The Texas Commission on Environmental Quality (TCEQ or commission) proposes 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 116.400, 116.402, 116.404, 116.406, and 116.1200 are proposed with identical language as currently exists in §§116.180 - 116.183, and 116.410, respectively. The amended, repealed, and new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

The commission also proposes to rename the title of Subchapter C from Hazardous Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(G), 40 CFR Part 63) to Plant-Wide Applicability Limits; to rename the title of Subchapter E from Emergency Orders to Hazardous Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(G), 40 CFR Part 63); and to add a new Subchapter K, Emergency Orders.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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). 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 would need to 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, then 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) as well as methods to minimize the emission increase determined in the netting exercise (baseline and actual to projected actual emission rates).

Plant-wide Applicability Limit (PAL)

Plant-wide applicability limit (PAL) is proposed for implementation by building on the current state permitting flexibility provided by the state flexible permit. A plant may have several facilities producing the same pollutant and may apply for this permit to establish an emission limit on a particular pollutant for those facilities. This limit would be established at the baseline emission rate for the facilities and best available control technology (BACT) must be implemented, on average, on the facilities over an implementation period. This option would be available to state flexible permit holders

based on their previous flexible permit review. Modifications at individual facilities resulting in emission increases that stay below the plant-wide limit are exempt from netting. The commission solicits comments on its proposed method of implementing the PAL and the relative benefits of the proposal versus the federal PAL. The commission also solicits comments on the benefits of adopting both the proposed version and the federal version of PAL into the commission's rules, such as a specific PAL model based on an east/west division of the state.

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 average 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

Actual to projected actual emissions consist of two parts. The first allows for the use of projected actual emissions rates based on projected demand rather than relying solely on the potential to emit, or proposed allowable emission rate, to determine the emission increase associated with the modification at modified and affected units. Secondly, it extends the concept of excluding demand growth from the projected emission increase to all source types by allowing sources to remove that portion of emission

increase (the difference between the projected actual emission rate and the baseline emission rate) that could have been accommodated in the baseline years.

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. 02-1387, 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 is not proposing rule changes concerning clean unit and federal pollution control projects.

Although the commission is not proposing a federal pollution control project rule, in this rulemaking it proposes changes to 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 an 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), or other standard permits as long as any collateral increases do not exceed the limits of §116.610.

The executive director had considered a federal pollution control project standard permit(FPCP) as a method to authorize collateral emissions that would otherwise qualify as major sources or modifications. The FPCP was part of the NSR reform program adopted by the EPA. A June 24, 2005, decision by the federal Court of Appeals for the District of Columbia vacated that portion of the EPA rules that authorized the FPCP. As a result of this ruling, the commission is not able to propose the FPCP as a method that excludes nonattainment and prevention of significant deterioration (PSD) review without a modification of the court of appeals' decision upon rehearing or appeal. The commission seeks comments on alternative processes for authorizing landfill gas flares and other ancillary facilities that have collateral emissions that would be considered major modifications or major sources for nonattainment or PSD review.

SECTION BY SECTION DISCUSSION

The commission proposes 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 proposes to amend §116.12 by changing the title to reflect the addition of all definitions associated with federal NSR permit applicability analysis. In addition to the changes necessary to incorporate NSR reform into the nonattainment permit program, changes associated with including PSD applicability analysis in §116.12 are also proposed. These definitions now apply to the

revised sections of the PSD rules in Chapter 116, Subchapter B, Division 6 of this chapter as well as the new sections associated with PAL permits.

The definition of actual emissions, in paragraph (1), has been modified to exclude this definition from being used in the federal NSR applicability test. 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 average 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.

Proposed 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.

Proposed 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) would require 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 (PM), 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.

Proposed 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 maintenance, startup, and shutdown 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, proposed paragraph (3)(E) has been added to allow for the inclusion of those emissions that could currently be authorized by permit to be included in the baseline. 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 under minor or major NSR. The proposed paragraph (3)(D) also requires that fugitive emissions be included in the baseline to the extent they can be quantified.

Proposed paragraphs (6) and (7), 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 would be renumbered as paragraph (11) and would be revised to reference major modification thresholds, including those for PSD as well as nonattainment.

The federal definition of electric utility steam generating unit is provided in proposed new paragraph (12). It identifies those units that are subject to a different baseline emissions determination than other source types. New paragraph (13) would define federally regulated NSR pollutant, providing a comprehensive list of pollutants that may be subject to federal NSR.

The definition for major stationary source would be renumbered as paragraph (15) and would be 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.

A number of changes are proposed for the definition of major modification in renumbered paragraph (16). Language would be added to incorporate PSD review into the definition and references to facility would be removed for clarity. Language would be 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. The definition would be expanded 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. This requirement ensures that if a PAL is not established for an entire process, any significant emission changes at non-PAL permitted

facilities result in a federal permit review. Exceptions would be added to the definition for projects satisfying the requirements for a PAL except as previously noted and for various clean coal projects.

The commission proposes changes to the definition of net emission increase in renumbered paragraph (18) 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 proposed 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 as a practical matter rather than federally enforceable and the emission decrease cannot have been relied upon in the issuance of a PAL. Emission decreases may be creditable at these types of facilities, but they must go beyond what is required for the permit exclusion or designation. An emission reduction may be generated within a PAL, but the PAL must be lowered by that amount and the reduction must be real and enforceable in the same way as if the PAL were not in place.

The definition of offset ratio in renumbered paragraph (19) has been revised to incorporate the same limits relating to emission reductions that have been relied upon in the issuance of a PAL.

Proposed new paragraphs (20) - (24) have been added to incorporate new definitions from NSR reform related to PALs into the commission rules. These new paragraphs include definitions for: PAL; effective date; PAL major modification; PAL permit; and PAL pollutant.

The requirement to use baseline actual emissions has been added to renumbered paragraph (26), in the definition of project net.

Proposed new paragraphs (27) and (28) are added 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 would need to be made that the market conditions expected in the future are expected to 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 encourages comments on the interpretations related to the actual to projected actual emissions rate.

A definition for temporary clean coal technology demonstration project is proposed as new paragraph (31) to fully incorporate all of EPA's exclusions to what is considered a major modification under NSR reform.

Existing paragraphs are proposed to be renumbered to accommodate the proposed new definitions.

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

This new section is proposed to require documentation associated with the projected actual emissions rates and records of compliance as identified in the federal rule. New subsection (a) would require a demonstration that federal NSR review 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) would require 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) would require 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) would require 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) would establish record retention periods.

The commission expects that projected actual emissions will be used extensively in registrations or claims for state NSR authorization 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 a state NSR construction permit is expected to be limited because the state allowable emission rate would not generally be based on an activity level that would not be reached for more than ten years.

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

The proposed amendment to subsection (b) would delete 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 will refer this determination to the definitions of major stationary source and major modification in §116.12. The commission would also substitute the term "facility" for "emission unit" in subsection (e)(1) for consistency in use of terms. The amendment to this section would also update the reference of the §116.12 title to Federal Permit Definitions.

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

The proposed amendments to this section consist primarily of administrative and formatting changes. This section is proposed to be reformatted into subsections. The reference to November 15, 1992, would be deleted from subsection (a) because that date has passed and is not necessary for application of the section. The commission would also substitute the term "facility" for "emission unit" in subsection (c)(1) for consistency in use of terms. Subsections (b) and (c) are proposed to state when netting will be required.

§116.160. Prevention of Significant Deterioration Requirements.

The proposed amendment to this section would limit 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) would delete the federal rule references and replace 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 proposed new subsection (b) would state 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.

Proposed new subsection (c) would incorporate 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 proposed amendment would also substitute 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.

Existing subsection (d) is proposed to be relettered as subsection (e).

In addition to renaming Subchapter C, the commission also proposes new Division 1, Plant-Wide Applicability Limits.

The commission proposes the repeal of existing §116.180, Applicability; §116.181, Exclusions; §116.182, Application; and §116.183, Public Notice Requirements.

Proposed new §§116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, and 116.198 would be in new Division 1.

§116.180. Applicability.

This proposed new section limits a PAL to one pollutant as required by the EPA and a site to one PAL permit in subsection (a). A PAL permit may contain separate PALs for several pollutants and will likely be consolidated with a state or federal 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.

§116.182. Plant-wide Applicability Limit Permit Application.

This proposed 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 state 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.

New paragraphs (4) and (6) would require that 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 beyond what the EPA reform requires, but is consistent with the state flexible permit program. BACT also allows flexible permit holders to establish a PAL based on their past flexible permit review to allow for maximum flexibility at a plant site. The BACT requirement does not change the PAL, which is set using baseline emissions for the facilities. Paragraph (6) would require an implementation schedule for BACT if control technology requires upgrading.

§116.184. Application Review Schedule.

This proposed new section would require 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 proposed 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.

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.

Subsection (b)(4) would integrate common recordkeeping and reporting requirements for most other air permits with the much more extensive requirements identified in the EPA rule. Subparagraphs (A) and (B) of paragraph (4) 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. The semiannual and deviation reporting requirements in the federal rule are redundant with the current requirements in 30 TAC Chapter 122, Federal Operating Permits, and were not included in this proposed rule.

Subsection (b)(5) - (7) contains 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 (8). Paragraphs (9) and (10) 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 re-validated at least every five years.

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.

§116.188. Plant-wide Applicability Limit.

This proposed new section identifies how the PAL is to be determined. Paragraph (1) allows the inclusion of emissions up to the significance level in addition to baseline emissions, but notes that adding these emission will affect any evaluation of emission increases at non-PAL sources. Paragraph (2) limits all facilities to the same baseline period for a given pollutant. Paragraph (3) addresses how to determine the PAL if there is a major modification involved. Modified sources contribute their allowable emission rates while existing unmodified sources contribute their baseline emission rates. Paragraph (4) would require 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 proposed new section identifies that any changes that occur under a PAL are not considered federal modifications unless the PAL will be exceeded. Subsection (b) would restrict 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.

§116.192. Amendments and Alterations.

This proposed new section would allow increases to a PAL only through amendment in subsection (a). Subsection (a) requires that the new or modified facilities causing the need for the PAL increase be

reviewed under the appropriate federal NSR program. Modified sources contribute their allowable emission rates to the new PAL while existing unmodified sources contribute their previous emission rates. The amended PAL is subject to public notice. The PAL increases are effective when the new and modified units become operational. Subsection (b) would limit reconsideration of controls associated with a PAL to amendments, but allow for changes in the implementation schedule to be requested through alteration. Subsection (c) identifies other changes that may be completed by alteration. These include changes to the special conditions that do not increase the emission cap, as well as adding new facilities to the PAL to ensure adequate monitoring is in place.

§116.194. Public Notice and Comment.

This proposed new section requires that all PAL initial issuances, amendments, and renewals go to public notice with a possible notice and comment hearing as specified in 30 TAC Chapter 39, Subchapters H and K, Applicability and General Provisions; and Public Notice of Air Quality Applications.

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

This proposed 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; identification of and justification for those qualified facilities to be included in the PAL; the potential to emit for qualified facilities and highest consecutive 12-month emissions in the last ten years for those that are not qualified; the associated state NSR authorizations; and any other information the executive director may require to determine at what level to renew the PAL.

Subsection (d) would require public notice for the renewed PAL, while subsection (e) includes the requirements for establishing the renewed PAL. These include summing the potential to emit for qualified facilities and the greatest rolling 12-month emissions for the facilities that are not qualified. The significance level for the pollutant may be added to that, but in no case may the new PAL level exceed the previous level. The significance level for a criteria pollutant is the netting trigger level found in the definition of major modification (Table 1) in §116.12.

§116.198. Expiration or Voidance.

This proposed new section requires that all BACT upgrades either be complete or be made enforceable in another manner prior to a PAL being voided. Once the controls have been implemented, a PAL may be dissolved at the permit holder's request. There is no need to allocate the PAL among facilities because there will be allowables associated with the state or federal authorizations.

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

These proposed 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 proposed as a reorganization of this chapter in order to accommodate new sections concerning NSR reform and do not contain substantive changes. The commission proposes administrative changes to be consistent with previously mentioned guidelines and to remove dates that are no longer applicable. The commission is not seeking comments on the substance of the sections, but rather, seeking only comments regarding the new organization structure, or non-substantive changes that would improve clarity of these sections.

The commission proposes the repeal of §116.410, Applicability.

§116.610. Applicability.

The proposed amendment to this section would remove 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 30 TAC §106.262 would be deleted because §106.261 refers to the use of §106.262, when applicable. The proposed change to subsection (b) would delete 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.

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

§116.617. State Pollution Control Project Standard Permit.

This proposed new section would incorporate 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 projects standard permit. Proposed new subsection (a)(2) clarifies the types of projects that may be authorized by a state pollution control projects standard permit, reorganized from the existing §116.617 requirements.

Proposed 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. Proposed 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.

Proposed new subsection (a)(3)(B) states that any collateral emission increase associated with the state pollution control projects standard permit must not cause or contribute to any exceedance of a national ambient air quality standard or cause adverse health effects. Proposed new subsection (a)(3)(C) prohibits the use of the state pollution control projects standard permit for the purpose of bringing a facility or group of facilities into compliance with an existing authorization or permit, which, by

practice and intent, has never been allowed. Correcting such violations using the state pollution control projects standard permit would circumvent the potential evaluation of BACT and review of environmental and health effects that should have occurred during the original facility authorization review.

Proposed new subsection (a)(4) addresses how projects that have been registered under the existing §116.617 may continue to be authorized and subsequently meet the conditions of this proposed 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 current review period of 30 days would be extended to 45 days to allow evaluation of netting, which would be required under the state pollution control projects standard permit.

Proposed new subsection (b) is organized into paragraphs (1) - (5) and includes the general requirements dispersed throughout current §116.617. Proposed new 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.

Proposed new subsection (b)(2) contains 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. This requirement is added for three reasons: 1) questions regarding the start of construction deadlines and effective dates of new emissions limitations are frequently asked of the executive director; 2) setting a deadline consistent with §116.120, Voiding of Permits, ensures timely progress toward pollution control; and 3) this deadline keeps any emission changes within a contemporaneous netting window if federal permit applicability is of concern.

Proposed new subsection (b)(3) would exempt 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.

Proposed new subsection (b)(4) contains a new requirement that predictable maintenance, startup, and shutdown (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. The commission solicits comments regarding the calculation, reporting, and inclusion of MSS emissions within this standard permit.

Proposed new subsection (b)(5) contains the same requirements as in current §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.

Proposed 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. Proposed subsection (c)(1) repeats the current §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. Proposed new 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. Proposed new subsection (c)(3) is a new requirement and 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.

Proposed 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. Proposed 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 proposed 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. Proposed new subsection (d)(2) clarifies current 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.

Proposed 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. Proposed new subsection (e)(1) emphasizes that a project should be constructed and operated in accordance with good engineering practices to minimize emissions. Proposed new subsection (e)(2) specifically requires copies of documentation to be kept demonstrating compliance with this standard permit.

Proposed 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. Proposed new subsection (f)(1) applies to facilities authorized by a

permit or standard permit. Proposed new subsection (f)(1) 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. Although incorporation is not a new requirement, subsection (f)(1) clarifies that the project will have an impacts review, no evaluation of BACT is required, and that the increases will not trigger public notice.

Proposed 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 proposed new section contains the identical language found in existing §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 proposed in order to reorganize this chapter to accommodate new sections associated with NSR reform and does not contain substantive changes. The commission is not seeking comment on the substance of the section, but rather, seeking only comments regarding the new organization structure or non-substantive changes that would improve the clarity of this section.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules would implement EPA regulations concerning NSR reform.

The proposed rules seek to implement NSR reform by repealing, amending, and proposing new sections of this chapter. EPA received feedback that needed improvements to facilities have not been undertaken because of the cost of federal NSR evaluations. EPA indicated that the intent of the reform of the process is to limit the instances of modification that would, under current rules, trigger federal NSR. Fewer planned facility modifications would be subject to emission accounting exercises where increases and decreases of emissions in a certain time period are totaled to determine if a facility modification is classified as a major modification and, therefore, subject to federal NSR.

Reform of federal NSR offers options by which facility owners or operators can avoid the triggering mechanisms of federal NSR. The reforms that these proposed rules would implement are: state pollution control and prevention projects, PALs, and changes in the calculation of emission increases and actual emission baselines. The use of these reforms is not mandatory and owners or operators of modified facilities would implement these reforms on a voluntary basis.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be consistency between

federal and state regulations concerning NSR. Owners or operators making facility modifications would not incur the cost of procedures, upgrades to emission equipment, or the purchase of pollution credits that could be required under federal NSR.

Industry would save costs by reducing the number of facility modifications that would be subject to federal NSR. Fewer emission increases that result from facility modification would have to be offset by emission reductions, upgrade of emission controls, or by the purchase of emission credits or allowances. The exact amount of cost savings at this time is not known due to the variety of methods and operating systems employed by different entities in industry. However, savings could be as much as $40,000 per ton of pollutant, the current market price of an emission credit, which an entity would have been required to purchase under NSR if emission calculations showed planned modifications would increase emissions above the allowable amount.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. A small business is defined as having fewer than 100 employees or less than $1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees. Typically, small or micro-businesses do not participate in the type of industrial activities to which NSR, and therefore, NSR reform would apply.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed 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 proposed rulemaking would revise the rules regarding federal permitting applicability, including adding additional options under federal air quality permitting applicability and plant-wide applicability limit options. The proposed rulemaking revises the existing pollution control projects standard permit. In addition, the proposed rulemaking would modify and add definitions, and change some general formatting of this chapter. The proposed rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by

state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rules do not exceed a standard set by federal law or exceed an express requirement of state law. The proposed rules do not incorporate federal NSR reform verbatim but provide for a different, yet equivalent, approach for implementation that is best suited to benefit Texas' industry and environment. This equivalence will also be demonstrated to EPA for these rules to be included in the SIP. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. 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 proposed rules do not meet any of the four applicability requirements.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rules, including adding additional options under federal air quality permitting applicability and plant-wide applicability limit options. The proposed rulemaking revises the existing pollution control projects standard permit. The specific

purpose of this rulemaking is to revise the rules regarding federal permitting applicability. In addition, the proposed rulemaking would modify and add definitions, and change 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 proposed rules do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission'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(l)). No new sources of air contaminants will be authorized and the proposed 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 (31 TAC §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 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The new and amended sections in this proposal 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.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on October 27, 2005, at 2:00 p.m. in Building B, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., October 31, 2005, and should reference Rule Project Number 2005-010-116-PR. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Beecher Cameron, Air Permits Division, at (512) 239-1495 or Kurt Kind, Air Permits Division, at (512) 239-1337.

SUBCHAPTER A: DEFINITIONS

§116.12

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under 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 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; §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 proposed 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. Federal Permit [Nonattainment 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) [§116.150 and §116.151 of this title (relating to Nonattainment Review)], 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 a two-year 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 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) (No change.)

(3) **Baseline actual emissions** - The average rate of actual 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 average 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 reviewing authority 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 average 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 average 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 average 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 average 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 average 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, in a permit action under Chapter 106 of this title (relating to Permits by Rule) and this chapter.

(4) [(3)] **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.

(5) [(4)] **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.

(6) **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.

(7) **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.

(8) [(5)] **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.

(9) [(6)] **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.

(10) [(7)] **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.

(11) [(8)] ***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 major modification threshold [MAJOR MODIFICATION column of Table I located in the definition of major modification in this section] for that pollutant [specific nonattainment area]. If the major modification level is exceeded, then prevention of significant deterioration and/or nonattainment review is required.

(12) **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 also considered in determining the electrical energy output capacity of the affected facility.

(13) **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.

(14) [(9)] **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.

(15) [(10)] **Major [facility/] stationary source** - Any [facility/] stationary source that emits, or has the potential to emit, a threshold quantity of emissions [the amount specified in the MAJOR SOURCE column of Table I located in the definition of major modification in this section] 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 provided 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 §51.166(b)(1). A source that is major for one prevention of significant deterioration pollutant is considered major for all prevention of significant deterioration pollutants. Any physical change that would occur at a stationary source not qualifying as a major stationary source will make the source major [in Table I of this section], if the change would constitute a major stationary source by itself. A major stationary source that is major for VOCs 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 Code of Federal Regulations §51.165(a)(1)(iv)(C).

(16) [(11)] **Major modification** - As follows.

(A) Any physical change in, or change in the method of operation of a major [facility/] stationary source that causes a significant project emissions increase and a significant net emissions increase for any federally regulated new source review pollutant [air contaminant for which a national ambient air quality standard (NAAQS) has been issued]. At a [facility/] stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified for a major source [in the MAJOR SOURCE column of Table I of this section]. At an existing major [facility/] stationary source, the increase must equal or exceed that specified for a major modification to be significant. The major source and major modification 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. Any physical change in, or change in the method of operation of a facility in a plant-wide applicability limit (PAL) that causes a significant project emissions increase for any federally regulated new source review pollutant at non-PAL facilities is a major modification. [in the MAJOR MODIFICATION column of Table I.]

Figure: 30 TAC §116.12(16)(A)

[Figure: 30 TAC §116.12(11)(A)]

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT designation[1]	MAJOR SOURCE tons/year	MAJOR MODIFICATION[2] tons/year	OFFSET RATIO minimum

OZONE (VOC, NOx)[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 major modification threshold is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the major modification level listed in 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

NO_2 = nitrogen dioxide

CO = carbon monoxide

SO_2 = sulfur dioxide

PM_{10} = particulate matter with an aerodynamic diameter less than or equal to ten microns

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

[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 which was established after December 21, 1976); [or]

(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 unless the project emission increases at non-PAL facilities are significant;

(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.

(17) [(12)] **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.

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

(A) An increase or decrease in [actual] emissions is creditable only if both of the following conditions are met:

(i) it occurs during the contemporaneous period; and

(ii) the executive director has not relied on it in issuing a federal permit of same type [nonattainment permit] for the source and that permit is in effect [(under regulations approved during which the permit is in effect)] when the increase in [actual] emissions from the particular change occurs.

(B) An increase in [actual] 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 [actual] emissions exceeds the baseline actual emission rate. Emission increases at facilities under a plant-wide applicability limit are not creditable. [old level.]

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

(i) the baseline actual emission rate [old level of actual emissions or the old level of allowable emissions, whichever is lower,] exceeds the new level of [actual] emissions;

(ii) it is enforceable as a practical matter [federally enforceable] at and after the time that actual construction on the particular change begins;

(iii) the reviewing authority has not relied on it in issuing a prevention of significant deterioration, [or a] nonattainment, or plant-wide applicability limit permit; [permit, or the state has not relied on the decrease to demonstrate attainment or reasonable further progress; and]

(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.

(19) [(14)] **Offset ratio** - For the purpose of satisfying the emissions offset reduction requirements of the 42 United States Code, §7503(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total [allowable] emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification [of this section]. 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, or plant-wide applicability limit permit.

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

(21) **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.

(22) **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.

(23) **Plant-wide applicability limit permit** - The state or federal new source review permit that establishes the plant-wide applicability limit.

(24) **Plant-wide applicability limit pollutant** - The pollutant for which a plant-wide applicability limit is established.

(25) [(15)] **Potential to emit** - The maximum capacity of a [facility/] stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the [facility/] stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, 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.

(26) [(16)] **Project net** - The sum of the following: the total proposed increase in emissions resulting from a physical change or change in the method of operation at a stationary source, minus any sourcewide creditable [actual] 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.

(27) **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.

(28) **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.

(29) [(17)] **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.

(30) [(18)] **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*.

(31) **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 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 new section 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; §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 FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, and 382.0518; and FCAA, 42 United States Code, §§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 will 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 year of which records must be maintained setting out 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 such 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 required information maintained to document projected actual emissions and any emissions excluded from the project emission increase 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 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 amendments are 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; §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 FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

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

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

(a) (No change.)

(b) The owner or operator of a proposed new [or modified facility that will be a new] major stationary source, as defined in §116.12 of this title (relating to Federal Permit Definitions) of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or the owner or operator of an existing [major] 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 [modifications] in §116.12 of this title, [(relating to Nonattainment Review Definitions)] specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source or major modification for those classifications.

(c) - (d) (No change.)

(e) In applying the *de minimis* threshold test, if the net emissions increases, aggregated over the contemporaneous period, are greater than the major modification levels stated in Table I located in the definition of major modification in §116.12 of this title, then 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 [emission unit] and to each existing facility [emission unit] 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) - (4) (No change.)

(f) (No change.)

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

(a) This section applies to [administratively complete] applications [submitted on or after November 15, 1992,] 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 [which] 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) [paragraphs] (1) - (4) of this section. Table I of §116.12 of this title (relating to

Federal Permit [Nonattainment Review] Definitions) specifies the various classifications of nonattainment along with the associated emission levels that [which] designate a major stationary source [or major modification for those classifications].

(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 of §116.12 of this title.

(c) In applying the *de minimis* threshold test, if the net emissions increases, aggregated over the contemporaneous period, are greater than the major modification levels stated in Table I of §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 [emission unit] and to each existing facility [emission unit] 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 of §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 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 amendment 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; §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 FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 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. [Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the EPA in Title 40 Code of Federal Regulations (CFR) at 40 CFR §52.21 as amended March 12, 1996 and the Definitions for Protection of Visibility promulgated at 40 CFR §51.301 as amended July 1, 1999, hereby incorporated by reference.]

(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, aggregated over the contemporaneous period, 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 Federal Permit 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) A determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application, provided a contested case hearing has not been called on the application.

[(b) The following paragraphs are excluded:]

[(1) 40 CFR §52.21(j), concerning control technology review;]

[(2) 40 CFR §52.21(l), concerning air quality models;]

[(3) 40 CFR §52.21(q), concerning public notification (provided, however, that a determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application so long as a contested case hearing has not been called on the application);]

[(4) 40 CFR §52.21(r)(2), concerning source obligation;]

[(5) 40 CFR §52.21(s), concerning environmental impact statements;]

[(6) 40 CFR §52.21(u), concerning delegation of authority; and]

[(7) 40 CFR §52.21(w), concerning permit rescission.]

[(c) The definitions of building, structure, facility, or installation (40 CFR §52.21(b)(6)) and secondary emissions (40 CFR §52.21(b)(18)) are excluded and replaced with the following definitions:]

[(1) building, structure, facility, or installation - all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.]

[(2) secondary emissions - emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emission except as a result of the

construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.]

[(d) The term "executive director" shall replace the word "administrator," except in 40 CFR §52.21(b)(17), (f)(1)(v), (f)(3), (f)(4)(i), (g), and (t). "Administrator or executive director" shall replace "administrator" in 40 CFR §52.21(b)(3)(iii), and "administrator and executive director" shall replace "administrator" in 40 CFR §52.21(p)(2).]

(d) [(e)] 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 [PSD] 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 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 repeals are 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; §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 FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed repeals implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 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 [HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (FCAA, SECTION 112(G), 40 CFR PART 63)]

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 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 new sections are 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; §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 FCAA, 42 USC,

§§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 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 may be consolidated with a state or federal permit at the source.

(b) The new owner of a facility, group of facilities, or account 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 include a completed application that must be 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;

(4) use of best available control technology (BACT) at the proposed facility or group of facilities, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility on a proposed facility, group of facilities, or account basis. Control technology beyond BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of facilities or account basis, provided that the existing level of control may not be lessened for any facility. Until December 31, 2006, facilities authorized by a flexible permit under Subchapter G of this chapter (relating to Flexible Permits) may satisfy this requirement on the basis of that review if the PAL effective period is limited to ten years from the date the PAL permit was issued. Facilities with flexible permits issued more than ten years ago must satisfy the control requirements for PAL permit renewals and the PAL effective period is limited to 20 years after the flexible permit issuance date;

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

(6) a control technology implementation schedule, if necessary, to satisfy the BACT requirement in paragraph (4) of this section.

§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 as a practical matter, 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 show 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 show 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 will be 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. It shall be the responsibility of the PAL permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the 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 agency 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 may 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.

(5) Plantwide applicability limits. A PAL permit covers only those sources of emissions and those air contaminants identified in the table attached to the permit.

(6) 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.

(7) 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, then 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.

(8) Effective period. The PAL will be effective for ten years.

(9) 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.

(10) Re-validation. All data used to establish the PAL pollutant must be re-validated 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.

(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 requirement.

(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.

(4) If a facility requires the installation of additional controls to meet the best available control technology requirement in §116.182(4) of this title (relating to Plant-wide Applicability Limit Permit Application) for the pollutant, the PAL permit must specify an implementation schedule for such additional controls.

§116.188. Plant-wide Applicability Limit.

The plant-wide applicability limit (PAL) will be established as 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.

(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, but that quantity must be added to the result of the project emission increase at non-PAL facilities for any physical change, or change in the method of operation of a facility in the PAL. The amount must also be added to the result of the *de minimis* threshold test for any physical change, or change in the method of operation of a non-PAL facility.

(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) A PAL established concurrently with a federal major modification will be determined as follows. Prior to the start of operation of the new or modified facilities subject to federal NSR, the PAL shall be determined using baseline emissions as identified in §116.182(1) and (2) of this title (relating to Plant-wide Applicability Limit Permit Application). Upon the start of operation of the new or modified facilities subject to the major modification under prevention of significant deterioration and/or nonattainment review, as applicable, these facilities will contribute the authorized allowable emission rates to the PAL. Any baseline emissions associated with these facilities must be removed from the PAL at that time.

(4) 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) that is effective prior to issuance of the PAL permit.

§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.

§116.192. Amendments and Alterations.

(a) Any increase in a plant-wide applicability limit (PAL) must be made through amendment. The new or modified facilities causing the need for the increase in the PAL must be reviewed prior to start of construction as a major modification under prevention of significant deterioration and/or nonattainment review, as applicable, for each pollutant requiring an increase in a PAL. The PAL must be reestablished concurrently with the issued or amended permit by adding the authorized allowable

emission rates for the new or modified facilities to the baseline emissions for operating facilities used to establish the issued or renewed PAL for the remaining facilities. Amendments 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 to be included in the PAL and are subject to the public notice requirements under §116.194 of this title (relating to Public Notice and Comment). The PAL level will be increased effective on the day each facility that is part of the PAL major modification becomes operational and emits the PAL pollutant.

(b) Any changes to the control technology proposed to satisfy §116.182(4) of this title must be made through amendment. These changes shall include information necessary to demonstrate that the proposed change satisfies those requirements. Changes to the implementation schedule must be requested through permit alteration.

(c) 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.

The applicant shall also provide for public notice on the draft plant-wide applicability limit permit in accordance with Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications) for all initial applications, amendments, and renewals of a plant-wide applicability limit permit.

§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) an identification of the facilities that are qualified as defined in §116.10 of this title (relating to General Definitions) with supporting documentation;

(3) the sum of the potential to emit of all facilities under the PAL, with supporting documentation, and the greatest rolling 12-month actual emission rate during the PAL effective period for facilities that are not qualified;

(4) information as identified in §116.182(1) and (5) of this title (relating to Plant-wide Applicability Limit Permit Application); and

(5) any other information the owner or operator wishes 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 level of the renewed PAL must be established by setting the cap to equal the sum of the design emission rates from all qualified facilities, the greatest rolling 12-month actual emissions during the PAL effective period for facilities that are not qualified, and the applicable federal *de minimis* level subject to the following limitations.

(1) If the potential to emit of the stationary source is less than the PAL, the PAL must be adjusted to a level no greater than the potential to emit of the source.

(2) A renewed PAL must not be set at a level higher than the current PAL, unless the PAL is being amended concurrently with the renewal.

(3) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, the PAL cap contribution for the affected facility shall be adjusted down accordingly.

§116.198. Expiration or Voidance.

(a) A plant-wide applicability limit (PAL) permit holder may request that the permit be voided at any time after initial issuance. That request must include documentation demonstrating that all required control technology upgrades have been completed for that pollutant or propose an alternate mechanism for making the upgrades enforceable. The PAL permit remains effective until voided by the executive director.

(b) If a PAL permit expires or is voided, each facility must comply with all allowable emission limitations associated with the state new source review authorization. Any physical change or change in the method of operation at the major stationary source will be subject to major new source review requirements if such change meets the definition of major modification. The owner or operator shall

continue to comply with any state or federal applicable requirements that may have applied during the

PAL permit effective period.

SUBCHAPTER E: HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (FCAA, SECTION 112(G), 40 CFR PART 63) [EMERGENCY ORDERS]

§§116.400, 116.402, 116.404, 116.406

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under 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 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; §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; and §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.

The proposed 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 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 Code of Federal Regulations (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 (relating to Section 112(g) Definitions)) 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 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; 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 proposed 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 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 amendment and new section are 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; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC and to issue a standard permit for similar facilities, 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 §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 proposed amendment and new section implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.0518, and 382.05195; and FCAA, 42 USC, §§7401 *et seq*.

§116.610. Applicability.

(a) Under the Texas Clean Air Act [TCAA], §382.051, a project that [which] 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 [any] project that [which] 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 [National Ambient Air Quality Standard] has been established must meet the emission limitations of §106.261[(3) or (4) or §106.262(3)] of this title (relating to Facilities (Emission Limitations) [, and Facilities (Emission and Distance Limitations))], unless otherwise specified by a particular standard permit. [;]

(2) Construction [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 [the] proposed project must comply with the applicable provisions of the Federal Clean Air Act (FCAA) [FCAA], §111 (concerning New Source Performance Standards) as listed under [Title] 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA. [;]

(4) The [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 United States Environmental Protection Agency (EPA). [EPA;]

(5) The [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)). [; and]

(6) (No change.)

(b) Any project [, except those authorized under §116.617 of this title (relating to Standard Permits for Pollution Control Projects),] which constitutes a new major source[,] or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration Review) or Part D (Nonattainment Review) and regulations promulgated thereunder is subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(c) - (d) (No change.)

§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 (40 CFR) §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 (NAAQS) 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.

(4) Only new or modified pollution control projects must meet the conditions of this standard permit. All previous standard permit registrations under §116.617 of this title (relating to Standard Permits for Pollution Control Projects) 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) §115.615 of this title (relating to General Conditions).

(2) Construction or implementation of the pollution control project must begin within 180 days of receiving written acceptance of the registration from the executive director and must comply with §116.115(b)(2) of this title 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.

(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 application 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 application 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 at a previously permitted or standard permitted facility must be incorporated into that facility's permit when the permit is amended or renewed. Incorporation during amendments or renewal must meet the following:

(A) authorized changes will be subject to an impacts review based on the Effects Evaluation Flowchart and “Air Quality Modeling Guidelines” except for facilities permitted under another standard permit;

(B) authorized changes will not be subject to best available control technology review;

(C) this standard permit will be voided and the changes and emissions will become authorized by the permit or standard permit; and

(D) any emission increases authorized by this standard permit will not be considered for purposes of triggering public notice for amendments.

(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 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 new section 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.

The proposed new section implements 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.