too limiting for more complex CAPs and has changed the time frame in §101.223(a)(3) from 15 days to 30 days.

TIP commented that a facility must be able to seek authorization for excessive emissions events when it reasonably believes the emissions are sufficiently frequent, quantifiable, and predictable to be authorized, not when the emissions are sufficiently frequent, quantifiable, and predictable to be

authorized based on an objective standard, and requested the commission to add "in the reasonable judgment of the owner or operator of a facility," after the word "predictable," in proposed §101.223(b), (b)(3), and (c).

The commission does not agree that the suggested language is necessary, but recognizes that a facility is able to seek authorization for emissions that are sufficiently frequent, quantifiable, and predictable in the judgment of the commission. The commission has not made any changes in response to this comment.

Brown McCarroll, TIP, and ATINGP expressed concern with the impact of the use of "site" in proposed §101.1(88) as it impacts the proposed compliance history rules. ATINGP, TCC and TIP expressed concern that the term "site" was overly broad and not clearly delineated. ATINGP stated that there is no statutory authority to support a determination of chronic excessive emissions events on a site-wide basis. ATINGP, Dow, and TIP requested the commission to revise the provisions related to findings of "chronic excessive emissions events" to provide that they are facility-based and not site-wide determinations. Dow commented that a large complex site could have only two excessive emissions events from different pieces of equipment and be labeled as chronic. Dow, Oxychem, and TIP commented that excessive emissions events should be from the same piece of equipment and have the same cause before they can be evaluated to be chronic. TIP commented that the proposed language in §101.223(c) does not make it clear whether multiple excessive emissions events have to be the same violation of the same requirement from the same source, or whether the "site" simply has to have

multiple emissions events classified as “excessive.” TIP suggested the commission revise the first sentence of §101.223(c) by adding “for a facility” between “determination” and “under.”

To address HB 2912 requirements concerning chronic excessive emissions events, the commission decided that the determination for chronic will be based on a review of the site, not just each facility at a site. TCAA, §382.0216(j), requires the commission to “account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an *entity’s* compliance history.” Because the statute uses the term “entity,” the commission disagrees that the chronic determination is facility-based. The commission does not believe that the term “site” is too broad nor is it unclear in its delineation. The term “site” has been clearly defined and is identical to the term “site” as recently adopted by the commission in the Chapter 60 compliance history rules. Under the compliance history rules, chronic excessive emissions events at a site are components to be included in a person’s compliance history specific to the site under review. The commission has removed the language that when a site receives more than one excessive emissions event determination within a five-year period it is considered chronic. The commission has determined that when reviewing excessive emissions on a site-wide basis, two excessive emissions events at a facility in five years could be too restrictive in the determination of chronic. Therefore, when determining whether a facility has had chronic excessive emissions events, the commission will consider the size, nature, and complexity of the site’s operation; the frequency of the emissions events at the site; and the reasons for the excessive emissions event determinations at the site. This determination will be based on a case-by-case review of the emissions events at the site. The

commission does not agree that emissions events must be identical, or that emissions must emanate from the same piece of equipment or that emissions must have the same cause, before a chronic assessment under §101.223(b) is appropriate. A site may experience emissions events that are not directly attributable to the same piece of facility equipment, or to the exact same immediate cause, but that could indicate a chronic pattern.

Birch, TCC, AECT, ATINGP, TIP, Chaparral, Brown McCarroll commented on the trigger for review of excessive emissions events as chronic as any two excessive emissions events in a five-year period in proposed §101.223(c). Birch commented the commission has not provided adequate standards for establishing when excessive emissions events are chronic. TCC commented that the language in the preamble is inconsistent with the proposed rule language. TCC, AECT, and ATINGP commented that the occurrence of two excessive emissions events does not constitute “chronic.” AECT explained that in the dictionary, “chronic” is defined as “marked by frequent occurrence,” and that to be “frequent” requires more than two events. ATINGP encouraged the commission to incorporate a standard that indicates that a finding of chronic excessive emissions events will be found at a facility when the owner/operator has “a trend or pattern of excessive emissions events and a blatant disregard for compliance.” TIP commented that if the commission plans to interpret new proposed §101.223(c) as allowing a chronic excessive emissions events determination to be made on a site-wide, multi-emissions point basis, two excessive emissions events is far too low a criterion to establish a pattern of “chronic” behavior, especially for a large plant. Chaparral and Brown McCarroll commented that the commission's proposal, to deem that more than one excessive emissions event in a five-year period as “chronic,” is inconsistent with HB 2912. Chaparral stated that to be chronic, excessive events must

frequently recur or persist for a long duration. Brown McCarroll commented that the proposal provides absolutely no explanation as to why two such determinations constitutes a chronic situation, and that by use of the word “chronic,” the legislature meant this term to apply to sites that have excessive emissions events on a habitual or recurring basis. TCC commented that in general there should be clarity around what constitutes an "excessive" versus a "chronic" event. TCC suggested that "excessive" refers to the quantity of emissions and "chronic" refers to the frequency.

With the changes to §101.222(a) as adopted regarding excessive emissions events, and the commission’s expectation that the number of excessive events will be significant, defining “chronic” as “two or more excessive emissions events at a site in a five-year period” is not appropriate. Since proposal, the commission added to the criteria for review of chronic excessive emissions events, the reason or reasons for excessive emissions event determination(s) at the site. A chronic assessment is best made on a case-by-case review of the size, nature, and complexity of the site’s operations; the frequency of the excessive emissions events at a site; and the underlying reasons for the excessive emissions events.

Excessive emissions events and chronic excessive emissions events are related in that excessive emissions events may become chronic excessive emissions events. TCAA, §382.0216, established and the commission adopts a set of criteria that define when an emissions event is excessive.

Chronic excessive emissions events are excessive emissions events that occur in such a magnitude or frequency or that cause an impact that the commission determines is unacceptable.

ACT expressed concern that the proposed definition of excessive emissions event sets such a high bar that few, if any, emissions events will be classified as excessive each year.

With the changes to §101.222(a) as adopted, the commission believes that many more than a few emissions events will be classified as excessive on an annual basis.

Oxychem suggested §101.223(c) should be modified to set the limit for the executive director to recommend to the commission that a site be considered chronic at more than one excessive emissions events determination for the same cause within a one-year period.

Because assessment of emissions events is best made on a case-by-case basis, the commission has removed its proposed reference to a specific number of events within a certain time frame and declines to establish a specific number of excessive emissions events that will trigger a chronic assessment. The commission has not made any change in response to this comment.

ExxonMobil-Production proposed that the number of excessive emissions events to be considered as possibly chronic be the site complexity factor as proposed in the compliance history rules, with a minimum of two, in a five-year period.

Because the site complexity factor in the proposed compliance history rules in Chapter 60 has a specific meaning beyond the air quality program to which the emissions events rules are limited, the commission does not see that factor as an appropriate basis for considering whether a site has

chronic excessive emissions events. The commission is retaining the size, nature, and complexity of the site operations in the criteria that the commission will evaluate in determining whether a site has chronic excessive emissions events and the frequency of the excessive emissions events at the site, and has added consideration of the reasons for the excessive events determinations.

Brown McCarroll commented that it does not understand why a second CAP is required when it is not mandated and the underlying excessive emissions events determinations have already been addressed through a CAP. ATINGP commented that the statute only requires that the determination of chronic excessive emissions events be included in the regulated entity's compliance history. Brown McCarroll and ATINGP requested that the commission delete the requirement in proposed §101.223(c) for CAPs and permitting of emissions.

The commission agrees that a chronic determination only effects the entity's compliance history. The commission also agrees that the CAP associated with the excessive emissions event should be sufficient to address the underlying cause of the event, and that with a determination of chronic excessive emissions events, a second CAP is not necessary. The commission has deleted the requirement for a second CAP in §101.223(b).

Sierra-Houston commented that the word "may" in §101.223(c) should be replaced with the word "must," thus requiring the executive director to forward the determinations of excessive emissions events to the commission.

Section 101.223(c) has been revised and the trigger has been removed. However, as with all determinations regarding emissions events, they are made on a case-by-case basis. Upon a review of the excessive emissions event(s), a determination will be made by the executive director to recommend that the commission make a finding of chronic excessive emissions events. Only when the executive director determines that emissions events may be chronic is there a reason for the commission to review these to consider whether these are chronic.

Brown McCarroll recommended that the commission insert the word "excessive" in front of "emissions events" in §101.223(c)(2) to more accurately implement the requirements of HB 2912.

The commission must be able to review all emissions events associated with the site in question. While a single emission event may not be deemed to be excessive, subsequent emissions events from the same site may indicate a problem by their recurring pattern and may result in an excessive determination. Therefore, the commission has not made the suggested change.

Section 101.224 - Temporary Exemptions During Drought Conditions

TCC and Dow commented that the commission should consider providing temporary relief for weather conditions other than drought conditions. TCC provided an example that during the June 2001 flooding, some plants had switchgear failures which caused unplanned emissions at some facilities. Dow provided an example of a hurricane threatening the Texas gulf coast, where many facilities might opt to cease operations and would notify the commission in advance of their shutdown plans perhaps only a matter of hours prior to commencing shutdown actions. Dow stated that in these types of cases,

perhaps the commission could consider just requiring a simple site-wide notification of the shutdown activity, and then collect the details via the two-week follow-up written report. TCC further stated that the commission should clarify that these types of events are unavoidable.

The commission does not believe that amending this section to provide temporary relief for weather conditions other than drought conditions is appropriate at this time. The commission performed a rules review of Chapter 101 in 1998, and identified several areas for amendment. One suggested amendment included the reformatting of Chapter 101 to improve rule clarity and ease of future rule revisions. As stated in this proposal, the rule language found in repealed §101.12, *Temporary Exemptions During Drought Conditions*; was moved to a new §101.224 and the new section retained its original title. The changes being made to language of this section were purely administrative; therefore, amending the section to address temporary relief for weather conditions other than drought conditions is out of the scope of this rulemaking action. However, the commission may consider this suggested amendment at a later rulemaking.

The commission does not agree that the use of §101.224 is the proper reporting avenue for floods and/or hurricanes. Reporting under §101.211 would be the proper way to report shutdown events made as a result of *force majeure* events beyond the control of the source, such as floods or hurricanes.

Section 101.233 - Variance Transfers

Chaparral suggested renaming §101.233 to “Transfers of Variance” to avoid confusion with provisions relating to transfer of permits.

The commission agrees with the comment and has revised the title of the section to Variance Transfers.

SUBCHAPTER A: GENERAL RULES

§101.1

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when

emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The amendment is also adopted under Title 42 United States Code (42 USC), §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state commission with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

§101.1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) **Criteria pollutant or standard** - Any pollutant for which there is a national ambient air quality standard established under 40 Code of Federal Regulations Part 50.

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

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

Figure: 30 TAC §101.1(22)

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

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

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

(25) **Emissions event** - Any upset event or unscheduled maintenance, startup, or shutdown activity that results in unauthorized emissions from an emissions point.

(26) **Emissions reduction credit** - Any stationary source emissions reduction which has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

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

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

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

(30) **External floating roof** - A cover or roof in an open top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space

between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

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

(32) **Federally enforceable** - All limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) Parts 60 and 61; requirements within any applicable state implementation plan (SIP); and any permit requirements established under 40 CFR §52.21 or under regulations approved under 40 CFR Part 51, Subpart I, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

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

(34) **Fuel oil** - Any oil meeting the American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D396-01, Standard Specifications for Fuel Oils, revised

2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2, 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

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

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

(37) **Gasoline** - Any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kilopascals) or greater, which is produced for use as a motor fuel, and is commonly called gasoline.

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

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

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

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

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

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

(44) **Incinerator** - An enclosed combustion apparatus and attachments which is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and which is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device which burns 10% or more of solid waste on a total British

thermal unit (Btu) heat input basis averaged over any one-hour period shall be considered an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually shall also be considered an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any regulations within this title provided they are installed and operated in compliance with the condition of all applicable permits.

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

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

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

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 and §335.505 of this title (relating to Definitions and Class 1 Waste Determination).

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

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

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

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

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

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

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

(A) Victoria Ozone Maintenance Area (60 FR 12453) - Victoria County; and

(B) Collin County Lead Maintenance Area (64 FR 55421 - 55425) - Portion of Collin County. Eastside: Starting at the intersection of South Fifth Street and the fence line approximately 1,000 feet south of the Exide property line going north to the intersection of South Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the Exide property line; Southside: Fence line approximately 1,000 feet south of the Exide property line.

(53) **Maintenance plan** - A revision to the applicable state implementation plan, meeting the requirements of FCAA, §175A.

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

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

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

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

(58) **Mobile emissions reduction credit** - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter E or F of this title (relating to Low Emission Vehicle Fleet Requirements and Vehicle Retirement and Mobile Emission Reduction Credits), and which has been banked in accordance with Subchapter H, Division 1 of this chapter.

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

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

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

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

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

(64) **National ambient air quality standard** - Those standards established under FCAA, §109, including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

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

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

(67) **Nonattainment area** - A defined region within the state which is designated by EPA as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, §107(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state.

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

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

(C) Lead. No designated nonattainment areas.

(D) Nitrogen dioxide. No designated nonattainment areas.

(E) Ozone.

(i) Houston/Galveston ozone nonattainment area (56 FR 56694)--Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso ozone nonattainment area (56 FR 56694)--Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont/Port Arthur ozone nonattainment area (61 FR 14496)--Classified as a Moderate ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

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

8128)--Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Sulfur dioxide. No designated nonattainment areas.

(68) **Non-reportable emissions event** - Any emissions event that is not a reportable emissions event as defined in this section.

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

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

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

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

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

(74) **Petroleum refinery** - Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

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

(76) **PM₁₀ emissions** - Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method specified in an approved state implementation plan.

(77) **Polychlorinated biphenyl compound** - A compound subject to 40 Code of Federal Regulations Part 761.

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

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

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

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

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

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

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

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

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) §302, Table 302.4, the column “final RQ”;

(II) listed in 40 CFR §355, Appendix A, the column
“Reportable Quantity”; or

(III) listed as follows:

(-a-) butanes (any isomer) - 5,000 pounds;

(-b-) butenes (any isomer, except 1,3-butadiene) -
5,000 pounds, except in the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) ozone
nonattainment areas as defined in paragraph (67)(E)(i) and (iii) of this section, where the RQ shall be
100 pounds;

(-c-) ethylene - 5,000 pounds, except in the HGA and
BPA ozone nonattainment areas as defined in paragraph (67)(E)(i) and (iii) of this section, where the
RQ shall be 100 pounds;

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

(-e-) pentanes (any isomer) - 5,000 pounds;

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

(-g-) propylene - 5,000 pounds, except in the HGA and BPA ozone nonattainment areas as defined in paragraph (67)(E)(i) and(iii) of this section, where the RQ shall be 100 pounds;

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

(-i-) isopropyl alcohol - 5,000 pounds;

(-j-) mineral spirits - 5,000 pounds;

(-k-) hexanes (any isomer) - 5,000 pounds;

(-l-) octanes (any isomer) - 5,000 pounds;

(-m-) decanes (any isomer) - 5,000 pounds;

(-n-) acetaldehyde - 1,000 pounds, except in the HGA and BPA ozone nonattainment areas as defined in paragraph (67)(E)(i) and (iii) of this section, where the RQ shall be 100 pounds;

(-o-) toluene - 1,000 pounds, except in the HGA and BPA ozone nonattainment areas as defined in paragraph (67)(E)(i) and (E)(iii) of this section, where the RQ shall be 100 pounds;

(-p-) nitrogen oxide - 100 pounds, which shall be used instead of the RQ provided in 40 CFR §302, Table 302.4, the column “final RQ”; or

(-q-) nitrogen dioxide - 100 pounds, which shall be used instead of the RQ listed in 40 CFR §302, Table 302.4, the column “final RQ” or listed in 40 CFR §355, Appendix A, the column “Reportable Quantity”;

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

(B) for mixtures of air contaminant compounds:

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

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

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

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

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

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

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

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

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

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

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

(86) **Scheduled maintenance, startup, or shutdown activity** - For activities with unauthorized emissions which are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity for which the owner or operator of the facility provides timely prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the initial notification. For activities with unauthorized emissions which are not expected to, and do not, exceed

an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title. Expected excess opacity events as described in §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) resulting from scheduled maintenance, startup, or shutdown activities are those that provide prior notice (if required), and are recorded and reported as required by §101.211 of this title.

(87) **Site** - For the purposes of Subchapter F of this chapter, shall mean all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location.

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

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

(90) **Solid waste** - Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial,

municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

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

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

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 United States Code, §§6901 *et seq.*).

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

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

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

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

(95) **Standard conditions** - A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals). Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.

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

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

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

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

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

(101) **Total suspended particulate** - Particulate matter as measured by the method described in 40 Code of Federal Regulations Part 50, Appendix B.

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

(103) **True vapor pressure** - The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, of all volatile organic compounds at the temperature of storage, handling, or processing.

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

(105) **Upset event** - An unplanned or unanticipated occurrence or excursion of a process or operation that results in unauthorized emissions.

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

(107) **Vapor combustor** - A partially enclosed combustion device used to destroy volatile organic compounds by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system, which can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

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

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

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

(111) **Volatile organic compound** - Any compound of carbon or mixture of carbon compounds excluding methane; ethane; 1,1,1-trichloroethane (methyl chloroform); methylene chloride (dichloromethane); perchloroethylene (tetrachloroethylene); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone;

3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1-chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane; 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane; 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane; 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane; methyl acetate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; and perfluorocarbon compounds which fall into these classes:

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

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

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

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

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

SUBCHAPTER A: GENERAL RULES

§§101.6, 101.7, 101.11, 101.12, 101.15 - 101.17

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeals are also adopted under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.023, concerning Orders, which authorizes the commission to issue orders to carry out the purposes of TCAA; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.028, concerning Variances, which authorizes the commission to grant variances; §382.0518(g), concerning Preconstruction Permits, which

authorizes the commission to authorize emissions under preconstruction permits; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The repeals are also adopted under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state commission with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

§101.6. Upset Reporting and Recordkeeping Requirements.

§101.7. Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

§101.11. Demonstrations.

§101.12. Temporary Exemptions During Drought Conditions.

§101.15. Petition for Variance.

§101.16. Effect of Acceptance of Variance or Permit.

§101.17. Transfers.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE,
STARTUP, AND SHUTDOWN ACTIVITIES**

DIVISION 1: EMISSIONS EVENTS

§101.201

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also adopted under TCAA, §382.002, concerning Policy and Purpose, 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, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits

emissions except as authorized by commission rule or order; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The new section is also adopted under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state commission with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

§101.201. Emissions Event Reporting and Recordkeeping Requirements.

(a) The following requirements for reportable emissions events shall apply.

(1) As soon as practicable, but not later than 24 hours after the discovery of an emissions event, the owner or operator of a facility shall:

(A) determine if the event is a reportable emissions event; and

(B) notify the commission office for the region in which the facility is located, and all appropriate local air pollution control agencies, if the emissions event is reportable.

(2) The notification for reportable emissions events for each facility, except for boilers or combustion turbines referenced in the definition of reportable quantity (RQ) in §101.1 of this title (relating to Definitions) shall at a minimum, identify:

(A) the name of the owner or operator of the facility experiencing an emissions event;

(B) the commission air account number of the facility experiencing an emissions event, if an account number exists;

(C) the physical location of the point at which emissions to the atmosphere occurred;

(D) the common name of the process unit or area, the common name of the facility which incurred the emissions event, and the common name of the emission point where the unauthorized emissions were released to the atmosphere;

(E) the date and time of the discovery of the emissions event;

(F) the estimated duration of the emissions event;

(G) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, which are known through common process knowledge, past engineering analysis, or testing to have equaled or exceeded the RQ;

(H) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (G) of this paragraph, and, if applicable, the estimated opacity and the authorized opacity limit;

(I) the cause of the emissions event, if known; and

(J) the actions taken, or being taken, to correct the emissions event and minimize the emissions.

(3) The notification for reportable emissions events for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title shall identify:

(A) the name of the owner or operator of the facility experiencing an emissions event;

(B) the commission air account number of the facility experiencing an emissions event, if an account number exists;

(C) the physical location of the point from which the opacity occurred;

(D) the cause of the emissions event, if known;

(E) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions event, and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points for which the agency has not established facility identification numbers or emission point numbers are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(F) the date and time of the discovery of the emissions event;

(G) the estimated duration or expected duration of the emissions event;

(H) the estimated opacity;

(I) the authorized opacity limit for the source having the emissions event; and

(J) the actions taken, or being taken, to correct the emissions event and minimize the emissions.

(4) The owner or operator of a facility experiencing an emissions event must provide, in writing, additional or more detailed information on the emissions event when requested by the executive director or any air pollution control agency with jurisdiction, within the time frames established in the request.

(5) The owner or operator of a facility experiencing a reportable emissions event which also requires an initial notification under §327.3 of this title (relating to Notification Requirements) may satisfy the initial notification requirements of this section by complying with the requirements under §327.3 of this title.

(b) The owner or operator of a facility experiencing an emissions event shall create a final record of all reportable and non-reportable emissions events as soon as practicable, but no later than two weeks after the end of an emissions event. Final records shall be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air pollution program with jurisdiction. If a site is not normally staffed, records of emissions events may be maintained at the staffed location within Texas that is responsible for the day-to-day operations of the site. Such records shall identify:

(1) the name of the owner or operator of the facility experiencing an emissions event;

(2) the commission air account number of the facility experiencing an emissions event, if the account number exists;

(3) the physical location of the point at which emissions to the atmosphere occurred ;

(4) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions event, and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points for which the agency has not established facility identification numbers or emission point numbers are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report.

(5) the date and time of the discovery of the emissions event;

(6) the estimated duration of the emissions event;

(7) the compound descriptive type of all individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, which are known through common process knowledge or past engineering analysis or testing to have been released during the emissions event, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title;

(8) the estimated total quantities for those compounds or mixtures described in paragraph (7) of this subsection, the preconstruction authorization number or rule citation of the

standard permit, permit by rule, or rule governing the facility involved in the emissions event, authorized emissions limits for the facility involved in the emissions events, and, if applicable, the estimated opacity and authorized opacity limit, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title which record only the authorized opacity limit and the estimated opacity during the emissions event;

(9) the basis used for determining the quantity of air contaminants emitted, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title;

(10) the cause of the emissions event;

(11) the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(12) any additional information necessary to evaluate the emissions event.

(c) For all reportable emissions events, if the information required in subsection (b) of this section differs from the information provided in the 24-hour notification under subsection (a) of this section, the owner or operator of the facility shall submit a copy of the final record to the commission office for the region in which the facility is located no later than two weeks after the end of the emissions event. If the owner or operator does not submit a record under this subsection, the information provided in the 24-hour notification under subsection (a) of this section will be the final

record of the emissions event, provided the initial notification was submitted electronically in accordance with subsection (g) of this section.

(d) The owner or operator of a boiler or combustion turbine fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emission reports by other state or federal requirements, is exempt from creating, maintaining, and submitting final records of reportable and non-reportable emissions events of the boiler or combustion turbine under subsections (b) and (c) of this section as long as the notice submitted under subsection (a) of this section contains the information required under subsection (b) of this section.

(e) An owner or operator of a facility has an excess opacity event when it has opacity reading(s) equal to or exceeding 15 additional percentage points above the applicable opacity limit, averaged over a six-minute period. As soon as practicable, but not later than 24 hours after the discovery of an excess opacity event where the owner or operator was not already required to provide a notification under subsection (a)(2) or (3) of this section, the owner or operator shall notify the commission office for the region in which the facility is located, and all appropriate local air pollution control agencies. In the notification, the owner or operator shall identify:

- (1) the name of the owner or operator of the facility experiencing the excess opacity event;
- (2) the commission air account number of the facility experiencing an excess opacity event, if an account number exists;
- (3) the physical location of the excess opacity event;
- (4) the common name of the process unit or area, the common name of the facility where the excess opacity event occurred, and the common name of the emission point where the excess opacity event occurred;
- (5) the date and time of the discovery of the excess opacity event;
- (6) the estimated duration of the excess opacity event;
- (7) the estimated opacity;
- (8) the authorized opacity limit for the source having the excess opacity event;
- (9) the cause of the excess opacity event, if known; and

(10) the actions taken, or being taken, to correct the excess opacity event.

(f) The owner or operator of any facility subject to the provisions of this section shall perform, upon request by the executive director or any air pollution control agency with jurisdiction, a technical evaluation of each emissions event. The evaluation shall include at least an analysis of the probable causes of each emissions event and any necessary actions to prevent or minimize recurrence. The evaluation shall be submitted in writing to the executive director within 60 days from the date of request. The 60-day period may be extended by the executive director.

(g) On and after January 1, 2003, notifications and reports required in subsections (c) and (e) of this section shall be submitted electronically to the commission using the electronic forms provided by the commission. On and after January 1, 2004, notifications required in subsection (a) of this section shall be submitted electronically to the commission using electronic forms provided by the commission. Notwithstanding the requirement to report initial notifications electronically after January 1, 2004, the owner or operator of a facility experiencing a reportable emissions event, which also requires an initial notification under §327.3 of this title, is not required to report the event electronically under this subsection provided the owner or operator complies with the requirements under §327.3 of this title and in subsections (a) and (c) of this section. Owners and operators must report emissions events electronically by using an online form on the commission's secure web server. In the event the commission's server is unavailable due to technical failures or scheduled maintenance, events may be reported via facsimile to the appropriate regional office. The commission will provide an alternative means of notification in the event that the commission's electronic reporting system is inoperative.

Electronic notification and reporting is not required for small businesses which meet the small business definition in TCAA, §382.0365(g)(2). Small businesses shall provide notifications and reporting by any viable means which meet the time frames required by this section.

(h) In the event the owner or operator of a facility fails to report as required by subsection (a)(2) or (3), (b), or (e) of this section, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely, unless the owner or operator knowingly or intentionally falsified the information in the report.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

DIVISION 2: MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

§101.211

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also adopted under TCAA, §382.002, concerning Policy and Purpose, 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, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits

emissions except as authorized by commission rule or order; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The new section is also adopted under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

§101.211. Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.

(a) The owner or operator of a facility conducting a scheduled maintenance, startup, or shutdown activity shall notify the commission office for the region in which the facility is located and all appropriate local air pollution control agencies at least ten days prior to any scheduled maintenance, startup, or shutdown activity which is expected to cause an unauthorized emission which equals or exceeds the reportable quantity (RQ) as defined in §101.1 of this title (relating to Definitions) in any 24-hour period and/or an activity where the owner or operator expects only an excess opacity event that is subject to §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements). If notice cannot be given ten days prior to a scheduled maintenance, startup, or shutdown activity, notification shall be given as soon as practicable prior to the scheduled activity. Maintenance, startup, or shutdown activities where the actual emissions exceed the emissions in the

notification or for which a notification was not submitted are emissions events. Excess opacity events where unauthorized emissions result are emissions events. Owners and operators of facilities that exceed the emissions or opacity estimate submitted in the notification or experience unauthorized emissions during an expected excess opacity event shall report such events as emissions events in accordance with the requirements in §101.201 of this title and §101.222 of this title (relating to Demonstrations).

(1) The notification for a scheduled maintenance, startup, or shutdown activity, except for boilers and combustion turbines referenced in the definition of RQ in §101.1 of this title, shall identify:

(A) the name of the owner or operator;

(B) the commission air account number of the facility, if an account number exists;

(C) the physical location of the point at which emissions from the scheduled maintenance, startup, or shutdown activity will occur;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the expected date and time of the scheduled maintenance, startup, or shutdown activity;

(F) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions event, and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points for which the agency has not established facility identification numbers or emission point numbers are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(G) the expected duration of the scheduled maintenance, startup, or shutdown activity;

(H) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, which through common process knowledge or past engineering analysis or testing are expected to equal or exceed the RQ ;

(I) the estimated total quantities for those compounds or mixtures described in subparagraph (H) of this paragraph, the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule governing the facility involved in the activity, authorized

emissions limits for the facility involved in the emissions activity, and, if applicable, the estimated opacity and the authorized opacity limit;

(J) the basis used for determining the quantity of air contaminants to be emitted; and

(K) the actions taken to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(2) The notification for a scheduled maintenance, startup, or shutdown activity involving a boiler or combustion turbine referenced in the definition of RQ in §101.1 of this title, or where the owner or operator expects only an excess opacity event and the owner or operator was not already required to provide a notification under paragraph (1) of this subsection, shall identify:

(A) the name of the owner or operator;

(B) the commission air account number of the facility, if an account number exists;

(C) the physical location of the scheduled maintenance, startup, or shutdown activity;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the excess opacity event, and the common name and the agency-established emission point number where the excess opacity event occurred. Owners or operators of those facilities and emission points for which the agency has not established facility identification numbers or emission point numbers are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(F) the expected date and time of the scheduled maintenance, startup, or shutdown activity;

(G) the estimated duration of the scheduled maintenance, startup, or shutdown activity;

(H) the estimated opacity and the authorized opacity limit; and

(I) the actions taken, or being taken, to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(b) The owner or operator of a facility conducting a scheduled maintenance, startup, or shutdown activity shall create a final record of all scheduled maintenance, startup, and shutdown activities with unauthorized emissions, or with opacity exceedances from boilers and combustion turbines referenced in the definition of RQ in §101.1 of this title. The final record shall be created as soon as practicable, but no later than two weeks after the end of each scheduled activity. Final records shall be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air pollution program with jurisdiction. If a site is not normally staffed, records of scheduled maintenance, startup, and shutdown activities may be maintained at the staffed location within Texas that is responsible for day-to-day operations of the site. Such scheduled activity records shall identify:

- (1) the name of the owner or operator;
- (2) the commission air account number of the facility, if an account number exists;
- (3) the physical location of the scheduled point at which emissions from the maintenance, startup, or shutdown activity will occur;
- (4) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(5) the common name of the process unit or area, the common name and the agency-established facility identification number of the facility that experienced the emissions event, and the common name and the agency-established emission point number where the unauthorized emissions were released to the atmosphere. Owners or operators of those facilities and emission points for which the agency has not established facility identification numbers or emission point numbers are not required to provide the facility identification number and emission point number in the report, but are required to provide the common names in the report;

(6) the date and time of the scheduled maintenance, startup, or shutdown activity;

(7) the duration of the scheduled maintenance, startup, or shutdown activity;

(8) the compound descriptive type of all individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, which are known through common process knowledge or past engineering analysis or testing to have been released during the scheduled maintenance, startup, or shutdown activity, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title;

(9) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in paragraph (8) of this subsection, the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule governing the facility involved in the scheduled maintenance, startup, or shutdown activity, authorized emissions limits for the facility

involved in the scheduled maintenance, startup, or shutdown activity, and, if applicable, the estimated opacity and authorized opacity limit, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title which record only the authorized opacity limit and the estimated opacity during the emissions event;

(10) the basis used for determining the quantity of air contaminants to be emitted, except for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title; and

(11) the actions taken to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(c) For any scheduled maintenance, startup, or shutdown activity for which an initial notification was submitted under subsection (a) of this section, if the information required in subsection (b) of this section differs from the information provided under subsection (a) of this section, the owner or operator of the facility shall submit a copy of the final record to the commission office for the region in which the facility is located no later than two weeks after the end of the scheduled activity. If the owner or operator does not submit a record under this subsection, the information provided under subsection (a) of this section will be the final record of the scheduled activity.

(d) The owner or operator of a boiler or combustion turbine fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, that is equipped with a continuous emission monitoring system that completes a minimum of

one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emissions reports by other state or federal regulations, is exempt from creating, maintaining, and submitting final records of scheduled maintenance, startup, and shutdown activities with unauthorized emissions under subsections (b) and (c) of this section, as long as the notice submitted under subsection (a) of this section contains the information required under subsection (b) of this section.

(e) The executive director may specify the amount, time, and duration of emissions that will be allowed during the scheduled maintenance, startup, or shutdown activity. The owner or operator of any source subject to the provisions of this section shall submit a technical plan for any scheduled maintenance, startup, or shutdown activity when requested by the executive director. The plan shall contain a detailed explanation of the means by which emissions will be minimized during the scheduled maintenance, startup, or shutdown activity. For those emissions which must be released into the atmosphere, the plan shall include the reasons such emissions cannot be reduced further.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

**DIVISION 3: OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND
ACTIONS TO REDUCE EXCESSIVE EMISSIONS**

§§101.221 - 101.224

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also adopted under TCAA, §382.002, concerning Policy and Purpose, 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, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.023, concerning Orders, which authorizes the

commission to issue orders to carry out the purposes of the TCAA; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.0518(g), concerning Preconstruction Permits, which authorizes the commission to authorize emissions under preconstruction permits; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The new sections are also adopted under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

§101.221. Operational Requirements.

(a) All pollution emission capture equipment and abatement equipment shall be maintained in good working order and operated properly during facility operations. Emission capture and abatement equipment shall be considered to be in good working order and operated properly when operated in a manner such that each facility is operating within authorized emission limitations.

(b) Smoke generators and other devices used for training inspectors in the evaluation of visible emissions at a training school approved by the commission are not required to meet the allowable emission levels set by the rules and regulations, but must be located and operated such that a nuisance is not created at any time.

(c) Equipment, machines, devices, flues, and/or contrivances built or installed to be used at a domestic residence for domestic use are not required to meet the allowable emission levels set by the rules and regulations unless specifically required by a particular regulation.

(d) Sources emitting air contaminants which cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules and regulations when so determined and ordered by the commission. The commission may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements.

(e) The owner or operator of a facility has the burden of proof to demonstrate that the criteria identified in §101.222(a) and (b) of this title (relating to Demonstrations) for emissions events, or in §101.222(c) of this title for scheduled maintenance, startup, or shutdown activities are satisfied for each occurrence of unauthorized emissions. The owner or operator of a facility has the burden of proof to demonstrate that the criteria identified in §101.222(d) of this title for excess opacity events, or in §101.222(e) for excess opacity events resulting from scheduled maintenance, startup, or shutdown activities are satisfied for each excess opacity event. The executive director or any air pollution

program with jurisdiction may request documentation of the criteria in §101.222 of this title at their discretion. Satisfying the burden of proof is a condition to unauthorized emissions being considered not excessive and exempt from compliance with authorized emission limitations under §101.222 of this title.

(f) This section does not limit the commission's power to require corrective action as necessary to minimize emissions, or to order any action indicated by the circumstances to control a condition of air pollution.

§101.222. Demonstrations.

(a) Excessive emissions event determinations. The executive director shall determine when emissions events are excessive. Emissions events determined to be excessive are not exempt from compliance with emission limitations. To determine whether an emissions event or emissions events are excessive, the executive director will evaluate emissions events using the following criteria:

- (1) the frequency of the facility's emissions events;
- (2) the cause of the emissions event;
- (3) the quantity and impact on human health or the environment of the emissions event;

(4) the duration of the emissions event;

(5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(b) Non-excessive emissions events. Emissions events determined not to be excessive by the executive director after applying the criteria in subsection (a) of this section are exempt from compliance with emission limitations if the owner or operator satisfies all of the following criteria:

(1) the owner or operator complies with the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements);

(2) the unauthorized emissions were caused by a sudden breakdown of equipment or process, beyond the control of the owner or operator;

(3) the unauthorized emissions did not stem from any activity or event that could have been foreseen and avoided, and could not have been avoided by good design, operation, and maintenance practices;

(4) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events;

(5) prompt action was taken to achieve compliance once the operator knew or should have known that applicable emission limitations were being exceeded;

(6) the amount and duration of the unauthorized emissions and any bypass of pollution control equipment were minimized;

(7) all emission monitoring systems were kept in operation if possible;

(8) the owner or operator actions in response to the unauthorized emissions were documented by contemporaneous operation logs or other relevant evidence;

(9) the unauthorized emissions were not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance;

(10) the percentage of a facility's total annual operating hours during which unauthorized emissions occurred was not unreasonably high; and

(11) unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, or to a condition of air pollution.

(c) Scheduled maintenance, startup, or shutdown activity. Emissions from any scheduled maintenance, startup, or shutdown activity are exempt from compliance with emission limitations, if the owner or operator satisfies all of the following criteria:

(1) the owner or operator complies with the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements);

(2) the periods of unauthorized emissions from any scheduled maintenance, startup, or shutdown activity could not have been prevented through planning and design;

(3) the unauthorized emissions from any scheduled maintenance, startup, or shutdown activity were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(4) if the unauthorized emissions from any scheduled maintenance, startup, or shutdown activity were caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(5) the facility and air pollution control equipment were operated in a manner consistent with good practices for minimizing emissions;

(6) the frequency and duration of operation in a scheduled maintenance, startup, or shutdown mode resulting in unauthorized emissions were minimized;

(7) all emissions monitoring systems were kept in operation if possible;

(8) the owner or operator actions during the period of unauthorized emissions from any scheduled maintenance, startup, or shutdown activity were documented by contemporaneous operating logs or other relevant evidence; and

(9) unauthorized emissions did not cause or contribute to an exceedance of the NAAQS, PSD increments, or a condition of air pollution.

(d) Excess opacity events. Excess opacity events that are subject to §101.201(e) of this title, and other opacity events where the owner or operator did not experience an emissions event, are exempt from compliance with applicable opacity limitations if the owner or operator satisfies all of the following criteria:

(1) the owner or operator complies with the requirements of §101.201 of this title;

(2) the opacity did not stem from any activity or event that could have been foreseen and avoided, and could not have been avoided by good design, operation, and maintenance practices;

(3) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing opacity;

(4) prompt action was taken to achieve compliance once the operator knew or should have known that applicable opacity limitations were being exceeded;

(5) the amount and duration of the opacity event and any bypass of pollution control equipment were minimized;

(6) all emission monitoring systems were kept in operation if possible;

(7) the owner or operator actions in response to the opacity event were documented by contemporaneous operation logs or other relevant evidence;

(8) the opacity event was not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance; and

(9) the opacity event did not cause or contribute to a condition of air pollution.

(e) Opacity events resulting from scheduled maintenance, startup, or shutdown activity.

Excess opacity events, or other opacity events where the owner or operator did not experience an emissions event, that result from any scheduled maintenance, startup, or shutdown activity are exempt from compliance with applicable opacity limitations if the owner or operator satisfies all of the following criteria:

- (1) the owner or operator complies with the requirements of §101.211 of this title;
- (2) the periods of opacity could not have been prevented through planning and design;
- (3) the opacity was not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (4) if the opacity event was caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (5) the facility and air pollution control equipment were operated in a manner consistent with good practices for minimizing opacity;
- (6) the frequency and duration of operation in a scheduled maintenance, startup, or shutdown mode resulting in opacity were minimized;

(7) all emissions monitoring systems were kept in operation if possible;

(8) the owner or operator actions during the opacity event was documented by contemporaneous operating logs or other relevant evidence; and

(9) the opacity event did not cause or contribute to a condition of air pollution.

(f) Frequent or recurring pattern. When the commission finds a frequent or recurring pattern of events under this subchapter, the commission may pursue penalties and corrective actions from an owner or operator of a facility for unauthorized emissions notwithstanding the exemptions described in subsections (b) - (e) of this section.

§101.223. Actions to Reduce Excessive Emissions.

(a) The executive director will provide written notification to an owner or operator of a facility upon determination that a facility has had one or more excessive emissions events. The written notification shall contain, at a minimum, a description of the emissions events that were determined to be excessive and the time period when those excessive emissions events were evaluated. Upon receipt of this notice, the owner or operator of the facility must take action to reduce emissions and shall either file a corrective action plan (CAP) or, if the emissions are sufficiently frequent, quantifiable, and predictable, in which case the owner or operator may file a letter of intent to obtain authorization from the commission for emissions from such events, in lieu of a CAP.

(1) When a CAP is required, the owner or operator must submit a CAP to the commission office for the region in which the facility is located within 60 days after receiving notification from the executive director that a facility has had one or more excessive emissions events . The 60-day period may be extended once for up to 15 days by the executive director. The CAP shall, at a minimum:

(A) identify the cause or causes of each excessive emissions event including all contributing factors that led to each emissions event;

(B) specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future;

(C) identify operational changes the owner or operator will take to prevent or minimize similar emissions events in the future; and

(D) specify time frames within which the owner or operator will implement the components of the CAP.

(2) An owner or operator must obtain commission approval of a CAP no later than 120 days after the commission receives the first CAP submission from an owner or operator. If not disapproved within 45 days after initial filing, the CAP shall be deemed approved. The owner or operator of a facility must respond completely and adequately, as determined by the executive director,

to all written requests for information concerning its CAP within 15 days after the date of such requests, or by any other deadline specified in writing. An owner or operator of a facility may request written approval of a CAP, in which case the commission shall take final written action to approve or disapprove the plan within 120 days from the receipt of such request. Once approved, the owner or operator must implement the CAP in accordance with the approved schedule. The implementation schedule is enforceable by the commission. The commission may require the owner or operator to revise a CAP if the commission finds the plan, after implementation begins, to be inadequate to prevent or minimize emissions or emissions events. If the CAP is disapproved, or determined to be inadequate to prevent or minimize excessive emissions events, the executive director shall identify deficiencies in the CAP and state the reasons for disapproval of the CAP in a letter to the owner or operator. If the commission finds a CAP inadequate to prevent or minimize excessive emissions events after implementation begins, an owner or operator must file an amended CAP within 60 days after written notification by the executive director.

(3) If the emissions from excessive emissions events are sufficiently frequent, quantifiable, and predictable, and an owner or operator of a facility elects to file a letter of intent to obtain authorization from the commission for the emissions from excessive emissions events, the owner or operator must file such letter within 30 days of the notification that a facility has had one or more excessive emissions events. If the commission denies the requested authorization, the owner or operator of a facility shall file a CAP in accordance with paragraph (1) of this subsection within 45 days after receiving notice of the commission denial.

(A) If the intended authorization is a permit, the owner or operator must file a permit application with the executive director within 120 days after the filing of the letter of intent. The owner or operator of a facility must respond completely and adequately, as determined by the executive director, to all written requests for information concerning its permit application within 15 days after the date of such requests, or by any other deadline specified in writing.

(B) If the intended authorization is a permit by rule or standard permit, the owner or operator must obtain authorization within 120 days after filing of the letter of intent.

(b) The executive director, after a review of the excessive emissions events determinations made at a site as defined in §101.1 of this title (relating to Definitions), may forward these determinations to the commission requesting that it issue an order finding that the site has chronic excessive emissions events. Orders issued by the commission under this section shall be part of the entity's compliance history as provided in Chapter 60 of this title (relating to Compliance History). The commission may issue an order finding that a site has chronic excessive emissions events after considering the following factors:

- (1) the size, nature, and complexity of the site operations;
- (2) the frequency of emissions events at the site; and
- (3) the reason or reasons for excessive emissions event determinations at that site.

(c) If an emissions event recurs because an owner or operator fails to take corrective action as required and in the time frames specified by a CAP approved by the commission, the emissions event is considered excessive and the unauthorized emissions from the event are not exempt from compliance with emission limitations.

(d) Nothing in this section shall limit the commission's ability to bring enforcement actions for violations of the TCAA or rules promulgated thereunder, including enforcement actions to require actions to reduce emissions from excessive emissions events.

§101.224. Temporary Exemptions During Drought Conditions.

Owners and operators of sources located in an area or region which has been classified by the National Weather Service as being in a severe or extreme drought condition under the Palmer Drought Severity Index for at least 30 days that are required to control emissions through the application or use of water may request a temporary exemption from any commission air quality rule, permit condition, permit representation, standard exemption condition, or commission order. This section does not allow for an exemption from any federal requirement.

(1) The request must be submitted in writing to the Office of Permitting, Remediation, and Registration, Air Permits Division, and include at a minimum the following information:

(A) the site-specific circumstances that prevent the continued or limited use of water;

(B) the specific rule, permit condition, permit representation, standard exemption condition, or commission order from which an exemption is being requested; and

(C) the reasonably available alternative control measures which will be undertaken to minimize emissions.

(2) The executive director may authorize, by written permission, a temporary exemption of up to 120 days upon finding that:

(A) the source or facility is located in an area or region which has been classified as severe or extreme for at least 30 days under the Palmer Drought Severity Index;

(B) such an exemption is necessary to aid in the conservation of the area's water resources;

(C) any additional emissions which may result from the exemption will not cause a significant health concern in the opinion of the executive director; and

(D) the requesting owner and operator of the source will use reasonably available alternative control measures to minimize emissions during this time.

(3) The executive director may specify alternative procedures or methods for controlling emissions when an exemption is granted under this section.

(4) The executive director may issue one 60-day extension of an exemption authorized under this section. A commission order is required for any exemption which would extend beyond a total of 180 days and approval shall be based on the criteria contained in this section. The executive director shall notify the EPA of exemptions which will be considered for extension beyond 180 days. The executive director shall notify the EPA at least 30 days prior to commission consideration of such an extension.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

DIVISION 4: VARIANCES

§§101.231 - 101.233

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also adopted under TCAA, §382.002, concerning Policy and Purpose, 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, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.028, concerning Variances, which authorizes the commission to grant variances; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order.

§101.231. Petition for Variance.

Any person seeking a variance, amendment of a variance, or extension of a variance issued to that person shall file a petition on a form prepared by the commission. The form shall be furnished by the commission without charge upon request. In order to obtain a variance past the date by which compliance is to be achieved, a person must have demonstrated continuous and substantial progress toward compliance before the date of petition.

§101.232. Effect of Acceptance of Variance or Permit.

Acceptance of a variance or a permit constitutes an acknowledgment and agreement that the holder will comply with its terms, and with the rules, regulations, and orders of the commission adopted under the TCAA.

§101.233. Variance Transfers.

A variance or a permit is granted in person, and does not attach to the realty to which it relates. A variance cannot be transferred without prior notification to the commission. If a transfer of ownership of a source covered by a variance is contemplated by the holder of the variance, and the source and characteristics of the emissions will remain unchanged, upon notification, the executive director shall issue an endorsement to the variance reflecting the name of the new owner. Continuation

of emissions by the new owner without prior notification to the commission makes the variance subject to forfeiture.