

The Texas Commission on Environmental Quality (commission) adopts amendments to §122.10, General Definitions; §122.122, Potential to Emit; §122.132, Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits; §122.140, Representations in Application; §122.142, Permit Content Requirements; §122.143, General Terms and Conditions; §122.161, Miscellaneous; §122.201, Initial Permit Issuance; §122.217, Procedures for Minor Permit Revisions; §122.221, Procedures for Significant Permit Revisions; §122.350, EPA Review; §122.502, Authorization to Operate; §122.503, Application Revisions for Changes at a Site; §122.504, Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded; and §122.602, Periodic Monitoring Applicability.

The commission also adopts new §122.147, General Terms and Conditions for Compliance Assurance Monitoring; §122.604, Compliance Assurance Monitoring Applicability; and §122.606, Compliance Assurance Monitoring Quality Improvement Plans.

The commission also adopts the repeal of §122.600, Implementation of Periodic Monitoring; §122.604, Periodic Monitoring Application Due Dates; §122.606, Applications for Periodic Monitoring; §122.608, Procedures for Incorporating Periodic Monitoring Requirements; §122.610, Periodic Monitoring General Operating Permits Content; §122.612, Periodic Monitoring Requirements in Permits and General Operating Permit Applications; §122.700, Implementation of Compliance Assurance Monitoring; §122.702, Compliance Assurance Monitoring Applicability; §122.704, Compliance Assurance Monitoring Application Due Dates; §122.706, Applications for Compliance

Assurance Monitoring; §122.708, Procedures for Incorporating Compliance Assurance Monitoring Requirements; §122.710, Compliance Assurance Monitoring General Operating Permit Content; §122.712, General Terms and Conditions for Compliance Assurance Monitoring; §122.714, Compliance Assurance Monitoring Requirements in Permits and General Operating Permit Applications; and §122.716, Compliance Assurance Monitoring Quality Improvement Plans. Section 122.122 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Texas state implementation plan (SIP). The commission adopts these amendments to Chapter 122, Federal Operating Permits, in order to correct deficiencies regarding the Texas Title V Operating Permit Program (OPP), published by the EPA in the January 7, 2002 issue of the *Federal Register* (67 FR 732). Sections 122.10, 122.122, 122.132, 122.147, 122.161, 122.201, 122.217, 122.221, 122.350, 122.503, 122.504, 122.602, 122.604, and 122.606 are adopted *with changes* to the proposed text as published in the July 26, 2002 issue of the *Texas Register* (27 TexReg 6636). Sections 122.140, 122.142, 122.143, and 122.502, and repealed §§122.600, 122.604, 122.606, 122.608, 122.610, 122.612, 122.700, 122.702, 122.704, 122.706, 122.708, 122.710, 122.712, 122.714, and 122.716 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Title V of the Federal Clean Air Act Amendments of 1990 (FCAA) as codified in 42 United States Code (USC), §§7661 - 7661(e), required all states to develop OPPs that met federal criteria. The EPA promulgated a final rule identifying the criteria for state OPPs in 40 Code of Federal Regulations (CFR) Part 70, State Operating Permit Programs. The general goal of the OPP requirement is to facilitate compliance and improve enforcement by issuing permits that consolidate all applicable requirements

into a federally-enforceable document. EPA reviews all state OPPs, and retains the authority to issue a notice of deficiency (NOD) for identified deficiencies in state OPPs after full approval of those programs.

The EPA promulgated source category-limited interim program approval of the Texas OPP on June 25, 1996. The EPA extended approval of interim programs, including the Texas OPP, three times. The third extension of the interim program approval was challenged in the Court of Appeals for the District of Columbia Circuit, and the third extension was withdrawn. As a result of the litigation, on May 22, 2000, the EPA promulgated a rulemaking that extended approval of interim programs until December 1, 2001, in order to allow permitting authorities the time needed to correct all remaining identified interim approval deficiencies and obtain full approval for their OPPs by December 2001. Texas submitted its revised program that corrected all interim approval identified deficiencies and the EPA published the Texas full program approval notice in the December 6, 2001 issue of the *Federal Register* (66 FR 63318). The EPA also, through settling the litigation, agreed to solicit comments on programmatic or implementation deficiencies on Title V programs by publishing a notice in the *Federal Register*. This notice was published in the December 11, 2000 issue of the *Federal Register* (65 FR 77376) and EPA received comments on the Texas OPP. The EPA reviewed the comments, agreed that some of the comments received on the Texas OPP identified deficiencies, and those deficiencies were addressed in the NOD published in the January 7, 2002 issue of the *Federal Register*.

The commission is adopting these rule amendments to correct all items identified in the NOD. 40 CFR Part 70 specifies the EPA's authority to withdraw an approved OPP when a state does not comply with

the requirements of Part 70. If the state does not correct identified deficiencies, the EPA administrator will apply sanctions, as specified in the 42 USC, §7509(b), 18 months after the January 7, 2002 NOD. In addition, the EPA administrator will withdraw approval of the program, or a portion of the program, and promulgate, administer, and enforce a whole or partial federal program two years after the date of issuance of the NOD unless the deficiencies are corrected within 18 months of the January 7, 2002 NOD. Correcting all deficiencies requires amendments to 30 TAC 106, Permits by Rule, and 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, as well as amendments to this chapter. The commission is adopting amendments to the rules that implement the Texas OPP and will submit program revisions to the EPA within 18 months of the NOD.

Resolution of Deficiencies

The January 7, 2002 NOD identified deficiencies relating to the commission's periodic monitoring regulations; compliance assurance monitoring (CAM) regulations; periodic monitoring and CAM general operating permits (GOP); statement of basis; applicable requirement definition; and potential to emit (PTE) registration regulations. The commission is required to correct these deficiencies within 18 months of the NOD, otherwise, the EPA will apply sanctions under 42 USC, §7509(b) and will promulgate, administer, and enforce a whole or partial program within two years of the date of the finding of the deficiencies. The following paragraphs describe each deficiency and the commission's rule amendments which address them.

Periodic Monitoring Regulations

The EPA stated in the NOD that the commission's periodic monitoring regulations do not meet the requirements of 40 CFR Part 70. This deficiency has three parts, two of which are regulatory issues, and one which deals with the commission's implementation of the periodic monitoring rules. The commission adopts amendments that address all regulatory deficiencies.

First, the EPA specified in the NOD that the rules must be revised to eliminate the GOP process for monitoring requirements because the commission's approach for implementing periodic monitoring through the GOP process does not ensure that all permits have periodic monitoring when they are issued. The resolution of this part of the deficiency is discussed elsewhere in this preamble relating to periodic monitoring and compliance assurance monitoring GOPs.

The EPA further specified in the NOD that the commission must revise its regulations to ensure that all operating permits when issued, including GOPs, contain periodic monitoring requirements which meet the requirements of 40 CFR §70.6(a)(3)(i)(B).

Lastly, the EPA specified in the NOD that, for consistency with 40 CFR §70.6(a)(3)(i)(B) and (c)(1) in implementing periodic monitoring, the commission must ensure that permits include monitoring sufficient to assure compliance with the terms and conditions of the permit, and include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.

In response to this deficiency, the commission adopts several amendments to the periodic monitoring regulations to require that the executive director issue permits with all required periodic monitoring requirements included. The commission amends §122.132 and §122.142 to ensure that when all operating permits are issued, including GOPs, they contain periodic monitoring requirements. The commission adopts new §122.132(e)(13) to require applications to include periodic monitoring requirements, consistent with 40 CFR §70.6(a)(3)(i)(B) and (c)(1), for emission units subject to periodic monitoring, as specified in §122.602. This will include all applications submitted for any initial permit issuance under §122.201, permit renewals under §122.243, permit re-openings under §122.231(a) and (b), significant permit revisions under §122.221, and minor permit revisions under §122.217. The commission also amends §122.142(c) to require that the executive director issue all permits with periodic monitoring requirements consistent with 40 CFR §70.6(a)(3)(i)(B) and (c)(1). The previous rule language only required periodic monitoring requirements to be included in the permit as required by the executive director. This language was originally developed to give the executive director authority to include periodic monitoring requirements through a two-phased approach, which entailed including some periodic monitoring requirements at initial issuance, and including the remaining periodic monitoring requirements through the monitoring GOP process. Because the executive director will be required to include all periodic monitoring requirements into issued permits, the phrase "as required by the executive director" is no longer needed.

These amendments will eliminate the need for the periodic monitoring GOP process. The validity of monitoring GOPs has also been identified by the EPA as a deficiency and is described in further detail elsewhere in this preamble. Chapter 122, Subchapter G, Periodic Monitoring, contains sections that

specify requirements and procedures for incorporating periodic monitoring through the periodic monitoring GOP process. Because the executive director will include periodic monitoring into permits at initial issuance, permit renewals, permit reopenings (other than those permit reopenings required solely for the incorporation of minor new source review (NSR) requirements), significant permit revisions, and minor permit revisions, there is no need to have a process for issuing periodic monitoring requirements through GOPs. As a result, the commission adopts the repeal of the Subchapter G sections that specify periodic monitoring GOP requirements. These repealed sections include §§122.600, 122.604, 122.606, 122.608, 122.610, and 122.612. The commission's amendments eliminate the GOP process for periodic monitoring and require the executive director to include periodic monitoring consistent with 40 CFR Part 70.

Compliance Assurance Monitoring Regulations

The EPA specified in the NOD that the commission's phased GOP approach to implement CAM does not ensure that all permits will have CAM according to the schedule in 40 CFR §64.5, Deadlines for Submittals. The commission must revise its regulations to ensure that all Title V permits, including GOPs, will have the CAM required by 40 CFR §70.6(a)(3)(i)(A), according to the schedule in 40 CFR §64.5.

The commission addressed this deficiency by amending the sections of Chapter 122 relating to application content and permit content, to ensure that all permits, including GOPs, include CAM requirements according to the schedule in 40 CFR §64.5. The commission amends §122.132(e)(12) to specify that applications must, for units subject to CAM, be submitted according to the schedule

specified in 40 CFR §64.5. In addition, the commission amends §122.142 to specify that permits contain CAM in accordance with the schedule in 40 CFR §64.5. Lastly, the commission adopts new §122.221(b)(4), which is consistent with 40 CFR §64.5(a)(2), to specify that the executive director may issue a significant permit revision if CAM is included for large pollutant-specific emission units. These amendments ensure that all permits issued after the effective date of this rule will contain CAM according to the schedule in 40 CFR Part 64.

Periodic Monitoring and CAM GOPs

The EPA specified in the NOD that the commission's use of GOPs to implement periodic monitoring and CAM does not comply with 40 CFR Part 70, because the monitoring GOPs do not contain all the 40 CFR §70.6 requirements for Part 70 permits. The EPA specified that the commission must revise its regulations to ensure that each GOP issued includes all of the requirements in 40 CFR §70.6, including periodic monitoring and CAM. The EPA also specified that the commission must ensure that any GOP issued covers similar sources, consistent with 40 CFR §70.6(d).

To address this deficiency, the commission amends Chapter 122 to require that all GOPs include periodic monitoring and CAM, and to eliminate the monitoring GOP process. To ensure that the executive director issues permits containing periodic monitoring and CAM, the commission adopts amendments requiring periodic monitoring and CAM to be addressed in permit applications and to be included in issued permits accordingly. These amendments include new §122.132(e)(12) and (13), and revised §122.142(c) and (h). New §122.132(e)(12) specifies that applications must, for units subject to CAM, contain elements specified in 40 CFR §64.3, Monitoring Design Criteria, and 40 CFR §64.4,

Submittal Requirements. The commission also adopts new §122.132(e)(13) to specify that applications for all initial permit issuances, renewals, reopenings (other than reopening for the purposes of minor NSR incorporation), and significant and minor permit revisions include periodic monitoring requirements. Specifically, periodic monitoring will be included for those parts of the permit affected by a permit reopening or a minor or significant permit revision. The commission amends §122.142(c), which previously specified that periodic monitoring is only included as required by executive director, and §122.142(h), which previously specified that permits include CAM as specified in Subchapter H. The amendments state that permits contain periodic monitoring, and contain CAM in accordance with the schedule in 40 CFR §64.5. These amendments will require permits to contain all requirements specified in 40 CFR §70.6. Because §122.501(a)(1) requires the executive director to issue GOPs with conditions that provide for compliance with all requirements of Chapter 122, the amendments require the executive director to issue GOPs which include all requirements in 40 CFR §70.6.

To eliminate the monitoring GOP process, the commission adopts the repeal of all sections from Subchapters G and H that specify requirements for implementing monitoring through the GOP process. In addition to the previously mentioned periodic monitoring sections that are being repealed, which includes all sections except for the periodic monitoring applicability section, the commission repeals all of the CAM requirements contained in Subchapter H. The CAM applicability section and the section pertaining to quality improvement plans (QIP) are adopted under Subchapter G, renamed Periodic Monitoring and Compliance Assurance Monitoring.

Because the commission is eliminating the monitoring GOP process, the executive director will no longer issue monitoring GOPs. The commission also amends the GOP definition to specify that multiple similar sources may be authorized to operate under a GOP, thus ensuring that any GOP issued will cover similar sources. Subsequently, the executive director will repeal all existing monitoring GOPs. The commission also adopts several amendments to Chapter 122 to clarify periodic monitoring and CAM implementation and to delete any reference to the monitoring GOP process. These amendments are described in further detail in the SECTION BY SECTION DISCUSSION part of this preamble.

Statement of Basis Requirement

The EPA specified in the NOD that the commission's approach to the statement of basis requirement does not comply with 40 CFR §70.7(a)(5). The commission is required to revise its regulations to require that it prepare and make available a statement setting forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions), and that this statement be sent to the EPA and any person who requests it.

To address this deficiency, the commission adopts new §122.201(a)(4), specifying that a permit may be issued by the executive director provided that the executive director has provided a statement that sets forth the legal and factual basis for the conditions of the permit, including references to the applicable statutory or regulatory provisions. The executive director will send this statement to the EPA and any person who requests it.

“Applicable Requirement” Definition

The EPA stated in the NOD that 30 TAC Chapter 101, General Air Quality Rules, contains regulations that are applicable requirements of the FCAA that are not included in the commission's applicable requirement definition in Chapter 122. The commission must revise the applicable requirement definition to include all the applicable provisions of the Texas SIP that implement relevant FCAA requirements.

The commission amends the applicable requirement definition in §122.10(2) to include the sections of Chapter 101 which implement relevant FCAA requirements as requested by EPA. The applicable requirement definition now includes §101.3, which relates to circumvention; §§101.201, 101.211, 101.221, 101.222, and 101.223, which are the sections that relate to emissions events and maintenance, startup, and shutdown reporting requirements; §101.8 and §101.9, which relate to sampling and sampling ports, and §101.10, which relates to emissions inventory requirements. In concurrent rulemaking, (Rule Log Number 2001-075-101-AI), the commission adopted the reformatting of Chapter 101 to move the upset, maintenance, startup, and shutdown reporting requirements into a new Subchapter F, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. The amendments also include the definitions contained in §101.1, but only to define terms used in other applicable requirements.

Potential to Emit Registration Regulation

The EPA specified in the NOD that the commission's approach for establishing PTE limits does not comply with the FCAA because registrations maintained on-site at facilities are not practically

enforceable. In addition, the NOD specified that the limitations are not federally-enforceable, because §122.122 has not been approved into the Texas SIP. The NOD also specified that the revised rule must be approved into the Texas SIP before the rule and registrations are federally-enforceable.

To address this deficiency, the commission amends §122.122 to require certified registrations of emissions establishing a federally-enforceable emission limit to be submitted to the commission. The submission of the certified registrations will make the PTE limits practically enforceable. In addition, the commission will submit the amended §122.122 to the EPA as a revision to the Texas SIP. Once EPA approves §122.122 into the Texas SIP, it, and all registrations under it, will be federally-enforceable.

The commission amends Chapters 106 and 116, as well as Chapter 122, because they also contain language relating to documentation requirements for establishing federally-enforceable PTE limits for permits by rule (PBR) and for standard permits. The commission is amending Chapters 106 and 116 in concurrent rulemakings. These changes will also be submitted to the EPA as a SIP revision, resulting in all commission approaches for establishing PTE limits being practically and federally-enforceable.

SECTION BY SECTION DISCUSSION

Amended §122.10

The commission adopts amendments to §122.10. First, the commission amends the applicable requirement definition in §122.10(2)(F) to include §101.1, Definitions, but only to define the terms of other applicable requirements; §101.3, Circumvention; §101.8, Sampling; §101.9, Sampling Ports;

§101.10, Emissions Inventory Requirements; §101.201, Emissions Event Reporting and Recordkeeping Requirements; §101.211, Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; §101.221, Operational Requirements; §101.222, Demonstrations; and §101.223, Actions to Reduce Excessive Emissions. The commission adopts these amendments to the applicable requirement definition in response to the NOD, which is discussed in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES part of this preamble under the subheading "Resolution of Deficiencies." The inclusion of new applicable requirements will require owners and operators to update pending permit applications or revise issued permits to address the new applicable requirements. The commission also deletes the following definitions: CAM case-by-case determination; CAM GOP; Periodic monitoring case-by-case determination; and Periodic monitoring GOP. These definitions will no longer be needed, because the monitoring GOP process is being eliminated. Because there will be no monitoring GOPs, all determinations will be case-by-case; therefore, there is no need to differentiate these items. The commission amends the language previously in §122.10(5), continuous compliance determination method to delete the reference to Subchapter H, Compliance Assurance Monitoring, and update the reference to Subchapter G, because Subchapters G and H have been combined and renamed "Periodic Monitoring and Compliance Assurance Monitoring." The commission adopts the predictive emission monitoring system definition with changes to delete reference to Subchapter G. This definition would have the same meaning throughout this chapter and the reference to Subchapter G is unnecessary. The commission deletes the "Control device" definition previously specified in §122.10(6) and references the 40 CFR Part 64 definition to provide clarity and consistency with the Part 64 regulation. The commission adopts amendments to the "Deviation" definition. The phrase "at a minimum, but not limited to" is deleted

and the phrase "any other credible evidence or information" is added. The amendment makes the definition consistent with deviation language that currently exists in the compliance certification forms, which were recently updated with guidance from the EPA. The commission also adopts new §122.10(12), which defines a large pollutant-specific emission unit. This term was included as part of the requirement for including CAM for certain significant permit revisions in the proposed change to §122.221(b)(4) and is consistent with 40 CFR §64.5(a)(2). In response to a comment submitted, the terminology is removed from §122.221(b)(4) and adopted as a new definition in §122.10. In response to a comment, new §122.10(12) also includes a new reference to the major source definition of §122.10. The commission also amends the "Permit or federal operating permit" definition to delete references to CAM GOPs and periodic monitoring GOPs, because the executive director will rescind these GOPs and will not issue any additional CAM or periodic monitoring GOPs. The commission amends the "Permit or federal operating permit" definition by deleting the phrase "a group of GOPs" from the definition because this inclusion is incorrect, in that a group of GOPs would be considered an example of multiple federal operating permits, not a single federal operating permit. To address the NOD, the commission amends the "General operating permit" definition to specify that a GOP is a permit that may authorize the operation of multiple, similar stationary sources. The commission amends the "Potential to emit" definition to clarify that certified registrations established under Chapters 106, 116, or 122, a PBR, or other NSR permit under Chapter 116 that restricts emissions, will be treated as part of a stationary source's design for purposes of determining PTE. The commission amends the "Proposed permit" definition to clarify that the proposed permit may be the same document as the draft permit. The "Draft permit" definition states that the draft permit may be the same document as the proposed permit. The amendment to the "Proposed permit" definition

provides further clarification on the concurrent public notice and EPA review process. The section was also renumbered accordingly and minor administrative changes were made.

Amended §122.122

The commission amends §122.122(a) to clarify that emission rates in NSR permits and certified registrations of emissions provided for under Chapters 106 and 116, are federally-enforceable emission rates. The commission amends §122.122(b) to clarify that representations in certified registrations regarding production or operational limits, monitoring and reporting will become conditions under which a stationary source must operate. The commission amends §122.122(e) by requiring certified registrations to be submitted to the executive director, to the regional appropriate regional office, and to any local air pollution control agency having jurisdiction. The commission adopts §122.122(e) with changes to correct a grammatical error. The commission also adopts new §122.122(e)(1) and (2) to specify that registrations established prior to the effective date of this rule must be submitted by February 3, 2003, and registrations established on or after the effective date of this rule must be submitted upon operation. Also, in response to a comment, the commission adopts §122.122(e)(2) with changes to clarify the language specifying the registration requirement. The requirement that certified registrations and records demonstrating compliance with a certified registration must still be maintained on-site is moved from §122.122(e) to new §122.122(f). The commission adopts §122.122(f) with changes to clarify that if the site normally operates unattended, certified registrations and records demonstrating compliance with the certified registration must be maintained at an office within Texas having day-to-day operational control of the site. This is consistent with similar PBR recordkeeping requirements contained in §106.8. The commission also adopts in new §122.122(f) a requirement that

all certified registrations and records demonstrating compliance with a certified registration shall be, upon request, provided during regular business hours to representatives of the appropriate commission regional office and any local air pollution control agency having jurisdiction over the site, and that the commission will make the certified registrations and records available to members of the public upon request.

Amended §122.132

The commission amends §122.132(e)(4)(B) to clarify the compliance plan information required to be included in applications. The phrase "at a minimum, but not limited to" is deleted and the phrase "any other credible evidence or information" is added. The amendment makes the rule language in Chapter 122 consistent with the compliance certification language that currently exists in the forms, which were recently updated with guidance from the EPA. To address a deficiency identified by the EPA, CAM will not be implemented through the GOP process. Therefore, the commission adopts new §122.132(e)(4)(D) to require that the application include CAM-related compliance plan information for any emission unit requiring installation, testing, or final verification of operational status of monitoring equipment to satisfy the requirements of compliance assurance monitoring after the permit is issued. The compliance plan must include an implementation plan and milestones for completion, which is consistent with 40 CFR §64.6(d). In addition, the commission adopts §122.132(e)(4)(D) with changes in response to a comment received. The revised requirement specifies that equipment used to satisfy periodic monitoring requirements that requires testing, installation, or final verification of operational status after the permit is issued to be included in the permit application's compliance plan. Section §122.132(e)(11) is amended to replace the phrase "effective date of this rule" with June 3, 2001, the

last effective date of the rule prior to these amendments. This amendment provides regulatory certainty regarding the date by which permit applications that are undergoing review must be issued with minor NSR requirements. Also to resolve a deficiency identified by the EPA, the commission adopts new §122.132(e)(12) and (13) to require permit applications to contain CAM and periodic monitoring. These new paragraphs are required to ensure that all permit applications address periodic monitoring and CAM, because the commission's response to the deficiency will eliminate the monitoring GOP process. Section 122.132(e)(12) requires applications to contain information specified in 40 CFR §64.3, Monitoring Design Criteria, and §64.4, Submittal Requirements, in accordance with the schedule specified in 40 CFR §64.5. Section 122.132(e)(13) requires applications to contain periodic monitoring requirements sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement. This is consistent with 40 CFR §70.6(a)(3)(i)(B) and (c)(1). Lastly, the commission adopts new §122.132(e)(13)(A) - (E) to specify that periodic monitoring must be addressed in all applications for initial issuance; permit renewals; permit reopenings, other than those permit reopenings required solely for the incorporation of minor NSR requirements; significant permit revisions; and minor permit revisions.

Amended §122.140

The commission deletes §122.140(3), which previously specified that representations in monitoring GOP applications are conditions under which a permit holder operates upon granting of authorization to operate under a monitoring GOP. This paragraph is no longer needed because the commission is

eliminating the monitoring GOP process. The paragraphs of this section are renumbered accordingly, and cross references to this paragraph and the renumbered paragraphs are amended in each section as discussed elsewhere in this preamble.

Amended §122.142

The commission amends §122.142(b)(3) to replace the phrase "effective date of this rule" with June 3, 2001, the last effective date of the rule prior to these amendments. This amendment provides regulatory certainty regarding the date by which permits must be issued with minor NSR requirements. The commission also amends §122.142(c) to delete the phrase "as required by the executive director" to address the EPA-identified deficiency for periodic monitoring, and to add text consistent with 40 CFR §70.6(a)(3)(i)(B) and (c)(1). The commission amends §122.142(h) which previously specified that permits contain CAM as specified in Subchapter H. The amended subsection will, instead, reference the CAM schedule specified in 40 CFR §64.5. Lastly, the commission adopts new subsection (i), which specifies that CAM requirements for an emission unit shall satisfy the requirements for periodic monitoring. This information was previously specified in §122.600(c) which is being repealed. Permits must be issued with periodic monitoring, and CAM must be included in permits according to the schedule specified in 40 CFR §64.5, which is often not at initial permit issuance. New §122.142(i) specifies that CAM requirements satisfy the requirements for periodic monitoring. For units that are subject to periodic monitoring and CAM, applicants have the opportunity to voluntarily submit CAM applications, in lieu of periodic monitoring applications, to avoid subsequent changes in their permits due to the different schedules for periodic monitoring and CAM incorporation.

Amended §122.143

The commission amends §122.143(16) to delete the unnecessary language that references representations in monitoring GOP applications previously specified in §122.140(3), which is being deleted.

New §122.147

The commission adopts new §122.147. The contents of this section, which previously existed in §122.712, specify the terms and conditions that apply to units subject to CAM. Because the commission will no longer use the monitoring GOP process, there is no need to have stand alone monitoring terms and conditions. Therefore, the language in §122.712 has been moved to Subchapter B, Division 4, Permit Content, and modified accordingly. For example, §122.147(a) specifies that the section pertains to permits that contain emission units subject to CAM. In addition, the permit is referenced, rather than the CAM GOP, and the terms and conditions are specified as CAM terms and conditions. The commission adopts §122.147(a)(3)(A) with changes to correct a referencing error. In §122.147(a)(6), the commission changed the language previously contained in §122.712(a)(6) to clarify that a permit revision application may be required, and not just a notification to the executive director, when approved monitoring fails. The commission adopts §122.147(a)(6) with minor administrative changes. Section 122.147(a)(7) is modified from the language previously contained in §122.712(a)(7) to reference the section, instead of Subchapter H. Lastly, §122.147(a)(8) references the QIPs of new §122.606, rather than the repealed §122.716. The commission corrects a typographical error in §122.147(a)(8), which incorrectly referenced §122.616 instead of §122.606. The commission is not replacing the language in repealed §122.712(b), which specified requirements for a CAM case-by-case

determination, because there is no need to specify case-by-case requirements with the elimination of the CAM GOP process. The commission adopts new §122.147(b) with changes to specify that the permit holder must be in compliance with 40 CFR §64.7, Operation of Approved Monitoring.

Amended §122.161

The commission amends §122.161(d) to update the previous references to Subchapter G, Periodic Monitoring, and Subchapter H, Compliance Assurance Monitoring, to the amended and renamed Subchapter G, Periodic Monitoring and Compliance Assurance Monitoring. The commission adopts §122.161(d) with changes to make the language consistent with other sections in this chapter, which refer to local air pollution control agencies having jurisdiction over the site.

Amended §122.201

The commission adopts new §122.201(a)(4) to require that the executive director provide a statement of basis for draft permits. This new paragraph addresses the “statement of basis” deficiency identified by the EPA in the NOD, and is consistent with 40 CFR §70.7(a)(5). The executive director will be required to provide this statement for all permits issued and shall send it to the EPA and any person who requests it. The commission adopts a new sentence in §122.201(a)(4) to clarify that statements of basis are required for all initial issuances, revisions, renewals, and reopenings of permits. The statement of basis will set forth the legal and factual basis for the permit conditions associated with a particular permitting action. For example, when the executive director drafts permit conditions for a significant permit revision, the statement of basis will address the conditions associated with the significant revision. The commission did not propose changes to all sections necessary to clarify that

statements of basis are required for all permitting actions, but will propose conforming changes to additional sections in a future rulemaking.

Amended §122.217

The commission deletes obsolete §122.217(b), which previously specified permit holder requirements when the executive director revised a CAM GOP or periodic monitoring GOP, because the monitoring GOP process is eliminated. The remaining subsections in §122.217 are also re-lettered.

Amended §122.221

The commission amends §122.221 by adding new §122.221(b)(4) to specify that the executive director may issue a significant permit revision if the revised permit contains CAM for large pollutant-specific emission units. A large pollutant-specific emission unit is one that has, including emission controls, the PTE at or above the threshold at which a source would be classified as a major source. CAM will only need to be included in significant permit revisions if the significant permit revision application includes revisions to large pollutant-specific emission units, which is consistent with 40 CFR §64.5(a)(2). In response to a comment, the commission adopts §122.221(b)(4) with changes, removing the terminology defining a large pollutant-specific emission unit. The commission adopts this language as a new definition in §122.10. The commission also adopts this section with minor administrative changes.

Amended §122.350

The commission amends §122.350(b)(1) to clarify that public notice and EPA review cannot run concurrently if comments are received during the public comment period or if a hearing request is granted. The commission also clarifies in this paragraph that, if comments are received or if a hearing is granted, the comments and the revised permit, if applicable, will be sent to the EPA. The EPA review period will begin upon their receipt. The commission also amends §122.350(b)(3) to indicate that, for GOP initial issuances and GOP significant revisions, if comments are received or a hearing is granted, the comments and the revised GOP, if applicable, will be sent to the EPA. The EPA review period will begin upon their receipt.

Amended §122.502

The commission amends §122.502(b) by deleting language which explained that information specified in §122.140 becomes a condition under which the permit holder operates, upon the granting of the authorization to operate under a CAM GOP or periodic monitoring GOP. This language is no longer needed because the commission is eliminating the monitoring GOP process.

Amended §122.503

The commission amends §122.503 by deleting §122.503(a)(2) and (b)(5), which refer to the CAM and periodic monitoring information specified in §122.140, because the commission is deleting the references in §122.140 to CAM GOPs and periodic monitoring GOPs. The section is also renumbered accordingly. In addition, the commission amends §122.503(c) to delete references to deviation limits

noted in repealed §122.608(e) and §122.708(d). The amended §122.503(c) now references the deviation limit definition in §122.10.

Amended §122.504

The commission amends §122.504(a), (a)(1)(D), and (b)(4) to delete the references to CAM and periodic monitoring information in §122.140(3) which is deleted. The commission amends §122.504(a)(4)(A) to require applications submitted as the result to a revision of a GOP to be submitted no later than 90 days after the issuance of the GOP. This amendment gives permit holders an extra 45 days to comply with the requirement. To address a deficiency identified by the EPA in the NOD, the commission is amending the OPP rules to ensure that each GOP includes all of the requirements of 40 CFR §70.6. To implement this requirement, the executive director will revise all of the previously issued oil and gas, bulk fuel terminal, and municipal solid waste landfill GOPs to include all periodic monitoring and CAM requirements, as appropriate. Once the GOPs have been revised to include monitoring, applications for new authorizations to operate under a GOP must be submitted to address any appropriate new periodic monitoring and CAM requirements for units covered by a GOP. If all emission units at a site are not subject to the new periodic monitoring and CAM requirements, and an application for a new authorization to operate is not required, nothing need be submitted to the executive director in accordance with §122.504(b). The executive director made the determination that extra time will be required for permit holders to submit applications addressing CAM and periodic monitoring requirements, which fall under §122.504(a)(4)(A). For consistency, the commission also amends §122.504(a)(3)(B) to require application revisions within 90 days. The commission adopts new §122.504(a)(5) to specify the required application information for periodic monitoring and CAM. The

application requirements for CAM GOPs previously existed in repealed §122.706. The commission is discontinuing the implementation of monitoring through the GOP process and the executive director will revise the existing oil and gas, bulk fuel terminal, and municipal solid waste landfill GOPs to include periodic monitoring and CAM; therefore, §122.706 is no longer needed to specify the requirements for CAM GOP applications. However, because the monitoring requirements will be added to the oil and gas, bulk fuel terminal, and municipal solid waste landfill GOPs, the information is needed for GOP applications in general, and is therefore adopted in §122.504(a)(5). New §122.504(a)(5) specifies requirements for applications and deviation limits, which will apply to periodic monitoring, as well as CAM. Section 122.504(a)(5)(C) is also added to specify the requirements for periodic monitoring, consistent with 40 CFR §70.6(a)(3)(i)(B) and (c)(1). In addition, the text in new §122.504(a)(5) has been changed from the previous language in §122.706 by deleting the references to monitoring GOPs. The commission adopts §122.504(a)(5)(A)(iii) with changes to correct a typographical error. The commission adopts new §122.504(a)(5)(A)(vi), which was not contained in the previous language of §122.706, to specify that applications include any information required by the executive director to evaluate the monitoring requirements. In addition, previous language in §122.706(a)(1)(C) requiring applications to contain a certification by the responsible official, is not included in new §122.504(a)(5). Because this information will now be part of the GOP application as a whole, this requirement is redundant due to the fact that GOP applications are required to contain such certification. The commission adopts §122.504(a)(5)(B) and (C) with changes to refer to proposed options for CAM and periodic monitoring, respectively, specified in GOP applications. This amendment further clarifies that a monitoring option specified in one of the GOPs will be used to satisfy CAM or periodic monitoring. The commission adopts new §122.504(a)(5)(D) to specify that the permit

holder shall provide justification for deviation limits. This language differs from the previous §122.706(a)(3) language, which stated that this justification for deviation limits be provided unless otherwise specified in the CAM GOP. The commission adopts the revised language in §122.504(a)(5)(D) because justification for deviation limits are always required. The previous language in §122.706(b) is not adopted in new §122.504(a)(5) because it specified CAM application requirements for a case-by-case determination. This information is no longer required because, in order for an owner and operator to be eligible to operate under a GOP, one of the monitoring options in the GOP must be selected and identified in the application for an authorization to operate under a GOP as applicable to the unit. The commission adopts new §122.504(a)(5)(G) with changes to specify that, when a GOP is revised to include monitoring, commencement of the operation of monitoring must begin no later than 180 days after the GOP revision is issued, which is consistent with 40 CFR §64.4(e). The section is also relettered accordingly.

Subchapter G, repeal most sections and rename subchapter; Subchapter H repeal

To address a deficiency identified by the EPA in the NOD, the commission is discontinuing the implementation of periodic monitoring and CAM through the GOP process. Because much of Subchapters G and H relates to the implementation of periodic monitoring and CAM through the GOP process, most sections are no longer needed. Therefore, the commission adopts the repeal of all sections in Subchapter G, except for §122.602, and all sections in Subchapter H. The commission concurrently adopts new language in §122.604 and §122.606, specifying CAM applicability and CAM QIPs, which were previously contained in §122.702 and §122.716. The commission adopts these two

sections in Subchapter G and renames Subchapter G as “Periodic Monitoring and Compliance Assurance Monitoring.”

Amended §122.602

The commission amends §122.602(b) to make the periodic monitoring language consistent with 40 CFR §70.6(a)(3)(i)(B) and (c)(1). The commission also amends §122.602(a) and adopts §122.602(b) with changes referring to periodic monitoring requirements and not the requirements of the subchapter. This clarification is necessary since the commission is adopting CAM sections into the subchapter.

New §122.604

The commission adopts new §122.604 which contains revised language previously found in repealed §122.702. Because requirements for CAM appear in several Chapter 122 subchapters, the commission amends §122.604(a) - (d) to more appropriately identify that this section is used to determine the applicability of CAM, in general, and not just in the subchapter. The reference to the control device definition in §122.604(a) is updated, because the definition section is renumbered. The commission is not adopting a paragraph previously contained in §122.702(c)(8), which specified that CAM does not apply to emission limitations or standards regulating fugitive emissions, because the language is inconsistent with the 40 CFR §64.2. The commission is not adopting a new section to replace §122.700(a) because the commission is discontinuing the CAM GOP process. Section 122.700(b), however, specifies that 40 CFR Part 64 references to 40 CFR Part 70 are satisfied by the CAM requirements in Chapter 122 for the purposes of implementing 40 CFR Part 64; therefore, the previous language in §122.700(b) is still needed, and is adopted as new §122.604(e).

New §122.606

The commission adopts new §122.606 which contains all information from the repealed §122.716. The reference to a CAM GOP has been updated to a GOP, because the commission will no longer implement CAM through CAM GOPs. In response to comments received, the commission adopts §122.606(b) with changes to specify that a QIP must meet the requirements of 40 CFR §64.8.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in accordance with the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule. 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Although the adopted rules to implement the requirements of 42 USC, §§7661 - 7661e are intended to protect the environment or reduce risks to human health from environmental exposure through increased compliance with requirements already applicable to facilities, the rules are not anticipated to have adverse effects on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules require the inclusion of periodic monitoring and CAM, where applicable, on a quicker implementation schedule than previously required. The adopted rules also contain additional requirements for establishing the status of a facility as a synthetic minor (below the major source threshold), in order to avoid applicability of the OPP;

changes regarding the types of requirements that must be established in operating permits; changes relating to how monitoring is included into permits; and other changes relating to the administration of the permitting program as addressed elsewhere in this preamble.

The requirements of the adopted rules are expected to result in little or no impact on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. All facilities affected by the adopted rules were already required to include periodic monitoring and CAM, where applicable, on a delayed implementation schedule. The adopted rules provide for a shorter implementation schedule in order to comply with the federal requirements relating to periodic monitoring and CAM. The mechanism for including monitoring into permits may delay the issuance of permits for some period of time, but the commission does not anticipate the delay to result in significant costs to permittees, beyond the costs to implement the required monitoring, when incorporated into their permits. These adopted rules contain requirements that applicants provide certain documents to the agency to establish the status of the facility as a synthetic minor; additional applicable requirements that must be included in permits; changes relating to compliance certifications; a requirement that the agency provide a statement of basis for the proposed permits; and other changes relating to the administration of the permitting program. These adopted amendments are discussed in detail in the SECTION BY SECTION DISCUSSION part of this preamble.

Title V required all states to develop OPPs that met federal criteria. The EPA has promulgated a final rule identifying the criteria for state OPPs in 40 CFR Part 70. The general goal of the OPP requirement is to facilitate compliance and improve enforcement by issuing permits that consolidate all

applicable requirements into a federally-enforceable document. EPA reviews all state OPPs, and retains the authority to issue an NOD for identified deficiencies in state OPPs after full approval of those programs. The commission was granted final approval of the OPP in the December 6, 2001 issue of the *Federal Register*. EPA issued an NOD on January 7, 2002 for the OPP, identifying items which must be resolved within 18 months after the NOD to avoid withdrawal of program approval and the application of sanctions in accordance with 40 CFR §70.10 and 42 USC, §7509. The adopted rules correct the deficiencies identified by the EPA in the NOD, in order to provide the basis for an EPA approval of the Texas OPP. If the commission fails to submit a program that is approvable by EPA, the EPA will implement a whole or partial federal OPP in Texas under 40 CFR Part 71, and impose sanctions, including a loss of federal highway funds and increased emission offsets in nonattainment areas.

Additionally, the analysis required by Texas Government Code, §2001.0225(c) does not apply because the adopted rules do not meet any of the four applicability requirements of a major environmental rule. The rulemaking action does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rules are adopted specifically to comply with the requirements of 42 USC, §§7661 - 7661e and related provisions of the Texas Health and Safety Code (THSC), also referred to as the Texas Clean Air Act (TCAA), and do not exceed the requirements of either. Additionally, the adopted rules do not exceed a requirement of a delegation agreement, because there is no agreement applicable to this rulemaking, and are not adopted solely under the general powers of the agency.

The commission solicited public comment on the draft regulatory impact analysis, but received no comments specifically regarding the analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The purpose of the adopted rules is to fulfill the commission's obligation to implement the requirements of 40 CFR Part 70 through the creation of a state OPP. The commission was granted final approval of the OPP in the December 6, 2001 issue of the *Federal Register*. EPA issued an NOD on January 7, 2002 for the OPP, identifying items which must be resolved within 18 months after the NOD to avoid withdrawal of program approval and the application of sanctions in accordance with 40 CFR §70.10 and 42 USC, §7509. The adopted rules will advance this purpose by responding to the deficiencies identified by EPA in the NOD.

The commission determined that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The adopted rules will implement requirements of 42 USC, §§7661 - 7661e. The action is mandated by federal law because the state is required to submit a state OPP to avoid the imposition of sanctions under 42 USC, §7509. Additionally, promulgation and enforcement of these rules will not burden private real property. The rules 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 governmental action. Consequently, the rules do not meet the definition of a takings under Texas Government Code, §2007.002(5).

The commission solicited public comment on the draft takings impact assessment, but received no comments specifically regarding the assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that the rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is in 31 TAC §501.12(l) to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to this rulemaking is in 31 TAC §501.14(q) that commission rules comply with federal regulations in 40 CFR to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). The permits issued under Chapter 122 do not authorize new air emissions. The permits issued for these facilities are expected to result in improved compliance with state and federal air pollution control requirements. Therefore, this rulemaking is consistent with the applicable CMP policy and goal.

The commission solicited public comment on the consistency of the proposed rulemaking with applicable CMP goals and policies, but received no comments specifically regarding the CMP.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This adoption impacts owners and operators of sites subject to the OPP and also owners and operators that have established federally-enforceable emission limits for their sites to avoid permitting requirements under the OPP. Owners and operators subject to the program will be required to revise their permits or permit applications. Owners and operators that have established federally-enforceable emission limits to avoid OPP requirements will be required to submit the registrations that establish their federally-enforceable emission limits.

PUBLIC COMMENT

The commission held a public hearing on this rulemaking action on August 19, 2002 at the commission complex. The following commenters provided written and/or oral comment: EPA; ExxonMobil Production Company (ExxonMobil Production); Public Citizen on behalf of Public Citizen, SEED Coalition, Sierra Club, Galveston-Houston Association for Smog Prevention, and Hilton Kelley (Public Citizen); Texas Chemical Council Association of Chemical Industry of Texas (TCC); and BakerBotts, LLP, on behalf of the Texas Industry Project (TIP).

RESPONSE TO COMMENTS

Public Citizen expressed general support of the proposed rule amendments. No commenter expressed general opposition to the proposed rule amendments. EPA, ExxonMobil Production, Public Citizen, TCC, and TIP expressed concerns and/or suggested changes to the proposed rule changes.

General Comments

Public Citizen supported the commission's efforts to improve the Title V program to make it more consistent with federal requirements and more useful as a tool for improving compliance.

The commission appreciates the support.

ExxonMobil Production recognized the commission's need to implement rule changes to resolve issues associated with the EPA's NOD. TCC commented that they appreciate the commission's effort on the rulemaking to correct the NOD.

The commission appreciates the support.

Monitoring in GOPs

Public Citizen generally supported the elimination of the periodic monitoring and CAM GOPs.

The commission appreciates the support.

Public Citizen commented, regarding §122.140(2), that all applicable requirements, periodic monitoring and conditions necessary to assure compliance, and CAM must be included in GOPs when they are issued and may not be incorporated by reference through GOP applications. Public Citizen commented that the current method of incorporating NSR, periodic monitoring, and CAM through GOP applications is illegal. The rules allow GOP applicants to select monitoring and deviation limits, and provide justifications for such limits. Because applications for GOPs are submitted after the GOP has been issued, this eliminates public participation and EPA review regarding the adequacy of monitoring option selected, the appropriateness of deviation limits, NSR and minor NSR permit terms, and associated monitoring. Periodic monitoring for all applicable requirements, including NSR permits, and CAM must be included in GOPs rather than in GOP applications. Public Citizen commented that there is a problem with the process of including periodic monitoring and CAM for site-specific NSR authorizations for sites authorized to operate under GOPs.

The commission made no change in response to this comment. The commission is adopting amendments to eliminate the periodic monitoring and CAM GOP processes. As a result, the executive director is in the process of revising the oil and gas, bulk fuel terminal, and municipal solid waste landfill GOPs to include all monitoring requirements. When the executive director issues the revised GOPs, all applicable requirements, periodic monitoring and conditions necessary to assure compliance, and CAM will be included in the GOPs. Section 122.140(2) states that applicability determinations and the basis for each determination in GOP applications become conditions under which the permit holder shall operate. The monitoring will not be incorporated by reference through GOP applications, except for the monitoring associated with

minor NSR permits. The GOPs will be issued with periodic monitoring and CAM options, and applicants will be required to choose appropriate options from the GOPs. Section 122.140(2) will still apply in that the representations in the GOP applications, including representations pertaining to monitoring, are conditions under which a permit holder must operate. Once the executive director revises the GOPs to include periodic monitoring and CAM, the GOPs will contain all requirements of 40 CFR §70.6. Therefore, the process for authorizing sites to operate under GOPs is consistent with 40 CFR §70.6(d), which does not require public comment and EPA review for individual authorizations. The executive director will provide a public comment period on each GOP. However, consistent with 40 CFR §70.6(d), the executive director will grant requests for authorization to operate under the GOPs without repeating the public participation procedures. During the public comment period on the GOPs, members of public will have the opportunity to comment on all monitoring options that would apply to any site requesting authorization under the GOP. Revised applications to address monitoring requirements must include a proposed deviation limit and supporting justification. 40 CFR §64.6(c)(1) specifies that permits must contain the indicators to be monitored, the means or device to measure each indicator, and the performance requirements established to satisfy 40 CFR §64.3(b) and (d), but does not require deviation limits or supporting justification to be incorporated into permits. As such, the GOPs are not required to contain deviation limits and supporting justification. The commission notes that the NOD identified the use of GOPs to implement periodic monitoring and CAM as a deficiency. The commission addressed the deficiency by adopting rule amendments to eliminate the monitoring GOP process. However, the GOP process for incorporating NSR requirements and the addition of periodic monitoring and CAM, as appropriate, may benefit from

further review, and the commission will consider addressing this issue in a subsequent rulemaking. This issue is related to many comments submitted in this rulemaking, however, in the interest of brevity, the commission only discusses it in this response.

TIP commented that no deadline is specified for the submittal of application revisions required by the revision of a GOP to add periodic monitoring or CAM, governed by §122.504(a)(5).

The commission made no change in response to this comment and notes that the requirements of §122.504(a)(4) and (5) apply to the revision of a GOP to add periodic monitoring or CAM.

Section 122.504(a)(4) specifies application requirements if an application is required as the result of the revision of a GOP that is not based on a change in an applicable requirement or state-only requirement. This includes applications required as a result of a GOP revision to incorporate periodic monitoring and CAM. Section 122.504(a)(5) specifies additional requirements if the application is required as a result of a revision to a GOP to incorporate periodic monitoring or CAM. As such, an application must be submitted to include periodic monitoring or CAM no later than 90 days after a specific GOP is revised.

Public Citizen requested that the phrase "unless otherwise approved by the executive director" be deleted from §122.504(a)(5)(F) because 40 CFR §64.3(d) requires that if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required in accordance with other authority under the FCAA or state or local law, such systems must be used for purposes of CAM.

The commission made no change in response to this comment. Section 122.504(a)(5) specifies application requirements for periodic monitoring and CAM. Periodic monitoring does not require the use of a CEMS, COMS, or PEMS. The commission acknowledges that if a CEMS, COMS, or PEMS was required, then it would be required for purposes of CAM.

TIP suggested that §122.504(a)(5)(G) be amended to indicate that operation of monitoring shall begin no later than 180 days after issuance of the "revised" GOP. Adding the word "revised" makes it clear that the paragraph refers to GOPs that have been revised to incorporate CAM or periodic monitoring requirements.

The commission agrees with this comment and is changing §122.504(a)(5)(G) to clarify that operation of monitoring is required no later than 180 days after issuance of the revised GOP.

Periodic Monitoring

Public Citizen commented that it supports the inclusion of the reference to the federal language defining monitoring, and that it supports the provision that the executive director can request additional information in applications, as necessary, to determine adequacy of monitoring.

The commission agrees that it would be helpful to clarify that the executive director has authority to request additional information and appreciates the support regarding the inclusion of federal monitoring rule language.

Public Citizen commented that the rules fail to adequately address the federal requirement that monitoring be included in every Title V permit for every applicable requirement. The rules allow a lengthy timeline for incorporating periodic monitoring into existing permits.

The commission made no change in response to this comment. 40 CFR §70.6 states that each permit issued has to contain certain elements, such as periodic monitoring. The commission is adopting amendments to §122.132 and §122.142 to ensure that each permit, when issued, contains periodic monitoring requirements, consistent with 40 CFR §70.6. Specifically, all periodic monitoring requirements will be included in all initial permits issued; significant and minor permit revisions will include periodic monitoring for all terms associated with the revised permit conditions; permit reopenings under §122.231(a) and (b) will include periodic monitoring for those parts of the permit for which cause to reopen exists; and all remaining periodic monitoring requirements will be included into permits at renewal. Section 122.501(a)(1) specifies that the conditions of a GOP must provide for compliance with all requirements of Chapter 122. As such, all permits, including GOPs, will contain periodic monitoring when issued as addressed elsewhere in this preamble. This time line assures that periodic monitoring will be included in all permits in a deliberate manner that will provide adequate time for permit holders to plan, purchase, and install required equipment to comply with these requirements.

Public Citizen commented that it is unclear which application representations are included as permit conditions, and therefore are included as Title V permit conditions, and should include monitoring and

reporting. Public Citizen noted that the rules do not ensure that monitoring is added for application representations that are permit conditions.

The commission made no change in response to this comment. Section 116.116(a)(1) specifies that representations with regard to construction plans and operation procedures in an NSR application (or standard permit registration) are conditions upon which a permit is issued. Chapter 106 contains no such requirement. NSR permit conditions must be based on the information submitted in the application. Further, the significant conditions, such as the emissions table and special conditions, are added to the NSR permits themselves. Appropriate monitoring and recordkeeping requirements would be included in the NSR permits when issued, or in the Title V permit, if needed. NSR applications are primarily used by the commission's regional office inspectors to ensure that the owner or operator of a site has constructed its facility as represented in the NSR application. Additionally, standard permit registrations are primarily used by air permit engineers to determine a facility's eligibility to use a particular standard permit. As such, the commission does not believe it is appropriate to add monitoring to representations in NSR applications, to standard permit registrations, or to PBR registrations.

TCC requested that §122.132(e)(13) be made consistent with new §122.132(e)(4)(D), which includes new language on implementation plans and milestones for completing installations and testing of monitoring equipment to satisfy the requirements of CAM. Similar language should be added if monitoring equipment has to be installed to meet the requirements of periodic monitoring. There could be isolated cases where instruments or devices must be installed to meet periodic monitoring

requirements. TIP suggested including the phrase “periodic monitoring” into §122.132(e)(4)(D) to make it clear that the framework established for the installation of CAM equipment also can be used for equipment required for periodic monitoring.

The commission agrees with these comments, and adopts §122.132(e)(4)(D) with amendments specifying that permit applications include compliance plans for periodic monitoring requirements if equipment must be installed or tested, or if final verification of operational status of the monitoring is required. The commission recognizes that some owners and operators may be required to install devices to meet periodic monitoring requirements. If those devices could not be operational upon the issuance of a permit, a compliance plan would be necessary.

Public Citizen commented that it supports the addition of the 40 CFR Part 70 language to §122.142(c) defining periodic monitoring. Public Citizen also supported the removal of the language in §122.142(c) that required periodic monitoring to be included as required by the executive director.

The commission appreciates the support.

Public Citizen commented, regarding §122.132(e)(13)(C), that periodic monitoring should be incorporated into permits when they are reopened to incorporate minor NSR.

The commission made no change in response to this comment. In the notice of proposed full approval for the Texas OPP (66 FR 51898), the EPA required that existing permits which did not

contain minor NSR requirements to: 1) include minor NSR at renewal if the renewal date was within two years of the *Federal Register* notice proposing approval of the Texas OPP; or 2) be reopened, using the minor permit revision procedure, within three to four years of the issuance date to incorporate minor NSR requirements. EPA also required that the commission begin proceedings to reopen permits no later than December 1, 2001. Those permits that incorporate minor NSR at renewal will include all periodic monitoring requirements. For the reopenings occurring within three to four years of issuance, the only requirements subject to the reopening are the minor NSR requirements. As such, periodic monitoring will be addressed for the minor NSR requirements only. Addressing periodic monitoring only for the minor NSR requirements subject to the reopening will ensure that the deadline of minor NSR incorporation specified in the *Federal Register* notice will be met.

Public Citizen commented that it supports the clarification to §122.132(e)(13) that periodic monitoring must meet the requirements of 40 CFR §70.6(a)(3)(i)(B) and (c)(1). However, Public Citizen suggested that §§122.132(e)(13), 122.142(c), 122.504(a)(5)(C), and 122.602(a) be amended to specify that periodic monitoring must be included for the source, not just emission units, because there may be applicable requirements that are not attached to specific emission units.

The commission appreciates the support, but made no change in response to this comment. Periodic monitoring requirements apply to all applicable requirements specified in the permit as is required by 40 CFR Part 70, both on a per unit basis and for the site as a whole (site-wide requirements). Permits issued by the executive director specify applicable requirements for

emission units and also specify site-wide requirements. Periodic monitoring is evaluated for all of these requirements. The existing language does not inadvertently permit some equipment from avoiding periodic monitoring requirements.

Public Citizen requested an explanation of the basis for the periodic monitoring exemptions listed in §122.602(b)(1) - (4). Public Citizen commented that it does not believe the rules may create exemptions, although some monitoring in §122.602(b)(1) - (4) might be subject to a rebuttable presumption of adequacy.

The commission made no change in response to this comment. Section 122.602(b)(1) - (3) are consistent with the exemption criteria for CAM established in 40 CFR §64.2(b). For example, EPA determined in the CAM rule that emission limitations or standards proposed by EPA after November 15, 1990 under FCAA, §112 were exempt from CAM, because they contain adequate monitoring. CAM applies to units that are major sources. EPA determined in the CAM rulemaking, that no additional monitoring would be necessary for those large units in certain circumstances, (e.g., the exemptions mentioned above). Thus, the commission determined that those same exemptions should also apply to units that are not major sources, where there would be less potential for concern. The exemptions for CAM are also appropriate for periodic monitoring, because both CAM and periodic monitoring must assure compliance with the emission limitation or standard. If an emission limitation or standard contains adequate monitoring sufficient to assure compliance for purposes of CAM, then it will also be sufficient to assure compliance for purposes of periodic monitoring. In addition, §122.602(b)(4) specifies that

periodic monitoring does not apply to emission limitations or standards specified as exempt by the EPA. If EPA makes a determination that no periodic monitoring is required for a particular emission limitation or standard in the future, it is appropriate that it be excluded.

Compliance Assurance Monitoring

Public Citizen commented that the commission did not sufficiently address the NOD because the rules allow CAM requirements to be implemented through the GOP process in such a way that EPA and public review are avoided. Public Citizen stated that the commission must revise its regulations to ensure that all Title V permits, including GOPs, will have CAM according to the schedule in 40 CFR §64.5.

The commission made no change in response to this comment. To address the NOD, as discussed elsewhere in this preamble, the commission is adopting revisions to eliminate the CAM GOP process. In addition, the commission is adopting several amendments to ensure that CAM is included according to the schedule in 40 CFR §64.5. These amendments include §122.132(e)(12), to specify that applications must include applicable CAM requirements according to the schedule in 40 CFR §64.5; §122.142(h), to specify that permits contain CAM in accordance with the schedule in 40 CFR §64.5; and §122.221(b)(4), to specify that the executive director may issue a significant revision if CAM is included for large pollutant-specific emission units, consistent with 40 CFR §64.5(a)(2).

Public Citizen supported the requirement that applications include a CAM implementation plan and schedule with milestones, but stated that §122.132(e)(4)(D)(i) should be amended to require the schedule for installing, testing, and performing of any appropriate activities prior to the use of the monitoring to provide that the actions are completed by the date specified in 40 CFR §64.5.

The commission appreciates the support, but made no change in response to this comment. If the owner or operator of a site was able to install, test, and perform appropriate activities prior to the use of CAM equipment according to the schedule in 40 CFR §64.5, it would be in compliance and there would be no need for a CAM compliance plan. Moreover, §122.132(e)(4)(D)(i) is consistent with 40 CFR §64.6(d).

Public Citizen requested that §122.142(i) be amended to specify that "compliance assurance monitoring meeting the requirements of 40 CFR Part 64 shall qualify as monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance and monitoring sufficient to assure compliance." Public Citizen stated that current wording suggests that any CAM requirement is sufficient, regardless of whether it meets the requirements of 40 CFR Part 64.

The commission made no change in response to this comment. The commission is amending its rules to ensure the implementation of CAM in accordance with the requirements of Part 64. As such, the commission cannot recognize monitoring that does not meet the requirements of Part 64 as CAM. In addition, the commission is adopting amendments to §122.142(c) specifying that permits contain periodic monitoring requirements that are "sufficient to yield reliable data from

the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement.”

Public Citizen requested that the phrase "unless otherwise specified in the permit" be deleted from §122.147(a), because permits that apply to units subject to CAM must include the CAM general terms and conditions.

The commission made no change in response to this comment. The phrase gives the executive director the authority to include more stringent site-specific CAM conditions when needed.

Public Citizen requested that §122.147(a)(3)(A) be amended to refer to CAM requirements, rather than the subchapter, pertaining to data recorded during monitoring malfunctions.

The commission agrees with the comment and adopts the change to §122.147(a)(3)(A), which will refer to CAM instead of this subchapter.

Public Citizen commented that §122.147(a)(6) does not meet 40 CFR Part 64 because it does not require any reporting. Public Citizen commented that instead of requiring reporting, the language states that "if necessary" a permit revision must be submitted if there is a failure to achieve compliance with an emission limitation for which there was no indication of a deviation by valid monitoring data.

The commission made no change in response to this comment. The notification requirement of 40 CFR §64.7(e) does not specify the manner in which notification must occur. These events would be required to be reported as deviations under Chapter 122. Section 122.147(a)(6) specifies a deadline for submitting permit revision applications, if needed to correct the applicable CAM requirements so that they will assure compliance. Although §64.7(e) does not specify a deadline to apply for a permit revision, the adoption of a 30-day deadline for submitting a permit revision application will provide regulatory certainty regarding compliance with this requirement.

Public Citizen commented that §122.147(b) is too vague and should be amended to clarify that CAM must meet the requirements of 40 CFR Part 64, including §§64.3, 64.4, and 64.7.

The commission made no change in response to this comment. Section 122.147 specifies general permit terms and conditions for CAM, and because §64.7 specifies requirements for the operation of approved monitoring, the commission proposed to include the requirements in §122.147. However, §64.3 and §64.4 specify requirements for monitoring design criteria and for submittal requirements, respectively. Because §64.3 and §64.4 are application requirements, the commission determined that it would be inappropriate to include them as general permit terms and conditions. Instead, §122.132(e)(12) requires that information in accordance with §64.3 and §64.4 must be included in applications.

Public Citizen commented that §122.221(b)(4) is unclear and should be revised to specify that the permit contains CAM for those large pollutant-specific emission units for which the proposed revision is applicable.

The commission made no change in response to this comment. The commission is adopting language in §122.221(b)(4) to specify that the executive director may issue a significant permit revision, if the permit contains CAM for large pollutant-specific emission units submitted in the revision application. This language will require that CAM be included for those large pollutant-specific emission units for which the proposed revision is applicable.

Public Citizen commented regarding §122.504(a)(5)(G) that CAM must be operational by the time lines specified in 40 CFR Part 64.

The commission made no change in response to this comment. The commission acknowledges that many permit holders will be required to purchase and install monitoring equipment once the GOPs are revised to include monitoring. Section 122.504(a)(5)(G) states that operation of the monitoring shall begin no later than 180 days after issuance of a GOP. This is consistent with 40 CFR §64.4(e), which states that a permit holder shall, in no case, begin operation of the monitoring more than 180 days after approval of a permit.

Public Citizen requested that §122.602(b) be revised, because CAM was proposed to be included in Subchapter G. Public Citizen commented that §122.602(b) cannot state that the requirements of the

subchapter do not apply if an applicable requirement has sufficient periodic monitoring, because CAM is a separate requirement from periodic monitoring and must still be met.

The commission agrees with the comments and adopts §122.602(b), clarifying that periodic monitoring does not apply to the emission standards identified in §122.602(b)(1) - (4).

Public Citizen commented that the commission cannot create exemptions to CAM that are not authorized by federal rules. While some monitoring may be presumptively adequate CAM, 40 CFR §64.4 expressly provides that such a presumption may be rebutted. Specifically, Public Citizen commented on §122.604(c) in that 40 CFR Part 64 does not allow an exemption from CAM requirements, and that the items listed in the rule's exemption list are not all included in the presumptively adequate list in 40 CFR §64.4(b).

The commission made no change in response to this comment because no CAM exemptions in Chapter 122 have been created that are not authorized by federal rules. Section 122.604(c) specifies requirements for which CAM does not apply. The commission notes that §122.604(c)(1) - (6) and (d) are exemptions specified in the CAM applicability at 40 CFR §64.2(b), not 40 CFR §64.4, which provides requirements for presumptively acceptable monitoring. The provisions of §122.604(c) and (d) do not specify any presumptively acceptable monitoring for CAM. The EPA provided that presumptively acceptable monitoring, as specified in §64.4(b)(1), may be rebutted. Chapter 122 does not address presumptively acceptable monitoring, because all monitoring submitted for purposes of CAM will be reviewed.

The EPA commented that §122.606 does not contain the detailed requirements of 40 CFR §64.8, Quality Improvement Plan Requirements. EPA stated that requirement of 40 CFR §64.8 should be listed, or §122.606 should refer to the requirements of 40 CFR §64.8. Public Citizen commented that §122.606(b) does not include all of the QIP elements specified in 40 CFR §64.8 and that the list should include improvements to control methods.

The commission agrees with the comments and adopts §122.606(b) with changes to specify that a QIP must meet the requirements of 40 CFR §64.8.

PTE

Public Citizen supported the rule revisions to make PTE limits more enforceable, and the requirement that registrations used to limit PTE below Title V thresholds be submitted to the agency and local air pollution control agencies.

The commission appreciates the support.

Public Citizen commented that the requirement for submission of PTE registrations should be expanded, and expressed a belief that all registrations that are used to limit a source's emissions below any federal threshold should be submitted. Public Citizen also commented that all registrations containing conditions that become permit terms, which are applicable requirements for any Title V facility, should be submitted to the commission.

The commission made no change in response to this comment. The commission is adopting amendments to its rules to require that all registrations that establish federally-enforceable limits will be submitted. In addition, Chapters 106 and 116 require registrations to be submitted, when appropriate, for purposes of obtaining NSR authorizations by claiming a PBR or using a standard permit. As such, all registrations will be submitted and will become part of the commission's files.

Public Citizen commented that permit engineers and members of the public have no way to review the representations in registrations and ensure that they are adequately monitored and reported. Public Citizen commented that monitoring to demonstrate compliance with conditions included in registrations should be submitted to the commission with other Title V monitoring. Public Citizen further commented that representations in registrations with regard to construction plans, operating procedures, and maximum emission rates should be reflected in the Title V permit, or at least should be included in the Title V file, because they become permit conditions.

The commission made no change in response to this comment. Owners and operators of sites submitting registrations limiting PTE do so to either: 1) avoid permitting under Title V; or 2) limit hazardous air pollutant emissions such that the site is not subject to maximum achievable control technology requirements, even though the site may be subject to Title V permitting. If a registration is claimed under the first scenario, representations are not reflected in a Title V permit and Title V monitoring is not submitted because the site is not subject to Title V. A discussion of how these registrations meet the EPA's guidelines on limiting PTE to ensure

practical enforceability is included elsewhere in this preamble. If a registration is claimed under the second scenario, the limit, along with other appropriate representations needed to demonstrate compliance with the limit, and any appropriate monitoring, recordkeeping, and reporting is included in the Title V permit. Compliance certification and deviation reporting requirements also apply to these Title V permit conditions in the same manner as all other applicable requirements. Lastly, because all registrations will now be required to be submitted, they will become part of the commission's files, which, in accordance with state law, are open to the public for review.

Public Citizen commented that the PTE definition of §122.10(19) should clarify that any certified registration or preconstruction authorization restricting emissions is not sufficient to limit a source's PTE.

The commission made no change in response to this comment. Chapters 106, 116, or 122 specify the requirements for establishing federally-enforceable emission limits through preconstruction authorizations or certified registrations. Only certified registrations that meet the requirements of Chapters 106, 116, or 122 would be acceptable under the PTE definition of §122.10(19), which is being renumbered as §122.10(20). As discussed elsewhere in this preamble, all registrations and preconstruction authorizations established under the requirements in Chapters 106, 116, and 122 contain emission limits that meet federal guidance on limiting a site's PTE, and are practically enforceable.

The EPA commented that to ensure practical enforceability, certified registrations submitted under §122.122 to limit a source's PTE must meet the EPA's guidance on limiting PTE. Specifically, EPA stated that to ensure practical enforceability, certified registrations generally must contain: 1) a production or operational limitation, in addition to the emission limitation, in cases where the emission limitation does not reflect the maximum emissions of the source at full design capacity without pollution control equipment; 2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and 3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting. Public Citizen commented that the PTE rules should require registrations used to limit PTE to include: 1) short-term emission limits, not tons-per-year emission limits, so that compliance can be determined in a timely manner; 2) production or operational limits, not just emission limits; and 3) specific monitoring and reporting to demonstrate compliance with the limit. The general requirement to keep records necessary to demonstrate compliance is not practically enforceable because it is too vague. Public Citizen pointed out that the court case *U.S. versus Louisiana-Pacific Corp.* stated that just blanket restrictions on emissions are not enough to limit a source's PTE.

The commission made no change in response to these comments. The commission's rules regarding PTE limits and registrations establishing federally-enforceable emission limits adhere to guidance published by the EPA on limiting PTE. Registrations do not solely contain blanket restrictions on emissions. Registrations cannot solely include a tons-per-year limit, but must also include a short-term pounds-per-hour limit. The June 13, 1989 EPA guidance document entitled "Limiting Potential to Emit (PTE) in New Source Review (NSR) Permitting" specifies that, "To appropriately limit potential to emit consistent with the opinion in *Louisiana-Pacific*, all permits .

. . . must contain a production or operational limitation . . ." The guidance document further notes that, "Operational limits are all other restrictions on the manner in which a source is run, including hours of operation, amount of raw material consumed, fuel combusted, or conditions which specify that the source must install and maintain add-on controls that operate at a specified emission rate or efficiency." The commission's registration forms specifically require an applicant to identify either: 1) maximum hourly emission rates, and a maximum operating schedule in hours per day, days per week and weeks per year, in addition to annual emission rates; or 2) hourly and annual emission rates, and documentation (including calculations, emission factors, equipment capacity, fuel consumption rate, sampling, monitoring, etc.) which demonstrates the basis for each emission rate. The January 25, 1995 EPA guidance document entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)" asserts that mechanisms should ensure that states can create federally-enforceable limitations "without undue administrative burden to sources or the agency." In accordance with this goal, the commission's rules specify that records must be kept to demonstrate that a site is in compliance with any certified registration. The commission notes, however, that the January 25, 1995 EPA guidance document states that, "In general, practical enforceability . . . means that the permit's provisions must specify . . . the method to determine compliance including appropriate monitoring, recordkeeping, and reporting." Registrations may include monitoring, however, recordkeeping is generally the method to determine compliance. Establishing recordkeeping as the method to determine compliance fulfills a site's requirements for establishing enforceable PTE limits. This is also consistent with the previously referenced June 13, 1989 EPA guidance document which specifies that permits containing production or

operational limits should have "recordkeeping requirements that allow a permitting agency to verify a source's compliance with its limits." The commission also notes that 40 CFR Part 70 specifies that recordkeeping may be sufficient for a Title V source to meet requirements for periodic monitoring.

Public Citizen commented that sources with PTE limits that just have "tons per year" emission limits should be required to get federal permits. They are not actually limiting their PTE to keep them below the major source thresholds.

The commission made no change in response to this comment. Chapters 106, 116, and 122 provide mechanisms for establishing federally-enforceable PTE limits. Certifications establishing federally-enforceable emission limits do not solely contain "tons per year" emission limits, but meet the federal guidance for appropriately limiting PTE below the major source thresholds. Therefore, sources that have established federally-enforceable emission limits through one of the mechanisms provided in the commission's rules will not be required to get federal permits for this purpose.

Public Citizen supported the clarification in §122.122(b) and (e) that production or operational limits and monitoring and reporting representations in registrations are conditions upon which the source shall operate. TCC and TIP, on the other hand, recommended that the commission eliminate the new language in §122.122(b) regarding production or operational limit, monitoring, and reporting, because the purpose of the registrations is to show that the emissions are less than the levels that trigger

applicability of the Title V OPP. TIP further commented that the purpose of the registration if emissions is to demonstrate that emission levels are below the major source threshold, and stated that the only enforceable representations in those registrations should be the representation regarding emission levels.

The commission appreciates the support but made no change in response to these comments. All representations in registrations are conditions under which facilities must operate. All representations in registrations are enforceable, including those pertaining to production and operational limits, monitoring, and reporting, as they are used to demonstrate that the source is in compliance with the specified emission limits. The registrations must not only provide for the limitation of emissions below major source threshold levels, but must also be practically enforceable. Further discussion regarding practical enforceability of registrations may be found elsewhere in this preamble.

ExxonMobil Production suggested that the commission adopt §122.122(e) with language consistent with the proposed language contained in §106.6(e), which specifies that certified registrations, used to demonstrate that Chapter 122 does not apply to a source, be submitted. ExxonMobil Production commented that adopting the same language that was proposed in §106.6 clarifies which registrations need to be submitted. The proposed language could be interpreted that all certified registrations must be submitted no matter what purpose used.

The commission made no change in response to this comment. Section 122.122(a) specifies that certified registrations of emissions may be established for purposes of determining applicability of the federal OPP. All certified registrations of emissions established under §122.122 are required to be submitted.

TIP suggested a grammatical change to §122.122(e) by adding the word "to" to clarify that local air pollution control agencies are a designated recipient of registrations.

The commission agrees with this comment and adopts §122.122(e) with the suggested change.

TIP suggested moving the phrase "after the effective date of this rule" in §122.122(e)(2) to clarify that the only registrations due on the date of operation are those established after the effective date of the rule.

The commission agrees, in part, with the comment. Registrations established on the effective date of the rule are also due on the date of operation, as well as registrations established after the effective date of the rule. The commission is adopting §122.122(e)(2) to clarify the intent of the amendment.

Applicable Requirement Definition

Public Citizen supported the amendments to the "applicable requirement" definition.

The commission appreciates the support.

Public Citizen commented that all of the SIP requirements, particularly §§101.2 - 101.4, should be included in the definition of applicable requirement. Public Citizen further stated that §101.2 and §101.4 are provisions included in the Texas SIP relating to reducing and controlling conditions of air pollution.

The commission made no change in response to this comment. Section 101.3 was proposed to be added to the applicable requirement definition, but §101.2 and §101.4 should not be included in that definition, because the definition of applicable requirement should only include the portions of Chapter 101 provided in the SIP that are relevant to permit content and that implement relevant requirements of the FCAA.

TCC commented that the inclusion of §§101.6, 101.7, 101.10, and 101.11 in the applicable requirement definition is not practical. Each of these sections have specific recordkeeping, reporting, and certification requirements. TCC requested clarification on whether, for example, deviations for Title V will be reported each time an emissions inventory is revised in accordance with §101.10 and its associated guidance. TCC further offered to work with the commission to develop guidance to implement the revised applicable requirement definition to limit duplication of effort in recordkeeping, reporting, and certification processes. TIP also requested that the commission offer members of the regulated community an opportunity to participate in the development of policy and guidance regarding

how the new sections of Chapter 101 will be treated for Title V deviation reporting and compliance certification purposes.

The commission made no change in response to this comment. All sites subject to the OPP were required to comply with §§101.6, 101.7, 101.10, and 101.11 (recently renumbered as §§101.201, 101.211, 101.221 - 101.223) prior to the addition of these sections to the applicable requirement definition. The addition of these sections will now require permit holders to certify that they were in compliance with the emissions events requirements and with the emissions inventory requirement, and to report a deviation if they did not meet these reporting and emissions inventory requirements. For example, if the emissions inventory is revised in accordance with §101.10, the responsible official may certify that the site was in compliance with the requirement and no deviation from §101.10 would be reported. Also, if the site had an emissions event that was not reported in accordance with the emissions events requirements, a deviation with the emissions events rules would be included in the deviation report and the responsible official could not certify continuous compliance with the emissions events requirements. The commission notes that, prior to this amendment, upsets were required to be recorded and reported in accordance with the requirements of Chapter 101 and were also required to be included or referenced in deviation reports. The inclusion of these sections in the applicable requirement definition does not alter the dual reporting requirement. The amendment to the applicable requirement definition will require, however, that instances, in which the emissions events and emissions inventory requirements were not satisfied, be reported as deviations. At this time, the commission has no plans to develop formal guidance regarding the inclusion of Chapter 101 requirements as

applicable requirements. However, if the commission determines that such guidance is necessary, the commission will provide for public comment as part of that process.

Credible Evidence

Public Citizen supported the clarification of consideration of all credible evidence when making compliance certifications. Public Citizen also supported the use of the credible evidence language in the “Deviation” definition and in §122.132(e)(4)(B) to clarify what sources must consider when they certify compliance. Public Citizen stated that the revised language was necessary for consistency with EPA's credible evidence rule.

The commission appreciates the support.

Public Citizen commented that it does not believe the compliance certification form is consistent with 42 USC, §7414(a)(3), because it does not identify the specific applicable requirements being certified; does not require, for all requirements, identification of the monitoring on which the certification is based; and does not state whether compliance was continuous or intermittent for each requirement.

The commission made no change in response to this comment. The commission acknowledges that the form does not require a list of applicable requirements or a description of the method used for determining compliance for all instances. Instead, the form requires this information for all deviations and, except for the identified deviations, a responsible official must certify that the

company was in continuous compliance with all terms and conditions in the permit. The form requires all appropriate information, and meets the requirements of 42 USC, §7414(a)(3).

Statement of Basis

Public Citizen supported the new “statement of basis” requirement.

The commission appreciates the support.

EPA commented that the proposed language requiring the statement of basis for draft permits addresses the January 7, 2002 NOD.

The commission appreciates the support, and agrees that the language in §122.201(a)(4) satisfies the NOD and the 40 CFR Part 70 “statement of basis” requirement.

EPA commented that implementation of the “statement of basis” requirement should be consistent with EPA's national guidance and orders from the EPA administrator in response to Title V permit petitions. EPA stated that, following adoption of the proposed rules, it will review the state's record of implementing the “statement of basis” requirement for newly issued Title V permits.

The commission made no change in response to this comment, and intends to continue working with the EPA to ensure the proper implementation of the “statement of basis” requirement.

EPA commented that the statement of basis should be a separate document from the permit because it is not an enforceable term or condition of the permit.

The commission agrees and acknowledges that the statement of basis will be a separate document from the permit.

Public Citizen supported the “statement of basis” requirement of §122.201(a)(4), but commented that it should require that the statement explain the rationale for the state's determination that monitoring included in the permit meets the monitoring requirements of 40 CFR §70.6.

The commission made no change in response to this comment. The commission is committed to satisfy the NOD, by providing statements of basis that include the rationale for the monitoring methods selected, and is adopting §122.201(a)(4) to be consistent with 40 CFR §70.7(a)(5). The commission will continue to work with the EPA to determine the appropriate format for the statement of basis.

Concurrent Review

Public Citizen supported the elimination of concurrent public notice and EPA review when comments are received on a draft permit or when a hearing is requested, and expressed a belief that concurrent review is illegal under 40 CFR Part 70. EPA commented that §122.350(b)(1) and (3) should address that the commission will provide copies of all public comments received to the EPA, and that the EPA

review period will not begin until the EPA has received all public comments and a proposed permit which addresses the public comments.

The commission appreciates the support. The commission is adopting §122.350(b)(1) and (3) with changes to specify that the public notice period for a permit or a GOP may not run concurrently with the EPA review period if comments are submitted or if a hearing request is granted. If comments are received or a hearing is granted, the comments and the revised permit or GOP, if applicable, will be sent to the EPA and the EPA review period will begin upon receipt. The commission does not agree that Part 70 precludes concurrent public notice and EPA review, where no public comment is received.

TIP suggested amendments to §122.350(b)(1) and (3) to clarify that the EPA review may not run concurrently with the public notice period if any person submits significant comments during the public comment period. This would specify that only timely comments will eliminate the possibility of concurrent notice. In addition, only significant comments would delay the Title V permit issuance process, which is consistent with 30 TAC §55.25(b)(1) of the Texas Pollutant Discharge Elimination System rules. TIP further commented that §122.350, as proposed, would allow any public comment, no matter the substance or content, to postpone Title V permit issuance and may be vulnerable to abuse. Further, TIP commented that EPA will not need a full 45-day review period to review insignificant, nonsubstantive comments.

The commission made no change in response to this comment. The commission intends to submit all comments to the EPA such that the EPA will have 45 days to review the proposed permit and all comments received, because a complete 45-day review of a proposed permit is consistent with 40 CFR §70.8(c). In addition, the commission is not amending §122.350 to specify that only timely comments will be received, because such a change would eliminate the executive director's flexibility to accept or reject reasonably late comments.

Permit Shield

Public Citizen commented that §122.148 should clarify that the conditions in the permit shield "Basis of Determination" become conditions of the Title V permit to avoid Texas granting a shield to a facility based on conditions that may change. For example, if Texas grants a shield to a facility based on the representation that benzene is not stored in a tank, it should become a condition of the Title V permit that benzene not be stored in that tank.

The commission made no change in response to this comment, because the commission did not propose changes to §122.148, Permit Shield, and therefore, cannot adopt changes to that section at this time. Additionally, the commission has always considered the information that forms the basis for the determination of permit shields to be enforceable, and that an amendment is not required to clarify that such representations are enforceable.

Public Notice

Public Citizen stated that the commission's rules should be revised to ensure that 30-days public notice of the comment period is provided by every draft permit. Public Citizen commented that the commission's Title V notice system fails to provide the public with adequate notice of Title V permitting actions because mailed notices do not indicate when notice is published or in which paper. Public Citizen further stated that the Chief Clerk's Office does not find out that notice was published until well into the 30-day comment period, making it difficult for them to convey proper information to the public. Finally, Public Citizen stated that the website often has not indicated that the public comment period is running until after it has closed.

The commission made no changes in response to this comment. The executive director provides public notice information for draft permits on its website, which is above and beyond the requirements of Part 70. Publication of the notice marks the beginning of the public notice period, and the executive director requires permit applicants to notify permit engineers within two days of publishing notice. This information is then uploaded to the public notice website within one or two days. Chapter 122 also requires, again above and beyond the Part 70 public notice requirements, that signs be posted on the property line to alert individuals in the vicinity of the site to the permitting action. The sign posting requirement, web notices, and newspaper notices provide the public with adequate notice of draft permits. In addition, §122.320 specifically provides for a 30-day public notice period for every initial permit issuance, significant permit revision, reopening, and renewal. Finally, any member of the public may always contact the Office of Public Assistance (OPA) at 1-800-687-4040 for help with any question. In addition, the

commission is considering the creation of a point of contact within the Air Permits Division to assist OPA or others with the location of permits or other matters.

Deviation Reporting

Public Citizen commented that the commission's rules fail to require "prompt" reporting of deviations as required by Title V. Public Citizen commented that six months is not "prompt" under common understanding or under EPA's repeated interpretation of the term.

The commission made no change in response to this comment. States are given the discretion, under 40 CFR §70.6(a)(3)(iii)(B), to define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements. The commission has determined that six-month reporting for non-excess emission events is prompt. For excess emission events, the commission requires more expeditious reporting. The emissions event reporting and recordkeeping requirements of Chapter 101 and the deviation reporting of Chapter 122, together, provide prompt reporting.

Public Citizen commented that the commission should be using the Title V monitoring and reporting provisions as a valuable tool, particularly in light of the problems Texas is having identifying the source of emissions causing ozone exceedances.

The commission made no change in response to this comment, because the commission is implementing monitoring requirements consistent with federal requirements. In addition, the

commission does use submitted reports as a tool in that deviation reports are reviewed to improve compliance with regulations.

Public Citizen commented that the statute requires reporting "without delay" and that a six-month reporting requirement fails to serve this purpose. The commission should merge its emissions event reporting and deviation reporting requirements to ensure that deviations are reported at least as promptly as emissions events and that the emissions event reports meet all requirements for deviation reporting. This would allow one report to be submitted instead of two and would ensure that excess emissions, which might escape reporting under the current emissions event rules, are promptly reported.

The commission made no change in response to this comment. The commission is currently implementing the deviation reporting requirement in accordance with 40 CFR Part 70, as previously discussed in this preamble. In a different rulemaking, the commission carefully considered the appropriate level of reporting for excess emissions events. Excess emissions events may be caused by any upset event or maintenance, startup, or shutdown activity. Deviations, however, are an indication of noncompliance and do not necessarily indicate that excess emissions have been released or that a violation has occurred. As such, the commission determined that a six-month reporting period is appropriate. The commission acknowledges that some deviations are violations and cannot be claimed as excess emissions events. An owner or operator would generally discover an excess emissions event quickly because it is due to an upset event or maintenance, startup, or shutdown activity. The discovery of a deviation, however, will often

occur after the fact. In most cases, deviations are discovered when compliance is evaluated. Because many applicable requirements require quarterly or semiannual reports, a thorough evaluation of compliance status for a given applicable requirement may occur quarterly or semiannually. As such, discovery of deviations may occur weeks or months after the specific deviation has occurred. Therefore, the commission determined that it is not feasible for an entity to report deviations in the same manner as excess emissions events.

Miscellaneous

Public Citizen commented that adding the term "similar" to the GOP definition of §122.10(11) does not sufficiently limit the definition of general operating permits.

The commission made no change in response to this comment, because 42 USC, §7661c(d), and 40 CFR §70.6(d) provide that general permits may be issued for numerous similar sources. Congress understood that Title V permitting would be a large task and that many states would be faced with a number of sources that were basically similar (S. Rep. 228, 101st Cong., 1st Sess., (1989), *reprinted in 1990 U.S.C.C.A.N. 3385, 3735*). Therefore, the commission is adopting language to clarify that general permits may be issued only for similar sources.

ExxonMobil Production recommended that the commission revise §122.10 to define the term "submit." As discussed at previous Title V stakeholder meetings, the date of submittal was to be evidenced by the postmark date, which is consistent with the EPA's rules. ExxonMobil Production further commented that formalizing the definition of submit will ensure clarity amongst stakeholders and regional offices.

The commission made no change in response to this comment. The commission does not think a definition for submit is necessary, but may consider defining the term in a future rulemaking.

TIP recommended that the commission add a definition for "large pollutant-specific emission unit" to §122.10 and reference the definition in §122.221(b)(4), because the definition section of the rule will likely be the first place that members of the regulated community turn to when attempting to identify large pollutant-specific emission units at their sites. TIP also suggested that the commission clarify the term "major source," as used in the definition for "large pollutant-specific emission unit" proposed in §122.221(b)(4), by adding a reference to the definition for "major source" found in §122.10.

The commission agrees with these comments, and is adopting a definition for large pollutant-specific emission unit in §122.10, consistent with the terminology used in 40 CFR Part 64. The term was defined in §122.221(b)(4) in the proposal, but is being moved to §122.10 and a reference to the definition is being adopted in §122.221(b)(4). The commission is also adding to the definition of large pollutant-specific emission unit, a reference to the "Major source" definition found in §122.10.

Public Citizen commented that all references to the phased permit detail process in §122.132(d) and (e)(7) should be deleted because phased permit detail is illegal.

The commission made no change in response to this comment. Section 122.132(d) and (e)(7) references the phased permit detail process of §122.131 which was not proposed for change in this

rulemaking. The commission amended §122.131 on June 3, 2001 to specify that no site may qualify for a phased permit if an application is received after July 22, 2000. Therefore, the phased permit detail process is not being used at this time. The commission will consider the repeal of §122.131 and the associated references in §122.132(d) and (e)(7) in a future rulemaking.

Public Citizen requested that the phrase "for all emission units addressed in the application" be deleted from §122.132(e)(4)(B). Public Citizen stated that 40 CFR Part 70 requires the application to include a description of the compliance status of the source with respect to all applicable requirements, and that there may be applicable requirements not specifically tied to an emission unit.

The commission made no change in response to this comment. Section 122.10 defines an emission unit as a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants, including appurtenances. Section 122.132(e)(4)(B) requires an indication of compliance for all emission units addressed in the application, and §122.132(e)(4)(C) requires applications with emission units not in compliance with the applicable requirements to include a compliance plan. As such, no piece of equipment is excluded from the requirement of indicating compliance with or submitting a compliance plan, if necessary, for an applicable requirement.

TIP suggested replacing the phrase "permits issued" with the phrase "permit issuance" in §122.132(e)(13)(A) to be consistent with the language used to describe permitting actions for which proposed periodic monitoring requirements must be submitted in proposed §122.132(e)(13)(B) - (E).

The commission made no change in response to this comment, because language in §122.132(e)(13)(A) is consistent with the language in §122.132(e)(13)(B) - (E) in that each subparagraph identifies the type of permit (i.e. permit, permit renewal, permit reopening, etc.) that the executive director issues.

Public Citizen requested an explanation of how the list in §116.119, referenced in §122.132(g), meets the 40 CFR Part 70 requirements regarding insignificant activities, and asked if those *de minimis* or insignificant activities are included in Title V permits.

The commission has made no change in response to this comment. The commission is implementing §122.132(g) in accordance with the July 10, 1995 EPA guidance document entitled "White Paper for Streamlined Development of Part 70 Permit Applications," which states, ". . . there is flexibility inherent in §70.5 to tailor the level of information required in the application to be commensurate with the need to determine applicable requirements. The EPA believes this inherent flexibility encompasses the idea that certain activities are clearly trivial (i.e., emissions units and activities without specific applicable requirements and with extremely small emissions) and can be omitted from the application even if they are not included on a list of insignificant activities approved in a State's part 70 program pursuant to §70.5(c)."

ExxonMobil requested that §122.146 be amended to clarify compliance certification requirements for permits that are voided or transferred before the end of the current 12-month reporting cycle.

ExxonMobil stated that the commission's regional offices are asking for compliance certifications after permits have already been voided.

The commission made no change in response to this comment. Section 122.146 requires permit holders to certify compliance at least once each 12-month period following permit issuance. If a permit is voided, a compliance certification is required to be submitted for the time period between the actual date of the voided permit and the previous compliance certification period. Likewise, change in ownership of a Title V site does not release a permit holder from the compliance certification requirement. A compliance certification must be submitted at least once for each 12-month period following permit issuance and new owners of Title V permitted sites need to make sure that compliance can be certified for the entire time proceeding the last compliance certification period.

Public Citizen requested that §122.161(a) be amended to add a statement that the commission shall not grant an emergency order excusing violations of operating permits.

The commission made no change in response to this comment. An emergency order is an order which must be issued immediately in order to protect human health, safety, or the environment. The owner or operator of a facility for which an emergency order has been issued is required to submit an NSR application within 60 days of issuance of the order. Further, an emergency order may be issued only if the emissions will not cause or contribute to a condition of air pollution, and that any construction or modification will not interfere with the attainment or maintenance of national ambient air quality standards or violate applicable portions of the control strategy. The suggested change to §122.161(a) would inappropriately limit the commissions authority to prevent loss of life and serious injury when a catastrophe strikes.

Public Citizen commented that it does not support the proposed amendment of §122.504(a)(4)(A) extending the GOP revision application requirement from 45 to 90 days.

The commission made no change in response to this comment. The commission has determined that 90 days is a necessary amount of time to prepare and submit an application for a revised GOP. For example, to address the NOD the executive director will revise GOPs to include periodic monitoring and CAM. The commission believes that 45 days is an insufficient amount of time for monitoring plans to be developed for a site.

TIP suggested replacing the period in §122.504(a)(5)(D) with a colon since it refers to "one of the following." TIP also suggested that §122.504(a)(5)(D)(i)(III) be followed by a semicolon and the word "or" because §122.504(a)(5)(D)(i) presents one of two options that the permit holder has for providing justification for a deviation limit.

The commission disagrees with the comment because each of the clauses associated with §122.504(a)(5)(D)(i) and (ii), are complete sentences, therefore, the punctuation should be a period. In addition, a semicolon and the word "or" should not be placed at the end of §122.504(a)(5)(D)(i)(III) because the wording of subparagraph (D), ". . . according to one of the following," clearly states that the requirement is either (i) or (ii).

SUBCHAPTER A: DEFINITIONS

§122.10

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to prescribe sampling, monitoring, and certification; §382.0515, which authorizes the commission to require permit application information; §382.054, which requires sources to obtain a federal operating permit; §382.0541 which authorizes the commission to administer and enforce federal operating permits; and §382.0543, which authorizes the commission to review and renew federal operating permits.

§122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Air Quality Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition,

the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(A) nitrogen oxides;

(B) volatile organic compounds;

(C) any pollutant for which a national ambient air quality standard (NAAQS) has been promulgated;

(D) any pollutant that is subject to any standard promulgated under FCAA, §111 (Standards of Performance for New Stationary Sources);

(E) unless otherwise specified by the EPA by rule, any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI (Stratospheric Ozone Protection); or

(F) any pollutant subject to a standard promulgated under FCAA, §112 (Hazardous Air Pollutants) or other requirements established under §112, including §112(g), (j), and (r) including any of the following:

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

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

(2) **Applicable requirement** - All of the following requirements, including requirements that have been promulgated or approved by the EPA through rulemaking at the time of issuance but have future-effective compliance dates:

(A) All of the requirements of Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) as they apply to the emission units at a site.

(B) All of the requirements of Chapter 112 of this title (relating to Control of Air Pollution from Sulfur Compounds) as they apply to the emission units at a site.

(C) All of the requirements of Chapter 113 of this title (relating to Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants), as they apply to the emission units at a site.

(D) All of the requirements of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) as they apply to the emission units at a site.

(E) All of the requirements of Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds) as they apply to the emission units at a site.

(F) The following requirements of Chapter 101 of this title (relating to General Air Quality Rules):

(i) Chapter 101, Subchapter A of this title (relating to General Rules), §101.1 of this title (relating to Definitions), insofar as the terms defined in this section are used to define the terms used in other applicable requirements;

(ii) Chapter 101, Subchapter A, §101.3 and §101.10 of this title (relating to Circumvention; and Emissions Inventory Requirements);

(iii) Chapter 101, Subchapter A, §101.8 and §101.9 of this title (relating to Sampling; and Sampling Reports) if the commission or the executive director has requested such action;

(iv) Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities), §§101.201, 101.211, 101.221, 101.222, and 101.223 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; Operational Requirements; Demonstrations; and Actions to Reduce Excessive Emissions); and

(v) Chapter 101, Subchapter H of this title (relating to Emissions Banking and Trading) as it applies to the emission units at a site.

(G) Any site specific requirement of the SIP.

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

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

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

(ii) any standard or other requirement under FCAA, §112 (Hazardous Air Pollutants);

(iii) any standard or other requirement of the Acid Rain Program;

(iv) any requirements established under FCAA, §504(b) or §114(a)(3) (Monitoring and Analysis or Inspections, Monitoring, and Entry);

(v) any standard or other requirement governing solid waste incineration under FCAA, §129 (Solid Waste Combustion);

(vi) any standard or other requirement for consumer and commercial products under FCAA, §183(e) (Federal Ozone Measures);

(vii) any standard or other requirement under FCAA, §183(f) (Tank Vessel Standards);

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

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

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

(J) The following are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph:

(i) any state or federal ambient air quality standard;

(ii) any net ground level concentration limit;

(iii) any ambient atmospheric concentration limit;

(iv) any requirement for mobile sources;

(v) any asbestos demolition or renovation requirement under 40 Code of Federal Regulations (CFR) Part 61, Subpart M (National Emissions Standards for Asbestos);

(vi) any requirement under 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters); and

(vii) any state only requirement (including §111.131 of this title (relating to Definitions), §111.133 of this title (relating to Testing Requirements), §111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead), §111.137 of this title (relating to Control Requirements for Surface Coatings containing less than 1.0% Lead), and §111.139 of this title (relating to Exemptions)).

(3) **Continuous compliance determination method** - For purposes of Subchapter G of this chapter (relating to Periodic Monitoring and Compliance Assurance Monitoring), a method, specified by an applicable requirement, which satisfies the following criteria:

(A) the method is used to determine compliance with an emission limitation or standard on a continuous basis consistent with the averaging period established for the emission limitation or standard; and

(B) the method provides data either in units of the emission limitation or standard or correlated directly with the emission limitation or standard.

(4) **Control device** - For the purposes of compliance assurance monitoring applicability, specified in §122.604 of this title (relating to Compliance Assurance Monitoring Applicability), the control device definition specified in 40 CFR Part 64 concerning Compliance Assurance Monitoring applies.

(5) **Deviation** - Any indication of noncompliance with a term or condition of the permit as found using compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information.

(6) **Deviation limit** - A designated value(s) or condition(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the indicator of performance shall be considered a deviation.

(7) **Draft permit** - The version of a permit available for the 30-day comment period under public announcement or public notice and affected state review. The draft permit may be the same document as the proposed permit.

(8) **Emission unit** - A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants, including appurtenances.

(A) A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual

emission unit. The fugitive emissions shall be collectively considered as an emission unit based on their relationship to the associated process.

(B) The term may also be used in this chapter to refer to a group of similar emission units.

(C) This term is not meant to alter or affect the definition of the term "unit" for purposes of the acid rain program.

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

(10) **Final action** - Issuance or denial of the permit by the executive director.

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

(12) **Large pollutant-specific emission unit** - An emission unit with the potential to emit, taking into account control devices, the applicable air pollutant in an amount equal to or greater than 100% of the amount, in tons per year, required for a source to be classified as a major source, as defined in this section.

(13) **Major source** -

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

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

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

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

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

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

- (i) coal cleaning plants (with thermal dryers);
- (ii) kraft pulp mills;
- (iii) portland cement plants;
- (iv) primary zinc smelters;
- (v) iron and steel mills;
- (vi) primary aluminum ore reduction plants;
- (vii) primary copper smelters;
- (viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (Btu) per hour heat input;

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

(xxiii) taconite ore processing plants;

(xxiv) glass fiber processing plants;

(xxv) charcoal production plants;

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

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

(D) Any site, except those exempted under FCAA, §182(f) (NO_x Requirements), which, in whole or in part, is a major source under FCAA, Title I, Part D (Plan Requirements for Nonattainment Areas), including the following:

(i) any site with the potential to emit 100 tpy or more of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) in any ozone nonattainment area classified as "marginal or moderate";

(ii) any site with the potential to emit 50 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "serious";

(iii) any site with the potential to emit 25 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "severe";

(iv) any site with the potential to emit ten tpy or more of VOC or NO_x in any ozone nonattainment area classified as "extreme";

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

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

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

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

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

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

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

(G) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or

under common control, to determine whether the units or stations are major sources under subparagraph (A) of this paragraph.

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

(15) **Permit or federal operating permit** -

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

(B) any GOP issued, renewed, or revised by the executive director under this chapter.

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

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

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

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

(20) **Potential to emit** - The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration established under §106.6 of this title (relating to Registration of Emissions), §116.611 of this title (relating to Registration to Use a Standard Permit), or §122.122 of this title (relating to Potential To Emit), or a permit by rule under Chapter 106 of this title or other new source review permit under Chapter 116 of this title restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in acid rain provisions of the FCAA or the acid rain rules.

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

(A) any requirement established under FCAA, §112(g) (Modifications);

(B) any requirement established under FCAA, §112(j) (Equivalent Emission Limitation by Permit); and

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

(22) **Predictive emission monitoring system (PEMS)** - A system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(23) **Proposed permit** - The version of a permit that the executive director forwards to the EPA for a 45-day review period. The proposed permit may be the same document as the draft permit.

(24) **Provisional terms and conditions** - Temporary terms and conditions, established by the permit holder for an emission unit affected by a change at a site, or the promulgation or adoption of an applicable requirement or state-only requirement, under which the permit holder is authorized to

operate prior to a revision or renewal of a permit or prior to the granting of a new authorization to operate.

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

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

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

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

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

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

and

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

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

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

(27) **Site** - The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). A research and development (R&D) operation and a collocated manufacturing facility shall be considered a single site if they each have the same two-digit Major Group Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) or the R&D operation is a support facility for the manufacturing facility.

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

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

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 2: APPLICABILITY

§122.122

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; and §382.054, concerning Federal Operating Permits, which requires sources to obtain a federal operating permit.

§122.122. Potential To Emit.

(a) For purposes of determining applicability of the Federal Operating Permit Program under this chapter, the owner or operator of stationary sources without any other federally-enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally-enforceable. Emission rates in new source review permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or

Modification) and certified registrations provided for under Chapters 106 or 116 of this title are also federally-enforceable emission rates.

(b) All representations in any registration of emissions under this section with regard to emissions, production or operational limits, monitoring, and reporting shall become conditions upon which the stationary source shall operate. It shall be unlawful for any person to vary from such representation unless the registration is first revised.

(c) The registration of emissions shall include documentation of the basis of emission rates and a certification, in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the stationary source.

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in §122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions shall be submitted to the executive director; to the appropriate commission regional office; and to all local air pollution control agencies having jurisdiction over the site.

(1) Certified registrations established prior to the effective date of this rule shall be submitted on or before February 3, 2003.

(2) Certified registrations established on or after the effective date of this rule shall be submitted no later than the date of operation.

(f) All certified registrations and records demonstrating compliance with a certified registration shall be maintained on-site and shall be provided, upon request, during regular business hours to representatives of the appropriate commission regional office and any local air pollution control agency having jurisdiction over the site. If however, the site normally operates unattended, certified registrations and records demonstrating compliance with the certified registration must be maintained at an office within Texas having day-to-day operational control of the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 3: PERMIT APPLICATION

§122.132, §122.140

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.0515, which authorizes the commission to require permit application information; §382.054, which requires sources to obtain a federal operating permit; and §382.0541 which authorizes the commission to administer and enforce federal operating permits.

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

(a) A permit application shall provide any information, including confidential information as addressed in Chapter 1 of this title (relating to Purpose of Rules, General Provisions), required by the

executive director to determine the applicability of, or to codify, any applicable requirement or state-only requirement.

(b) An application for a general operating permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general operating permit.

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

(d) An application for a site qualifying under §122.131 of this title (relating to Phased Permit Detail) may be submitted under the phased permit detail process.

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

(1) a general application form and all information requested by that form;

(2) for each emission unit, information regarding the general applicability determinations, which includes the following:

(A) the general identification of each potentially applicable requirement and potentially applicable state-only requirement (e.g., NSPS Kb);

(B) the applicability determination for each requirement identified under subparagraph (A) of this paragraph; and

(C) the basis for each determination made under subparagraph (B) of this paragraph;

(3) for each emission unit, except as provided in §122.131 of this title, information regarding the detailed applicability determinations, which includes the following:

(A) the specific regulatory citations in each applicable requirement or state-only requirement identifying the following:

(i) the emission limitations and standards; and

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

(B) the basis for each applicability determination identified under subparagraph (A) of this paragraph;

(4) a compliance plan including the following information:

(A) the following statement: "As the responsible official it is my intent that all emission units shall continue to be in compliance with all applicable requirements they are currently in compliance with, and all emission units shall be in compliance by the compliance dates with any applicable requirements that become effective during the permit term.";

(B) for all emission units addressed in the application, an indication of the compliance status with respect to all applicable requirements, based on any compliance method specified in the applicable requirements and any other credible evidence or information;

(C) for any emission unit not in compliance with the applicable requirements identified in the application, the following information:

(i) the method used for assessing the compliance status of the emission unit;

(ii) a narrative description of how the emission unit will come into compliance with all applicable requirements;

(iii) a compliance schedule (resembling and at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the site is

subject), including remedial measures to bring the emission unit into compliance with the applicable requirements; which shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based; and

(iv) a schedule for the submission, at least every six months after issuance of the permit, of certified progress reports;

(D) for any emission unit requiring installation, testing, or final verification of operational status of monitoring equipment to satisfy the requirements of compliance assurance monitoring or periodic monitoring, the following information:

(i) an implementation plan and schedule for installing, testing, and performing any other appropriate activities prior to use of the monitoring; and

(ii) milestones for completing such installation, testing, or final verification;

(5) if applicable, information requested by the nationally-standardized forms for the acid rain portions of permit applications, and compliance plans required by the acid rain program;

(6) if applicable, a statement certifying that a risk management plan, or a schedule to submit a risk management plan has been submitted to the appropriate agency in accordance with FCAA, §112(r)(7) (Prevention of Accidental Releases);

(7) for applicants electing the phased permit detail process under §122.131 of this title, a proposed schedule for the incorporation of the remaining detailed applicability determinations into the permit;

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

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

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

(11) for any application for which the executive director has not authorized initiation of public notice by June 3, 2001, any preconstruction authorizations that are applicable to emission units at the site;

(12) for emission units subject to compliance assurance monitoring, as specified in §122.604 of this title (relating to Compliance Assurance Monitoring Applicability), information specified in 40 Code of Federal Regulations (CFR) §64.3 concerning Monitoring Design Criteria; and §64.4 concerning Submittal Requirements, according to the schedule specified in §64.5 concerning Deadlines for Submittals.

(13) for emission units subject to periodic monitoring, as specified in §122.602 of this title (relating to Periodic Monitoring Applicability), proposed periodic monitoring requirements sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement, shall be submitted for the following permitting actions:

(A) permits issued under §122.201 of this title (relating to Initial Permit Issuance);

(B) permit renewals issued under §122.243 of this title (relating to Permit Renewal Procedures);

(C) permit reopenings issued under §122.231(a) and (b) of this title (relating to Permit Reopenings);

(D) significant permit revisions issued under §122.221 of this title (relating to Procedures for Significant Permit Revisions); and

(E) minor permit revisions issued under §122.217 of this title (relating to Procedures for Minor Permit Revisions).

(f) The executive director shall make a copy of the permit application accessible to the EPA.

(g) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement; however, any facilities that meet the requirements of §116.119 of this title (relating to De Minimis Facilities or Sources) are not required to be included in applications unless the facilities or sources are subject to an applicable requirement.

§122.140. Representations in Application.

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

(1) representations in an acid rain permit application;

(2) upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application; and

(3) any representation in an application which is specified in the permit as being a condition under which the permit holder shall operate.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 4: PERMIT CONTENT

§§122.142, 122.143, 122.147

STATUTORY AUTHORITY

The amendments and new section are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments and new section are also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to prescribe sampling, monitoring, and certification; §382.054, which requires sources to obtain a federal operating permit; and §382.0541 which authorizes the commission to administer and enforce federal operating permits.

§122.142. Permit Content Requirements.

(a) The conditions of the permit shall provide for compliance with the requirements of this chapter.

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

(1) Unless otherwise specified in the permit, each permit shall include the terms and conditions in §§122.143 - 122.146 of this title (relating to General Terms and Conditions; Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(2) Each permit shall also contain specific terms and conditions for each emission unit regarding the following:

(A) the generally identified applicable requirements and state-only requirements (e.g., NSPS Kb);

(B) except as provided by the phased permit detail process, the detailed applicability determinations, which include the following:

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

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph sufficient to ensure compliance with the permit.

(3) Each permit for which the executive director has not authorized initiation of public notice by June 3, 2001 shall contain any preconstruction authorization that is applicable to emission units at the site.

(c) Each permit shall contain periodic monitoring requirements that are sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement.

(d) For permits undergoing the phased permit detail process, the permit shall contain a schedule for phasing in the detailed applicability determinations consistent with §122.131 of this title (relating to Phased Permit Detail).

(e) For emission units not in compliance with the applicable requirements at the time of initial permit issuance or renewal, the permit shall contain the following:

(1) a compliance schedule or a reference to a compliance schedule consistent with §122.132(e)(4)(C) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits); and

(2) a requirement to submit progress reports consistent with §122.132(e)(4)(C) of this title. The progress reports shall include the following information:

(A) the dates for achieving the activities, milestones, or compliance required in the compliance schedule;

(B) dates when the activities, milestones, or compliance required in the compliance schedule were achieved; and

(C) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(f) At the executive director's discretion, and upon request by the applicant, the permit may contain a permit shield for specific emission units.

(g) Where an applicable requirement is more stringent than a requirement under the acid rain program, both requirements shall be incorporated into the permit and shall be enforceable requirements of the permit.

(h) Permits shall contain compliance assurance monitoring in accordance with the schedule specified in 40 Code of Federal Regulations §64.5 concerning Deadlines for Submittals.

(i) Any compliance assurance monitoring requirements for an emission unit shall satisfy the requirements for periodic monitoring.

§122.143. General Terms and Conditions.

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

(1) Compliance with the permit does not relieve the permit holder of the obligation to comply with any other applicable rules, regulations, or orders of the commission, or of the EPA, except for those requirements addressed by a permit shield.

(2) The term of the permit shall not exceed five years from the date of initial issuance or renewal of the permit. The authorization to operate under a general operating permit shall not exceed five years from the date the authorization was granted or renewed.

(3) Consistent with the authority in Texas Health and Safety Code, Chapter 382, Subchapter B (Powers and Duties of Commission), the permit holder shall allow representatives from the commission or the local air pollution control program having jurisdiction to do the following:

(A) enter upon the permit holder's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) access and copy any records that must be kept under the conditions of the permit;

(C) inspect any emission unit, equipment, practices, or operations regulated or required under the permit; and

(D) sample or monitor substances or parameters for the purpose of assuring compliance with the permit at any time.

(4) The permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit. Except as provided for in paragraph (5) of this section, any noncompliance with either the terms or conditions codified in the permit or the provisional terms and conditions, if any, constitutes a violation of the FCAA and the TCAA and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of the permit.

(5) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal or before the granting of a new authorization to operate.

(6) In every case, the applicable requirements and state-only requirements are always enforceable.

(7) The permit may be reopened for cause and revised or terminated. Permit terms or conditions remain enforceable regardless of the following:

(A) the filing of a request by the permit holder for a permit revision, reopening, or termination;

(B) a notification of planned changes or anticipated noncompliance; or

(C) a notice of intent by the executive director for a permit reopening or termination.

(8) The executive director may request any information necessary to determine compliance with the permit or whether cause exists for revising, reopening, or terminating the permit. The permit holder shall submit the information no later than 60 days after the request, unless the deadline is extended by the executive director. Upon request, the permit holder shall also furnish to the

executive director copies of records required to be kept by the permit, including information claimed to be confidential.

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

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

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

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

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

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

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

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

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

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

§122.147. General Terms and Conditions for Compliance Assurance Monitoring.

(a) For permits that contain emission units subject to compliance assurance monitoring (CAM), unless otherwise specified in the permit, the following CAM general terms and conditions shall become terms and conditions of the permit.

(1) The permit holder shall install, calibrate, maintain, and operate a monitoring system according to the manufacturer's specifications or other written procedures that provide adequate assurance that the system would reasonably be expected to monitor accurately.

(2) At all times, the permit holder shall properly maintain the monitoring system, including, but not limited to, maintaining parts if necessary, for routine repairs of the monitoring system.

(3) The permit holder shall collect data at all required intervals during emission unit operation, except for, as applicable, monitoring malfunctions, repairs associated with monitoring malfunctions, and required quality assurance or control activities.

(A) Data recorded during monitoring malfunctions, repairs associated with malfunctions, and required quality assurance or control activities shall not be used for purposes of CAM.

(B) The permit holder shall maintain records of the beginning date and time, ending date and time, and cause (including unknown cause, if applicable) for monitoring downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable).

(C) The permit holder shall use all the data collected during all periods other than those identified in subparagraph (A) of this paragraph in assessing the operation of the control device and associated control system.

(D) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions and shall be considered deviations.

(4) All incidents of monitoring downtime recorded under paragraph (3)(B) of this subsection shall be reported in accordance with §122.145 of this title (relating to Reporting Terms and Conditions).

(5) The permit holder shall respond to deviations in the following manner.

(A) The permit holder shall restore operation to its normal manner as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

(B) The permit holder shall minimize the period of any startup, shutdown, or malfunction and take any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of a deviation (other than those caused by excused startup or shutdown conditions).

(6) The permit holder, if necessary, shall within 30 days of discovery, apply for a permit revision, or submit an application for a new authorization to operate, consistent with the procedures of Subchapter C or F of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals; and General Operating Permits) if:

(A) the permit holder identifies a failure to achieve compliance with an emission limitation or standard, for which the approved monitoring did not indicate a deviation while providing valid data; or

(B) the results of compliance or performance testing document a need to modify the existing CAM requirements.

(7) CAM requirements established under this section are subject to §§122.144 - 122.146 of this title (relating to Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(8) The permit holder shall comply with the requirements of a quality improvement plan according to §122.606 of this title (relating to Compliance Assurance Monitoring Quality Improvement Plans), if required by the executive director.

(b) The permit holder must be in compliance with 40 Code of Federal Regulations §64.7 (Operation of Approved Monitoring).

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 5: MISCELLANEOUS

§122.161

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.054, which requires sources to obtain a federal operating permit; and §382.0541 which authorizes the commission to administer and enforce federal operating permits.

§122.161. Miscellaneous.

(a) The commission shall not grant a variance, under Texas Health and Safety Code, §382.028, from the requirements of this chapter.

(b) Unless specifically noted otherwise, requirements under this chapter do not supersede, substitute for, or replace any requirement under any other rule, regulation, or order of the commission or the EPA.

(c) None of the requirements in this chapter shall be construed as prohibiting the construction of new or modified facilities, provided that the owner or operator has obtained any necessary preconstruction authorization.

(d) The requirements of Subchapter G of this chapter (relating to Periodic Monitoring and Compliance Assurance Monitoring) shall not be used to justify the approval of monitoring less stringent than the monitoring which is required by the TCAA, FCAA, or by a local air pollution control agency having jurisdiction over the site and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under the TCAA, FCAA, or by a local air pollution control agency having jurisdiction over the site.

(e) If after permit issuance or the granting of an authorization to operate under a general operating permit, a site no longer meets the applicability criteria in §122.120 of this title (relating to Applicability), the executive director may administratively void the permit or the authorization to operate under a general operating permit.

(1) The permit holder shall demonstrate in writing that a site no longer meets the applicability criteria in §122.120 of this title and request that the permit or authorization to operate under a general operating permit be administratively voided by the executive director.

(2) If it is determined that the site meets the applicability criteria in §122.120 of this title after a permit or authorization to operate is administratively voided by the executive director, the owner or operator may be subject to enforcement action.

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

DIVISION 1: INITIAL PERMIT ISSUANCES

§122.201

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.0541 which authorizes the commission to administer and enforce federal operating permits; and §382.0543, which authorizes the commission to review and renew federal operating permits.

§122.201. Initial Permit Issuance.

(a) A permit may be issued by the executive director provided the following:

(1) the executive director has received a complete permit application under §122.134 of this title (relating to Complete Application);

(2) the conditions of the permit provide for compliance with the requirements of this chapter;

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

(4) the executive director has provided a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The executive director will send this statement to the EPA and any person who requests it. A statement of basis is required for all initial issuances, revisions, renewals, and reopenings.

(b) The permit will not be final until the public petition requirements of this chapter have been satisfied.

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

(d) All permits shall have terms not to exceed five years from initial issuance or renewal.

(e) At the discretion of the executive director, more than one permit may be issued for a site.

(f) Neither the issuance of a general operating permit by the executive director nor the granting of an authorization to operate under a general operating permit shall be required to meet the requirements of this section. General operating permits are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

(g) If the permit application does not meet the criteria of this chapter, the executive director may deny the permit application.

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

DIVISION 2: PERMIT REVISIONS

§122.217, §122.221

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to prescribe sampling, monitoring, and certification; §382.0515, which authorizes the commission to require permit application information; §382.054, which requires sources to obtain a federal operating permit; §382.0541 which authorizes the commission to administer and enforce federal operating permits; and §382.0543, which authorizes the commission to review and renew federal operating permits.

§122.217. Procedures for Minor Permit Revisions.

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

(1) the permit holder complies with the following:

(A) all applicable requirements governing the change;

(B) all state-only requirements governing the change; and

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

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

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

(b) In every case, the applicable requirements are always enforceable.

(c) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal.

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

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

(1) the changes meet the criteria for a minor permit revision;

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

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

(4) the requirements of this chapter for public announcement, affected state review, and EPA review have been satisfied.

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

§122.221. Procedures for Significant Permit Revisions.

(a) Changes requiring a significant permit revision shall not be operated before the permit is revised. For those changes, the permit holder shall do the following:

(1) comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(2) submit to the executive director a request for a permit revision including the information required in §122.220 of this title (relating to Applications for Significant Permit Revisions).

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

(1) the permit holder has submitted a complete application;

(2) the conditions of the permit provide for compliance with the requirements of this chapter;

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

(4) the permit contains compliance assurance monitoring for large pollutant-specific emission units, as defined in §122.10 of this title (relating to General Definitions), submitted in the revision application.

(c) The significant permit revision shall not be final until the public petition requirements of this chapter have been satisfied.

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

§122.350

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.0541 which authorizes the commission to administer and enforce federal operating permits; and §382.0543, which authorizes the commission to review and renew federal operating permits.

§122.350. EPA Review.

(a) EPA review requirements apply to initial issuances, minor permit revisions, significant permit revisions, reopenings, and renewals.

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

(1) For initial issuances, significant permit revisions, reopenings, and renewals the proposed permit shall be submitted to the EPA. At the discretion of the executive director, the procedural requirements of §122.320 of this title (relating to Public Notice), §122.322 of this title (relating to Bilingual Notice), and the requirements for EPA Review under this section may run concurrently. The procedural requirements of §122.320 and §122.322 of this title and the requirements for EPA review under this section may not run concurrently if any person submits comments or if the executive director grants a hearing request. In such case, any comments received and the revised proposed permit, if applicable, shall be submitted to the EPA. The EPA review period shall begin upon its receipt of the comments and the proposed permit.

(2) For minor permit revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public announcement period.

(3) For general operating permit initial issuances and significant revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public comment period. If any person submits comments or if the executive director grants a hearing request, any comments received and the revised general operating permit, if applicable, shall be submitted to the EPA. The EPA review period shall begin upon its receipt of the comments and the general operating permit. For general operating permit minor permit revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public announcement period.

(c) Upon receipt of the proposed permit, the EPA shall have 45 days to object, in writing, to the issuance of the proposed permit. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

(d) The executive director may issue the permit provided the following:

(1) the EPA does not object to the issuance of the proposed permit;

(2) the EPA notifies the executive director that the EPA will not object to the issuance of the permit; or

(3) the executive director resolves any objections received.

(e) If the executive director fails, within 90 days of receipt of an objection, to revise the proposed permit and submit a revised permit, if necessary, in response to the objection, the EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under FCAA, Title V (relating to Permit).

SUBCHAPTER F: GENERAL OPERATING PERMITS

DIVISION 1: PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

§§122.502 - 122.504

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to prescribe sampling, monitoring, and certification; §382.0515, which authorizes the commission to require permit application information; §382.054, which requires sources to obtain a federal operating permit; §382.0541 which authorizes the commission to administer and enforce federal operating permits; and §382.0543, which authorizes the commission to review and renew federal operating permits.

§122.502. Authorization to Operate.

(a) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who submit a complete application under §122.134 of this title (relating to Complete Application) and who qualify for the general operating permit.

(b) Upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application become conditions under which the permit holder shall operate.

(c) The permit holder may be subject to enforcement action for operating without a permit if the permit holder, having been granted the authorization to operate under a general operating permit, is later determined not to qualify for the general operating permit.

(d) Authorizations to operate under general operating permits shall have terms not to exceed five years.

(e) More than one authorization to operate under a general operating permit may be granted for a site.

(f) A copy of the permit, the permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(g) General operating permits shall not be authorized for affected units under the acid rain program.

(h) The executive director shall make a copy of the authorization to operate accessible to the EPA.

§122.503. Application Revisions for Changes at a Site.

(a) The permit holder shall submit an application for a new authorization to operate to the executive director for the following activities at a site:

(1) a change in any applicability determination or the basis of any determination in the general operating permit application; or

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

(b) The application for a general operating permit under this subsection shall contain at a minimum the following:

- (1) a description of each change;
- (2) a description of the emission unit affected;
- (3) any changes in the applicability determinations;
- (4) any changes in the bases of the applicability determinations;
- (5) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);
- (6) a statement that the emission units qualify for the general operating permit; and
- (7) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director except changes to deviation limits as defined in §122.10 of this title:

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

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

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title;

(2) the permit holder submits to the executive director the application before the change is operated;

(3) the permit holder maintains, with the authorization to operate under the general operating permit the application until the executive director grants a new authorization to operate; and

(4) the permit holder operates under the representations in the general operating permit application, as specified in §122.140 of this title (relating to Representations in Application).

(d) The permit holder need not comply with the representations in the application that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

(e) In every case, the applicable requirements and state-only requirements are always enforceable.

(f) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who qualify.

(g) If the emission units addressed in the application no longer meet the requirements for a general operating permit, the permit holder must submit a complete application for another operating permit.

(h) If it is later determined that the permit holder does not qualify for a revision applied for under this section, the permit holder may be subject to enforcement action for operation without a permit.

§122.504. Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded.

(a) If the applicability determinations or the bases for the determinations in the general operating permit application change due to the promulgation or adoption of an applicable requirement or state-only requirement or the revision or rescission of a general operating permit issued by the executive director, the following requirements apply.

(1) The permit holder shall submit an application for a new authorization to operate containing at a minimum the following information:

(A) a description of the emission unit affected;

(B) any changes in the applicability determinations;

(C) the basis of each determination identified under subparagraph (B) of this paragraph;

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

(E) a statement that the emission units qualify for the general operating permit;

and

(F) certification in accordance with §122.165 of this title (relating to certification by a Responsible Official).

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

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

(B) all applicable requirements;

(C) all state-only requirements; and

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

(3) If the application is required as the result of the promulgation or adoption of an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) record the information required in paragraph (1)(A) - (E) of this subsection before the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement;

(B) submit an application for a new authorization to operate no later than 90 days after the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement; and

(C) maintain the information required in paragraph (1)(A) - (E) of this subsection with the authorization to operate until a new authorization is granted.

(4) If the application is required as the result of the revision of a general operating permit that is not based on a change in an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) submit the application no later than 90 days after the issuance of the general operating permit; and

(B) maintain the application with the authorization to operate until the general operating permit is revised.

(5) If the application is required as the result of a revision of a general operating permit to add periodic monitoring or compliance assurance monitoring requirements, the following requirements apply.

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

(i) the identification of the emission unit;

(ii) the emission limitation or standard subject to compliance assurance monitoring (CAM) or periodic monitoring;

(iii) an appropriate monitoring option provided in the general operating permit;

(iv) if not defined by the monitoring option selected, a deviation limit;

(v) a justification for any deviation limit proposed under clause (iv) of this subparagraph in accordance with subparagraph (B) or (C) of this paragraph; and

(vi) any information required by the executive director to evaluate the requirements.

(B) Proposed CAM options specified in the application shall be designed to provide reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(C) Proposed periodic monitoring options specified in the application shall be sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement.

(D) The permit holder shall provide justification for any deviation limit according to one of the following.

(i) The permit holder shall submit the following performance test data:

(I) control device operating parameter data from an applicable performance test conducted under conditions specified by the applicable rule;

(II) if the applicable rule does not specify testing conditions or only partially specifies testing conditions, control device operating parameter data from an applicable performance test conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the emission unit; and

(III) a statement that no changes to the emission unit, including control device, have taken place that could result in a significant change in the control system performance, indicators (such as emissions, control device parameters, process parameters, or inspection and maintenance activities) to be monitored, or deviation limits since the performance test was conducted.

(ii) The permit holder shall submit manufacturer's recommendations, engineering calculations, and/or historical data.

(E) The executive director will not grant a request for a new authorization to operate under a general operating permit if the deviation limits have been deemed unacceptable. In

such case, revised justification for deviation limits under subparagraph (D) of this paragraph shall be submitted for approval.

(F) Unless otherwise approved by the executive director, if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required by an applicable requirement, the permit holder shall submit a monitoring option from the general operating permit that includes the use of the CEMS, COMS, or PEMS to satisfy the requirements of this subchapter.

(G) The permit holder shall begin operation of the monitoring no later than 180 days after the issuance of the revised general operating permit.

(b) The permit holder need not reapply for a revised general operating permit, provided the following:

(1) the emission units addressed in the application qualify for the revised general operating permit;

(2) the applicability determinations remain unchanged; and

(3) the basis for each applicability determination remain unchanged.

(c) If a general operating permit is rescinded and not replaced, the authorization to operate under the general operating permit is revoked. The permit holder must apply for another operating permit no later than the date the general operating permit is rescinded.

(d) If as a result of the revision of a general operating permit the permit holder no longer qualifies for the general operating permit, the permit holder must apply for another operating permit no later than the date of issuance of the revised general operating permit.

(e) Those representations in the application not affected by the revision of a general operating permit remain conditions under which the permit holder shall operate.

(f) In every case, the applicable requirements and state-only requirements are always enforceable.

(g) The permit holder need not comply with the representations in the application or the terms and conditions codified in the general operating permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

SUBCHAPTER G: PERIODIC MONITORING

§§122.600, 122.604, 122.606, 122.608, 122.610, 122.612

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeals are also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; and §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter.

§122.600. Implementation of Periodic Monitoring.

§122.604. Periodic Monitoring Application Due Dates.

§122.606. Applications for Periodic Monitoring.

§122.608. Procedures for Incorporating Periodic Monitoring Requirements.

§122.610. Periodic Monitoring General Operating Permits Content.

§122.612. Periodic Monitoring Requirements in Permits and General Operating Permit Applications.

SUBCHAPTER G: PERIODIC MONITORING AND COMPLIANCE ASSURANCE

MONITORING

§§122.602, 122.604, 122.606

STATUTORY AUTHORITY

The amendment and new sections are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment and new sections are also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to prescribe sampling, monitoring, and certification; §382.0515, which authorizes the commission to require permit application information; and §382.0541 which authorizes the commission to administer and enforce federal operating permits.

§122.602. Periodic Monitoring Applicability.

(a) Periodic monitoring applies to an emission unit at a site that is subject to this chapter provided the emission unit is subject to an emission limitation or standard in an applicable requirement except as noted in subsection (b) of this section.

(b) Periodic monitoring shall not apply to emission limitations or standards for which the executive director has determined that the applicable requirement has periodic monitoring (which may consist of recordkeeping) sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement. These emission limitation or standards include, but are not limited to, the following:

(1) emission limitations or standards proposed by the EPA after November 15, 1990 under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 (Hazardous Air Pollutants);

(2) emission limitations or standards under FCAA, Title IV (the Acid Rain Program);

(3) emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test); and

(4) other emission limitations or standards specified as exempt by the EPA.

§122.604. Compliance Assurance Monitoring Applicability.

(a) To determine the applicability of compliance assurance monitoring (CAM), each emission unit shall be considered separately with respect to each air pollutant and the term control device, as used in this subchapter, shall have the meaning defined in §122.10 of this title (relating to General Definitions).

(b) Except for emission units that are exempt under subsection (d) of this section, CAM applies to an emission unit at a major source subject to this chapter provided the following:

(1) the emission unit is subject to an emission limitation or standard for an air pollutant (or surrogate thereof) in an applicable requirement, except as noted in subsection (c) of this section;

(2) the emission unit uses a control device to achieve compliance with the emission limitation or standard in paragraph (1) of this subsection; and

(3) the emission unit has the pre-control device potential to emit greater than or equal to the amount in tons per year required for a site to be classified as a major source, as defined in this chapter.

(c) CAM shall not apply to any of the following:

(1) emission limitations or standards proposed by the EPA after November 15, 1990 under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 (Hazardous Air Pollutants);

(2) emission limitations or standards under FCAA, Title VI (Stratospheric Ozone Protection);

(3) emission limitations or standards under FCAA, Title IV (the Acid Rain Program);

(4) emission limitations or standards that apply solely under an emissions trading program approved or promulgated by the EPA under the FCAA that allows for trading emissions;

(5) emissions caps that meet the requirements specified in 40 Code of Federal Regulations (CFR) §70.4(b)(12) (State Program Submittals and Transition);

(6) emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test); or

(7) other emission limitations or standards specified as exempt by the EPA.

(d) CAM shall not apply to a utility unit, as defined in 40 CFR §72.2 (Definitions), that is municipally-owned if the permit holder documents in a permit application the following:

(1) the utility unit is exempt from all monitoring requirements in 40 CFR Part 75 (Continuous Emission Monitoring) (including the appendices);

(2) the utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations, as demonstrated by historical operating data and relevant contractual obligation, and will be operated consistent with that purpose throughout the permit term; and

(3) the actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or the total time the unit has been in operation for a unit in operation less than three years), are less than 50% of the amount in tons per year required for a site to be classified as a major source and are expected to remain so.

(e) References in 40 CFR Part 64 to 40 CFR Part 70 (Operating Permit Program) shall be satisfied by the requirements of this chapter for the purpose of implementing 40 CFR Part 64.

§122.606. Compliance Assurance Monitoring Quality Improvement Plans.

(a) Based on the frequency of deviations, the cause of deviations, the magnitude of deviations, the permit holder's response to deviations, or other information that indicates that the emission unit or control device is not being maintained and operated consistent with good air pollution control practices, the executive director may require implementation of a quality improvement plan (QIP).

(b) A QIP shall meet all of the requirements specified in 40 Code of Federal Regulations §64.8 concerning Quality Improvement Plan Requirements.

(c) The permit holder shall maintain the written QIP with the permit or authorization to operate under a general operating permit.

SUBCHAPTER H: COMPLIANCE ASSURANCE MONITORING

§§122.700, 122.702, 122.704, 122.706, 122.708, 122.710, 122.712, 122.714, 122.716

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeals are also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; and §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter

§122.700. Implementation of Compliance Assurance Monitoring.

§122.702. Compliance Assurance Monitoring Applicability.

§122.704. Compliance Assurance Monitoring Application Due Dates.

§122.706. Applications for Compliance Assurance Monitoring.

§122.708. Procedures for Incorporating Compliance Assurance Monitoring Requirements.

§122.710. Compliance Assurance Monitoring General Operating Permit Content.

§122.712. General Terms and Conditions for Compliance Assurance Monitoring.

§122.714. Compliance Assurance Monitoring Requirements in Permits and General Operating Permit Applications.

§122.716. Compliance Assurance Monitoring Quality Improvement Plans.