

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§116.12, 116.150, 116.151, 116.160, and 116.610; the repeal of §§116.180 - 116.183, 116.410, and 116.617; and new §§116.121, 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198, 116.400, 116.402, 116.404, 116.406, 116.617, and 116.1200. Sections 116.12, 116.121, 116.150, 116.151, 116.160, 116.180, 116.182, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198, 116.400, 116.610, and 116.617 are adopted *with changes* to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6183). Sections 116.184, 116.402, 116.404, 116.406, and 116.1200 and the repealed §§116.180 - 116.183, 116.410, and 116.617 are adopted *without changes* to the proposed text as published and the text will not be republished. The amended, repealed, and new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

EPA adopted revisions to 40 Code of Federal Regulations (CFR) §§52.21, 51.165, and 51.166 in the December 31, 2002, publication of the *Federal Register* (67 FR 251), which amended the application of federal new source review (NSR) in air quality permitting. Federal NSR is triggered by a new major source or major modification. If the area in which the source will be located is also classified as nonattainment for a pollutant that will be emitted by the source, the source must offset the emission increase with emission decreases at other facilities or through the purchase and retirement of emission reduction credits. The source would also have to apply control technology that meets the lowest achievable emission rate to the new and modified units.

Federal NSR reform is intended to limit the instances where federal NSR will be required of facilities that undergo modifications. It will streamline plant modifications by allowing small changes to be completed without the delay associated with federal NSR. Currently, most modifications are evaluated to determine the applicability of federal NSR through a netting exercise. Netting is an accounting exercise where, prior to the modification of a facility, the sum of emission increases and decreases over a specified period of time at the plant site is determined. If the total exceeds the major modification threshold, the modification is subject to federal NSR. NSR reform provides an additional path that may be taken to avoid federal NSR applicability (plant-wide applicability limit (PAL)) as well as methods to minimize the emission increase determined in the netting exercise (baseline and actual-to-projected actual emission rates).

The commission's proposal on NSR reform was intended to integrate the federal revisions within an existing state program that addressed similar situations concerning plant-wide emission limits and baseline emission determinations. The commission also solicited comments from affected industries on the relative benefits of an integrated program versus an incorporation of the federal program without substantive changes. It is clear from stakeholder meetings and public comment that a program matching the federal rules is the preferred method of accomplishing federal NSR reform. The commission agrees that it has traditionally approached state NSR permitting separately from federal NSR requirements. Additionally, the commission can continue this approach under federal NSR reform without endangering the attainment of maintenance of national ambient air quality standards (NAAQS) or affecting public health. The commission is adopting rules implementing the federal program on

PALs, actual-to-projected actual emissions test, and baseline determination without substantive changes to the federal model for these programs.

The commission currently allows the inclusion of certain maintenance, startup, and shutdown (MSS) emissions in NSR permits. The commission expects to consider rules to prescribe authorization mechanisms and procedures for emissions not historically authorized, including those for MSS activities. The commission will also consider the authorization of emissions that any well maintained, operated, and managed facility cannot eliminate entirely. These emissions are therefore anticipated and quantifiable, yet unscheduled (QUAN). Examples are emissions that may be released intermittently from a pressure relief valve, line switching, compressor blow-downs, or even a burst seal well before the end of its life expectancy. QUAN emissions are arguably different in nature from the most commonly reported emissions events, those incidents resulting from inadequate maintenance, malfunctions, accidents, and disasters, and therefore should be taken out of the classification of “emission event” by providing an authorization mechanism. These actions will enable the commission to authorize MSS and QUAN emissions for inclusion in baseline emissions applicable to the NSR reform program.

The commission is also adopting a new version of the state pollution control project standard permit that includes required federal changes emissions netting. The new standard permit also includes authorization requirements for MSS and is reorganized.

Plant-wide Applicability Limit

The adopted version of the site-wide PAL closely follows the federal model and is established for each pollutant using the baseline emission rate for each facility. A control technology evaluation is required only if a cap increase is sought. The PAL can be reduced at renewal if emissions are less than 80% of the cap. The PAL baseline emissions will include authorized MSS and QUAN.

Baseline

The emission increase associated with a modification is determined by taking the difference, in tons per year, between the proposed emission rate and the actual annual emissions (or baseline emissions) during the baseline period. The baseline period can be any consecutive 24-month period in the previous ten years (typically that period where the emissions from the facility to be modified are the greatest). The baseline period is a 24-month period in the previous five years for electric utility steam generating units.

Actual-to-Projected Actual Emissions Test

Federal NSR reform allows use of a projected actual emission rate to be used to determine a project emission increase with compliance tracked for five to ten years. Additionally, any calculated emission increase can be reduced by the emissions that could have been accommodated in the baseline period.

Federal NSR reform included two other components, the clean unit designations and pollution control projects. As a result of a petition for review of EPA's final action, on June 24, 2005, the District of Columbia Circuit Court of Appeals in *State of New York, et al v. U.S. Environmental Protection Agency*, No. 413 F.3d 3 (D.C. Cir 2005), vacated the clean unit and pollution control project

provisions of the rule and remanded recordkeeping provisions to the EPA. As a result of this court decision, the commission has not adopted rules concerning clean unit and federal pollution control projects. The commission is adopting the standard permit for state pollution control projects. The standard permit for state pollution control projects allows projects that will have better or equivalent controls, but increases and decreases for projects qualifying for the standard permit for state pollution control projects requires evaluation for federal permitting applicability, which may include netting calculations. This new requirement for the state pollution control projects is also a result of the June 24, 2005, ruling, which does not allow a federal NSR exemption for incidental emission increases resulting from pollution control projects. In addition, the standard permit for state pollution control projects may be used to authorize emissions reductions and collateral increases for facilities authorized under a permit by rule as long as any collateral increases do not cause emission rates to exceed limits found in 30 TAC §106.4(a), Requirements for Permitting by Rule, or other standard permits as long as any collateral increases do not exceed the limits of §116.610, Applicability.

SECTION BY SECTION DISCUSSION

The commission adopted administrative changes throughout this rulemaking to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

§116.12. Federal Permit Definitions.

The commission amended the title of §116.12 to reflect the addition of all definitions associated with federal NSR or prevention of significant deterioration (PSD) permit applicability analysis. In addition

to the changes necessary to incorporate NSR reform into the nonattainment permit program, the commission has adopted changes associated with including PSD applicability analysis. These definitions now apply to the revised sections of the PSD rules in Chapter 116, Subchapter B, Division 6, Prevention of Significant Deterioration Review, as well as the new sections associated with PAL permits.

The definition of actual emissions, in paragraph (1), has been amended to exclude this definition from being used in the federal NSR applicability test. In response to public comments, the commission specified that actual emissions are determined over a 24-month period instead of two years. When determining whether the emission increase associated with a project is significant, the baseline actual emissions, defined in new paragraph (3), must be used. Paragraph (3)(A) allows electric utility steam generating units to identify baseline actual emissions as the rate, in tons per year, at which an existing unit emitted the pollutant during any consecutive 24-month period within the five-year period immediately preceding construction. A different time period may be selected if it is shown to be more representative of normal source operations. This is consistent with past guidance provided by EPA for these sources. In response to public comment, the commission deleted the word “average” as a modifier for “emissions” and changed “reviewing authority” references to “executive director.” The commission made this change to refer to “executive director” through the definitions added to §116.12 for the implementation of NSR reform.

Paragraph (3)(B) allows other source types to choose 24 consecutive months in the ten years preceding start of construction to establish their baseline emissions. In this case, the source must adjust this

emission rate down for any emission limitations that would currently apply to the facility. These limitations include requirements in the SIP, federal rules (with the exception of 40 CFR Part 63), or permit requirements that would apply when the analysis is completed.

Paragraph (3)(C) identifies baseline emissions for new facilities as being zero and also defines baseline emissions for new facilities that have operated for less than two years to be the facility's potential to emit. Paragraph (3)(D) requires that a project affecting all facilities use the same 24-month baseline period for each pollutant. For example, if a project affected five facilities that emitted volatile organic compounds and particulate matter, all five would have to identify the same baseline period for volatile organic compounds; however, a different 24-month period could be chosen for particulate matter. The source must have sufficient records to document the baseline emissions, which cannot have occurred before November 15, 1990.

Paragraph (3)(D) also requires that baseline emission rates be adjusted down to exclude noncompliant emissions. The EPA's reform rule requires that baseline emissions include startup, shutdown, and malfunction emissions. The commission's policy, which has evolved over a number of years, currently allows for permitting of emissions from certain MSS activities. Changes to this policy are being evaluated. The commission has been unsuccessful in getting clarification on the EPA's basis for inclusion of malfunction emissions in the baseline calculation. Given these circumstances, paragraph (3)(E) has been added to allow for the inclusion of those emissions that could currently be authorized to be included in the baseline. The commission deleted the phrase "in a permit action under Chapter 106 of this title (relating to Permits by Rule) and this chapter" because these are types of authorizations and

the phrase is redundant. Given that sources would become aware of this change with adoption of this rule amendment, the effort involved in authorizing these types of emissions, and the baseline period having to be within ten years of the project, this method of determining baseline emissions would be available for some time but not beyond ten years from the effective date of this rule amendment. After that date, all baseline emissions will have to have been authorized. Paragraph (3)(D) also requires that fugitive emissions be included in the baseline to the extent they can be quantified.

In response to public comment to adopt a version of NSR reform closer to the federal model and to be consistent with the use of federal terms, the commission had added definitions for “Basic design parameters,” “Major facility,” “Replacement facility,” “Significant facility,” and “Small facility.” The term “facility” has been substituted for the federal term “emissions unit” in the appropriate definitions. The term “facility” is an established part of the commission’s permitting program and is synonymous with “emissions unit.” The remaining paragraphs have been renumbered as a result of the added definitions.

Paragraphs (7) and (8), associated with the federal definition of clean coal, have been added as a result of including PSD applicability into the definitions under this section. The definition of *de minimis* threshold test in paragraph (12) has been revised to reference significant levels, including those for PSD as well as nonattainment. In response to public comment, the commission substituted the term “significant level” for “major modification” in Table 1 in the definition of “Major modification” in §116.12.

The federal definition of electric utility steam generating unit is provided in new paragraph (13). The definition identifies those units that are subject to a different baseline emissions determination than other source types. New paragraph (14) defines federally regulated NSR pollutant, providing a comprehensive list of pollutants that may be subject to federal NSR.

The definition for major stationary source has been renumbered as paragraph (17) and has been modified to remove references to facility for clarity, as well as to include PSD review within the definition. 40 CFR §51.166(b)(1) is referenced to identify the PSD major source thresholds. The "source" identified in this definition is the EPA NSR source that is, in most cases, analogous to "account" as defined in 30 TAC §101.1, General Air Quality Definitions.

A number of changes are adopted for the definition of major modification in renumbered paragraph (18). The commission added language to incorporate PSD review into the definition and references to facility have been removed for clarity. Language has been added to clearly identify the two criteria, a significant project emission increase and a significant net emission increase, that must be met for a modification to be considered major at a major source. In response to public comment concerning the adoption of a PAL program closer to the federal model, the commission substituted the term "significant level" for "major modification" in Table 1, and deleted the proposed expansion of the definition to identify projects performed at facilities within a PAL as being major modifications if the modifications result in emission increases at facilities outside the PAL that are significant.

The commission adopted changes to the definition of net emission increase in renumbered paragraph (20) specifying that baseline actual emissions are to be used to determine emission increases and decreases, adjusting the language to accommodate for PSD applicability, and excluding emission increases at facilities under a PAL from being creditable. Under the amendment, emission decreases cannot be counted in both an attainment demonstration and credit for nonattainment netting because this would be double credit for the same reduction. Emission decreases need only be enforceable rather than federally enforceable. The commission deleted the phrase “enforceable as a practical matter” and will just use “enforceable.” The commission also substituted the term “project emissions increase” for “total increase in actual emissions from a particular physical change. . .” because this concept is included within the definition of “Project emissions increase.” In response to public comment the commission deleted the proposed revision that stated that emission decrease cannot have been relied upon in the issuance of a PAL. The commission made the same deletion in the definition of “Offset ratio” in paragraph (21).

The commission adopted new paragraphs (22) - (26) to incorporate definitions from NSR reform related to PALs into the commission rules. These new paragraphs include definitions for: PAL; PAL effective date; PAL major modification; PAL permit; and PAL pollutant. In response to public comment, the commission modified the proposed definition of PAL pollutant to restrict its application to major sources. The commission deleted the phrase “enforceable as a practical matter” and will just use “enforceable.”

The requirement to use baseline actual emissions has been added to renumbered paragraph (28), in the definition of “Project net.” The commission also substituted the term “project emissions increase” for “total increase in actual emissions from a particular physical change. . .” because this concept is included within the definition of “Project emissions increase.”

The commission adopted new paragraphs (29) and (30) to define the new concepts of projected actual emissions and projects emissions increase. The project emissions increase may be determined in a different manner than the other emission increases that might be part of a netting exercise (used to determine the net emissions increase). For existing facilities, the emission increase at modified or affected facilities may be determined by using the projected actual emissions rate rather than the potential to emit for the facility. The projected emission rate must be developed using all relevant information including company projections and filings with regulatory authorities. The basis for the projection must be maintained by the source and would be submitted with any documentation required for a state NSR authorization to demonstrate that the project is not subject to federal review. The source would be required to demonstrate compliance with the projected emission rates for ten years if there was a change to the source's potential to emit or increase in capacity. Other affected facilities would be required to demonstrate compliance with projected rates for five years.

The actual-to-projected actual emissions rate test also allows the source to remove from the project increase any emissions increase that could have been accommodated in the baseline period. These must be unrelated to the project and may include demand growth. This federal rule change extends this concept that was developed for the electrical generation industry where traditionally there had been a

captured, or limited, customer base that was expected to grow at some rate unrelated to the available capacity of the generator. While this concept appears reasonable for the electric power industry as well as some sources with a limited customer base due to geography (such as gasoline terminals), it is not as useful for industries that have national or international markets served by multiple sources. In these cases, a demonstration is required that the market conditions expected in the future would be significantly different than any time in the past ten years and that if they had occurred in the baseline, they would have resulted in different operations. It is likely that this case would only be made in cases such as a prolonged outage at a major producer or a significant shift in market conditions. The determination of what could have been accommodated is limited to what could have been produced or handled and does not allow for changes in emissions that could have occurred due to a lower emission control device efficiency or the use of a fuel or solvent that might have resulted in greater emissions.

The commission adopted a definition for “Temporary clean coal technology demonstration project” as new paragraph (36) to fully incorporate all of EPA's exclusions to what is considered a major modification under NSR reform.

§116.121. Actual-to-Projected Actual and Emissions Exclusion Test for Emissions Increases.

The commission adopts this new section to require documentation associated with the projected actual emissions rates and records of compliance as identified in the federal rule. New subsection (a) requires a demonstration that federal NSR does not apply be submitted with any permit application or registration. This demonstration must be documented by records that include a project description, the facilities affected, and a description of the applicability test. New subsection (b) requires monitoring of

emissions that could increase as a result of the project if projected actual emissions are used to determine the project emission increase at a facility.

New subsection (c) requires electric utility steam generating units to provide the executive director documentation of emissions for each calendar year that records are required under the actual-to-projected actual test. New subsection (d) requires facilities, other than electric generating units, to submit a report to the executive director if annual emissions exceed the baseline actual emissions by a significant amount. Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection, may be included as well. New subsection (e) establishes record retention periods and was modified in response to public comment to allow review by local pollution control programs and the general public of all documentation required under this section.

The commission expects that projected actual emissions will be used extensively in registrations or claims for non-PSD and nonattainment NSR authorizations where a maximum allowable emission rate is not specified in the rule. The use of a projected actual emissions rate for a modified source in these NSR construction permits is expected to be limited because the allowable emission rate would not generally be based on an activity level that would not be reached for more than ten years. The commission is adopting changes in subsections (a), (c), (d), and (e) to make language more concise and to specify the use of a calendar year for the submission of reports.

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

The commission deleted the date (June 15, 2004) in subsection (a), which would apply major modification determination based on the date an application is determined administratively complete. In response to EPA comment, this determination will be made based on the issuance date of the permit.

The commission is adopting subsection (a)(1) and (2) that specifies when the requirements of this section will apply to facilities. The section will apply on the effective date of the permit for facilities located in areas that are designated ozone nonattainment on the effective date of this section. For those areas that are designated nonattainment after this section is effective, the section will apply based on the date a permit application is administratively complete.

The amendment to subsection (b) deleted language referring to a modified facility that will be a new major stationary source, which has caused confusion about what constitutes a major modification at an emission source that becomes major after the modification. A minor modification to a minor source that results in a major source does not qualify the modification as major. The commission refers to the definitions of major stationary source and major modification in §116.12 to make this determination.

The commission also substituted the term “facility” for “emission unit” in subsection (e)(1) for consistency in use of terms. The amendment to this section added a reference to “significant level” consistent with changes in §116.12 and updated that section’s title to Nonattainment and Prevention of Significant Deterioration Review Definitions. In response to public comment, the commission also amended subsections (c)(3) and (d)(2) to indicate that project emission increases must be less than the significant level before and after netting.

In response to public comment, the commission deleted the phrase “aggregated over the contemporaneous period” from subsection (e). This term “contemporaneous period” is included in the definition of “*De minimis* threshold test (netting)” and was redundant.

§116.151. New Major Source or Major Modification in Nonattainment Area Other Than Ozone.

The commission adopted amendments to this section consisting primarily of administrative and formatting changes. The reference to November 15, 1992, has been deleted from subsection (a) because that date is not applicable for application of the section. The commission substituted the term “facility” for “emission unit” in subsection (c)(1) for consistency in use of terms. Subsections (b) and (c) state when netting is required, and subsection (c) was amended to delete the reference to “contemporaneous period” because this term is included in the definition of “*De minimis* threshold test (netting).”

§116.160. Prevention of Significant Deterioration Requirements.

The amendment to this section limits the incorporation by reference of definitions from 40 CFR §52.21 that are used to administer the PSD program, deleting most of the language in subsection (a) and all of the language in existing subsections (b) - (d).

Amended subsection (a) deleted the federal rule references and replaced them with language that requires a proposed new major source or major modification in an attainment or unclassifiable area to meet the requirements of this section.

The new subsection (b) states that the *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated NSR pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant.

New subsection (c) incorporated by reference the following definitions and requirements located in 40 CFR §52.21: baseline concentrations, baseline dates, baseline areas, innovative control technology, federal land manager, terrain, Indian reservations/governing bodies, increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, exemptions, source impact analysis, air quality analysis, source information, additional impact analysis, sources impacting federal Class I areas, and innovative technology. Other definitions used for the PSD program or visibility in Class I areas program are currently in the commission's rules. The term "aggregated over the contemporaneous period" was deleted from subsection (c) because the term is included within the term "*De minimis* threshold test (netting)." The amendment also substituted the term "facility" for "emissions unit" in the definitions incorporated from the CFR because the commission's permitting actions are based on the individual facility or groups of facilities as defined in the commission's rules. The term "executive director" also replaces "administrator" in portions of 40 CFR §52.21(g) and (v). In response to public comment, the requirement to issue a PSD permit within a year of receipt of a completed application has been deleted from subsection (c)(4).

Existing subsection (d) has been re-designated as subsection (e).

In addition to renaming Subchapter C, the commission also adopted a new Division 1, Plant-wide Applicability Limits.

§116.180. Applicability.

This adopted section limits a PAL to one pollutant as required by the EPA and a site to one PAL permit in subsection (a). The commission is deleting the reference to state or federal permit and will use the term “NSR permit.” A PAL permit may contain separate PALs for several pollutants and will likely be consolidated with an NSR construction or flexible permit at the site. Subsections (b) and (c) identify the administrative procedure for changes in ownership, as well as responsibility for the PAL permit application. The commission is changing the phrase “new owners of facilities, group of facilities, or account” to “new owner of a major stationary source” as a more inclusive term.

§116.182. Plant-wide Applicability Limit Permit Application.

This new section identifies the information necessary for a PAL permit application. Paragraph (1) requires the facilities that would be included in the PAL to be identified with their design capacities and potential to emit and NSR authorizations. Paragraph (2) requires that the baseline emissions for those facilities be identified so that they may be used to set the PAL. Paragraphs (3) and (5) require the applicant to identify how plans to monitor and use that information will be used to demonstrate compliance with the PAL. This information will serve as a starting point to develop PAL permit conditions.

The commission did not adopt the proposed new paragraphs (4) and (6) requiring that best available control technology (BACT), on average, be implemented on all existing facilities to be included in the PAL over a period of time (typically less than five years). This is consistent with the commission's decision to implement NSR reform in a form closer to the federal model. Paragraph (6) would have required an implementation schedule for BACT if control technology required upgrading.

§116.184. Application Review Schedule.

This new section requires that PAL applications be reviewed on a schedule similar to other air permits as provided for in §116.114, Application Review Schedule.

§116.186. General and Special Conditions.

This new section identifies the PAL as an annual emission rate for a federally regulated NSR pollutant covering all facilities identified in the application in subsection (a). Emissions from all facilities must be determined and compliance with the PAL must be documented monthly. The commission is deleting the unnecessary phrase "enforceable as a practical matter" and will just use "enforceable." The commission is also substituting the word "demonstrate" for "show."

Subsection (b) identifies the general conditions applicable to every PAL. Paragraph (1) emphasizes that the PAL is not an authorization to construct but only sets an emission rate, below which federal NSR is not required. Paragraphs (2) and (3) identify sampling procedures and how a permit holder might obtain approval for an equivalent method. These requirements ensure consistency between various

types of the commission's air permits. The commission has substituted the word "are" for "will be" to more accurately indicate the applicability of the section.

Subsection (b)(4) integrates common recordkeeping and reporting requirements for most other air permits with the much more extensive requirements identified in the EPA rule. Paragraph (4)(A) and (B) require that the PAL permit application and records associated with demonstrating cap compliance be maintained on site. Subsection (b)(4) includes the reporting requirements from the EPA rule.

Consistent with its decision to adopt a PAL program equivalent with the federal model, the commission determined that the semiannual and deviation reporting requirements proposed in subsection (b)(4) were not sufficiently consistent with the federal rule requirements and added subsection (b)(4)(C) and (D) to incorporate federal requirements. Proposed subsection (b)(5) was not adopted for consistency with the federal rules.

Renumbered paragraphs (5) and (6) contain language common to air permits identifying what facilities are covered by the PAL, and requiring proper operation of control equipment and compliance with all rules. The PAL life of ten years is identified in paragraph (7). Paragraphs (8) and (9) incorporate requirements from the EPA rule requiring facility emissions to be reported as the potential to emit if monitoring data is not available, and that all data used to establish the PAL be revalidated at least every five years. The commission also added subsection (b)(10) allowing the extension of a PAL while an application for renewal is being considered.

Subsection (c) identifies those EPA requirements that must be incorporated into the permit through special conditions. All facilities in a PAL must be monitored using one of the following four methods: mass balance; continuous emission monitoring system, continuous parameter monitoring system, or predictive emission monitoring system; or emission factors. An alternate approach may be approved by the executive director. Performance standards for each type of monitoring are specified. The special conditions will also require a BACT implementation schedule, if applicable. For consistency with the federal rule, the commission deleted subsection (c)(4), which had required an implementation schedule for BACT.

§116.188. Plant-wide Applicability Limit.

This new section identifies how the PAL is to be determined. The commission is substituting “is “ for “will be established as” in the opening paragraph to more clearly define a PAL. In response to public comment, the commission added a specification requiring reduction of the PAL baseline emissions resulting from permanent shutdown of facilities. Paragraph (1) allows the inclusion of emissions, up to the significance level, in addition to baseline emissions. For consistency with the federal rule, the commission did not adopt the provision requiring addition of the significance level to project emission increases. Paragraph (2) limits all facilities to the same baseline period for a given pollutant. For consistency with the federal rule, proposed paragraph (3) that addressed determination of the PAL if there is a major modification involved was not adopted. Paragraph (4), renumbered as paragraph (3), requires that the PAL be reduced for any effective rules that have a future compliance date.

§116.190. Federal Nonattainment and Prevention of Significant Deterioration Review.

This new section identifies that any changes that occur under a PAL are not considered federal modifications unless the PAL will be exceeded. Subsection (b) restricts the generation of offsets from facilities under a PAL to cases where the PAL is lowered and such a decrease would be creditable without the PAL. For consistency with the federal rule, the commission added subsection (c), which states that a physical or operational change not causing an exceedance of a PAL is not subject to federal NSR review.

§116.192. Amendments and Alterations.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission made extensive revisions to §116.192, which include the requirements for reopening a PAL permit and increasing a PAL.

The commission retained the requirement that would allow increases to a PAL only through amendment in subsection (a). The commission deleted the requirement that the new or modified facilities causing the need for the PAL increase be reviewed under the appropriate federal NSR program. The amended PAL remains subject to public notice, and the PAL increases are effective when the new and modified units become operational. The commission added subsection (a)(1), which would require the considered application of BACT or equivalent technology where a facility proposes to add or modify units in such a way as to equal or cause an exceedance of the PAL. Such an increase would be authorized only if the source would not be able to maintain emissions below the PAL assuming application of BACT or BACT-equivalent controls. The commission added subsection (a)(2), which requires federal NSR permits for all facilities that equal or exceed a PAL. The new PAL would be the

sum of the allowable emissions for each new or modified source after the application of BACT.

Subsection (a)(3) requires any new PAL to be effective on the day any new unit that is part of the PAL begins operation. Subsection (a)(4) states that the PAL shall be the sum of the allowable emissions for each modified or new facility, plus the sum of the baseline actual emissions of the significant and major emissions units after the application of BACT-equivalent controls as identified in subsection (a)(1) of this section, plus the sum of the baseline actual emissions of the small emissions units.

The commission did not adopt proposed subsection (b), which limited reconsideration of controls associated with a PAL to amendments, but allows for changes in the implementation schedule to be requested through alteration. The commission adopted a new subsection (b), which identifies other changes that may be completed by alteration. These include changes to the special conditions that do not increase the emission cap.

§116.194. Public Notice and Comment.

The commission adopted a revised version of this section to require notification of intent to issue a permit allowing for public comment and an executive director response. These public notice requirements are similar to what the commission currently uses for permitting grandfathered facilities, and the commission has determined that they are equivalent to federal notice requirements for PALs.

The public notice requirements for the issuance of a PAL permit does not exempt applicants for an NSR permit from meeting the requirements of Chapter 116, Subchapter B.

§116.196. Renewal of a Plant-wide Applicability Limit Permit.

This new section requires that a PAL renewal application be submitted within six to 18 months of the PAL expiration date in subsection (a). Submittal within that time period ensures that the PAL will not expire. Subsection (b) makes all PALs issued with flexible permits under past guidance subject to renewal under this proposed rule. Any PAL that has been in place for more than ten years must be submitted for renewal by December 31, 2006, or within the time specified, whichever is later.

Subsection (c) identifies the information necessary for a renewal application. This information includes the proposed PAL level and any other information that the executive director may require to determine at what level to renew the PAL. For consistency with the federal rule, the commission did not adopt provisions that would have required identification of and justification for those qualified facilities to be included in the PAL and the potential to emit for qualified facilities and highest consecutive 12-month emissions in the last ten years for those that are not qualified.

Subsection (d) would require public notice for the renewed PAL. For consistency with the federal rule, the commission did not adopt the proposed language of subsection (e) that would have required the summation of the potential to emit for qualified facilities and the greatest rolling 12-month emissions for the facilities that are not qualified. The commission adopted revised language in subsection (e) allowing adjustment to a PAL if emission levels are greater than or equal to 80% of the PAL and if the executive director determines that a new PAL is more representative considering technology, economic factors, or the facility's prior voluntary reductions.

To be consistent with the federal rule, the commission adopted a new subsection (f) allowing for adjustment of a PAL affected by new state or federal requirements during the PAL effective period at the time of PAL or federal operating permit renewal, whichever occurs first.

§116.198. Expiration or Voidance.

To be consistent with the federal rule, the commission adopted language in this section significantly different than language that was proposed. The commission did not adopt the requirement for technology upgrades prior to PAL expiration or voidance. The adopted language in subsection (a) specifies the ten-year term of PAL permits. Subsection (b) addresses PALs that will not be renewed and allows owners of PAL sites to propose allowable emissions for each facility that was covered under the PAL. The executive director will decide on the allowable emissions distribution and issue revised permits.

§116.400. Applicability; §116.402. Exclusions; §116.404. Application; and §116.406. Public Notice Requirements.

These new sections contain identical language to that found in the current §§116.180 - 116.183. These sections apply to the regulation of sources of hazardous air pollutants. The new sections are adopted as a reorganization of this chapter in order to accommodate new sections concerning NSR reform and do not contain any substantive changes. The commission adopted administrative changes to be consistent with previously mentioned guidelines and to remove dates that are no longer applicable.

The commission adopts the repeal of §116.410, Applicability.

§116.610. Applicability.

The adopted amendment to this section removes references in subsection (a)(1) to specific paragraphs within 30 TAC §106.261 because the paragraph numbering of §106.261 has changed. The reference to §106.262 is deleted because §106.261 refers to the use of §106.262, when applicable. The adopted change to subsection (b) deletes the exemption from NSR requirements for projects authorized under proposed new §116.617. As discussed earlier, this change is based on the June 24, 2005, decision that vacated EPA rules exempting incidental emission increases from NSR. In response to public comment, the commission adopted language referring to §116.12 for definitions of “major stationary source” and “major modification.”

The commission adopted the repeal of §116.617, Standard Permits for Pollution Control Projects.

§116.617. State Pollution Control Project Standard Permit.

This adopted new section incorporates existing requirements listed throughout the current rule, while clarifying the language in new subsection (a). Subsection (a) is organized into paragraphs (1) - (4), which include scope and applicability conditions currently found in existing §116.617. Proposed new subsection (a)(1) lists the three types of existing authorizations that may be modified by a state pollution control project standard permit. New subsection (a)(2) clarifies the types of projects that may be authorized by a state pollution control project standard permit, reorganized from the existing §116.617 requirements.

New subsection (a)(3) outlines the prohibitions for use of the state pollution control projects standard permit, clarifying the existing intent and requirements of current §116.617. Specifically, subsection (a)(3) does not allow production facilities to be replaced or modified in any way under this authorization since these types of changes need to be reviewed for BACT and potential harmful effects to health and property in accordance with Texas Health and Safety Code (THSC), Chapter 382, the Texas Clean Air Act (TCAA), §382.0518 and §116.610, unless the conditions of a standard permit or permit by rule are met. Subsection (a)(3)(A) states that the standard permit will not be used to authorize complete replacement of an existing facility or reconstruction of a production facility.

New subsection (a)(3)(B) states that any collateral emission increase associated with the state pollution control project standard permit must not cause or contribute to any exceedance of an NAAQS or cause adverse health effects. The commission clarified subsection (a)(3)(C) to prohibit the use of the state pollution control project standard permit for the purpose of bringing a facility or group of facilities into compliance with an existing authorization or permit, unless approved by the executive director.

New subsection (a)(4) addresses how projects that have been registered under the previous version of §116.617 may continue to be authorized and subsequently meet the conditions of new §116.617.

Projects authorized prior to the effective date of this rulemaking may defer the inclusion of emission increases or decreases resulting from the project until future netting calculations. Paragraph (4) allows currently authorized control projects to continue operation uninterrupted until the ten-year renewal anniversary of the original registration or until otherwise incorporated into a permit or standard permit.

The review period of 30 days is extended to 45 days to allow evaluation of netting, which would be required under the state pollution control projects standard permit.

New subsection (b) is organized into paragraphs (1) - (5) and includes the general requirements dispersed throughout current §116.617. Subsection (b)(1) requires compliance with the specific conditions of §116.604, Duration and Renewal of Registrations to Use Standard Permits; §116.605, Standard Permit Amendment and Revocation; §116.610, Applicability; §116.611, Registration to Use a Standard Permit; §116.614, Standard Permit Fees; and §116.615, General Conditions. While these requirements are not new, they are reorganized to emphasize and remind applicants of these conditions to ensure submittal of more complete registration information.

New subsection (b)(2) was proposed containing a new requirement specifying that construction or implementation of the state pollution control projects standard permit must begin within 180 days of receiving written acceptance of the registration from the executive director, and that changes to maximum allowable emission rates are effective only upon completion or implementation of the project. In response to public comment, the commission retained the traditional 18-month start of construction window with one 18-month extension consistent with §116.120, Voiding of Permits.

New subsection (b)(3) exempts for state pollution control projects standard permits from the emission limits and distance requirements of permit by rule, §106.261, as referenced in §116.610(a)(1). Pollution control projects are considered environmentally beneficial so any emission increases associated with these projects do not require further authorization.

New subsection (b)(4) contains a new requirement that predictable MSS emissions directly associated with the state pollution control projects standard permit be included in the maximum emissions represented in the registration application, consistent with the ongoing efforts of the commission to authorize all aspects of normal operations.

New subsection (b)(5) contains the same requirements as the previous §116.617(5) and (6) and limits emission increases to only those directly as a result of the pollution control project. Any incidental production capacity cannot be authorized by the state pollution control projects standard permit, but requires some other preconstruction authorization. In response to public comment, the commission included a provision allowing the recovery of lost capacity due to a derate.

New subsection (c) includes the same requirements as in current §116.617(4), as well as two new requirements. Subsection (c) is organized into paragraphs (1) - (3) and pertains to requirements specific to replacement projects. Subsection (c)(1) repeats language from §116.617(4) and allows replacement controls or techniques to be different than those currently authorized as long as the new project is at least as effective in controlling emissions. Subsection (c)(2) allows for increases in MSS emissions if these emissions were reviewed as part of the original authorization for the existing control equipment or technique, and if the increases are necessary to implement the replacement project. Subsection (c)(3) is intended to clarify that the applicable testing and recordkeeping requirements associated with the currently permitted control or technique apply to the replacement to ensure continuing compliance with associated emission limits. If the control or technique is substantially different than an existing control or technique, applicants may also propose equivalent alternatives for review by the executive director.

New subsection (d) clarifies the requirements of current §116.617(4)(C), adds varying fees for different project types, and clearly specifies documentation required in a state pollution control projects standard permit registration application. New subsection (d)(1) includes existing language found in current §116.617(4)(C), but changes the required fees based on whether the project or change in representation results in an increase in the maximum authorized emission rates. Changes to fee requirements are adopted to encourage the installation and use of pollution control projects, especially where there is no increase in emissions or the changes require minimal review. This subsection also describes when a registration should be submitted and when construction or implementation may begin. Various deadlines are proposed to provide flexibility and encourage the use of pollution control projects. Regardless of these deadlines, all projects must meet all requirements of the state pollution control projects standard permit and the responsibility to do so remains with the applicant at all times. New subsection (d)(2) clarifies registration requirements. These include a process and project description, a list of affected permits and emission points, calculated emission rates, the basis of those emission rates, proposed monitoring and recordkeeping, and the proposed method for incorporating the state pollution control projects standard permit into existing permits. In response to public comment, the commission deleted the term “registration application” and replaced it with “registration.”

New subsection (e) incorporates requirements found in §116.615, General Conditions, but expands, clarifies, and focuses those requirements specifically for the state pollution control projects standard permit. New subsection (e)(1) emphasizes that a project should be constructed and operated in accordance with good engineering practices to minimize emissions. New subsection (e)(2) specifically requires copies of documentation to be kept demonstrating compliance with this standard permit.

New subsection (f) provides clarification of the procedures for, and under what conditions, a state pollution control projects standard permit should be incorporated or administratively referenced into a facility's NSR authorization. New subsection (f)(1) applies to facilities authorized by a permit or standard permit. New subsection (f)(1) also applies to those state pollution control projects standard permits that authorize new facilities or changes in method of control and would require incorporation upon the next amendment or renewal of the facility's authorization. The commission is not adopting the proposed requirement for effects review in this rulemaking and will continue to examine the issue during the consideration of additional rulemaking concerning, among other topics, the incorporation of standard permit and permit by rule authorizations (Rule Project No. 2005-016-106-PR, proposed by the commission in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8789, 8808).

New subsection (f)(2) applies to facilities authorized under a permit by rule and requires that all increases in previously authorized emissions, new facilities, or changes in method of control or technique authorized by this standard permit comply with §106.4, except for the emission limitations in §106.4(a)(1) and §106.8.

§116.1200. Applicability.

This new section contains the identical language found previously §116.410 and allows facility owners or operators to apply to the commission for a suspension of permit conditions for the addition, repair, or replacement of control equipment in the event of a catastrophe. This new section is adopted in order to reorganize this chapter to accommodate new sections associated with NSR reform and does not contain substantive changes.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a “major environmental rule.” Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). A “major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking revises the rules regarding federal permitting applicability, including adding additional options under federal air quality permitting applicability and plant-wide applicability limit options. The commission modified the rule since proposal to be consistent with the federal rule concerning baseline emission determination, actual-to-projected actual emissions test, and plant-wide applicability limits. The rulemaking revises the existing pollution control projects standard permit. In addition, the rulemaking modifies and adds definitions and changes some general formatting of this chapter. The rules do not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an

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 rules do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking.

Rather, the federal permitting applicability rules are adopted to incorporate new federal requirements to maintain SIP approval from EPA for the commission's federal air quality permitting program. The remaining changes implement specific state law requirements or are administrative changes. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the THSC and the Texas Water Code (TWC) that are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rules do not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rules. The specific purpose of this rulemaking is to revise the rules regarding federal permitting applicability, including adding additional options under federal air quality permitting applicability and plant-wide applicability limit options. The rulemaking revises the existing pollution control projects standard permit, modifies and adds definitions, and changes some general formatting of this chapter. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the rules do not affect private property in a manner that restricts or

limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, the commission's rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants are authorized and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (§501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The new and amended sections in this adoption are applicable requirements under Chapter 122, Federal Operating Permits Program. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program that modify any NSR authorized sources at their sites will be subject to the amended requirements of these sections.

PUBLIC COMMENT

The commission held a public hearing on the proposal in Austin on October 27, 2005. During the public comment period, which closed on October 31, 2005, the commission received 17 written comments. All of the commenters opposed the proposal.

RESPONSE TO COMMENTS

EPA, Baker Botts on behalf of the Texas Industry Project (TIP), Dow Chemical Company (Dow), Association of Electric Companies of Texas, Inc. (AECT), Texas Pipeline Association (TPA), Texas Chemical Council (TCC), ExxonMobil Refining and Supply (ExxonMobil), City of Houston, Department of Health and Human Services (HDH), TexasGenco, Sempra Texas Services, LP (Sempra), Texas Instruments (TI), BP Products North America, Inc. (BP), Calpine, Entergy Services, Inc. (Entergy), International Paper, JD Consulting, L.P. (JDC), Celanese Chemicals (Celanese), and the Lone Star Chapter of the Solid Waste Association of North America (TxWANA) submitted written comments during the public comment period. All of the commenters opposed the proposal.

TIP, AECT, TPA, TCC, TexasGenco, TI, BP, Calpine, Entergy, International Paper, Celanese, and Dow commented that substantial departures from federal NSR rules introduce confusion and inconsistencies particularly for companies with multi-state operations, and the introduction of less flexible triggers for federal NSR generates a competitive disadvantage for affected industries. They also commented that TCEQ has traditionally kept federal NSR review separate from permitting procedures under the TCAA and that changes in federal review do not affect the established TCEQ permitting program. They also mentioned the decision of the United States District Court that upheld EPA's rules on actual-to-projected actual emissions and plant-wide applicability limits as further reason not to adopt substantial differences with the federal NSR reform rules.

TIP, AECT, TPA, TCC, ExxonMobil, TI, BP, Calpine, Entergy, International Paper, JDC, Celanese, and Dow commented further that the commission proposal for PALs defeats the purpose of a federal PAL by introducing the BACT criterion. PAL applicants currently holding flexible permits could use ten-year old BACT, while those applicants without a flexible permit would require current BACT, causing an inequity. Plant units not under a PAL would be subject to traditional NSR evaluation. They believe there is not a sound legal basis for applying NSR review to a portion of a plant or project and is inconsistent with federal rules. The commenters noted the operational flexibility and stakeholder vetting that are part of the federal rule. TPA also stated that there were insufficient details on the concept of an east/west split of the state for the implementation of PALs and stated the federal plan should be offered statewide. JDC also suggested adding a provision allowing the conversion of existing flexible permits to PALs.

The commission's proposal on NSR reform was intended to integrate the federal revisions within an existing state program that addressed similar situations concerning plant-wide emission limits and baseline emission determinations. The commission also solicited comments from affected industries on the relative benefits of an integrated program versus an incorporation of the federal program without substantive changes. It is clear from stakeholder meetings and public comment that a program matching the federal rules is the preferred method of accomplishing federal NSR reform. The commission agrees that it has traditionally approached state NSR permitting separately from federal NSR requirements. Additionally, the commission determined that it can continue this approach under federal NSR reform without endangering the attainment of maintenance of NAAQS or affecting public health. The commission is changing the proposal accordingly to adopt rules implementing the federal program on plant-wide applicability limits, actual to projected actual emissions test, and baseline determination without substantive changes to the federal model for these programs.

In summary, PALs may now be considered without specific BACT application to each facility covered under the PAL with a site-wide PAL established as a sum of each facility's baseline emissions. Federal NSR will be required only if there is an increase sought in the PAL. The rules will allow the use of a projected actual emission increase instead of potential to emit in determining project emission increases. Project emission increases may also be reduced by an amount equal to what may have been accommodated within a facility's baseline period.

TIP commented that the proposed rule lacked a regulatory impact analysis. This analysis is required when a major environmental rule exceeds a standard set by federal law unless specifically required under state law. The significant departures from federal law regarding PALs and exclusion of compliant emissions exceeds requirements of federal law.

The commission is adopting rules without substantive difference from federal rules concerning NSR reform and determined that additional regulatory impact analysis is not required.

EPA commented that the definition of actual emissions uses a two-year period where the federal rule uses a 24-month period and requested clarification as the two terms are not necessarily identical.

The commission agrees with this comment, and the rule has been revised by replacing two-year period with 24 months.

TIP and TPA commented that the definition of baseline actual emissions should use the phrase “rate of emissions” instead of “average rate of emissions” as it is closer to federal language.

The commission agrees with the comment, and the phrase "average rate of actual emissions" has been replaced with "rate of emissions."

AECT questioned if the term “facility” has the same meaning in §116.10, and §116.12. Additionally, the term “reviewing authority” should be replaced with “executive director” throughout the new language in §116.12.

The term “facility” is based on the TCAA and has the same meaning throughout Chapter 116 unless stated otherwise. The commission agrees that the term "reviewing authority" could be confusing, and it has been replaced with the term "executive director" in the definitions for baseline actual emissions and net emission increase.

TIP, AECT, TPA, TCC, ExxonMobil, Sempra, TI, BP, Calpine, Entergy, International Paper, Celanese, and Dow expressed concern that the current rule language will exclude malfunction emissions from any baseline consideration. The commenters stated that the preamble indicates that the rule language is intended to include MSS emissions, but it does not clearly accomplish this and appears to cut off inclusion in 2016. They also stated that malfunction emissions, if compliant with federal and state rules, should not be excluded from baseline emissions. They believe issues associated with the authorization of compliant emissions should be addressed in upcoming commission rulemakings in Chapter 101, General Air Quality Rules, and Chapter 116. TIP also commented that it is not necessary to depart from using actual emissions as representative of the first two years of new source operation. AECT commented that specific language authorizing MSS and emission events should be included in the definition of baseline actual emissions. TPA suggested adding a definition of noncompliant emissions.

The federal rule requires that baseline emissions include startup, shutdown, and malfunctions. EPA requested confirmation that the commission's proposal would include these emissions in determining compliance with SIP-approved permit limits. EPA questioned whether the commission intended to retroactively authorize past excess emissions and how baseline emissions will be determined for sources whose startup, shutdown, and malfunction emissions have not been previously authorized. EPA also stated that emissions from startup, shutdown, and malfunctions are not included in the proposed definition of projected actual emissions or in the baseline determination of facilities included under a PAL.

The commission is not changing the rule in response to this comment. The definition of baseline actual emissions requires the exclusion of "noncompliant" emissions from baseline calculations. Baseline MSS emissions may not currently be authorized but future MSS emissions from the modified or affected facilities must be authorized.

TIP, TPA, and Dow commented that the proposed definition of net emissions increase is inconsistent with TCEQ's recent adoption of eight-hour ozone NSR standards, which allows reductions made under mass emissions cap and trade programs to be creditable for netting. The proposed definition disallows decreases that have been relied on in SIPs. AECT and TPA commented that this definition should refer to the definition of baseline actual emissions and the inclusion of MSS and malfunction emissions when calculating a net emission increase. AECT and TPA made the same comment concerning the definition of project net.

The commission is changing the definitions of net emissions increase and project net in response to this comment. Baseline actual emissions are referenced in these definitions. Cap and trade reductions are allowed in netting calculations. The commission does not rely on any facility or site-specific emission decrease to demonstrate attainment or reasonable further progress when using cap and trade programs to provide for emission reductions. A cap and trade program ensures that there must be a real emission decrease somewhere in the air shed if there is an emission increase. The five-year netting window ensures that any emission decreases at a site are contemporaneous with proposed increases.

TPA requested a clarification of the term “enforceable as a practical matter,” as used in the preamble, when assigning credits for emission reductions.

The commission is changing the rule language in response to this comment and will use the term “enforceable.” Limits that are enforceable require demonstration through such measures as documentation, inspection, and monitoring.

AECT commented that the second sentence of §116.12(28)(A) in the definition of project emission increase concerning calculation of emission increases should be moved to §116.12(27), the definition of projected actual emissions. AECT also commented that the use of “modified” and “affected” are undefined and the phrase “at the stationary source” should be added after “facility” in the introductory phrase.

The commission is not changing the rule in response to these comments. The commission determined that the language concerning calculation of emissions is properly located because the consideration of what emissions could have been accommodated in the baseline period is part of determining the project emissions increase, not the projected actual emissions. The terms "modified" and "affected" are used in the EPA rule and guidance, are consistent with everyday usage, and consistent with commission practice, and do not require a definition in the rule. The commenter's suggestion of adding the phrase "at the stationary source" would be inconsistent with EPA rules, which do not limit the project emission increase to facilities at the stationary source.

AECT commented that the definition of *de minimis* threshold test contains the term "major modification threshold" that should be defined in §116.12.

The commission agrees with this comment and is modifying the definitions for more consistent and accurate use of terms that are consistent with federal use. The term "major modification threshold" has been replaced with "significant level" in the definition for major modification (including Table I) and the definition of *de minimis* threshold test. The significant level is identified in the definition for major modification.

AECT commented that the term "federally regulated new source review pollutant" in §116.12(13) differs significantly from the same definition in the federal NSR reform rules. AECT questioned the basis for the difference.

The commission is changing the rule in response to this comment to add a cited definition containing references to federal definitions for the determination of a federally regulated NSR pollutant.

AECT commented that the definition of major stationary source in §116.12(15) contains a sentence stating “a source that is major for one PSD pollutant is considered major for all PSD pollutants.”

AECT stated that there is no support for the sentence in EPA rules or guidance.

The commission disagrees that this concept requires change. The commission modified this sentence to clearly indicate that a source that has emissions of any federally regulated NSR pollutant greater than the major source level is a major stationary source for all PSD pollutants. This policy is consistent with the EPA definition of major stationary source and federal guidance.

AECT commented that the definition of major modification in §116.12(16) should be changed to indicate that a project emission increase and the net emission increase must be at or above the major source threshold for the modification to be considered major. This concept should also be applied at non-PAL facilities.

The commission is not changing the rule in response to this comment. At major stationary sources, the project emission increase and the net emission increase must be greater than the significant level (or threshold) for the modification to be major. If the source is not major, the

project emissions increase must exceed the major source threshold for the modification to be major. This is consistent with federal applications.

TxWANA requested clarification that provisions in the definition of major source in §116.12 exempting the use of alternate fuels from being considered a major modification would apply to landfill-generated gas.

The commission agrees with this comment. The use of landfill gas as an alternate fuel, if that is the only change, would not constitute a major modification.

EPA questioned whether a significant emission increase determination would yield the same result under state and federal rules.

The commission is not changing the rule in response to this comment. A significant emission increase would be the same under the commission's rule as it would be under the federal language. Emissions that deviate from those authorized are considered noncompliant and the treatment of the associated emissions would vary, depending on the circumstances. For example, if a unit's annual operating hours were limited to 2,000, the allowable emission rate associated with operating beyond 2,000 hours would be considered zero, regardless of whether the tons per year limit had been exceeded by the source. If the hourly emission rate had been exceeded, emissions above the hourly emissions rate would be considered noncompliant and would not be in the baseline.

EPA requested clarification that the commission consider municipal incinerators capable of charging 50 tons of refuse per day as major sources.

The commission considers these municipal incinerators as major sources.

EPA requested clarification of the provision in the definition of major modification that allows a change in a facility in a PAL that causes a significant increase for a pollutant at a non-PAL facility to be considered a major modification.

Consistent with its decision to adopt rules equivalent with the federal PAL, the commission removed this language. Emission increases will be included in PAL and will constitute a major modification only if the PAL is exceeded by a significant level.

EPA requested clarification of the term “federal permit of the same type” as used in §116.12(18)(A)(ii). Further, there is no provision stating that an increase or decrease in sulfur dioxide, particulate matter, or nitrogen oxides occurring before a minor source baseline date is creditable only if it is required in calculating the amount of maximum increases that remain available.

The commission is changing the rule in response to these comments, for clarity, and substituted the term “NSR permit” for permit of the “same type.” The commission is also adding the EPA-recommended change concerning increases or decreases in sulfur dioxide, particulate matter, or nitrogen oxides for consistency with federal rules.

EPA questioned why the commission is not allowing credit for emission decreases in §116.12(18)(C)(iii) if it is relied upon for issuing a PAL. EPA also questioned why reduction credits cannot be used in determining an offset ratio if the reduction was used in issuing a PAL.

Consistent with its decision to adopt rules equivalent with the federal PAL, the commission removed this language.

EPA commented that the following definitions were not proposed for the commission's PAL program and should be added or an equivalency demonstration provided: allowable emissions, small emissions unit, major emissions unit, major facility, PAL effective period, and significant emissions unit.

Allowable emissions are defined in §116.10. The PAL is being incorporated into the commission rules in the same manner as state NSR permits. The PAL permits will have the same ten-year renewal requirement, and it has not been necessary to define an effective period. Consistent with its decision to adopt rules equivalent with the federal PAL, the definitions for major facility, small facility, and significant facility have been added. The commission used the term "facility" as a substitute for "emissions unit" for consistency with its use of terms. The term "facility" is synonymous with "emissions unit."

EPA commented that the definition of PAL major modification lacked the federal definitions of major modification and net emissions increase and requested an equivalency demonstration based on their exclusion.

The commission is not changing the rule in response to the comment. The EPA definition for PAL major modification contains language that states “notwithstanding the definitions for major modification and net emissions increase.” These definitions already exempt PAL facilities so the additional language is unnecessary.

EPA commented that the definition of PAL pollutant does not require that the PAL be established at a major source.

Consistent with its decision to adopt a PAL program equivalent with the federal model, the commission added the suggested language to the definition.

EPA commented that §116.121(e) differs from the federal rule and only requires that information documenting projected actual emissions and any excluded emissions be available for review by the executive director and the general public. For equivalency with the federal rule, all information required under §116.121 must be made available to the executive director and the general public.

Consistent with its decision to adopt a PAL equivalent with the federal model, the commission added the necessary language in this section.

AECT suggested revising the first sentence in §116.121(a) to refer to a “project emission increase” because that is a defined term. A similar change should be made in §116.151.

The commission did not change §116.121(a) in response to this comment. The project emission increase must be determined for every project and is compared to the significance level. It may be determined using projected actual emissions and/or excluding emissions that could have been accommodated in the baseline and will therefore be subject to the requirements of §116.121. If it were determined using the potential to emit, these requirements would not apply.

EPA commented that §116.150 makes nonattainment review in relation to a change in an area's attainment status contingent on the date that a complete permit application is received. This differs from federal guidance, which bases nonattainment review on the issuance date of a permit.

In order to remain consistent with federal rules, the commission removed the date from the rule.

EPA, TIP, and Dow commented that the commission should modify §116.150(c)(3) to state that any increase in volatile organic compounds or nitrogen oxides that exceeds the major modification threshold in the definition of major modification will be subject to a netting test. Dow stated that the concept could also be incorporated by adding to the definition of project net in §116.12.

The commission agreed with the comment, and §116.150(c)(3) has been revised to clarify when a netting test will be required.

AECT commented that the terms "facility" and "facilities" in §116.151 should be replaced with "stationary source(s)" and that the term "modification" is undefined. In subsection (c), the term

“aggregated over the contemporaneous period” is superfluous as the concept is included in the defined term “net emissions increase.” AECT made similar comments about the use of these terms in §116.160 and also suggested that the term “major source” be replaced with “major stationary source.”

The commission disagrees with AECT about the use of the term “facility.” The commission’s current NSR permitting program is based on the authorization of facilities and the term is defined in THSC, TCAA, Chapter 382, §382.002(6) and in the commission’s rules. The use of the term is well-established and causes no significant difference in the issuance of PAL permits. The commission determined that the term is used appropriately in §116.151 and §116.160. The term “modification” has not been defined by EPA for NSR and the commission determined that a Texas definition is not appropriate or necessary because the term has an accepted meaning, and the term “modification of existing facility” is defined in TCAA, §382.002(9). The commission agrees with AECT concerning the use of the term “aggregated over the contemporaneous period” and the term has been removed from §§116.150, 116.151, and 116.160. The terms “major source” and “major stationary source” have the same meaning, and the commission has not made the suggested change.

EPA commented that the commission should confirm that “replacement units” as referenced in §116.151 and §116.160 will be treated as existing units for purposes of federal NSR and emission reductions from the shutdown of a replaced unit will not be used for netting or offsets.

The commission agrees with this comment and added definitions to §116.12 for “Replacement facility” and “Basic design parameters” to address EPA concerns.

AECT commented that the understanding is that the date July 1, 1999, in §116.160(c)(1) refers only to the phrase “the definitions for protection of visibility and promulgated in 40 CFR §51.301” and does not apply to 40 CFR §52.21. If this is not the case, the commission will have failed to incorporate 40 CFR §52.21 and the NSR reform rule adopted in December 2002.

AECT's understanding is correct; the July 1, 1999, date does not apply to 40 CFR §52.21.

Dow, Calpine, International Paper, Celanese, and TI commented that the provision in §116.160(c)(4) requiring a determination to issue a PSD permit within one year after receipt of a completed application should be deleted. The commenters agreed that most permits can be issued within that time frame, but permit timing should not be added to regulations so as to allow maximum flexibility to resolve complex technical issues.

The commission agrees with this comment and removed the one-year requirement.

TxWANA commented that the commission should create an alternative permitting process for landfill gas-to-energy projects that would allow for quicker authorization of those projects that qualify as major sources or major modifications. The commenter’s specific suggestion is that the municipal solid waste landfill air standard permit currently proposed as an amendment to 30 TAC Chapter 330, Municipal

Solid Waste, be used as the base authorization mechanism. Landfill gas projects that would qualify as major would, by rule, be directed into case-by-case permit review under Chapter 116 but would be exempt from contested case hearings. TxWANA stated that this abbreviated process would help promote these environmentally beneficial projects.

The commission did not change the rule in response to this comment. The subject of an abbreviated permitting process for major source landfill gas energy projects was not in the proposal and thus unavailable for public comment. The commission staff is evaluating TxWANA's proposal for a possible future rulemaking.

EPA requested that the commission explain how its permitting process allowing the establishment of a separate PAL permit works with the federal requirement to establish a PAL within an existing permit. The commenter also requested an explanation of how a partial PAL (one not covering all facilities at a site) will determine NSR applicability, including netting procedures, for non-PAL facilities. EPA also requested an explanation of how conditions in individual permits remain in effect after issuance of a PAL permit.

The commission is unaware of any requirement to establish the PAL in an existing NSR permit and expects that most PALs will be consolidated with an existing state NSR permit. The commission sees no reason to limit the option of establishing a separate PAL permit for a site. The commission decided to adopt a PAL closer to the EPA model so the partial PAL has been

removed as an option. A PAL permit contains the conditions necessary to satisfy PAL requirements and has no effect on the requirements associated with any state NSR authorization.

EPA commented that §116.186 requires that each PAL contain all the requirements of a PAL as listed in 40 CFR §51.165 and §51.166. It is not clear that the commission's rule contains this requirement or the requirement that PAL facilities use a monitoring system meeting the requirements of 40 CFR §51.165(f) and §51.166(w).

The commission is adopting language consistent with the federal requirements. To simplify use of this rule, the commission is including the necessary language in §116.186 rather than adopt the federal requirements by reference. The language concerning monitoring was added as §116.186(b)(4)(C) and (D). The commission also added subsection (b)(10) allowing the extension of a PAL while an application for renewal is being considered.

TIP commented that language in §116.186(b)(1) - (4) and §116.186(b)(6) and (7) is not found in the federal PAL rule and that the commission should deviate from the federal requirements only when necessary to integrate PAL into the commission rules. It made the same comment on §116.186(c)(2)(E), concerning alternative monitoring approach and subsection (c)(4), concerning implementation schedules for installation of BACT or BACT-equivalent controls.

The commission is retaining §116.186(b)(1) - (4) and §116.186(6) and (7) in this adoption. These paragraphs identify procedures and requirements for sampling and recordkeeping that ensure

proper communication with the commission and compliance with the permit and do not conflict with the federal PAL rule. The commission is also retaining §116.186(c)(2)(E) because it determined alternative monitoring is a part of the federal PAL rule. The commission did not adopt §116.186(c)(4) because it was inconsistent with the federal PAL rule.

EPA requested that the commission clarify whether its rule will establish a PAL based on the application of BACT or baseline actual emissions of included facilities. It also requested that the commission explain the use of allowable emissions in place of potential to emit when considering addition of facilities to a PAL. EPA commented that the commission's rules do not contain the provision requiring subtraction of emission level from a PAL for permanently shut down facilities.

Consistent with its decision to adopt a PAL equivalent with the federal model, the commission set the PAL based on baseline emissions. Facilities in the PAL are still subject to state permitting requirements, including any allowable emissions rate authorized by state law that effectively limits the potential to emit of that facility. The provision requiring subtraction of emission level from a PAL for permanently shut down facilities has been added to §116.188, Plant-wide Applicability Limit.

TIP commented that language in §116.188(1) - (3), concerning addition of significance levels to PALs and use of potential to emit for new facilities added to a PAL is not comparable to the federal rule and that the commission should deviate from the federal requirements only when necessary to integrate PAL into the commission rules.

The commission disagrees with the comment. The federal language addresses significance levels in PALs and the use of potential to emit in 40 CFR §51.165(f)(6) and §51.166(w)(6). The commission is retaining the language in §116.188(1) and (2). The commission agrees that §116.188(3) is not necessary and it has been removed from the rule.

EPA stated that §116.188 has no provisions corresponding to federal rules for requesting an increase in a PAL and it is unaware of a federal requirement to remove baseline emissions of new or modified facilities from the PAL. EPA also commented that §116.188(4) discusses regulatory requirements that have a future compliance date but closes the provision by referring to requirements that are effective prior to PAL issuance. The commenter requested that the commission clarify this provision and demonstrate how it meets federal requirements.

Consistent with its decision to adopt a version of PAL closer to the federal model, the commission removed the noted language that is not required under the federal rules.

EPA stated that §116.190 does not contain a federally equivalent provision that a physical or operational change not causing an exceedance of a PAL is not subject to federal restrictions on relaxing enforceable emission limitations to avoid NSR review.

Consistent with its decision to adopt a version of PAL equivalent to the federal model, the commission added the federally equivalent language as a new subsection (c).

EPA and TIP commented that the federal PAL requirements allow the permitting authority to consider the application of BACT or equivalent technology where a facility proposes to add or modify units in such a way as to cause an exceedance of the PAL. Such an increase would be authorized only if the source would not be able to maintain emissions below the PAL, assuming application of BACT or BACT-equivalent controls. EPA requested an explanation of how the commission's requirement to install BACT compares with the federal rule. The commenter also requested that the commission explain how its requirements to increase the PAL compare to the federal rule. TIP stated that the term "major modification" is used rather than "PAL major modification" and that a control technology implementation schedule for BACT went beyond federal requirements.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission added §116.192(a)(1) addressing the issue of potential BACT application when a PAL permit holder seeks an amendment or alteration.

EPA stated that the commission has not addressed these areas in its proposed PAL rules: contents of a PAL permit; reopening a PAL permit; increasing a PAL; revalidation of data used to establish a PAL; and recordkeeping.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission made extensive revisions to §116.192 that include the requirements for reopening a PAL permit and increasing a PAL. Additionally, the commission expanded the recordkeeping requirements in §116.186(b)(4) to incorporate all the requirements in the EPA rule. Section 116.186 specifies the

contents of a PAL permit and includes EPA requirements with the addition of §116.186(b)(10).

The revalidation of data used to establish the PAL was in the proposed rule and is found in §116.186(b)(9) of the adopted rule.

EPA commented that the permit alteration and amendment of provisions in §116.192 must be consistent with the SIP-approved provisions of §116.116, Changes to Facilities.

The commission disagrees with this comment. Section 116.116 identifies requirements associated with the authorization of facilities that emit air contaminants. A PAL permit does not authorize facilities that emit air contaminants and is not subject to those requirements.

EPA commented that the commission appears to rely on 30 TAC Chapter 39, Public Notice, to meet the public notice requirements for PALs and noted that a second public notice prior to permit issuance is not required for all air permits and may not be consistent with federal requirements to notify the public of the agency's approval of a permit. EPA also commented that Chapter 39 has not been approved into the Texas SIP. EPA also stated that PALs are not referenced in Chapter 39 and requested a summary of Chapter 39 requirements for initial, renewed, or amended PALs.

The commission modified §116.194, Public Notice and Comment, to require notification of intent to issue a permit allowing for public comment and an executive director response. The commission determined that they are equivalent to federal notice requirements for PALs.

Although Chapter 39 has not been approved by EPA as a revision to the SIP, the commission

treats the rules, first submitted in 1999, as SIP requirements. A reference to PALs in Chapter 39 is not necessary and could not be added at this adoption because the applicable sections were not opened for public notice.

EPA commented that the requirements in §116.196 to identify qualified facilities under §116.10 and to include rolling 12-month emission rates for non-qualified facilities are not in federal rules and requested a demonstration that such inclusions result in a program at least as stringent as the federal PAL. TIP also noted this difference between the proposal and the federal rule and urged the commission to adopt the federal PAL without substantive differences.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission removed the reference language in the adopted rule.

EPA commented that §116.196(e)(B) would be clearer if the commission stated that the PAL is being set at a higher level in accordance with §116.188(3) and §116.192(a).

The commission agrees with this comment and §116.192(a) has been referenced as suggested.

EPA commented that §116.198 is not clear on whether a PAL that is not renewed expires at the end of the PAL effective period in 40 CFR §51.165(f)(9)(B). It also commented that the section does not have a requirement to include proposed allowable emission limits for each emission unit within the federal

time frame for PAL renewals or to adjust emissions. The requirement in the section that requires documentation of technology upgrades is not found in federal rules.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission is adopting EPA’s recommended additions. The commission removed the language concerning the documentation of technology upgrades because this requirement is not in the federal rule.

AECT commented that §116.610(b) should be revised to refer to major stationary sources, rather than “major source or major modification,” and also reference §116.12 as the location of the definition of major modification.

For consistency in the use of terms, the commission is modifying the appropriate term to refer to major stationary sources and included a reference to §116.12 as the location for the definitions rather than a federal rule reference.

HDH commented that the public comment period was too short and should be extended with additional hearings in Dallas, Houston, and Beaumont.

The commission disagrees that the chance for public participation in development of this proposal was too short. The commission met its legal obligation for length of the public comment period and conducted two stakeholder meetings during the development of this proposal. Representatives of industry and environmental organizations were invited on both occasions.

HDH commented that it encourages state rules that are more stringent than the federal. The City of Houston, along with several urban areas within the state, is currently classified as nonattainment and it views the more stringent rules as aids toward achieving attainment, or at least maintaining the severity of the nonattainment designations.

The commission did not change the rule in response to the comment. Neither state permitting law nor the federal NSR permitting program are designed to be control measures for specific nonattainment areas. The commission adopted specific rules regarding control of nitrogen oxide and volatile organic compound emissions from facilities in Houston and other nonattainment areas in its efforts to attain the NAAQS. The commission will consider more stringent rules if air quality goals are not achieved.

TIP, Entergy, Calpine, BP, TI, Celanese, and AECT commented that beyond the netting change required in response to the District of Columbia Circuit Court decision in *State of New York, et al. v. United States Environmental Protection Agency*, the proposed changes to the existing state Pollution Control Project Standard Permit are unnecessary and inappropriate.

The commission is not changing the rule language in response to this comment. In addition to the change concerning netting on pollution control projects required as a result of this court decision concerning NSR reform, the commission is adopting changes to §116.617, which are intended to clarify language and improve organization and readability. These changes include grouping similar or related requirements together and ordering those groups in a logical progression. To

better organize general requirements for standard permits, the applicable conditions of Chapter 116, Subchapter F, Standard Permits, were added in subsection (b), and a list of registration requirements were added to subsection (d) to ensure that all registration information is submitted. Similarly, subsection (e) incorporates requirements found in §116.615, General Conditions, and expands, clarifies, and focuses them specifically for the state pollution control project standard permit.

TIP requested confirmation that the standard permit still authorizes collateral emission increases for state NSR purposes. TIP commented that §116.617(9) should be retained.

TIP is correct that the pollution control project standard permit will authorize collateral emission increases. The commission determined that §116.617(9) is redundant in this adopted version of the pollution control project. Projects authorized under this standard permit will be evaluated through netting for significance. Any project qualifying as a significant change will be referred into the appropriate authorization methods of Chapter 116. Projects remaining below the significant level are not affected.

EPA commented that it does not consider this a good time for the commission to adopt any kind of pollution control regulation because of pending litigation concerning the District of Columbia Circuit Court decision, which vacated the federal pollution control project rule.

The commission is not changing the rule in response to this comment. The state pollution control project rule being amended is independent of the federal pollution control project rule vacated by the court. The federal rule addressed the issue of exclusion of pollution control project emissions from federal NSR or PSD review, a subject not addressed in the state rule. Litigation, appeals, and interpretation of court decisions may not be resolved for some time, and the commission desires to continue authorizing beneficial projects that reduce the quantity and severity of pollutants emitted to the atmosphere.

EPA requested the commission's rationale for qualifying the substitution of compounds as a pollution control project under §116.617(a)(2)(C).

The commission determined that substituting compounds used in manufacturing can reduce or control the amount of pollution emitted to the atmosphere and is therefore within the original scope and intent of the pollution control project. This substitution must be approved by the executive director.

TIP, TPA, TCC, and AECT all commented on §116.617(a)(4), which requires that past increases authorized under a standard permit be included in netting. The commenters claim that the retroactive nature of this requirement is unnecessary and impractical and request that the requirement only be applied prospectively.

The commission is not changing the rule in response to this comment and disagrees that the requirement is unnecessary. The commission determined that pollution control projects, even those with incidental emission increases in other contaminants, are beneficial to the environment, and wants to encourage them. However, in order to remain consistent with the previous rule, the emission increases and decreases from the pollution control project must be shown in subsequent site netting exercises. The requirement for immediate netting on new projects was added as a result of the District of Columbia Circuit Court decision.

TIP and EPA commented that they will review the pollution control project for consistency with 40 CFR §51.160 and §51.161. They asked the commission for a determination of whether the incidental emission increases resulting from projects could interfere with attainment or maintenance of NAAQS. In addition, EPA asked how the pollution control project complies with the public participation requirements of 40 CFR §51.161, particularly concerning §116.617(d)(1)(B), which allows for increases in emissions without public notice.

The commission is not changing the rule in response to these comments. The new pollution control project contains language prohibiting incidental emission increases that would prevent achievement of an NAAQS. Specifically, under §116.617(a)(4), all increases and decreases must be included in netting calculations. If the project emission increases are not below significance thresholds for PSD or nonattainment review, the standard permit cannot be used. For projects under PSD or nonattainment thresholds, the maximum emission rates identified in the standard permit registration serve as an enforceable emission limit.

The executive director uses the 30-day period prior to start of construction to verify that the collateral emissions are properly quantified and that there is not a significant net emission increase associated with the proposed project. Incidental increases associated with a pollution control project must have no harmful off-property effects, and the commission determined that the emission decreases are of benefit to the environment. Based on these conditions, the commission further determined that a public review of each individual application of the pollution control project was not necessary and would slow beneficial projects. This is not a new condition of the pollution control project, and the provision was available for public comment at the original adoption of the pollution control project and during this amendment.

TIP, AECT, and Dow commented that the proposed §116.617(f) requires impacts review upon a mandatory incorporation of the standard permit into an existing NSR permit. The TCAA does not require a re-review of project effects on incorporation.

The pollution control project standard permit can be used to make physical or operational changes at a facility instead of a permit amendment under §116.110, Applicability, and no effects review is required for initial construction. An effects review will be required at the incorporation of the pollution control project into the NSR permit. The commission is not adopting the proposed requirement for effects review in this rulemaking and will continue to examine the issue during the consideration of additional rulemaking concerning, among other topics, the incorporation of standard permit and permit by rule authorizations (Rule Project No. 2005-016-

106-PR, proposed by the commission in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8789, 8808).

TIP, AECT, and Dow commented regarding the requirement in §116.617(b)(2) limiting the start of construction to within 180 days of registration. They stated that the commission traditionally allows up to 18 months to start construction, and reducing the time allowed is unnecessary and unreasonable. They suggested that the time allowed be increased to 18 months with an automatic 18-month extension to be consistent with other state and federal rules and guidance. Dow also requested that the commission remove the requirement to notify upon the start of construction and the start of operation.

The commission agrees with the comment and is modifying the rule language. The commission is retaining the start of construction and operation notification in order to track construction progress.

TIP, AECT, and Dow commented that the proposed requirement that MSS emissions associated with replacement projects can only be authorized if necessary to the control project and authorized originally is contrary to the initiative to authorize MSS emissions and has no relationship to NSR reform. They also commented that provisions requiring the permitting of predictable emissions appear to be out of context in this rulemaking and there was no public notice on the potential scope of such an authorization. This issue should be deferred to the subsequent rulemaking on this subject. Dow commented that MSS should not be addressed in the standard permit.

The commission has not changed the rule in response to this comment. The commission requires the authorization of MSS emissions for new pollution control projects. Authorizing MSS for a replacement project when an initial authorization has not been made allows the MSS emissions to be included within the NSR permit without an effects evaluation. Because some pollution control projects can constitute facilities, the commission determined that the authorization of MSS emissions within the standard permit is necessary to an accurate review of project emissions.

TIP, TexasGenco, Sempra, and AECT opposed the deletion of the provision in §116.617(5), which allows the recovery of lost capacity caused by a derate resulting from the installation of control equipment or the implementation of a control technique. They stated that the language resulted from extensive input from stakeholders during a previous rulemaking, and asked that the commission provide a basis for its proposed removal. In addition, EPA requested that the authorizations be identified that are referred to as “additional authorizations” in the proposed rule. TIP specifically requested that the standard permit continue to authorize collateral increases if associated with the replacement of a control.

The commission agrees with the commenters and is retaining the language authorizing the recovery and utilization of capacity lost due to a pollution control project. All production increases associated with a pollution control project, not including capacity recovered, must qualify for and be authorized under §116.110 or §116.116 prior to the use of the increased capacity. Additional authorization means a permit amendment under §116.110 or the use of a

permit by rule. The commission agrees that the standard permit will continue to authorize collateral increases associated with control replacement.

EPA asked how the commission would address a situation under subsection (d)(1)(B) - (D) where it is determined a pollution control project results in a control strategy violation or interferes with an NAAQS after construction has begun. It asked for a demonstration of how the provisions of subparagraphs (B) - (D) meet the requirements of 40 CFR §51.160(a) and (b). EPA questioned whether a pollution control project could begin operation prior to the commission completing an evaluation under 40 CFR §51.160(a) and how the commission would prevent construction of a project. It stated that the subparagraph is not clear that construction of the pollution control project is solely at the risk of the owner if the commission does not find the project meets 40 CFR §51.160(a). EPA had similar comments concerning §116.617(f)(1)(A).

Because netting is required to show that a project does not trigger PSD or nonattainment reviews, the application of 40 CFR §51.160(a) should not be necessary. If a project is not constructed as represented, the commission has the authority to take enforcement action if any standard permit conditions are violated. The commission notes that it is always the responsibility of the owner or operator to evaluate applicability and determine compliance with all federal and state rules and regulations.

AECT recommended that the term “registration application” in §116.617(d)(1) be replaced by “registration” since no application is required under the standard permit process.

The commission agrees with the comment and made the necessary substitution. The commission further notes that evaluation of the proposed project requires the submittal of appropriate documentation.

TIP and AECT commented that the proposed language in §116.617(d)(1)(B) requiring notification of changes causing emission increases be submitted 30 days prior to construction should be deleted. They stated that the commission has not provided justification for the proposed change and that it is contrary to the streamlining intent of NSR reform.

The commission is not changing the rule in response to these comments. Those changes, which include revisions to construction and increased emissions, should be reported 30 days prior to implementation to allow time for review and approval of the revised project.

SUBCHAPTER A: DEFINITIONS

§116.12

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The amendment implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, and 382.0518; and FCAA, 42 USC, §§7401 *et seq.*

§116.12. Nonattainment and Prevention of Significant Deterioration Review Definitions.

Unless specifically defined in the 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 that are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review and Prevention of Significant Deterioration Review); and Chapter 116, Subchapter C, Division 1 of this title (relating to Plant-Wide Applicability Limits), have the following meanings, unless the context clearly indicates otherwise.

(1) **Actual emissions**--Actual emissions as of a particular date are equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during the 24-month period that precedes the particular date and that is representative of normal source operation, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plant-wide applicability limit. Instead, paragraph (3) of this section relating to baseline actual emissions shall apply for this purpose. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions,

e.g., when the allowable limit is reflective of actual emissions. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **Allowable emissions**--The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both), and the most stringent of the following:

(A) the applicable standards specified in 40 Code of Federal Regulations Part 60 or 61;

(B) the applicable state implementation plan emissions limitation including those with a future compliance date; or

(C) the emissions rate specified as a federally enforceable permit condition including those with a future compliance date.

(3) **Baseline actual emissions**--The rate of emissions, in tons per year, of a federally regulated new source review pollutant.

(A) For any existing electric utility steam generating unit, baseline actual emissions means the rate, in tons per year, at which the unit actually emitted the pollutant during any

consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(B) For an existing facility (other than an electric utility steam generating unit), baseline actual emissions means the rate, in tons per year, at which the facility actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received for a permit. The rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply with the exception of those required under 40 Code of Federal Regulations Part 63, had such major stationary source been required to comply with such limitations during the consecutive 24-month period.

(C) For a new facility, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and for all other purposes during the first two years following initial operation, shall equal the unit's potential to emit.

(D) The actual rate shall be adjusted downward to exclude any non-compliant emissions that occurred during the consecutive 24-month period. For each regulated new source review

pollutant, when a project involves multiple facilities, only one consecutive 24-month period must be used to determine the baseline actual emissions for the facilities being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant. The rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount. Baseline emissions cannot occur prior to November 15, 1990.

(E) The actual emissions rate shall include fugitive emissions to the extent quantifiable. Until March 1, 2016, emissions previously demonstrated as emissions events or historically exempted under Chapter 101 of this title (relating to General Air Quality Rules) may be included to the extent that they have been authorized, or are being authorized,.

(4) **Basic design parameters**--For a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content shall be used for determining the basic design parameters for a coal-fired electric utility steam generating unit. The basic design parameters for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator shall consider the primary product or primary raw material when

selecting a basic design parameter. The owner or operator may propose an alternative basic design parameter for the source's process units to the executive director if the owner or operator believes the basic design parameter as defined in this paragraph is not appropriate for a specific industry or type of process unit. If the executive director approves of the use of an alternative basic design parameter, that basic design parameter shall be identified and compliance required in a condition in a permit that is legally enforceable.

(A) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter.

(B) If design information is not available for a process unit, the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(C) Efficiency of a process unit is not a basic design parameter.

(5) **Begin actual construction**--In general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this

term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(6) **Building, structure, facility, or installation**--All of the pollutant-emitting activities that belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are considered to be part of the same industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) **Clean coal technology**--Any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

(8) **Clean coal technology demonstration project**--A project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the United States Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(9) **Commence**--As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) **Construction**--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(11) **Contemporaneous period**--For major sources the period between:

(A) the date that the increase from the particular change occurs; and

(B) 60 months prior to the date that construction on the particular change commences.

(12) ***De minimis* threshold test (netting)**--A method of determining if a proposed emission increase will trigger nonattainment or prevention of significant deterioration review. The summation of the proposed project emission increase in tons per year with all other creditable source emission increases and decreases during the contemporaneous period is compared to the significant level for that pollutant. If the significant level is exceeded, then prevention of significant deterioration and/or nonattainment review is required.

(13) **Electric utility steam generating unit**--Any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is included in determining the electrical energy output capacity of the affected facility.

(14) **Federally regulated new source review pollutant**--As defined in subparagraphs (A) - (D) of this paragraph:

(A) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the United States Environmental Protection Agency;

(B) any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111;

(C) any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI; or

(D) any pollutant that otherwise is subject to regulation under the FCAA; except that any or all hazardous air pollutants either listed in FCAA, §112 or added to the list under FCAA, §112(b)(2), which have not been delisted under FCAA, §112(b)(3), are not regulated new source review pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under FCAA, §108.

(15) **Lowest achievable emission rate**--For any emitting facility, that rate of emissions of a contaminant that does not exceed the amount allowable under applicable new source performance standards promulgated by the United States Environmental Protection Agency under 42 United States Code, §7411, and that reflects the following:

(A) the most stringent emission limitation that is contained in the rules and regulations of any approved state implementation plan for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation that is achieved in practice by a specific class or category of facilities, whichever is more stringent.

(16) **Major facility**--Any facility that emits or has the potential to emit 100 tons per year or more of the plant-wide applicability limit (PAL) pollutant in an attainment area; or any facility that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant in Table I of this section for nonattainment areas.

(17) **Major stationary source**--Any stationary source that emits, or has the potential to emit, a threshold quantity of emissions or more of any air contaminant (including volatile organic compounds (VOCs) for which a national ambient air quality standard has been issued. The major source thresholds are identified in Table I of this section for nonattainment pollutants and the major source thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations (CFR) §51.166(b)(1). A source that emits, or has the potential to emit a federally regulated new source review pollutant at levels greater than those identified in 40 CFR §51.166(b)(1) is considered major for all prevention of significant deterioration pollutants. A major stationary source that is major for VOCs or nitrogen oxides is considered to be 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 40 CFR §51.165(a)(1)(iv)(C).

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

(A) Any physical change in, or change in the method of operation of a major stationary source that causes a significant project emissions increase and a significant net emissions increase for any federally regulated new source review pollutant. At a stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified for a major source . At an existing major stationary source, the increase must equal or exceed that specified for a major modification to be significant. The major source and significant thresholds are provided in Table I of this section for nonattainment pollutants. The major source and significant thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations §51.166(b)(1) and (23), respectively.

Figure: 30 TAC §116.12(18)(A)

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT	MAJOR SOURCE	SIGNIFICANT	OFFSET RATIO
designation ¹	tons/year	LEVEL ²	minimum
		tons/year	
OZONE (VOC, NO _x) ^{3, 6}			
I marginal ⁷	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 significant level 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 this table.

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

NO₂ = nitrogen dioxide

CO = carbon monoxide

SO₂ = sulfur dioxide

PM₁₀ = particulate matter with an aerodynamic diameter less than or equal to ten microns

⁵ Applies to the NAAQS for nitrogen dioxide (NO₂).

⁶ For the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for NNSR according to that area's one-hour standard classification, each application will be evaluated according to that area's one-hour standard classification. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

⁷ For areas designated as nonattainment for ozone under Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), each application will be evaluated as if that area was designated as Marginal. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

(B) A physical change or change in the method of operation shall not include:

(i) routine maintenance, repair, and replacement;

(ii) use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act;

(iii) use of an alternative fuel by reason of an order or rule of 42 United States Code, §7425;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved under this chapter;

(vi) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition that was established after December 21, 1976);

(vii) any change in ownership at a stationary source;

(viii) any change in emissions of a pollutant at a site that occurs under an existing plant-wide applicability limit;

(ix) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(x) for prevention of significant deterioration review only, the installation or operation of a permanent clean coal technology demonstration project that constitutes re-powering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(xi) for prevention of significant deterioration review only, the reactivation of a clean coal-fired electric utility steam generating unit.

(19) **Necessary preconstruction approvals or permits**--Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the applicable state implementation plan.

(20) **Net emissions increase**--The amount by which the sum of the following exceeds zero: the project emissions increase plus any sourcewide creditable contemporaneous emission

increases, minus any sourcewide creditable contemporaneous emission decreases. Baseline actual emissions shall be used to determine emissions increases and decreases.

(A) An increase or decrease in emissions is creditable only if the following conditions are met:

(i) it occurs during the contemporaneous period;

(ii) the executive director has not relied on it in issuing a federal new source review permit for the source and that permit is in effect when the increase in emissions from the particular change occurs; and

(iii) in the case of prevention of significant deterioration review only, an increase or decrease in emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(B) An increase in emissions is creditable if it is the result of a physical change in, or change in the method of operation of a stationary source only to the extent that the new level of emissions exceeds the baseline actual emission rate. Emission increases at facilities under a plant-wide applicability limit are not creditable.

(C) A decrease in emissions is creditable only to the extent that all of the following conditions are met:

- (i) the baseline actual emission rate exceeds the new level of emissions;
- (ii) it is enforceable at and after the time that actual construction on the particular change begins;
- (iii) the executive director has not relied on it in issuing a prevention of significant deterioration or a nonattainment permit;
- (iv) the decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and
- (v) in the case of nonattainment applicability analysis only, the state has not relied on the decrease to demonstrate attainment or reasonable further progress.

(D) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(21) **Offset ratio**--For the purpose of satisfying the emissions offset reduction requirements of 42 United States Code, §7503(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total 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.

(22) **Plant-wide applicability limit**--An emission limitation expressed, in tons per year, for a pollutant at a major stationary source, that is enforceable and established in a plant-wide applicability limit permit under §116.186 of this title (relating to General and Special Conditions).

(23) **Plant-wide applicability limit effective date**--The date of issuance of the plant-wide applicability limit permit. The plant-wide applicability limit effective date for a plant-wide applicability limit established in an existing flexible permit is the date that the flexible permit was issued.

(24) **Plant-wide applicability limit major modification**--Any physical change in, or change in the method of operation of the plant-wide applicability limit source that causes it to emit the

plant-wide applicability limit pollutant at a level equal to or greater than the plant-wide applicability limit.

(25) **Plant-wide applicability limit permit**--The new source review permit that establishes the plant-wide applicability limit.

(26) **Plant-wide applicability limit pollutant**--The pollutant for which a plant-wide applicability limit is established at a major stationary source.

(27) **Potential to emit**--The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the 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, may 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 a stationary source.

(28) **Project net**--The sum of the following: the project emissions increase, minus any sourcewide creditable emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Baseline actual emissions shall be used to determine emissions increases and decreases. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in this section.

(29) **Projected actual emissions**--The maximum annual rate, in tons per year, at which an existing facility is projected to emit a federally regulated new source review pollutant in any rolling 12-month period during the five years following the date the facility resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the facility's design capacity or its potential to emit that federally regulated new source review pollutant. In determining the projected actual emissions, the owner or operator of the major stationary source shall include fugitive emissions to the extent quantifiable and shall consider all relevant information, including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved state implementation plan.

(30) **Project emissions increase**--The sum of emissions increases for each modified or affected facility determined using the following methods:

(A) for existing facilities, the difference between the projected actual emissions and the baseline actual emissions. In calculating any increase in emissions that results from the project, that portion of the facility's emissions following the project that the facility could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth may be excluded from the project emission increase. The potential to emit from the facility following completion of the project may be used in lieu of the projected actual emission rate; and

(B) for new facilities, the difference between the potential to emit from the facility following completion of the project and the baseline actual emissions.

(31) **Replacement facility**--A facility that satisfies the following criteria:

(A) the facility is a reconstructed unit within the meaning of 40 Code of Federal Regulations §60.15(b)(1), or the facility replaces an existing facility;

(B) the facility is identical to or functionally equivalent to the replaced facility;

(C) the replacement does not alter the basic design parameters of the process unit;

(D) the replaced facility is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable. If the replaced facility is brought back into operation, it shall constitute a new facility. No creditable emission reductions shall be generated from shutting down the existing facility that is replaced. A replacement facility is considered an existing facility for the purpose of determining federal new source review applicability.

(32) **Secondary emissions**--Emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or

modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions.

Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

(33) **Significant facility**--A facility that emits or has the potential to emit a plant-wide applicability limit (PAL) pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant.

(34) **Small facility**--A facility that emits or has the potential to emit the plant-wide applicability limit (PAL) pollutant in an amount less than the significant level for that PAL pollutant.

(35) **Stationary source**--Any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under 42 United States Code, §§7401 *et seq.*

(36) **Temporary clean coal technology demonstration project**--A clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.121

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The new section implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq.*

§116.121. Actual to Projected Actual and Emissions Exclusion Test for Emissions Increases.

(a) If projected actual emissions are used or emissions are excluded from the emission increase resulting from the project, the owner or operator shall document and maintain a record of the following information before beginning construction, and this information must be provided as part of the notification, certification, registration, or application submitted to the executive director to claim or apply for state new source review authorization for the project. If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall provide a copy of this information to the executive director before beginning actual construction:

(1) a description of the project;

(2) identification of the facilities of which emissions of a federally regulated new source review pollutant could be affected by the project; and

(3) a description of the applicability test used to determine that the project is not a major modification for any pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded from the project emissions increase and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) If projected actual emissions are used to determine the project emission increase at a facility, the owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project at that facility and calculate and maintain a record of the annual emissions from that facility, in tons per year, on a calendar year basis for:

(1) a period of five years following resumption of regular operations after the change;

or

(2) a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at that facility.

(c) If the facility is an electric utility steam generating unit, the owner or operator shall submit a report to the executive director within 60 days after the end of each calendar year of which records must be maintained documenting the unit's annual emissions during the calendar year that preceded submission of the report.

(d) If the facility is not an electric utility steam generating unit, the owner or operator shall submit a report to the executive director if the annual emissions from the project exceed the baseline actual emissions by a significant amount for that pollutant, and the emissions exceed the preconstruction projection for any facility. The report shall be submitted to the executive director within 60 days after the end of each calendar year. The report shall contain:

(1) the name, address, and telephone number of the major stationary source; and

(2) the calculated actual annual emissions.

(e) The owner or operator of the facility shall make the information required to be documented and maintained by this section available for review upon request for inspection by the executive director, local air pollution control program, and the general public.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 5: NONATTAINMENT REVIEW PERMITS

§116.150, §116.151

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The amendments implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq.*

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

(a) This section applies to all new source review authorizations for new construction or modification of facilities as follows:

(1) for all applications for facilities that will be located in any area designated as nonattainment for ozone under 42 United States Code (USC), §§7407 *et seq.* on the effective date of this section, the issuance date of the authorization; and

(2) for all applications for facilities that will be located in counties for which nonattainment designation for ozone under 42 USC §§7407 *et seq.* becomes effective after the effective date of this section, the date the application is administratively complete.

(b) The owner or operator of a proposed new major stationary source, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or the owner or operator of an existing stationary source of VOC or NO_x emissions that will undergo a major modification, as defined in §116.12 of this title with respect to VOC or NO_x, shall meet the requirements of subsection (e)(1) - (4) of this section, except as provided in subsection (f) of this

section. Table I, located in the definition of major modification in §116.12 of this title, specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source and significant level for those classifications.

(c) Except as noted in subsection (f) of this section regarding NO_x, the *de minimis* threshold test (netting) is required for all modifications to existing major sources of VOC or NO_x, unless at least one of the following conditions are met:

(1) the proposed emissions increases associated with a project, without regard to decreases, is less than five tons per year (tpy) of the individual nonattainment pollutant in areas classified under Federal Clean Air Act (FCAA), Title I, Part D, Subpart 2 (42 USC, §7511) classified as Serious or Severe;

(2) the proposed emissions increases associated with a project, without regard to decreases, is less than 40 tpy of the individual nonattainment pollutant in areas classified under FCAA, Title I, Part D, Subpart 1 (42 USC, §7502) and for those under FCAA, Title I, Part D, Subpart 2 (42 USC, §7511) classified as Marginal or Moderate; or

(3) the project emissions increases are less than the significant level stated in Table I located in the definition of major modification in §116.12 of this title and when coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy.

(d) For the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for nonattainment new source review according to that area's one-hour standard classification, except as noted in subsection (b) of this section regarding NO_x, the *de minimis* threshold test (netting) is required for all modifications to existing major sources of VOC or NO_x in that area, unless at least one of the following conditions is met:

(1) the proposed emissions increases associated with a project, without regard to decreases, is less than five tpy of the individual nonattainment pollutant; or

(2) the project emissions increases are less than the significant level stated in Table I located in the definition of major modification in §116.12 of this title and when coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy.

(e) In applying the *de minimis* threshold test, if the net emissions increases are greater than the significant levels stated in Table I located in the definition of major modification in §116.12 of this title, the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility is a

new major source or major modification except as provided in paragraph (3)(B) of this subsection and except for existing major stationary sources that have a potential to emit (PTE) of less than 100 tpy of the applicable nonattainment pollutant. For these sources, best available control technology (BACT) can be substituted for LAER. LAER shall otherwise be applied to each new facility and to each existing facility at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state must be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or facilities commence operation, the emissions increases from the new or modified facility or facilities must be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I located in the definition of major modification in §116.12 of this title. Internal offsets that are generated at the source and that otherwise meet all creditability criteria can be applied as follows.

(A) Major stationary sources with a PTE of less than 100 tpy of an applicable nonattainment pollutant are not required to undergo nonattainment new source review under this section, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1.

(B) Major stationary sources with a PTE of greater than or equal to 100 tpy of an applicable nonattainment pollutant can substitute BACT for LAER, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1. Internal offsets used in this manner can also be applied to satisfy the offset requirement.

(4) In accordance with the FCAA, the permit application must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis must demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(f) For sources located in the El Paso ozone nonattainment area as defined in §101.1 of this title (relating to Definitions), the requirements of this section do not apply to NO_x emissions.

§116.151. New Major Source or Major Modification in Nonattainment Area Other Than Ozone.

(a) This section applies to applications for new construction or modification of facilities located in a designated nonattainment area for an air contaminant other than ozone. The owner or operator of a proposed new or modified facility that will be a new major stationary source for that nonattainment air contaminant, or the owner or operator of an existing major stationary source that will undergo a major modification with respect to that nonattainment air contaminant, shall meet the additional requirements of subsection (c) (1) - (4) of this section. Table I located in the definition of major modification in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review

Definitions) specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source.

(b) The *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than the major modification threshold for the pollutant identified in Table I located in the definition of major modification in §116.12 of this title.

(c) In applying the *de minimis* threshold test, if the net emissions increases are greater than the major modification levels stated in Table I located in the definition of major modification in §116.12 of this title, the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility is a new major source or major modification. LAER shall be applied to each new facility and to each existing facility at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a schedule for compliance with all applicable state and federal emission limits and standards.

(3) At the time the new or modified facility or facilities commence operation, the emission increases from the new or modified facility or facilities shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I located in the definition of major modification in §116.12 of this title.

(4) In accordance with the Federal Clean Air Act, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 6: PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

§116.160

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The amendment implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq.*

§116.160. Prevention of Significant Deterioration Requirements.

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the requirements of this section. The owner or operator of a proposed new or modified facility that will be a new major stationary source for the prevention of significant deterioration air contaminant shall meet the additional requirements of subsection (c)(1) - (4) of this section.

(b) The *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant identified in 40 Code of Federal Regulations (CFR) §52.21(b)(23).

(c) In applying the *de minimis* threshold test (netting), if the net emissions increases are greater than the major modification levels for the pollutant identified in 40 CFR 52.21(b)(23), the following requirements apply.

(1) In addition to those definitions in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) the following definitions from

prevention of significant deterioration of air quality regulations promulgated by the United States Environmental Protection Agency (EPA) in 40 CFR §52.21 and the definitions for protection of visibility and promulgated in 40 CFR §51.301 as amended July 1, 1999, are incorporated by reference:

(A) 40 CFR §52.21(b)(13) - (15), concerning baseline concentrations, dates, and areas;

(B) 40 CFR §52.21(b)(19), concerning innovative control technology; and

(C) 40 CFR §52.21(b)(24) - (28), concerning federal land manager, terrain, and Indian reservations/governing bodies.

(2) The following requirements from prevention of significant deterioration of air quality regulations promulgated by the EPA in 40 CFR §52.21 are hereby incorporated by reference:

(A) 40 CFR §52.21(c) - (i), concerning increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, and exemptions;

(B) 40 CFR §52.21(k), concerning source impact analysis;

(C) 40 CFR §52.21(m) - (p), concerning air quality analysis, source information, additional impact analysis, and sources impacting federal Class I areas; and

(D) 40 CFR §52.21(v), concerning innovative technology.

(3) The term "facility" shall replace the words "emissions unit" in the referenced sections of the CFR.

(4) The term "executive director" shall replace the word "administrator" in the referenced sections of the CFR except in 40 CFR §52.21(g) and (v).

(d) All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the prevention of significant deterioration state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

**SUBCHAPTER C: HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING
CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES
(FCAA, SECTION 112(G), 40 CFR PART 63)**

§§116.180 - 116.183

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeals are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The repeals implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq.*

§116.180. Applicability.

§116.181. Exclusions.

§116.182. Application.

§116.183. Public Notice Requirements.

SUBCHAPTER C: PLANT-WIDE APPLICABILITY LIMITS

DIVISION 1: PLANT-WIDE APPLICABILITY LIMITS

§§116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The new sections implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq.*

§116.180. Applicability.

(a) The following requirements apply to a plant-wide applicability limit (PAL) permit.

- (1) Only one PAL may be issued for each pollutant at an account site.
- (2) A PAL permit may include more than one PAL.
- (3) A PAL permit may not cover facilities at more than one source.
- (4) A PAL permit may be consolidated with a new source review permit at the source.

(b) The new owner of a major stationary source shall comply with §116.110(e) of this title (relating to Applicability), provided that all facilities covered by a PAL permit change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a PAL permit alteration allocating the emission prior to the transfer of the permit by the commission. After the sale of a facility, or facilities, but prior to the transfer of a permit requiring a permit alteration, the original PAL permit holder remains responsible for ensuring compliance with the existing PAL permit and all rules and regulations of the commission.

(c) The owner of the facility, group of facilities, or account or the operator of the facility, group of facilities, or account that is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (b) of this section.

§116.182. Plant-wide Applicability Limit Permit Application.

Any application for a new plant-wide applicability limit (PAL) permit or PAL permit amendment must be completed and signed by an authorized representative. In order to be granted a PAL permit or PAL permit amendment, the owner or operator of the proposed facility shall submit information to the commission that demonstrates that all of the following information is submitted:

(1) a list of all facilities, including their registration or permit number to be included in the PAL, their potential to emit, and the expected maximum capacity. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit;

(2) calculations of the baseline actual emissions with supporting documentation;

(3) the calculation procedures that the permit holder proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month; and

(4) the monitoring and recordkeeping proposed satisfy the requirements of §116.186 of this title (relating to General and Special Conditions) for each PAL.

§116.184. Application Review Schedule.

The plant-wide applicability limit permit application will be reviewed by the commission in accordance with §116.114 of this title (relating to Application Review Schedule).

§116.186. General and Special Conditions.

(a) The plant-wide applicability limit (PAL) will impose an annual emission limitation in tons per year, that is enforceable for all facilities included in the PAL. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall demonstrate that the sum of the monthly emissions from each facility under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each facility under the PAL is less than the PAL. Each PAL must include emissions of only one pollutant. The PAL must include all emissions, including fugitive emissions, to the extent quantifiable, from all facilities included in the PAL that emit or have the potential to emit the PAL pollutant.

(b) The following general conditions are applicable to every PAL permit.

(1) Applicability. This section does not authorize any facility to emit air pollutants but establishes an annual emissions level below which new and modified facilities will not be subject to federal new source review for that pollutant.

(2) Sampling requirements. If sampling of stacks or process vents is required, the PAL permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission. The PAL permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(3) Equivalency of methods. The permit holder shall demonstrate 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 PAL permit. Alternative methods must 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.

(4) Recordkeeping and reporting.

(A) A copy of the PAL permit along with information and data sufficient to demonstrate continuous compliance with the emission caps contained in the PAL permit must be maintained in a file at the plant site and made available at the request of personnel from the commission or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information must be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information must include, but is not limited to, emission cap and individual emission limitation calculations based on a 12-month rolling basis and production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the PAL permit.

(B) The owner or operator shall retain a copy of the PAL permit application and any applications for revisions to the PAL, each annual certification of compliance under §122.146 of this title (relating to Compliance Certification Terms and Conditions), and the data relied on in certifying the compliance for the duration of the PAL plus five years.

(C) A semiannual report shall be submitted to the executive director within 30 days of the end of each reporting period that contains:

- (i) the identification of owner and operator and the permit number;
- (ii) total annual emissions (in tons per year) based on a 12-month rolling total for each month in the reporting period;

(iii) all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

(iv) a list of any facility modified or added to the major stationary source during the preceding six-month period;

(v) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken. This may be satisfied by referencing the PAL permit number in the semiannual report for the site submitted under §122.145 of this title (relating to Reporting Terms and Conditions);

(vi) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit; and

(vii) a signed statement by the responsible official certifying the truth, accuracy, and completeness of the information provided in the report.

(D) The owner or operator shall submit the results of any revalidation test or method to the executive director within three months after completion of such test or method.

(5) Maintenance of emission control. The facilities covered by the PAL permit will 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.

(6) Compliance with rules. Acceptance of a PAL permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules and orders of the commission issued in conformity with the Texas Clean Air Act and the conditions precedent to the granting of the permit. If more than one state or federal rule or PAL permit condition is applicable, the most stringent limit or condition will govern and be the standard by which compliance must be demonstrated. 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 PAL permit.

(7) Effective period. A PAL is effective for ten years.

(8) Absence of monitoring data. A source owner or operator shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for a facility during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit special conditions.

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the executive director. Such testing must occur at least once every five years after issuance of the PAL.

(10) Renewal. If a PAL renewal application is submitted to the executive director in accordance with §116.196 of this title (relating to Renewal of a Plant-wide Applicability Limit Permit), the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a renewed PAL permit is issued by the executive director or the application is voided.

(c) Each PAL permit must include special conditions that satisfy the following requirements.

(1) The PAL monitoring system must accurately determine all emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such a system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one or more of the general monitoring approaches meeting the minimum requirements as described in subparagraphs (A) - (D) of this paragraph.

(A) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in, or created by, all materials used in or at the facility;

(ii) assume that the facility emits all of the PAL pollutant that is contained in, or created by, any raw material or fuel used in or at the facility, if it cannot otherwise be accounted for in the process; and

(iii) where the vendor of a material or fuel that is used in or at the facility publishes a range of pollutant content from such material, the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the executive director determines that there is site-specific data or a site-specific monitoring program to support another content within the range.

(B) An owner or operator using a continuous emission monitoring system (CEMS) to monitor PAL pollutant emissions shall meet the following requirements.

(i) The CEMS must comply with applicable performance specifications found in 40 Code of Federal Regulations Part 60, Appendix B.

(ii) The CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(C) An owner or operator using continuous parameter monitoring system (CPMS) or predictive emission monitoring system (PEMS) to monitor PAL pollutant emissions shall meet the following requirements.

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the facility.

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes or at another less frequent interval approved by the executive director, while the facility is operating.

(D) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements.

(i) All emission factors must be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(ii) The facility must operate within the designated range of use for the emission factor, if applicable.

(iii) If technically practicable, the owner or operator of a significant facility that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the executive director determines that testing is not required.

(E) An alternative monitoring approach must meet the requirements in paragraph (1) of this subsection and be approved by the executive director.

(3) Where an owner or operator of a facility cannot demonstrate a correlation between a monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the facility, the executive director shall:

(A) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) determine that operation of the facility during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

§116.188. Plant-wide Applicability Limit.

The plant-wide applicability limit (PAL) is the sum of the baseline actual emissions of the PAL pollutant for each existing facility at the source to be covered. The allowable emission rate may be used for facilities that did not exist in the baseline period. Baseline actual emissions from facilities that were permanently shut down after the baseline period must be subtracted from the baseline emissions rate.

(1) An amount equal to the applicable significant level for the PAL pollutant may be added to the baseline actual emissions when establishing the PAL.

(2) When establishing the PAL level for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing facilities. However, a different consecutive 24-month period may be used for each different PAL pollutant.

(3) The executive director shall specify a reduced PAL level(s) in the PAL permit, to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s).

§116.190. Federal Nonattainment and Prevention of Significant Deterioration Review.

(a) An increase in emissions from operational or physical changes at a facility covered by a plant-wide applicability limit (PAL) permit is insignificant, for the purposes of federal new source review under this subchapter, if the increase does not exceed the PAL.

(b) At no time are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets, unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(c) A physical or operational change not causing an exceedance of a PAL is not subject to federal restrictions on relaxing enforceable emission limitations to avoid new source review.

§116.192. Amendments and Alterations.

(a) Any increase in a plant-wide applicability limit (PAL) must be made through amendment. Amendment applications must also include the information identified in §116.182 of this title (relating to Plant-wide Applicability Limit Permit Application) for new and modified facilities contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL and are subject to the public notice requirements under §116.194 of this title (relating to Public Notice and Comment).

(1) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small facilities, plus the sum of the baseline actual emissions of the significant and major facilities assuming application of best available control technology (BACT) equivalent controls, plus the sum of the allowable emissions of the new or modified facilities exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major facility shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the facility is currently required to comply with a BACT or lowest achievable emission rate (LAER) requirement that was established within the preceding ten years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(2) The owner or operator shall obtain a federal new source review permit for all facilities contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL, regardless of the magnitude of the emissions increase. These facilities shall comply with any emissions requirements resulting from the major new source review process.

(3) The PAL permit shall require that the increased PAL level be effective on the day any emission unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(4) The new PAL shall be the sum of the allowable emissions for each modified or new facility, plus the sum of the baseline actual emissions of the significant and major emissions units after

the application of BACT equivalent controls as identified in paragraph (1) of this subsection, plus the sum of the baseline actual emissions of the small emissions units.

(b) Changes to PAL permits that do not require the PAL to be increased must be completed through permit alteration. Unless allowed in the PAL permit special conditions, the permit holder shall submit an alteration request prior to start of construction for physical modifications to facilities or installation of new facilities under the PAL. Approval must be received from the executive director prior to start of operation of the facilities if the emissions from the new or modified facilities may exceed 100 tons per year.

§116.194. Public Notice and Comment.

Applications for initial issuance of plant-wide applicability limit permits under this division are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.419, 39.420, and 39.601 - 39.605 of this title (relating to Purpose; General Notice Provisions; Mailing Lists; Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing; Text of Public Notice; Notice of Application and Preliminary Decision; Transmittal of the Executive Director's Response to Comments and Decision; Applicability; Mailed Notice; Newspaper Notice; Sign-Posting; and Notice to Affected Agencies, respectively), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply. Nothing in this section exempts an applicant for a new source review permit from the requirements of Subchapter B of this chapter (relating to New Source Review Permits).

§116.196. Renewal of a Plant-wide Applicability Limit Permit.

(a) A stationary source owner or operator shall submit a timely application to the executive director to request renewal of a plant-wide applicability limit (PAL) permit. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. If the owner or operator of a stationary source submits a complete application to renew the PAL permit within this time period, then the permit will continue to be effective until the revised permit with the renewed PAL is issued or the PAL permit is voided.

(b) All PAL permits issued prior to the effective date of this section are subject to the renewal requirements under this section. These permits must be renewed by December 31, 2006, or within the time frame specified in subsection (a) of this section, whichever is later.

(c) The following information must be submitted with a PAL renewal application:

(1) a proposed PAL level;

(2) information as identified in §116.182(1) of this title (relating to Plant-wide Applicability Limit Permit Application); and

(3) any other information the owner or operator wants the executive director to consider in determining the appropriate level for renewing the PAL.

(d) The proposed PAL level and a written rationale for the proposed PAL level are subject to the public notice requirements in §116.194 of this title (relating to Public Notice and Comment). During such public review, any person may propose a PAL level for the source for consideration by the executive director.

(e) The renewed PAL shall not exceed the potential to emit for the source and shall not be set at a level higher than the current PAL, unless the PAL is being amended in accordance with §116.192(a) of this title (relating to Amendments and Alterations) concurrently with the renewal. The executive director may adjust the renewed PAL in accordance with the following. .

(1) If the emissions level calculated in accordance with §116.188 of this title (relating to Plant-wide Applicability Limit) is equal to or greater than 80% of the PAL level, the PAL may be renewed at the same level.

(2) If the emissions level calculated in accordance with §116.188 of this title is less than 80% of the PAL level, the executive director may set the PAL at a level that is determined to be more representative of the source's baseline actual emissions, or that is determined to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the executive director in written rationale.

(f) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the executive director has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

§116.198. Expiration or Voidance.

(a) A plant-wide applicability limit (PAL) permit shall expire ten years after the date of issuance if the renewal application is not submitted in accordance with §116.196(a) of this title (relating to Renewal of a Plant-wide Applicability Limit Permit).

(b) Owners or operators of major stationary sources who decide not to renew their PAL will, within the time frame specified for PAL renewal applications in §116.196(a) of this title, submit a proposed allowable emission limitation for each facility (or each group of facilities, if such a distribution is more appropriate as decided by the executive director) by distributing the PAL allowable emissions for the major stationary source among each of the facilities that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, the distribution shall be made as if the PAL had been adjusted.

(c) The executive director shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each facility, or each group of facilities, as the executive director determines is appropriate. Each facility shall comply with the

allowable emission limitation on a 12-month rolling basis. The executive director may approve the use of monitoring systems (source testing, emission factors, etc.) other than a continuous emission monitoring system, continuous emission rate monitoring system, predictive emission monitoring system, or continuous parameter monitoring system to demonstrate compliance with the allowable emission limitation.

(1) Until the executive director issues the revised permit incorporating allowable limits for each facility, or each group of facilities, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(2) Any physical change or change in the method of operation at the major stationary source will be subject to federal new source review requirements if the change meets the definition of major modification in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Definitions).

(3) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that applied during the PAL effective period.

**SUBCHAPTER E: HAZARDOUS AIR POLLUTANTS: REGULATIONS
GOVERNING CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES
(FCAA, §112(g), 40 CFR PART 63)**

§§116.400, 116.402, 116.404, 116.406

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The new sections implement THSC, §§382.002, 382.011, 382.012, 382.051, and 382.0518.

§116.400. Applicability.

(a) The provisions of this subchapter implement Federal Clean Air Act (FCAA), §112(g), Modifications, and 40 Code of Federal Regulations (CFR) Part 63, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology, as amended December 27, 1996. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to this subchapter are those sources for which the United States Environmental Protection Agency has not promulgated a maximum available control technology (MACT) standard under 40 CFR Part 63. For purposes of this subchapter, the following terms apply.

(1) **Construct a major source**--As follows.

(A) To fabricate, erect, or install at any green field site a stationary source or group of stationary sources that are located within a contiguous area and under common control and that emit or have the potential to emit ten tons per year of any hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPs;

(B) to fabricate, erect, or install at any developed site a new process or production unit that in and of itself emits or has the potential to emit ten tons per year of any HAP or

25 tons per year of any combination of HAPs, unless the process or production unit satisfies clauses (i)-(vi) of this subparagraph:

(i) all HAPs emitted by the process or production unit that would otherwise be controlled under the requirements of this subchapter will be controlled by emission control equipment that was previously installed at the same site as the process or production unit;

(ii) either of the following regarding control of HAP emissions:

(I) the executive director has determined within a period of five years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR Part 51 or Part 52, toxics-best available control technology (T-BACT), or MACT based on state air toxic rules for the category of pollutants that includes those HAPs to be emitted by the process or production unit; or

(II) the executive director determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other similar sources using a level of control equivalent to current BACT, LAER, T-BACT, or state air toxic rule MACT determination;

(iii) the executive director determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(iv) the executive director has provided notice and an opportunity for public comment concerning the determination that criteria in clauses (i) - (iii) of this subparagraph apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or state air toxic rule MACT determination;

(v) if any commenter has asserted that a prior LAER, BACT, T-BACT, or state air toxic rule MACT determination is no longer adequate, the executive director has determined that the level of control required by that prior determination remains adequate; and

(vi) any emission limitations, work practice requirements, or other terms and conditions upon which the determinations in clauses (i) - (v) of this subparagraph are predicated will be construed by the executive director as applicable requirements under FCAA, §504(a), and either have been incorporated into any existing permit issued under Chapter 122 of this title (relating to Federal Operating Permits) for the affected source (as defined in §116.15(1) of this title) or will be incorporated into such permit upon issuance.

(2) **Reconstruct a major source**--The replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit ten tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under this subchapter.

(b) The requirements of this subchapter apply to an owner or operator of an affected source (as defined in §116.15(1) of this title) that constructs or reconstructs, unless the affected source in question has been specifically regulated or exempted from regulation under a standard issued under FCAA, §112(d), (h), or (j) and incorporated in another subpart of 40 CFR Part 63, or the owner or operator of such affected source has received all necessary air quality permits for such construction or reconstruction project.

(c) Affected sources (as defined in §116.15(1) of this title) subject to the requirements of this subchapter are not eligible to use a standard permit under Subchapter F of this chapter (relating to Standard Permits) unless the terms and conditions of the specific standard permit meet the requirements of this subchapter.

§116.402. Exclusions.

(a) The requirements of this subchapter do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list under Federal Clean Air Act, §112(c)(5).

(b) The requirements of this subchapter do not apply to stationary sources that are within a source category that has been deleted from the source category list under Federal Clean Air Act, §112(c)(9).

(c) The requirements of this subchapter do not apply to research and development activities, as defined in 40 Code of Federal Regulations, §63.41.

(d) Nothing in this subchapter shall prevent a state or local agency from imposing more stringent requirements than those contained in this subchapter.

§116.404. Application.

Consistent with the requirements of 40 Code of Federal Regulations §63.43 (concerning maximum achievable control technology determinations for constructed and reconstructed major sources), the owner or operator of a proposed affected source (as defined in §116.15(1) of this title

(relating to Section 112(g) Definitions)) shall submit a permit application as described in §116.110 of this title (relating to Applicability).

§116.406. Public Notice Requirements.

Proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with the public notice requirements contained in Chapter 39 of this title (relating to Public Notice).

SUBCHAPTER E: EMERGENCY ORDERS

§116.410

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission 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 prepare and develop a general, comprehensive plan for the control of the state's air.

The repeal implements THSC, §§382.002, 382.011, and 382.012.

§116.410. Applicability.

SUBCHAPTER F: STANDARD PERMITS

§116.610, §116.617

STATUTORY AUTHORITY

The amendment and new section are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment and new section are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382, and to issue a standard permit for similar facilities; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and §382.05195, concerning Standard Permit, which authorizes the commission to issue a standard permit for new or existing similar facilities if the standard permit is enforceable, and the commission can adequately

monitor compliance with the terms of the standard permit; and FCAA, 42 USC, §§7401 *et seq.*, that requires permits for construction and operation of new or modified major stationary sources.

The amendment and new section implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, 382.0518, and 382.05195; and FCAA, 42 USC, §§7401 *et seq.*

§116.610. Applicability.

(a) Under the Texas Clean Air Act, §382.051, a project that meets the requirements for a standard permit listed in this subchapter or issued by the commission is hereby entitled to the standard permit, provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration.

(1) Any project that results in a net increase in emissions of air contaminants from the project other than carbon dioxide, water, nitrogen, methane, ethane, hydrogen, oxygen, or those for which a national ambient air quality standard has been established must meet the emission limitations of §106.261 of this title (relating to Facilities (Emission Limitations)), unless otherwise specified by a particular standard permit.

(2) Construction or operation of the project must be commenced prior to the effective date of a revision to this subchapter under which the project would no longer meet the requirements for a standard permit.

(3) The proposed project must comply with the applicable provisions of the Federal Clean Air Act (FCAA), §111 (concerning New Source Performance Standards) as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA).

(4) The proposed project must comply with the applicable provisions of FCAA, §112 (concerning Hazardous Air Pollutants) as listed under 40 CFR Part 61, promulgated by the EPA.

(5) The proposed project must comply with the applicable maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)).

(6) If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the proposed facility, group of facilities, or account must obtain allocations to operate.

(b) Any project that constitutes a new major stationary source or major modification as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) is subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(c) Persons may not circumvent by artificial limitations the requirements of §116.110 of this title.

(d) Any project involving a proposed affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with all applicable requirements under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)). Affected sources subject to Subchapter E of this chapter may use a standard permit under this subchapter only if the terms and conditions of the specific standard permit meet the requirements of Subchapter E of this chapter.

§116.617. State Pollution Control Project Standard Permit.

(a) Scope and applicability.

(1) This standard permit applies to pollution control projects undertaken voluntarily or as required by any governmental standard, that reduce or maintain currently authorized emission rates for facilities authorized by a permit, standard permit, or permit by rule.

(2) The project may include:

(A) the installation or replacement of emissions control equipment;

(B) the implementation or change to control techniques; or

(C) the substitution of compounds used in manufacturing processes.

(3) This standard permit must not be used to authorize the installation of emission control equipment or the implementation of a control technique that:

(A) constitutes the complete replacement of an existing production facility or reconstruction of a production facility as defined in 40 Code of Federal Regulations §60.15(b)(1) and (c); or

(B) the executive director determines there are health effects concerns or the potential to exceed a national ambient air quality standard criteria pollutant or contaminant that results from an increase in emissions of any air contaminant until those concerns are addressed by the registrant to the satisfaction of the executive director; or

(C) returns a facility or group of facilities to compliance with an existing authorization or permit unless authorized by the executive director.

(4) Only new or modified pollution control projects must meet the conditions of this standard permit. All previous standard permit registrations under this section that were authorized prior to the effective date of this rule must include the increases and decreases in emissions resulting from those projects in any future netting calculation and all other conditions must be met upon the ten-year anniversary and renewal of the original registration, or until administratively incorporated into the facilities' permit, if applicable.

(b) General requirements.

(1) Any claim under this standard permit must comply with all applicable conditions of:

(A) §116.604(1) and (2) of this title (relating to Duration and Renewal of Registrations to Use Standard Permits);

(B) §116.605(d)(1) and (2) of this title (relating to Standard Permit Amendment and Revocation);

(C) §116.610 of this title (relating to Applicability);

(D) §116.611 of this title (relating to Registration to Use a Standard Permit);

(E) §116.614 of this title (relating to Standard Permit Fees); and

(F) §116.615 of this title (relating to General Conditions).

(2) Construction or implementation of the pollution control project must begin within 18 months of receiving written acceptance of the registration from the executive director, with one 18-month extension available, and must comply with §116.115(b)(2) and §116.120 of this title (relating to General and Special Conditions and Voiding of Permits). Any changes to allowable emission rates authorized by this section become effective when the project is complete and operation or implementation begins.

(3) The emissions limitations of §116.610(a)(1) of this title do not apply to this standard permit.

(4) Predictable maintenance, startup, and shutdown emissions directly associated with the pollution control projects must be included in the representations of the registration application.

(5) Any increases in actual or allowable emission rates or any increase in production capacity authorized by this section (including increases associated with recovering lost production capacity) must occur solely as a result of the project as represented in the registration application. Any increases of production associated with a pollution control project must not be utilized until an additional authorization is obtained. This paragraph is not intended to limit the owner or operator's

ability to recover lost capacity caused by a derate, which may be recovered and used without any additional authorization.

(c) Replacement projects.

(1) The replacement of emissions control equipment or control technique under this standard permit is not limited to the method of control currently in place, provided that the control or technique is at least as effective as the current authorized method and all other requirements of this standard permit are met.

(2) The maintenance, startup, and shutdown emissions may be increased above currently authorized levels if the increase is necessary to implement the replacement project and maintenance, startup, and shutdown emissions were authorized for the existing control equipment or technique.

(3) Equipment installed under this section is subject to all applicable testing and recordkeeping requirements of the original control authorization. Alternate, equivalent monitoring, or records may be proposed by the applicant for review and approval of the executive director.

(d) Registration requirements.

(1) A registration must be submitted in accordance with the following.

(A) If there are no increases in authorized emissions of any air contaminant resulting from a replacement pollution control project, a registration must be submitted no later than 30 days after construction or implementation begins and the registration must be accompanied by a \$900 fee.

(B) If a new control device or technique is authorized or if there are increases in authorized emissions of any air contaminant resulting from the pollution control project, a registration must be submitted no later than 30 days prior to construction or implementation. The registration must be accompanied by a \$900 fee. Construction or implementation may begin only after:

(i) no written response has been received from the executive director within 30 calendar days of receipt by the Texas Commission on Environmental Quality (TCEQ); or

(ii) written acceptance of the pollution control project has been issued by the executive director.

(C) If there are any changes in representations to a previously authorized pollution control project standard permit for which there are no increases in authorized emissions of any air contaminant, a notification or letter must be submitted no later than 30 days after construction or implementation of the change begins. No fee applies and no response will be sent from the executive director.

(D) If there are any changes in representations to a previously authorized pollution control project standard permit that also increase authorized emissions of any air contaminant resulting from the pollution control project, a registration alteration must be submitted no later than 30 days prior to the start of construction or implementation of the change. The registration must be accompanied by a \$450 fee, unless received within 180 days of the original registration approval. Construction or implementation may begin only after:

(i) no written response has been received from the executive director within 30 calendar days of receipt by the TCEQ; or

(ii) written acceptance of the pollution control project has been issued by the executive director.

(2) The registration must include the following:

(A) a description of process units affected by the project;

(B) a description of the project;

(C) identification of existing permits or registrations affected by the project;

(D) quantification and basis of increases and/or decreases associated with the project, including identification of affected existing or proposed emission points, all air contaminants, and hourly and annual emissions rates;

(E) a description of proposed monitoring and recordkeeping that will demonstrate that the project decreases or maintains emission rates as represented; and

(F) a description of how the standard permit will be administratively incorporated into the existing permit(s).

(e) Operational requirements. Upon installation of the pollution control project, the owner or operator shall comply with the requirements of paragraphs (1) and (2) of this subsection.

(1) General duty. The owner or operator must operate the pollution control project in a manner consistent with good industry and engineering practices and in such a way as to minimize emissions of collateral pollutants, within the physical configuration and operational standards usually associated with the emissions control device, strategy, or technique.

(2) Recordkeeping. The owner or operator must maintain copies on site of monitoring or other emission records to prove that the pollution control project is operated consistent with the requirements in paragraph (1) of this subsection, and the conditions of this standard permit.

(f) Incorporation of the standard permit into the facility authorization.

(1) Any new facilities or changes in method of control or technique authorized by this standard permit instead of a permit amendment under §116.110 of this title (relating to Applicability) at a previously permitted or standard permitted facility must be incorporated into that facility's permit when the permit is amended or renewed.

(2) All increases in previously authorized emissions, new facilities, or changes in method of control or technique authorized by this standard permit for facilities previously authorized by a permit by rule must comply with §106.4 of this title (relating to Requirements for Permitting by Rule), except §106.4(a)(1) of this title, and §106.8 of this title (relating to Recordkeeping).

SUBCHAPTER F: STANDARD PERMITS

§116.617

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 THSC, §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 THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382.

The proposed repeal implements THSC, §§382.002, 382.011, 382.012, and 382.051.

§116.617. Standard Permits for Pollution Control Projects.

SUBCHAPTER K: EMERGENCY ORDERS

§116.1200

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.515, Emergency Order Because of Catastrophe, which authorizes the commission to order immediate action necessitated by catastrophe; §5.516, Emergency order Under Section 401.056, Health and Safety Code, which authorizes the commission to issue an emergency order under Section 401.056, Health and Safety Code; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC.

The new section implements TWC, §5.515 and §5.516, and THSC, §§382.002, 382.011, 382.012, and 382.051.

§116.1200. Applicability.

The owner or operator of a facility may apply to the commission or the executive director for an emergency order under Texas Water Code, §5.515, and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions), to authorize immediate action for the addition, replacement, or repair of facilities or control equipment, and authorizing associated emissions of air contaminants, whenever a catastrophe necessitates such construction and emissions otherwise precluded under the Texas Clean Air Act.