

The Texas Natural Resource Conservation Commission (commission) proposes 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Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded; and §122.602, Periodic Monitoring Applicability.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 proposes 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 proposes 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 proposes these revisions to Chapter 122, Federal Operating Permits, in order to correct deficiencies regarding the Texas Title V Operating Permit Program, published by the EPA in the January 7, 2002 issue of the *Federal Register* (67 FR 732).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Title V of the Federal Clean Air Act Amendments of 1990 (FCAA) as codified in 42 United States Code (USC) required all states to develop operating permit programs that met federal criteria. The EPA has promulgated a final rule identifying the criteria for state operating permit programs, 40 Code of Federal Regulations (CFR) Part 70, State Operating Permit Programs. The general goal of the operating permit program 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 operating permit programs, and retains the authority to issue a Notice of Deficiency (NOD) for identified deficiencies in state operating permit programs after full approval of those programs.

The EPA promulgated source category-limited interim program approval of the Texas Title V Operating Permit Program on June 25, 1996. The EPA extended approval of interim programs three times. The third extension of interim program approvals was challenged in the Court of Appeals for the District of Columbia Circuit, and the 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 interim approval deficiencies and obtain full approval for their operating permit programs by December, 2001. Texas submitted its revised program that corrected all interim approval 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 Operating Permit Program. The EPA reviewed the comments and agreed that some of the comments received on the Texas Title V Operating Permit Program were deficiencies. These deficiencies were identified in an NOD published in the January 7, 2002 issue of the *Federal Register* (67 FR 732).

The commission is proposing these rule amendments to correct all items identified in the NOD. Title 40 CFR Part 70 specifies the EPA's authority to withdraw an approved operating permit program when a state does not comply with the requirements of 40 CFR Part 70. If the state does not correct the deficiencies, the EPA administrator will apply sanctions, as specified in the FCAA, §179(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 proposing changes to the rules that implement its operating permit program and will submit program revisions to the EPA within 18 months of the NOD.

Resolution of Deficiencies

The January 7, 2002 NOD issued by the EPA identified deficiencies relating to the commission's periodic monitoring regulations; compliance assurance monitoring (CAM) regulations; periodic monitoring and compliance assurance monitoring general operating permits (GOPs); 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 FCAA, §179(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 proposed rule changes, which address all of the deficiencies.

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 its rules. The commission proposes changes that address all regulatory deficiencies.

First, EPA commented 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 proposed 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 commented that the commission must revise its regulations to ensure that all operating permits, including GOPs, contain periodic monitoring requirements that meet the requirements of 40 CFR §70.6(a)(3)(i)(B), when issued.

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

In response to this deficiency, the commission proposes several changes to its periodic monitoring regulations to require the executive director to issue permits with all required periodic monitoring requirements included. The commission proposes amendments to §122.132 and §122.142 to ensure that

all operating permits, including GOPs, when issued, contain periodic monitoring requirements. The commission proposes new §122.132(e)(13) to require applications to include proposed 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 proposes to amend §122.142(c) to require the executive director to issue all permits with periodic monitoring requirements consistent with 40 CFR §70.6(a)(3)(i)(B) and (c)(1). The rule currently only requires 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. Since 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 proposed changes 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. Since the executive director will include periodic monitoring into permits at initial issuance, there is no need to have a process for issuing periodic monitoring requirements through

GOPs. As a result, the commission proposes to repeal the sections of Subchapter G that specify periodic monitoring GOP requirements. These include §§122.600, 122.604, 122.606, 122.608, 122.610, and 122.612. The commission's proposed amendments eliminate the GOP process for periodic monitoring and requires the executive director to include periodic monitoring consistent with 40 CFR Part 70.

Compliance Assurance Monitoring Regulations

The EPA commented 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 addresses this deficiency by amending the sections of Chapter 122 that relate 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 proposes to amend §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 proposes to amend §122.142 to specify that permits contain CAM in accordance with the schedule in 40 CFR §64.5. Lastly, the commission proposes new §122.221(b)(4) to specify that the executive director may issue a significant permit revision if CAM is included for large pollutant-specific emission units, which is consistent with 40 CFR §64.5(a)(2). These proposed 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 Compliance Assurance Monitoring General Operating Permits

The EPA stated in the NOD that the commission's use of GOPs to implement periodic monitoring and CAM does not comply with 40 CFR Part 70, since the monitoring GOPs do not contain all the requirements for Part 70 permits, as set forth in 40 CFR §70.6. The EPA commented 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, and 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 proposes to amend Chapter 122 to require all GOPs to include periodic monitoring and CAM and eliminate the monitoring GOP process. The commission has specified elsewhere in this preamble the proposed amendments to require the executive director to issue permits with periodic monitoring and CAM. To ensure that the executive director issues permits containing periodic monitoring and CAM, the commission proposes amendments requiring periodic monitoring and CAM to be addressed in permit applications and be included in issued permits accordingly. These proposed amendments include new §122.132(e)(12) and (13), and revised §122.142(c) and (h). Proposed §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 proposes new §122.132(e)(13) to specify that applications for all initial permit issuances, renewals, reopenings (other than reopening for the purposes of minor new source review incorporation), and significant and minor permit revisions include periodic monitoring requirements. The commission proposes to revise §122.142(c), which currently specifies that periodic monitoring is only included as required by executive director, and §122.142(h), which

currently specifies that permits include CAM as specified in Subchapter H. The revisions state that permits contain periodic monitoring, and that permits contain CAM in accordance with the schedule in 40 CFR §64.5. These proposed amendments will require permits to contain all requirements specified in 40 CFR §70.6. Since §122.501(a)(1) requires the executive director to issue GOPs with conditions that provide for compliance with all requirements of Chapter 122, the proposed amendments require the executive director to issue GOPs that include all requirements in 40 CFR §70.6.

To eliminate the monitoring GOP process, the commission proposes to delete all sections from Subchapters G and H that specify requirements for implementing monitoring through the GOP process. In addition to the periodic monitoring sections mentioned previously that are proposed to be deleted, which includes all sections except for the periodic monitoring applicability section, the commission proposes to delete all of the CAM requirements contained in Subchapter H. The CAM applicability section and the section pertaining to quality improvement plans are proposed under Subchapter G, renamed Periodic Monitoring and Compliance Assurance Monitoring.

Since the commission is eliminating the monitoring GOP process, the executive director will no longer issue monitoring GOPs. The commission also proposes to amend the GOP definition to specify that multiple similar sources may be authorized to operate under a GOP. This will ensure that any GOP issued will cover similar sources. Subsequently, the executive director will repeal any existing monitoring GOPs. The commission also proposes several revisions to Chapter 122 to clarify periodic monitoring and CAM implementation and to delete any reference to the monitoring GOP process.

These proposed amendments are described in further detail in the SECTION BY SECTION DISCUSSION portion of this preamble.

Statement of Basis Requirement

The NOD specified 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 proposes 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 commented 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. The commission must revise the applicable requirement definition to include all the applicable provisions of the Texas SIP that implement relevant requirements of the FCAA.

The commission proposes to amend the applicable requirement definition, §122.10(2) to include the sections of Chapter 101 that implement relevant requirements of the FCAA. This includes §101.3, which relates to circumvention, the sections that relate to upset, maintenance, startup, and shutdown reporting requirements, §§101.6, 101.7, and 101.11, as well as §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 is in the process of adopting the reformatting of Chapter 101 to move §§101.6, 101.7, and 101.11 into a new Subchapter F, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. References to the applicable section numbers will be changed at adoption. The commission also proposes to include the definitions contained in §101.1, but only to define terms used in other applicable requirements.

Potential to Emit Registration Regulation

The EPA commented 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. The commission is required to revise Chapter 122 to make it practically enforceable. In addition, the limitations are not federally enforceable, since §122.122 has not been approved into the Texas SIP. The EPA also noted 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 proposes to revise §122.122 to require certified registrations of emissions to be submitted to the commission. The submission of the certified registrations will make the PTE limits practically enforceable. In addition, the EPA specified in the NOD that the

commission's approach to establishing PTE limits was not federally enforceable, since §122.122 was not part of the Texas SIP. In response, the commission will submit §122.122, once amended, 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 proposes to amend Chapters 106 and 116, as well as Chapter 122, since they also contain language relating to documentation requirements for establishing PTE limits for permits by rule and for standard permits. The commission is proposing changes to these rules 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 practically and federally enforceable.

SECTION BY SECTION DISCUSSION

The commission proposes changes to §122.10. First, the commission proposes to amend §122.10(2)(F), the applicable requirement definition, to include §101.1, Definitions, only to define the terms of other applicable requirements; §101.3, Circumvention; §101.6, Upset Reporting and Recordkeeping Requirements; §101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; §101.8, Sampling; §101.9, Sampling Ports; §101.10, Emissions Inventory Requirements; and §101.11, Demonstrations. The commission proposes these amendments to the applicable requirement definition in response to the NOD and is discussed in the "Resolution of Deficiencies" portion of this preamble. Upon adoption of the rule, the amendment will require owners and operators to update pending permit applications or revise issued permits to address the new applicable requirements. The commission also proposes to delete 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, since the monitoring GOP process is being eliminated (see the "Resolution of Deficiencies" portion of this preamble). Since there will be no monitoring GOPs, all determinations will be case-by-case, and hence, there is no need to differentiate these items. The commission proposes to amend the existing §122.10(5), continuous compliance determination method, and existing §122.10(25), predictive emission monitoring system, to delete the reference to Subchapter H, Compliance Assurance Monitoring, and update the reference to Subchapter G, since Subchapters G and H will be combined and renamed "Periodic Monitoring and Compliance Assurance Monitoring." The commission proposes to delete the existing control device definition currently specified in §122.10(6) and reference the 40 CFR Part 64 definition to provide clarity and consistency with the 40 CFR Part 64 regulation. The commission proposes 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" has been added. The amendment will make the definition consistent with deviation language that currently exists in the compliance certification forms, which the commission recently updated with guidance from the EPA. The commission also proposes to amend the permit or federal operating permit definition to strike reference to CAM GOPs and periodic monitoring GOPs, since 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; a group of GOPs would be considered an example of multiple federal operating permits, not a single federal operating permit. The commission also proposes to delete the language referring to CAM GOPs and periodic monitoring GOPs, since the monitoring GOP process will be eliminated. To

address the NOD, the commission proposes to amend the general operating permit definition to specify that a GOP is a permit that may authorize the operation of multiple similar stationary sources. The section was also renumbered accordingly.

The commission proposes to amend §122.122(e) to correct a deficiency identified in the NOD. Section 122.122(e) is amended 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 existing language specifies that this information be kept on-site. The commission also proposes new §122.122(e)(1) and (2) to specify that registrations previously established must be submitted by January 2, 2003 or upon operation thereafter. Records demonstrating compliance with a certified registration must still be maintained on-site, as is reflected in proposed new §122.122(f). The commission also proposes in §122.122(f) to require all certified registrations to be maintained on-site, in addition to being submitted, and that the commission will make the certified registrations and records available to members of the public upon request. Lastly, the commission proposes to amend §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 proposes amendments to §122.132. The commission proposes amendments to §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" has been added. The amendment will make the rule language in Chapter 122 consistent with the compliance certification language that currently exists in the forms, which the commission

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 proposes new §122.132(e)(4)(D) to require the application to include compliance plan information relating to CAM if monitoring needs to be installed, tested, or final verification of operational status is needed after issuance of the permit. The compliance plan would include an implementation plan and milestones for completion. This is consistent with 40 CFR §64.6(d). Section §122.132(e)(11) is revised to replace the phrase "effective date of this rule" with June 3, 2001, the last effective date of the rule prior to these proposed amendments. Also to resolve a deficiency identified by the EPA, the commission proposes 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, since the commission's response to the deficiency will eliminate the monitoring GOP process as explained in the "Response to Deficiencies" portion of this preamble. 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 set forth in §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 proposes 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 new source review requirements; significant permit revisions; and minor permit revisions.

The commission proposes to delete §122.140(3), which currently specifies that representations in monitoring GOP applications are conditions under which a permit holder operate upon granting of authorization to operate under a monitoring GOP. This paragraph is no longer needed since the commission proposes to eliminate the monitoring GOP process. Other sections reference this paragraph, and also require revision, as is discussed subsequently in this preamble. This section was also renumbered accordingly.

The commission proposes amendments to §122.142. Section 122.142(b)(3) is revised to replace the phrase "effective date of this rule" with June 3, 2001, the last effective date of the rule prior to these proposed amendments. The commission also proposes to amend §122.142(c) to delete the phrase "as required by the executive director" to address the EPA-identified deficiency for periodic monitoring, as is discussed in the "Resolution of Deficiencies" portion of this preamble, and to add text consistent with 40 CFR §70.6(a)(3)(i)(B) and (c)(1). The commission proposes to amend §122.142(h). This subsection currently specifies that permits contain CAM as specified in Subchapter H. The revised subsection will, instead, reference the CAM schedule set forth in 40 CFR §64.5 to address the CAM deficiency identified by the EPA as explained in the Resolution of Deficiencies portion of this preamble. Lastly, the commission proposes new subsection (i), which specifies that CAM requirements for an emission unit shall satisfy the requirements for periodic monitoring. This information is currently specified in §122.600(c). The commission proposes to delete §122.600, with the exception of this subsection, which it proposes to move to §122.142(i). Permits must be issued with periodic monitoring. CAM must be issued according to the schedule set forth in 40 CFR §64.5, which is often not at initial permit issuance. Proposed 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 differing schedules of periodic monitoring and CAM incorporation.

The commission proposes to amend §122.143(16) by deleting the language that references representations in monitoring GOP applications specified in §122.140(3). The commission is proposing to delete §122.140(3). Therefore, this language is no longer necessary.

The commission proposes new §122.147. The contents of this section, which currently exist in §122.712, specify the terms and conditions that apply to units subject to CAM. Since the commission will no longer utilize the monitoring GOP process, there is no need to have stand alone monitoring terms in conditions. Therefore, this section was moved to Subchapter B, Division 4, Permit Content. Some modifications are required for the language to be proposed in this section. For example, §122.147(a) is proposed to specify that the section pertains to permits that contain emission units subject to CAM. Also the permit is referenced, rather than the CAM GOP, and the terms and conditions are specified as CAM terms and conditions. The commission changed the language contained in the existing §122.712(a)(6), proposed as §122.147(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. Section 122.147(a)(7) is modified from the existing §122.712(a)(7) to reference the section, as opposed to Subchapter H. Lastly, §122.147(a)(8) references the Quality Improvement Plans of new proposed §122.606, rather than the existing §122.716. The commission does not propose a new

subsection to replace the existing §122.712(b), which specify requirements for a CAM case-by-case determination. The information contained in this subsection is no longer needed because, with the elimination of the CAM GOP process, there is no need to specify case-by-case requirements. The commission proposes new §122.147(b) to specify that 40 CFR §64.7, Operation of Approved Monitoring, applies.

The commission proposes to amend §122.161(d) to update the existing 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 proposes amendments to §122.201. The commission proposes new §122.201(a)(4) to require the executive director to provide a statement of basis for draft permits. This is to address the statement of basis deficiency identified by the EPA (see the "Resolution of Deficiencies" portion of this preamble) and is consistent with 40 CFR §70.7(a)(5). The executive director will be required to provide this statement for all issued permits and shall send it to the EPA and any person who requests it.

The commission proposes amendments to §122.217. The commission deletes §122.217(b) because it specifies permit holder requirements when the executive director revises a CAM GOP or periodic monitoring GOP. Since the monitoring GOP process will be eliminated, this subsection will be obsolete. The section is also renumbered.

The commission proposes 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 the PTE, including emission controls, 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 revision application is required to include revisions to large pollutant-specific emission units. This is consistent with 40 CFR §64.5(a)(2). The commission proposes this amendment to address a deficiency identified by the EPA.

The commission proposes amendments to §122.350. Section 122.350(b)(1) is amended 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, the EPA review period begins no earlier than the close of the public comment period or hearing date. The commission also proposes to amend §122.350(b)(3) to indicate that the EPA review period begins no earlier than the close of the public comment period, if comments are received, or hearing date, if the executive director grants a hearing, for GOP initial issuances and GOP significant revisions. The amendments are consistent with a recent federal court decision relating to public notice.

The commission proposes to amend §122.502(b). The commission proposes to delete language explaining 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 since the commission is proposing to eliminate the monitoring GOP process.

The commission proposes amendments to §122.503. The commission proposes to delete §122.503(a)(2) and (b)(5), which refer to the CAM and periodic monitoring information specified in §122.140. Since the commission proposes to revise §122.140 to delete reference to CAM GOPs and periodic monitoring GOPs, these paragraphs are no longer necessary. The section is also renumbered accordingly. In addition, the commission proposes to amend §122.503(c) to delete references to deviation limits noted in §122.608(e) and §122.708(d), since those sections are deleted to address a deficiency identified by the EPA. The amended §122.503(c) now references the deviation limit definition in §122.10.

The commission proposes amendments to §122.504. The commission proposes to amend §122.504(a), (a)(1)(D), and (b)(4) to delete the text relating to CAM and periodic monitoring information in §122.140(3), since the commission proposes to delete §122.140(3). The commission proposes to amend §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, the commission is proposing to revise its 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 source-specific 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. 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, per §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 falls under §122.504(a)(4)(A). For consistency, the commission also proposes to amend §122.504(a)(3)(B) to require application revisions within 90 days. The commission proposes new §122.504(a)(5) to specify the required application information for periodic monitoring and CAM. The application requirements for CAM GOPs currently exist in §122.706, relating to applications for CAM. The commission is proposing to discontinue implementing monitoring through the GOP process and the executive director will revise the existing source-specific GOPs to include periodic monitoring and CAM. Therefore, §122.706 is no longer needed to specify the requirements for CAM GOP applications. However, since the monitoring requirements will be added to the source-specific GOPs, the information is needed for GOP applications, in general, and is therefore proposed 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(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 changed from the existing language in §122.706 in that the references to monitoring GOPs are not included. The commission proposes new §122.504(a)(5)(A)(vi), which was not contained in §122.706, to specify that applications include any information required by the executive director to evaluate the monitoring requirements. Also, existing §122.706(a)(1)(C), requiring applications to contain a certification by the responsible official, will not

be proposed in new §122.504(a)(5). Since 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 proposes new §122.504(a)(5)(D) to specify that the permit holder shall provide justification for deviation limits. This differs from the existing §122.706(a)(3), which states that this justification for deviation limits be provided unless otherwise specified in the CAM GOP. The commission proposes the revised language in §122.504(a)(5)(D) because justification for deviation limits are always required. The information in existing §122.706(b) will also not be proposed in new §122.504(a)(5) because it specifies 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 chosen. The commission proposes new §122.504(a)(5)(G) to specify that, when a GOP is revised to include monitoring, commencement of the monitoring operations must begin no later than 180 days after the issuance of the GOP. This is consistent with 40 CFR §64.4(e) and §64.6(e)(2). The section is also renumbered accordingly.

To address a deficiency identified by the EPA, the commission proposes to discontinue its implementation of periodic monitoring and CAM through the GOP process. Since much of Subchapters G and H relate to the implementation of periodic monitoring and CAM through the GOP process, most sections are no longer needed. Therefore, the commission proposes to repeal all sections in Subchapter G, except for §122.602, the periodic monitoring applicability section, and all sections in Subchapter H. The commission concurrently proposes new §122.604 and §122.606, specifying CAM applicability and CAM quality improvement plans, currently contained in §122.702 and §122.716. The commission

proposes these two sections in Subchapter G and rename Subchapter G as Periodic Monitoring and Compliance Assurance Monitoring.

The commission proposes to amend §122.602(b), periodic monitoring applicability. The commission proposes to amend this subsection to contain periodic monitoring language consistent with 40 CFR §70.6(a)(3)(i)(B) and (c)(1).

The commission proposes new §122.604, relating to CAM applicability. This language currently exists in §122.702, which the commission is proposing to repeal. The commission proposes the new section with changes from the existing text in §122.702. Because requirements for CAM appear in several subchapters of Chapter 122, the commission proposes to amend §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, since the definition section is renumbered. A typographical error is updated in §122.604(c)(5). The commission does not propose a paragraph containing the information in §122.702(c)(8). This paragraph specifies that CAM does not apply to emission limitations or standards regulating fugitive emissions. The commission does not propose a corresponding paragraph in §122.604(c) because it is inconsistent with the 40 CFR §64.2 applicability criteria. The commission does not propose a new section to replace §122.700, relating to the implementation of CAM. The information that currently exists in §122.700(a) is no longer needed because it distinguishes between the CAM GOP approach and the CAM case-by-case determination approach. Since the commission proposes to discontinue the CAM GOP process, this subsection is no longer needed. Subsection (b), however, specifies that references in 40 CFR Part

64 to 40 CFR Part 70 are satisfied by the CAM requirements in Chapter 122 for the purposes of implementing 40 CFR Part 64. This subsection is still needed, and is proposed as new §122.604(e). Section 122.604(d)(1) and (e) have been amended from the existing language to correct references to the various parts of the CFR.

The commission proposes new §122.606. This new section contains all information from the existing §122.716, relating to CAM Quality Improvement Plans. The contents of the section remain unchanged, except for the reference to a CAM GOP has been updated to a GOP, since the commission will no longer implement CAM through CAM GOPs.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for any unit of state and local government due to administration and enforcement of the proposed rules. Units of government that operate sources subject to the commission's Title V Operating Permit Program may have to install pollution control devices earlier than expected due to implementation of the proposed rules. Additionally, units of government that operate sources with the PTE air pollutants equivalent to a major source that are establishing federally-enforceable emission limits would be required to submit data demonstrating that they are not subject to the Title V Program, and, if operating under a standard permit, retain records for five years instead of the current requirement to retain them for two years. The proposed rules are intended to revise existing Chapter 122 permit regulations to address issues raised by the EPA in the January 7, 2002 NOD.

A major source has the PTE: more than 100 tons per year (tpy) of any single air pollutant; or 25 tpy of nitrogen oxides (NO_x) or volatile organic compounds (VOCs) in a severe ozone nonattainment area; or 50 tons of NO_x or VOCs in a serious ozone nonattainment area; or ten tpy of any single hazardous air pollutant; or 25 tpy of any combination of hazardous air pollutants.

Examples of sites affected by the proposed rules include: electric generating facilities; landfills; boilers at power plants; oil and gas operations; fiberglass and chemical manufacturers; cotton seed oil mills; furniture manufacturers; concrete and asphalt batch plant operators; and manufacturers with coating operations (metal parts, aircraft parts, and auto parts). The number of units of state and local government specifically affected by the proposed rules is unknown.

The proposed rules revise existing rules by requiring the inclusion of periodic monitoring requirements at permit issuance. Existing commission regulations specify the implementation of periodic monitoring requirements through general operating permits and do not require that permit applicants include all periodic monitoring requirements at initial permit issuance. All new permit applications, or existing permits that do not contain all periodic monitoring requirements, will be required to include applicable periodic monitoring requirements at permit issuance, minor or significant permit revisions, at reopening, other than reopenings to incorporate minor new source review requirements, or at permit renewal. Similarly, applications from sources subject to CAM will have to include applicable CAM requirements if the permit application was received by the commission after February 1998. Also, all CAM requirements will have to be included when an owner or operator submits a significant permit revision for a large emission unit, or at permit renewal. Although the proposed rules would quicken the

implementation of monitoring requirements than currently required, all facilities affected by the proposed rules are already required to implement monitoring requirements. The proposed rules do not require installation of monitoring equipment beyond what is already required. Therefore, the commission does not anticipate significant fiscal implications due to implementation of the revised monitoring requirements.

This rulemaking also applies to owners and operators that have established certified registrations of PTE limitations to demonstrate that the commission's Title V program does not apply to their sources. Currently, sites with a PTE equivalent to a major source that are establishing federally-enforceable emission limits, are required to maintain certified registrations of emissions on-site that demonstrate that they are not subject to the Title V Operating Permit Program. The proposed rules would require owners or operators of affected sites to mail a copy of the certified registration of emissions to the executive director, the appropriate regional office, and to any air pollution control agency that has jurisdiction over the affected site. Additionally, if an owner or operator is using a standard permit to establish a federally-enforceable emission limit, they will be required to retain records for five years instead of the current requirement to retain them for two years. Because the amendments require the submission of existing data, and a longer retention period, no significant fiscal implications are anticipated for affected sources due to implementation of the proposed rules.

PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be that

owners or operators of affected sites will have to perform periodic monitoring and CAM earlier than existing rules require. This monitoring will potentially increase environmental protection by increasing the assurance of compliance with emission limitations to which emission units are subject.

Additionally, the proposed rules will increase availability of information on sites that claim to be emitting below major source thresholds. The existing Chapter 122 allows certified registrations of enforceable emission limits to be kept on-site. Members of the public may have difficulty accessing on-site registrations. This rulemaking will require all certified registrations established to avoid operating permit requirements to be submitted. The submitted certified registrations will be made available to members of the public in the commission's central office file room and appropriate regional office, and any local air pollution control agency with jurisdiction over the site.

This rulemaking is intended to revise existing Chapter 122 permit regulations to address issues raised by the EPA in the January 7, 2002 NOD. The proposed rules revise existing periodic monitoring regulations by requiring the inclusion of periodic monitoring requirements at permit issuance. Existing commission regulations do not require that permit applicants include all periodic monitoring requirements at initial permit issuance. In addition, all CAM requirements will have to be included when an owner or operator submits a significant permit revision for a large emission unit, or at permit renewal. Although the proposed rules would quicken the implementation of monitoring requirements than currently required, all facilities affected by the proposed rules are already required to implement monitoring requirements. The proposed rules do not require installation of monitoring equipment beyond what is already required. Therefore, the commission does not anticipate significant fiscal implications due to implementation of the revised monitoring requirements.

This rulemaking also applies to owners and operators that have established certified registrations of PTE limitations to demonstrate that the commission's Title V program does not apply to their sources. Currently, sites with a PTE equivalent to a major source that are establishing federally-enforceable emission limits, are required to maintain certified registrations of emissions on-site that demonstrate that they are not subject to the Title V Operating Permit Program. The proposed rules would require owners or operators of affected sites to mail a copy of the certified registration of emissions to the executive director, the appropriate regional office, and to any air pollution control agency that has jurisdiction over the affected site. Additionally, if an owner or operator is utilizing a standard permit to establish a federally-enforceable emission limit, they will be required to retain records for five years instead of the current requirement to retain them for two years. Because the amendments require the submission of existing data, and a longer retention period, no significant fiscal implications are anticipated for affected sources due to implementation of the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no significant adverse fiscal implications to small or micro-business as a result of implementing the proposed rules. This rulemaking is intended to revise existing Chapter 122 permit regulations to address issues raised by the EPA in the January 7, 2002 NOD. The proposed rules revise existing regulations by requiring the inclusion of periodic monitoring requirements at permit issuance. Existing commission regulations do not require that permit applicants include all periodic monitoring requirements at initial permit issuance. In addition, all CAM requirements will have to be included when an owner or operator submits a significant permit revision for a large emission unit, or at permit renewal. Although the proposed rules would quicken the implementation of monitoring requirements

than currently required, all facilities affected by the proposed rules are already required to implement monitoring requirements. The proposed rules do not require installation of monitoring equipment beyond what is already required. Therefore, the commission does not anticipate significant fiscal implications for any small or micro-business due to implementation of the revised monitoring requirements.

This rulemaking also applies to owners and operators that have established certified registrations of PTE limitations to demonstrate that the commission's Title V program does not apply to their sources. Currently, sites with a PTE equivalent to a major source that are establishing federally-enforceable emission limits, are required to maintain certified registrations of emissions on-site that demonstrate that they are not subject to the Title V Operating Permit Program. The proposed rules would require owners or operators of affected sites to mail a copy of the certified registration of emissions to the executive director, the appropriate regional office, and to any air pollution control agency that has jurisdiction over the affected site. Additionally, if an owner or operator is using a standard permit to establish a federally-enforceable emission limit, they will be required to retain records for five years instead of the current requirement to retain them for two years. Because the proposed rules require the submission of existing data, or a longer retention period, no significant fiscal implications are anticipated for affected sources due to implementation of the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking 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 proposed 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 proposed 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 proposed rules require the inclusion of periodic monitoring and compliance assurance monitoring, where applicable, on a quicker implementation schedule than previously required. The proposed rules also contain additional requirements for establishing the status of a facility as a synthetic minor, in order to avoid applicability of the operating permit program, 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.

The requirements of the proposed rules are expected to result in little or no impacts 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 proposed rules were already required to include periodic monitoring and compliance assurance monitoring, where applicable, on a delayed implementation schedule. The proposed rules provide for a shorter implementation schedule in order to comply with the federal requirements relating to periodic monitoring and compliance assurance monitoring, as addressed elsewhere in this preamble. The mechanism for including monitoring into permits may delay the issuance of permits for some period of time, but is not anticipated to result in significant costs to permittees, beyond the costs to implement the required monitoring, when incorporated into their permits. The other requirements of the rules require applicants to provide certain documents to the agency to establish the status of the facility as a synthetic minor (below the major source thresholds), provide for 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 proposed changes are discussed in detail elsewhere in this preamble.

Title V of the FCAA Amendments of 1990 required all states to develop operating permit programs that met federal criteria. The EPA has promulgated a final rule identifying the criteria for state operating permit programs, 40 CFR Part 70. The general goal of the operating permit program 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 operating permit programs, and retains the authority to issue an NOD for identified deficiencies in state operating permit programs after full approval of those programs. The commission was granted final approval of the operating permit program in the December 6, 2001 issue of the *Federal Register* (66 FR 63318). EPA issued an NOD on January 7, 2002 for the operating permit program, 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 proposed rules correct the deficiencies identified by the EPA in the NOD, in order to provide the basis for an approval of the Texas Operating Permit Program by EPA. If the commission fails to submit a program that is approvable by EPA, the EPA will implement a Federal Operating Permit Program 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 proposed rules do not meet any of the four applicability requirements of a major environmental rule. The proposed rules do 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 proposed specifically to comply with the requirements of 42 USC, §§7661 - 7661e and related provisions of the Texas Clean Air Act (TCAA), and do not exceed the requirements of either. Additionally, the proposed rules do not exceed a requirement of a delegation agreement,

since there is agreement that is applicable to this rulemaking, and are not proposed solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The purpose of the proposed rules is to fulfill the commission's obligation to implement the requirements of 40 CFR Part 70 through the creation of a state operating permit program. The commission was granted final approval of the operating permit program in the December 6, 2001 issue of the *Federal Register* (66 FR 63318). EPA issued an NOD on January 7, 2002 for the operating permit program, 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 proposed rules will advance this purpose by responding to the deficiencies identified by EPA in the NOD.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed 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 proposed 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 operating permit program to avoid the imposition of sanctions under 42 USC, §7509. Additionally, promulgation and enforcement of these rules will not burden private real property. The proposed 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 proposed rules do not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the 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 proposed 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 the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to this rulemaking is the policy (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 policy and goal.

The commission seeks public comment on the consistency of the proposed rulemaking with applicable CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

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

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held on August 19, 2002 at 2:00 p.m. at the Texas Natural Resource Conservation Commission Complex in Building E, Room 201S, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-043-122-AI. Comments must be received by 5:00 p.m., August 26, 2002. For further information please contact Tara Capobianco, Technical Program Support Section, at (512) 239-1117, or Alan Henderson, Regulation Development Section, at (512) 239-1510.

SUBCHAPTER A: DEFINITIONS

§122.10

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code (THSC), TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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 authorizing the administration and enforcement of federal operating permits; §382.0543, which authorizes the commission to review and renew federal operating permits; and Texas Water Code (TWC), §5.103, which authorizes the commission to propose rules.

The proposed amendment implements THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.0513, concerning the Establishment and Enforceability of Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application Information; §382.054, concerning Federal Operating Permits; §382.0541, concerning the Administration and

Enforcement of Federal Operating Permits; §382.0543, concerning Review and Renew Federal Operating Permits; and TWC, §5.103, concerning Rules.

§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) (No change.)

(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) - (E) (No change.)

(F) The following [All of the] requirements of [under] Chapter 101 of this title (relating to General Air Quality Rules): [, Subchapter H of this title (relating to Emissions Banking and Trading) as they apply to the emission units at a site.]

(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, 101.6, 101.7, 101.10, and 101.11 of this title;

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

(iv) all of the requirements under Chapter 101, Subchapter H of this title as they apply to the emission units at a site.

(G) Any site specific requirement of the SIP [state implementation plan (SIP)].

(H) - (J) (No change.)

[(3) Compliance assurance monitoring (CAM) case-by-case determination - A
monitoring plan designed by the permit holder and approved by the executive director to satisfy 40 CFR
Part 64 (Compliance Assurance Monitoring).]

[(4) Compliance assurance monitoring general operating permit (CAM GOP) - A
GOP issued under Subchapter F of this chapter (relating to General Operating Permits) which provides monitoring options established by the executive director to satisfy Subchapter H of this chapter (relating to Compliance Assurance Monitoring).]

(3) [(5)] Continuous compliance determination method - For purposes of [Subchapter H of this chapter and] 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) [(6)] 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. [Subchapter H of this chapter, equipment that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere.]

[(A) A control device does not include the following:]

[(i) passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics; or]

[(ii) inherent process equipment, which is equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that is installed and operated primarily for purposes other than compliance with applicable requirements. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment.]

[(B) If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular emission unit, then that definition shall apply for purposes of Subchapter H of this chapter.]

(5) [(7)] **Deviation** - Any indication of noncompliance with a term or condition of the permit as found using [, at a minimum, but not limited to,] compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information.

(6) [(8)] **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) [(9)] **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) [(10)] **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) [(11)] **FCAA, §502(b)(10) changes** - Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

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

(11) [(13)] **General operating permit [(GOP)]** - 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) [(14)] **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.

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

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

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

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

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

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

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

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

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

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

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

(20) [(24)] **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).

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

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

(23) [(27)] **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.

(24) [(28)] **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).

(25) [(29)] **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).

(26) [(30)] **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.

(27) [(31)] **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.

(28) [(32)] **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 proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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; §382.054, which requires sources to obtain a Federal Operating Permit; and TWC, §5.103, which authorizes the commission to propose rules.

The proposed amendment implements THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.054, concerning Federal Operating Permits; and TWC, §5.103, concerning Rules.

§122.122. Potential To Emit.

(a) (No change.)

(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) - (d) (No change.)

(e) The certified registrations of emissions shall be submitted to the executive director; to the appropriate commission regional office; and all local air pollution control agencies having jurisdiction over the site. [and records demonstrating compliance with such registration shall be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the Texas Air Control Board or any air pollution control agency having jurisdiction.]

(1) Certified registrations established prior to the effective date of this rule shall be submitted on or before January 2, 2003.

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

(f) All certified registrations and records demonstrating compliance with a certified registration shall be maintained on-site, or at an accessible designated location, 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. 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 proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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; §382.0541 authorizing the administration and enforcement of Federal operating permits; and TWC, §5.103, which authorizes the commission to propose rules.

The proposed amendments implement THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.0515, concerning application information; §382.054, concerning Federal Operating Permits; §382.0541, concerning the administration and enforcement of Federal Operating Permits; and TWC, §5.103, concerning Rules.

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

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

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

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

(4) a compliance plan including the following information:

(A) (No change.)

(B) for all emission units addressed in the application, an indication of the compliance status with respect to all applicable requirements, based on [, at a minimum, but not limited to,] any compliance method specified in the applicable requirements and any other credible evidence or information;

(C) (No change.)

(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, 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) - (10) (No change.)

(11) for any application for which the executive director has not authorized initiation of public notice by June 3, 2001 [the effective date of this rule], 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) - (g) (No change.)

§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) (No change.)

(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)~~ upon the granting of the authorization to operate under a CAM GOP or periodic monitoring GOP, the information specified in §122.714(a) or §122.612 of this title (relating to Compliance Assurance Monitoring Requirements in Permits and General Operating Permit Applications and Periodic Monitoring Requirements in Permits and General Operating Permit Applications, respectively), excluding the justification for those requirements; and]

~~(3)~~ [(4)] 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 proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a 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; §382.0541 authorizing the administration and enforcement of federal operating permits; and TWC, §5.103, which authorizes the commission to propose rules.

The proposed amendments and new section implement THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.0513, concerning the Establishment and Enforceability of Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application Information; §382.054, concerning Federal Operating Permits; §382.0541 concerning The Administration and Enforcement of Federal Operating Permits; and TWC, §5.103, concerning Rules.

§122.142. Permit Content Requirements.

(a) (No change.)

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

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

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

(c) Each permit shall contain periodic monitoring requirements [, as required by the executive director,] 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 [designed to produce data that are representative of the emission unit's compliance with the applicable requirements].

(d) - (g) (No change.)

(h) Permits shall contain compliance assurance monitoring [as specified in Subchapter H of this chapter (relating to 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) - (15) (No change.)

(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. [Representations in general operating permit applications for CAM and periodic monitoring, as specified in §122.140(3) of this title, are conditions under which the permit holder shall operate.]

(17) - (18) (No change.)

§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 this subchapter.

(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) If 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 the results of compliance or performance testing document a need to modify the existing CAM requirements, the permit holder, if necessary, shall within 30 days, 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).

(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 §122.616 of this title (relating to Quality Improvement Plans), if required by the executive director.

(b) 40 Code of Federal Regulations §64.7 (Operation of Approved Monitoring) apply.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 5: MISCELLANEOUS

§122.161

STATUTORY AUTHORITY

The amendment is proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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; §382.0541 authorizing the administration and enforcement of federal operating permits; and TWC, §5.103, which authorizes the commission to propose rules.

The proposed amendment implements THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.0513, concerning the Establishment and Enforceability of Permit Conditions; §382.054, concerning Federal Operating Permits; §382.0541, concerning the Administration and Enforcement of Federal Operating Permits; and TWC, §5.103, concerning Rules.

§122.161. Miscellaneous.

(a) - (c) (No change.)

(d) The requirements of Subchapter G [or Subchapter H] 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 an air pollution control agency having jurisdiction and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under the TCAA, FCAA, or by an air pollution control agency having jurisdiction.

(e) (No change.)

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

DIVISION 1: INITIAL PERMIT ISSUANCES

§122.201

STATUTORY AUTHORITY

The amendment is proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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 authorizing the administration and enforcement of federal operating permits; §382.0543, which authorizes the commission to review and renew federal operating permits; and TWC, §5.103, which authorizes the commission to propose.

The proposed amendment implements THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.0541, concerning the Administration and Enforcement of Federal Operating Permits; §382.0543, concerning review and renew Federal Operating Permits and TWC, §5.103, concerning Rules.

§122.201. Initial Permit Issuance.

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

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

(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.

(b) - (g) (No change.)

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

DIVISION 2: PERMIT REVISIONS

§122.217, §122.221

STATUTORY AUTHORITY

The amendments are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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 authorizing the administration and enforcement of federal operating permits; §382.0543, which authorizes the commission to review and renew federal operating permits; and TWC, §5.103, which authorizes the commission to propose rules.

The proposed amendments implement THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.0513, concerning the Establishment and Enforceability of Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application Information;

§382.054, concerning Federal Operating Permits; §382.0541, concerning the Administration and Enforcement of Federal Operating Permits; §382.0543, concerning Review and Renew Federal Operating Permits; and TWC, §5.103, concerning Rules.

§122.217. Procedures for Minor Permit Revisions.

(a) (No change.)

(b) For changes to a permit required as the result of the revision of a compliance assurance monitoring general operating permit or periodic monitoring general operating permit, the following requirements apply.]

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

[(A) 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 governing the change.]

[2) The information in §122.216(1) - (5) of this title shall be submitted no later than the compliance date of the new requirement or effective date of the repealed requirement, whichever is applicable.]

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

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

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

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

§122.221. Procedures for Significant Permit Revisions.

(a) (No change.)

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

(1) (No change.)

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

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

(4) the permit contains compliance assurance monitoring for large pollutant-specific emission units submitted in the revision application. Large pollutant specific emission units are emission units 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.

(c) (No change.)

**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 proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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 authorizing the administration and enforcement of federal operating permits; §382.0543, which authorizes the commission to review and renew federal operating permits; and TWC, §5.103, which authorizes the commission to propose rules.

The proposed amendment implements THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.0541, concerning the Administration and Enforcement of Federal Operating Permits; §382.0543, concerning Review and Renew Federal Operating Permits; and TWC, §5.103, concerning Rules.

§122.350. EPA Review.

(a) (No change.)

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

(1) For initial issuances, significant permit revisions, reopenings, and renewals the proposed permit shall be submitted to the EPA. At the discretion of the executive director, the procedural requirements of §122.320 of this title (relating to Public Notice), §122.322 of this title (relating to Bilingual Notice), and the requirements for EPA Review under this section may run concurrently. [If appropriate, the executive director may extend the EPA review period.] 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, the EPA review period shall begin no earlier than the close of the public comment period or date of the hearing.

(2) (No change.)

(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, the EPA review period shall begin no earlier than the close of the public comment period or date of the hearing.

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) - (e) (No change.)

SUBCHAPTER F: GENERAL OPERATING PERMITS

DIVISION 1: PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

§§122.502 - 122.504

STATUTORY AUTHORITY

The amendments are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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 authorizing the administration and enforcement of federal operating permits; §382.0543, which authorizes the commission to review and renew federal operating permits; and TWC, §5.103, which authorizes the commission to propose rules.

The proposed amendments implement THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.0513, concerning the Establishment and Enforceability of Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application Information; §382.054, concerning Federal Operating Permits; §382.0541, concerning the Administration and

Enforcement of Federal Operating Permits; §382.0543, concerning Review and Renew Federal Operating Permits; and TWC, §5.103, concerning Rules.

§122.502. Authorization to Operate.

(a) (No change.)

(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. [Upon the granting of the authorization to operate under a CAM GOP or periodic monitoring GOP, the information specified in §122.140(3) becomes a condition under which the permit holder shall operate.]

(c) - (h) (No change.)

§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 CAM and periodic monitoring information specified in §122.140(3) of this title; or]

~~2~~ [(3)] 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) - (4) (No change.)

[~~5~~] any changes in the CAM and periodic monitoring information as specified in §122.140(3) of this title;]

~~5~~ [(6)] the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

~~6~~ [(7)] a statement that the emission units qualify for the general operating permit;
and

(7) [(8)] 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: [noted in §122.608(e) and §122.708(d):]

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

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

§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 [, or the CAM and periodic monitoring information, as specified in §122.140(3) of this title,] 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) - (C) (No change.)

~~[(D)~~ any changes in the CAM and periodic monitoring information as specified in §122.140(3) of this title;]

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

~~[(E)]~~ ~~[(F)]~~ a statement that the emission units qualify for the general operating permit; and

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

(2) (No change.)

(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)]~~ ~~[(F)]~~ 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 [45] 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)~~ [(F)] 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 [45] days after the issuance of the general operating permit; and

(B) (No change.)

(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 operation 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 requirements submitted 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 requirements submitted 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 general operating permit.

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

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

[(4) the CAM or periodic monitoring information specified in §122.140(3) of this title remains unchanged.]

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

SUBCHAPTER G: PERIODIC MONITORING

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

STATUTORY AUTHORITY

The repeals are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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 TWC, §5.103, which authorizes the commission to propose rules.

The proposed repeals implement THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; and TWC, §5.103, concerning Rules.

§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 proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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; §382.0541 authorizing the administration and enforcement of federal operating permits; and TWC, §5.103, which authorizes the commission to propose rules.

The proposed amendment and new sections implement THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; §382.0513, concerning the Establishment and Enforceability of Permit Conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application Information; §382.0541, concerning the Administration and Enforcement of Federal Operating Permits; and TWC, §5.103, concerning Rules.

§122.602. Periodic Monitoring Applicability.

(a) (No change.)

(b) The requirements of this subchapter shall not apply to emission limitations or standards for which the executive director has determined that the applicable requirement has [sufficient] 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) - (4) (No change.)

§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(4) 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 include, as appropriate, steps to evaluate and correct control performance, process operation changes, preventative maintenance practices, and more frequent or improved monitoring.

(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 proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the 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 TWC, §5.103, which authorizes the commission to propose rules.

The proposed repeals implement THSC, §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.051, concerning Permitting Authority of Board and Rules; and TWC, §5.103, concerning Rules.

§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.