

The Texas Commission on Environmental Quality (TCEQ or commission) proposes the repeal of §116.170; new §§116.120, 116.170, 116.172; and amendments to §§116.12, 116.114, 116.115, 116.143, 116.150, 116.313, 116.315, and 116.715. If adopted, the new and amended sections would be submitted to the United States Environmental Protection Agency as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission is proposing rule amendments to ensure the timely submission of updated and additional information used to process NSR applications. The commission is proposing that applicants that do not supply requested and necessary information for the processing of a permit application will have their application voided. Applications resubmitted within six months would not be subject to any further permit fees, but the applicant would be required to go back through the public notice process in order to make possible a public review of updated and current information about the proposed facility.

The commission currently requires that persons issued an NSR permit under Chapter 116 begin construction of the facility within 18 months of permit issuance or the permit will be voided. The executive director may grant an additional one time 18-month extension to this period. In the case of flexible permits, the time period to begin construction is specified in the permit with one 12-month extension available. In the large majority of cases, these cumulative time periods are sufficient to resolve issues associated with starting construction. In some cases, particularly when third party litigation is involved, a permit holder may not be able to start construction within the extended time periods. The commission is therefore proposing that an additional extension be available. The commission is specifically proposing that the first 18-month extension may be granted at the permit

holder's request. Another extension of up to 18 months may be granted by the executive director to resolve litigation that is not of the permit holder's origin. The commission also believes that economic or other circumstances can arise which would affect the decision to start construction and proposes that the executive director retain discretion to grant a further extension for reasons, not specified in the rule, if the permit holder has demonstrated an intent to build the project by spending at least 15% of the estimated capital cost of the project. Any permit holder receiving a second extension would be required to demonstrate that the project continues to meet all the rules and regulations of the commission and the intent of the Texas Clean Air Act (TCAA), including protection of the public's health and physical property. Any extension of the time to begin construction of a project will subject the permit holder to additional best available control technology and offset review. Because the same conditions that would motivate a new NSR permit holder to seek extensions can also apply to holders of flexible permits, the commission proposes to apply the extension periods and conditions in proposed §116.120 to flexible permits as well. Flexible permits are used to authorize changes and modification to existing facilities.

Emission reductions in the form of offsets are obtained prior to the issuance of an NSR permit to counter the effect of new emissions on air quality. In recent years, the commission has established programs that create emission caps in Houston and Dallas and use emission credits and allowances to maintain the caps. Emission offsets are also considered in these programs and must meet the same certification standards as emission credits in order to achieve consistent protection of air quality. The commission is therefore proposing that emission offsets be certified in the same way as emission credits in 30 TAC Chapter 101, Subchapter H, Emissions Banking and Trading. The commission proposes to retain in Chapter 116 certification of future offsets internal to a facility. In many cases, these future internal offsets are credited for the replacement of existing equipment that must be kept in operation

until the new, lower emitting equipment is operational. This is in contrast to offsets used externally to a facility which must occur before it can be credited. Those portions of §116.170 that concern the offset of emissions from rocket engine firing and cleaning would be transferred to a new §116.172.

Emission offsets are reductions that are used to compensate for an emission increase, usually from new construction, in the same geographic area. Consequently, offsets are not permanent reductions but will reappear in the future. In order to make meaningful emission control plans for nonattainment and prevention of significant deterioration areas, the commission needs timely and accurate information on emission reductions that will be used as offsets. The commission is proposing that emission reductions not yet certified and banked as emission credits by the effective date of these rules must be certified and banked by September 1, 2004, in order to be considered for offsets.

The commission requires adequate time to process permit renewals and, for workload management, needs to ensure that those permits closest to expiration are received first. For these reasons, the commission is also proposing that permit renewal applications be submitted at least six months, but no earlier than 18 months, before the permit will expire. By establishing a date for the earliest submission of a renewal application, the commission will also increase the possibility that renewal applications are received under the most current fee tables.

SECTION BY SECTION DISCUSSION

Subchapter A: Definitions

The definition of “offset” in §116.12 would be amended to state that an offset would have to be certified as an emission credit under Chapter 101, Subchapter H, in order to qualify as a reduction.

The commission is also proposing minor changes to abbreviations, rule citations, and acronyms to conform with *Texas Register* formatting in the definitions.

Subchapter B: New Source Review Permits

The proposed amendments to §116.114, Application Review Schedule, would provide for the voiding of an application for a permit or permit amendment in the event of deficient information supplied with the application. After two written notifications of the deficiency, if an applicant fails to make a good faith effort to provide the required information, the executive director will void the application and notify the applicant. To pursue the project, the applicant shall submit an entirely new application with a new Form PI-1. The new application will be subject to the state and federal rules and regulations in place at the time of submittal. If a new application is submitted within six months of the voidance of the original application, the application will be exempt from the fee requirements under §116.140, Applicability. However, the applicant must go through a new technical review and republish public notice.

The commission proposes to amend §116.115, General and Special Conditions, to remove language relating to the voiding of permits and extensions of time to begin construction and transfer this language to a new §116.120.

The new §116.120, Voiding of Permits, addresses the voiding of permits and contains language relocated from §116.115. The relocated language would be amended to allow an additional extension of up to 18 months to begin construction of a project authorized with an NSR permit. This extension

would be available in the case of a construction delay caused by litigation, not of the permit holder's origin, associated with the issuance of the permit. The executive director may also issue an extension if the permit holder has spent at least 15% of the estimated cost of construction on preparatory work and has demonstrated that emissions from the facility are in compliance with commission rules and the intent of the TCAA.

The proposed amendments to §116.143, Payment of Fees, would state that the permit application fee must be received before an application will be processed or before the start of any time constraints required of the commission in application processing. This amendment is intended to ensure the commission receives fees needed to cover the expense in permit review and processing. The commission retains the conditions under which fees will or will not be returned to the applicant. If no permit or amendment is issued or if the applicant withdraws the application prior to permit issuance, then one-half of the fee will be refunded. If it is determined that a permit application will meet the requirements of a permit by rule, the applicant is entitled to a refund of the fee difference. The commission proposes to add a qualification for a standard permit or de minimis classification under §116.119, De Minimis Facilities or Sources, to those conditions under which the applicant may withdraw the permit application and receive a refund of the fee difference.

The proposed amendment of §116.150, New Major Source or Major Modification in Ozone Nonattainment Areas, would delete subsection (c) because the time period specified for the application of certain exemptions to nitrogen oxides reductions for sources in the Houston-Galveston and Beaumont-Port Arthur ozone nonattainment areas has expired.

The proposed new §116.170, Applicability of Emission Reductions as Offsets, would establish the requirements for the use of emission reductions as offsets. Most existing reductions must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4. Some reductions that will be used internally may still be certified under Chapter 116. The proposed section would establish the conditions by which future reductions may be used as offsets. The permit for the facility must contain special conditions that specify the date the permit holder must submit to the executive director appropriate and sufficient data that the reduction has occurred. The reduction must be achieved prior to the commencement of the permitted emissions for which the offset is required. The reduction must meet the requirements of Chapter 101, and the permit holder agrees to obtain additional offsets if the executive director determines the reductions do not satisfy the original offset requirements.

The proposed new §116.172, Emissions Offsets from Rocket Engine Firing and Cleaning, would contain the conditions under which emissions from rocket engine firing or cleaning may be offset by alternative or innovative means. These requirements would be transferred to the new section from existing §116.170. The language would be modified to state that information regarding rocket engine offsets would be submitted to the executive director instead of the commission.

Subchapter D: Permit Renewals

The proposed amendment to §116.313, Renewal Application Fees, would correct the commission's address with the correct zip code.

The proposed amendments to §116.315, Permit Renewal Submittal, would state that an application for permit renewal must be submitted at least six months but no earlier than 18 months prior to the permit

expiration date. The commission intends to allow sufficient time for preparation and submission of renewals for permit holders whose permit expires within six months of the potential effective date of these proposed rules. Therefore, this provision would not become effective until February 1, 2004. With executive director approval, applications may be submitted before or after these specified time periods.

Subchapter G: Flexible Permits

The proposed amendments to §116.715, General and Special Conditions, would remove language concerning voiding of the permit. The commission proposes to apply the same extension of construction conditions, as stated in the proposed new §116.120, to flexible permits as would be applied to other NSR permits.

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 may be fiscal implications, which are not anticipated to be significant, for certain units of state and local government that own and operate equipment under NSR permit authorizations. Units of state and local government that do not own or operate equipment affected by NSR permits would not be affected by the proposed rules. The commission anticipates the costs for those affected units of government that have NSR permit applications voided by the commission will face additional public notice costs between \$700 and \$4,000 due to implementation of the proposed rules.

Units of government most likely to be affected by the proposed rulemaking are municipally-owned electric generating units (power plants) and landfills along with a small number of university research facilities. The total number of sites with existing NSR permits is approximately 8,000, some of which are owned and operated by units of state and local government. The commission currently processes approximately 1,200 new NSR standard permits, 350 NSR permit amendments, and 100 NSR permit renewals annually, a small number of which are submitted by units of state and local government. Of the total number of applications processed, approximately 115 are voided each year by the commission and sent back to the applicant for further processing. These proposed rules would not require additional emission controls or new capital expenses, and would not change existing permit application fee rates.

The proposed rules would require emission reductions to be used as emission offsets, which is an emission reduction that is used to compensate for emission increases from new construction, be certified in the same manner that exists for emission credits. Additionally, the proposed rules would require existing emission credits to be certified and banked as offsets by September 1, 2004, specify conditions under which permit fees may be refunded, specify a time period for the submission of permit renewal applications, and specify which fee schedule will apply to permit renewals.

The proposed rules would also implement updated requirements for applicants that have NSR permit applications voided by the commission. The proposed rules would require the commission to notify an applicant of the voidance and provide specific details concerning the application deficiencies. An applicant with a voided NSR permit application would be required to submit a new application and repeat the public notification process. The costs for public notice vary significantly depending on the location of the facility and its proximity to large metropolitan areas. Small town/city newspapers

generally charge much less for publication of a public notice. The commission estimates a large city newspaper would charge approximately \$3,000 for the display notice and approximately \$450 for the legal notice. A smaller city newspaper would charge approximately \$210 for the display notice and \$20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be \$150. The cost for signs at affected facilities would cost approximately \$300. The total costs for public notice associated with an NSR permit application, renewal, or amendment would range from \$700 to \$4,000, assuming alternative language notice is also required.

This proposal would waive application fees for applicants who have had applications voided and who reapply within six months. If they do not reapply during that period, the commission would require the submission of the full application fee. The fee is .3% of the estimated capital cost of the project starting with the minimum fee of \$900 and a statutory maximum of \$75,000.

Persons who have been issued an NSR permit currently have 18 months to begin construction of the project. A one time 18-month extension is available to the holder on request. The commission is proposing that another extension of up to 18 months be made available for permit holders whose project has been delayed through litigation. The commission would also consider other circumstances for an extension if the permit holder meets certain conditions. Additionally, the permit holder would have to spend 15% of the cost of the project in preparation for construction. The median range of cost for NSR projects is \$8 to \$9 million. Fifteen percent of these figures is \$1.2 million and \$1.35 million, respectively.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be more consistent application of emission credits and offsets, and more timely NSR application submissions and receipt of application fees.

The total number of sites with existing NSR permits is approximately 8,000, the majority of which are large industrial businesses. The commission currently processes approximately 1,200 new NSR permits, 350 NSR permit amendments, and 100 NSR permit renewals annually, the majority of which are submitted by industry. Of the total number of applications processed, approximately 115 are voided by the commission and sent back to the applicant for further processing. These proposed rules would not require additional emission controls or new capital expenses, and would not change existing permit application fee rates.

The proposed rules would require that emission reductions used as emission offsets be certified in the same manner that exists for emission credits. Additionally, the proposed rules would require existing emission reductions to be certified and banked as offsets by September 1, 2004, specify conditions under which permit fees may be refunded, specify a time period for the submission of permit renewal applications, and specify which fee schedule will apply to permit renewals.

The proposed rules would also implement updated requirements for applicants that have NSR permit applications voided by the commission. The proposed rules would require the commission to notify an applicant of the voidance and provide specific details concerning the application deficiencies. An applicant with a voided NSR permit application would be required to submit a new application and

repeat the public notification process. The costs for public notice vary significantly depending on the location of the facility and its proximity to large metropolitan areas. The commission estimates the total cost for public notice will range from \$700 to \$4,000 per NSR application.

This proposal would waive application fees for applicants who have had applications voided and who reapply within six months. If they do not reapply during that period, the commission would require the submission of the full application fee. The fee is .3% of the estimated capital cost of the project starting with the minimum fee of \$900 up to the statutory maximum of \$75,000.

Persons who have been issued an NSR permit currently have 18 months to begin construction of the project. A one time 18-month extension is available to the holder on request. The commission is proposing that another extension of up to 18 months be made available for permit holders whose project has been delayed through litigation. The commission would also consider other circumstances for an extension if the permit holder has spent 15% of the cost of the project. The median range of cost for NSR projects is \$8 to \$9 million. Fifteen percent of these figures is \$1.2 million and \$1.35 million, respectively.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small and micro-businesses due to implementation of the proposed rules, which are intended to make procedural changes to NSR permit application requirements. The commission anticipates there will be additional fiscal implications for only those small and micro-businesses with a voided NSR permit application that would be required to submit a new application and repeat the public notification process.

The total number of sites with existing NSR permits is approximately 8,000, a small number of which may be small or micro-businesses. The commission currently processes approximately 1,200 new NSR permits, 350 NSR permit amendments, and 100 NSR permit renewals annually, a small number of which may be submitted by small or micro-businesses that would be affected by the proposed rules. Of the total number of applications processed, approximately 115 are voided by the commission and sent back to the applicant for further processing.

This rulemaking would require the commission to notify an applicant of the voidance and provide specific details concerning the application deficiencies. An applicant with a voided NSR permit application would be required to submit a new application and repeat the public notification process. The costs for public notice vary significantly depending on the location of the facility and its proximity to large metropolitan areas. The commission estimates the total cost for public notice will range from \$700 to \$4,000 per NSR application.

This proposal would waive application fees for applicants who have had applications voided and who reapply within six months. If they do not reapply during that period, the commission would require the submission of the full application fee. The fee is .3% of the estimated capital cost of the project starting with the minimum fee of \$900 and the statutory maximum of \$75,000.

The following is an analysis of the potential additional costs per employee for small or micro-businesses affected by the proposed rules. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. A small business which has to go through the public notification process due to a voided NSR permit application would pay an average of between approximately \$700 to \$4,000 per

notice or \$7.00 to \$40 per employee, while a micro-business would have to pay an average of between \$35 to \$200 per employee to comply with the proposed rules. Small businesses that do not reapply for a voided permit within six months would be required to pay application fees. This cost would vary according to the size of the project, and would cause an increase in the cost per employee.

Small businesses would also be eligible to apply for the additional extension of time to begin construction and would be subject to the same requirement to spend 15% of the cost of the project in preparation. Small businesses are typically under the median cost of an NSR project and would be required to spend proportionately less to qualify for the second extension.

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 reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a “major environmental rule.” Major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules would require that emission reductions used as emission offsets be certified in a manner consistent

with other TCEQ regulations, establish a deadline for the certification of existing reductions as emission offsets, establish procedures for voiding permit applications, establish conditions under which permit fees may be refunded, specify a time period for the submission of permit renewal applications, and specify which fee schedule will apply to permit renewals. These proposed rules would not require additional emission controls or new capital expenses. Applicants who have their applications voided would be required to submit a new application and repeat the public notification process. Depending on location, this notification can cost from \$700 to \$4,000. This expense would only be incurred following a lack of action from the applicant after being notified of deficiencies in its application.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rules in Chapter 116 are not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rules do not meet any of the statute's four applicability requirements. The commission invites public comment regarding the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the proposed rules. Promulgation and enforcement of the rules will not burden private real property. The proposed rules will not affect private property in a manner which restricts or limits an owner's right to the property that would

otherwise exist in the absence of a governmental action. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore, will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission's preliminary consistency determination for the proposed rules in accordance with 31 TAC §505.22 found that the proposed rulemaking is consistent with the applicable CMP goal to protect and preserve the quality and values of coastal natural resource areas (31 TAC §501.12(1)), and the policy which requires that the commission protect air quality in coastal areas (31 TAC §501.14(q)). The proposed rules would require emission reductions used as emission offsets be certified in a manner consistent with other TCEQ regulations, establish a deadline for the certification of existing reductions as emission offsets, establish procedures for voiding permit applications, establish conditions under which permit fees may be refunded, specify a time period for the submission of permit renewal applications, and specify which fee schedule will apply to permit renewals. No new emissions would be authorized if these proposals are adopted. Therefore, the rulemaking is consistent with the CMP. The commission invites public comment regarding the consistency of the proposed rules with the CMP.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

New source review is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits. These amendments affect the issuance, renewal, or extension of a new source review permit. Because they do not address permit content, the amendments do not require changes to Federal Operating Permits.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 24, 2003 at 10:00 a.m. in Building F, Room 3202, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before 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 Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-003-116-AI. Comments must be received by 5:00 p.m., May 5, 2003. Copies of the proposed rules can be

obtained from the commission's website at <http://www.tceq.state.tx.us/oprd>. For further information, please contact Clifton Wise, Policy and Regulations Division, at (512) 239-2263.

SUBCHAPTER A: DEFINITIONS

§116.12

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; and §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants. The amendment is also proposed under 42 United States Code (USC), §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The proposed amendment implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, and 382.016.

§116.12. Nonattainment Review Definitions.

Unless specifically defined in the TCAA [Texas Clean Air Act (TCAA)] or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in §116.150 and §116.151 of this title (relating to Nonattainment Review), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) **Contemporaneous period** - As follows.

(A) For major sources with the potential to emit 250 tons per year (tpy) [tpy] or more of a nonattainment pollutant, the period between:

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

(B) - (C) (No change.)

(8) **De minimis threshold test (netting)** - A method of determining if a proposed emission increase will trigger nonattainment review. The summation of the proposed increase with all other creditable source emission increases and decreases during the contemporaneous period is compared to the MAJOR MODIFICATION column of Table I (in tons per year [tpy]) for that specific nonattainment area. If the major modification level is exceeded, then nonattainment review is required.

(9) **Lowest achievable emission rate** - For any emitting facility, that rate of emissions of a contaminant which does not exceed the amount allowable under applicable New Source Performance Standards promulgated by the EPA [United States Environmental Protection Agency] under the FCAA [Federal Clean Air Act], §111, and which reflects the following:

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

(10) **Major facility/stationary source** - Any facility/stationary source which emits, or has the potential to emit, the amount specified in the MAJOR SOURCE column of Table I of this section or more of any air contaminant (including volatile organic compounds (VOCs)) for which a National Ambient Air Quality Standard (NAAQS) has been issued. Any physical change that would occur at a stationary source not qualifying as a major stationary source in Table I of this section, if the change would constitute a major stationary source by itself. A major stationary source that is major for VOCs [volatile organic compounds] or nitrogen oxides shall be considered major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in [Title] 40 Code of Federal Regulations[, Part] §51.165(a)(1)(iv)(C).

(11) **Major modification** - As follows.

(A) Any physical change in, or change in the method of operation of a facility/stationary source that causes a significant net emissions increase for any air contaminant for which a National Ambient Air Quality Standard (NAAQS) [an NAAQS] has been issued. At a facility/stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified in the MAJOR SOURCE column of Table I of this section. At an existing major facility/stationary source, the increase must equal or exceed that specified in the MAJOR MODIFICATION column of Table I.

Figure: 30 TAC §116.12(11)(A)

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS			
POLLUTANT	MAJOR SOURCE	MAJOR	OFFSET RATIO
<u>designation</u> ¹	<u>tons/year</u>	MODIFICATION ²	<u>minimum</u>
		<u>tons/year</u>	
OZONE (VOC, NO _x) ³			
I marginal	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1 ⁴
II serious	50	50	1.00 to 1 ⁴
SO ₂	100	40	1.00 to 1 ⁴
PM ₁₀			
I moderate	100	15	1.00 to 1 ⁴
II serious	70	15	1.00 to 1 ⁴
NO _x ⁵	100	40	1.00 to 1 ⁴
Lead	100	0.6	1.00 to 1 ⁴

¹ Texas nonattainment area designations are specified in 40 Code of Federal Regulations §81.344.

² The major modification threshold is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to

the project. The appropriate netting triggers for existing major sources of NO_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the major modification level listed in Table I.

³ VOC and NO_x are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. As specified in §116.150 of this title, for El Paso County, the NNSR rules apply to sources of VOC, but not to sources of NO_x .

⁴ The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds

NO_x = oxides of nitrogen

CO = carbon monoxide

SO_2 = sulfur dioxide

PM_{10} = particulate matter of less than ten microns in diameter

⁵ Applies to the NAAQS for nitrogen dioxide (NO_2).

(B) (No change.)

(12) (No change.)

(13) **Net emissions increase** - The amount by which the sum of the following exceeds zero: the total increase in actual emissions from a particular physical change or change in the method of operation at a stationary source, plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases.

(A) - (D) (No change.)

(E) At major sources with the potential to emit 250 tons per year [tpy] or more of a nonattainment pollutant:

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

(F) For all major sources of nitrogen oxides (NO_x) [NO_x] in ozone nonattainment areas, increases and decreases of NO_x are creditable only if they resulted from authorizations or applications received on or after November 15, 1992.

(14) **Offset ratio** - For the purpose of satisfying the emissions offset reduction requirements of the FCAA, §173(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total allowable emissions increases of such pollutants. The minimum offset

ratios are included in Table I of this section under the definition of major modification. In order for a reduction to qualify as an offset, it must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking or Trading; or Discrete Emission Credit Banking and Trading), except as provided for in §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets). The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit [to be considered creditable, offsets must be enforceable, permanent, quantifiable through a replicable methodology, real, and surplus. The reduction must be surplus at the time it was created as well as when it is used. The reduction must have occurred after January 1, 1990, and have been reported or represented in the 1990 or a subsequent emissions inventory. The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit].

(15) **Potential to emit** - The maximum capacity of a facility/stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the facility/stationary source to emit a 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 only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations §51.165(a)(1)(viii), do not count in determining the potential to emit for [of] a stationary source.

(16) - (17) (No change.)

(18) **Stationary source** - Any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA [Federal Clean Air Act].

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§§116.114, 116.115, 116.120

STATUTORY AUTHORITY

The new and amended sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new and amended sections are also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of

Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; and §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission.

The proposed new and amended sections implement TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, and 382.0518.

§116.114. Application Review Schedule.

(a) (No change.)

(b) Voiding of deficient application.

(1) (No change.)

(2) If an applicant fails to make such good faith effort, the executive director shall void the application and notify the applicant of the voidance and the remaining deficiencies in the voided application. If a new [the] application is submitted [resubmitted] within six months of the voidance, it shall meet the requirements of §116.111 of this title (relating to General Application) but will be exempt from the requirements of §116.140 of this title (relating to Applicability).

(c) (No change.)

§116.115. General and Special Conditions.

(a) (No change.)

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

(1) (No change.)

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

[(A) Voiding of permit. A permit or permit amendment under this chapter is automatically void if the permit holder does one of the following:]

[(i) fails to begin construction within 18 months of date of issuance.
The executive director may grant a one-time 18-month extension to the date to begin construction;]

[(ii) discontinues construction for more than 18 consecutive months
prior to completion; or]

[(iii) fails to complete construction within a reasonable time.]

(A) [(B)] Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(B) [(C)] Start-up notification.

(i) The permit holder shall notify the appropriate air program regional office of the commission prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow a representative of the commission to be present at the commencement of operations.

(ii) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

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

(C) [(D)] Sampling requirements.

(i) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(ii) All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission.

(iii) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(D) [(E)] Equivalency of methods. The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(E) [(F)] Recordkeeping. The permit holder shall:

(i) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

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

(iii) make the records available at the request of personnel from the commission or 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;

(iv) comply with any additional recordkeeping requirements specified in special conditions attached to the permit;

(v) retain information in the file for at least two years following the date that the information or data is obtained; and

(vi) for persons certifying and registering a federally-enforceable emission limitation in accordance with §116.611 of this title (relating to Registration To Use a Standard Permit), retain all records demonstrating compliance for at least five years.

(F) [(G)] Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(G) [(H)] Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for emissions events and maintenance in accordance with §§101.201, 101.211, and 101.221 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup [Start-up], and Shutdown Reporting and Recordkeeping Requirements; and Operational Requirements).

(H) [(I)] Compliance with rules.

(i) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit.

(ii) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(iii) Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) (No change.)

§116.120. Voiding of Permits.

A permit or permit amendment under this chapter is void if the permit holder does one of the following:

(1) fails to begin construction within 18 months, or a time period specified in the permit, of date of issuance. At the request of the permit holder, the executive director may grant an 18-month extension to begin construction. Permits issued to holders who have received extensions will be subject to further best available control technology review and reevaluation of netting or offsets as applicable. An additional extension of up to 18 months may be granted by the executive director if;

(A) the permit holder becomes involved in litigation not of the permit holder's initiation regarding the issuance of the permit, and demonstrates that emissions from the facility will comply with all rules and regulations of the commission and the intent of the TCAA, including protection of the public's health and physical property; or

(B) the permit holder has spent 15% of the estimated capital cost of the project on preparation for construction, and demonstrates that emissions from the facility will comply with all rules and regulations of the commission and the intent of the TCAA, including protection of the public's health and physical property.

(2) discontinues construction for more than 18 consecutive months prior to completion;

or

(3) fails to complete construction within a reasonable time.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 4: PERMIT FEES

§116.143

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes

the commission to determine when an application is administratively complete; §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission; and §382.061, concerning Application, Permit, and Inspection Fees, which requires the commission to adopt, charge, and collect fees for each application for a permit or renewal of a permit.

The proposed amendment implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, 382.0518, and 382.061.

§116.143. Payment of Fees.

All permit fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) or TCEQ and delivered with the application for permit or amendment to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3088 [78711-3087]. Fees must be paid at the time an application for a permit or amendment is submitted. Applications will not be considered for review nor will any time constraints required of TCEQ for application processing begin until a fee is received [Required fees must be received before the agency will begin examination of the application].

(1) (No change.)

(2) Return of fees. [Fees must be paid at the time an application for a permit or amendment is submitted. If no permit or amendment is issued by the agency or if the applicant

withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded except that the entire fee will be refunded for any such application for which an exemption under Chapter 106 of this title (relating to Exemptions from Permitting) is allowed.] No fees will be refunded after a deficient application has been voided or after a permit or amendment has been issued by the agency. Fees will be returned under the following conditions.

(A) If no permit or amendment is issued by the agency or if the applicant withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded.

(B) The fee difference will be refunded if a permit application is withdrawn because the proposed construction or modification is determined to meet the requirements of:

(i) a standard permit issued under Chapter 116, Subchapter F of this title (relating to Standard Permits);

(ii) a permit by rule under Chapter 106 of this title (relating to Permits by Rule); or

(iii) the conditions of §116.119 of this title (relating to De Minimis Facilities or Sources).

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 5: NONATTAINMENT REVIEW

§116.150

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes

the commission to determine when an application is administratively complete; and §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission.

The proposed amendment implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, 382.0518, and 382.061.

§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas.

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

[(c) For sources located in the Houston/Galveston (HGA) ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) or the Beaumont/Port Arthur (BPA) ozone nonattainment area (Hardin, Jefferson, and Orange counties), the following shall apply to NO_x emissions.]

[(1) For permit applications in review after April 12, 1995, and declared administratively complete on or before December 31, 1997:]

[(A) Subsection (a)(1), (2), and (4) of this section do not apply.]

[(B) The requirements of subsection (a)(3) of this section apply and shall be made a part of the source's permit. However, the requirements shall be held in abeyance for a period

ending no sooner than January 1, 1998. The Commission may on or after January 1, 1998, and after making the determinations described in paragraph (2) of this subsection, require the source to implement the permit requirements imposed pursuant to the requirements of subsection (a)(3) of this section. If the Commission requires implementation, the source shall obtain the NO_x offsets as specified in subsection (a)(3) of this section no later than January 1, 2000.]

[(C) Documentation of proposed increases of NO_x equal to or greater than 40 tons per year, as well as documentation of netting calculations for these increases, shall be submitted.]

[(D) A source otherwise subject to the requirements of subsection (a)(1) - (4) of this section may, at its option, comply with any of those requirements.]

[(2) The commission has reviewed the results of the Urban Airshed Model for the HGA and BPA ozone nonattainment areas, using data from the Coastal Oxidant Assessment for Southeast Texas study, in accordance with the United States Environmental Protection Agency document "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)" (December 1993). The commission has determined that additional NO_x reductions in the HGA and BPA nonattainment areas will contribute to attainment of the National Ambient Air Quality Standards for ozone. The commission will notify sources which have permit requirements in abeyance pursuant to paragraph (1)(B) of this subsection, that the period of abeyance has ended. The source shall obtain the NO_x offsets as specified in subsection (a)(3) of this section no later than January 1, 2000.]

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 7: EMISSION REDUCTIONS: OFFSETS

§116.170

STATUTORY AUTHORITY

The repeal is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air.

The proposed repeal implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, and 382.012.

§116.170. Applicability for Reduction Credits.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 7: EMISSION REDUCTIONS: OFFSETS

§116.170, §116.172

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes

the commission to determine when an application is administratively complete; and §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission. The new sections are also proposed under 42 USC, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The proposed new sections implement TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, and 382.0518.

§116.170. Applicability of Emission Reductions as Offsets.

(a) No reduction may be used as an offset unless it has been certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; or Discrete Emission Credit Banking and Trading), except as provided for in subsection (c) of this section.

(b) Reductions not yet certified and banked as an emission credit must be certified and banked with the executive director by September 1, 2004 in order to be considered for use as an offset.

(c) A future reduction may be used as an offset for a permit provided that:

(1) the permit contains special conditions that specify the date by which the permit holder must submit to the executive director appropriate and sufficient data to verify that the reduction has occurred and the reduction is provided by start of operation;

(2) the reduction must be achieved prior to commencement of the permitted emissions for which the offset is required;

(3) the reduction meets all of the requirements of Chapter 101, Subchapter H, Division 1 or 4 of this title when submitted to the executive director for review per the requirements of the issued permit; and

(4) the permit holder agrees to obtain additional offsets if the review by the executive director indicates the reductions do not satisfy the original offset requirements.

§116.172. Emissions Offsets from Rocket Engine Firing and Cleaning.

Emissions increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source, shall be allowed to be offset by alternative or innovative means, provided the following conditions are met.

(1) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source permitted to test such engines as of November 15, 1990.

(2) The source demonstrates to the satisfaction of the executive director that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(3) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(4) The source will comply with an alternative measure, imposed by the executive director, designed to offset any emissions increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the executive director may impose an emissions fee to be paid, which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years.

SUBCHAPTER D: PERMIT RENEWALS

§116.313, §116.315

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; §382.0518, concerning

Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission; and §382.061, concerning Application, Permit, and Inspection Fees, which requires the commission to adopt, charge, and collect fees for each application for a permit or renewal of a permit.

The proposed amendments implement TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, 382.0518, and 382.061.

§116.313. Renewal Application Fees.

(a) (No change.)

(b) Fees are due and payable at the time the renewal application is filed. No fee will be accepted before the permit holder has been notified by the commission that the permit is scheduled for review. All permit review fees shall be remitted by check, certified check, electronic funds transfer, or money order payable to the Texas Commission on Environmental Quality (TCEQ) and mailed to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3088 [78711-3087]. Required fees must be received before the agency will consider an application to be complete.

§116.315. Permit Renewal Submittal.

(a) An application for renewal must be submitted at least six months, but no earlier than 18 months, [90 days] prior to expiration of the permit or the permit will expire. This subsection will be effective on February 1, 2004 [The executive director may extend the time period for submitting an application].

(b) With executive director approval, the application may be submitted before or after the time period specified in subsection (a) of this section.

(c) [(b)] Any permit issued:

(1) before December 1, 1991, is subject for review 15 years after the date of issuance;

(2) on or after December 1, 1991, is subject for review every ten years after the date of issuance.

(3) at non-federal sources on or after December 1, 1991, may, for cause, contain a provision requiring renewal between five and ten years.

SUBCHAPTER G: FLEXIBLE PERMITS

§116.715

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; §382.0518, concerning

Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission; and §382.061, concerning Application, Permit, and Inspection Fees, which requires the commission to adopt, charge, and collect fees for each application for a permit or renewal of a permit.

The proposed amendment implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, 382.0518, and 382.061.

§116.715. General and Special Conditions.

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

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

(1) [Voiding of permit. A flexible permit or flexible permit amendment under this subchapter is automatically void if the holder fails to complete construction as specified in the flexible permit. Upon request, the executive director may grant a one time 12-month extension of the date to complete construction.] This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).

(2) - (8) (No change.)

(9) Maintenance of emission control. The facilities covered by the flexible permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good

working order and operating properly during normal facility operations. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201 and §101.211 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(10) (No change.)

(d) (No change.)