The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §§106.2, 106.4, 106.6, 106.8, and 106.50; the repeal of §§106.261 - 106.263; and new §§106.261, 106.263, 106.268, and 106.269.

The amendments to §§106.2, 106.4, 106.6, and 106.8 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

In addition, the commission proposes to request that §106.50 be removed from consideration as a proposed revision to the SIP. Although not approved by EPA as a revision to the SIP, the commission submitted a previous version of §106.50, effective October 20, 2002, as a revision to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Revisions to 30 TAC Chapter 101, General Air Quality Rules, federal new source review (NSR) rules, and ongoing implementation of the Federal Operating Permits Program have resulted in considerable interest and inquiries from the regulated community regarding what maintenance, startup, shutdown (MSS), and other episodic releases of emissions should and can be authorized by an NSR permit or method of authorization. In an effort to aid applicants and agency staff, the commission is proposing criteria to determine if, and when, emissions that are generated outside of production operations should be authorized.

The commission proposes to authorize all types of routine operations (production, MSS, and certain anticipated and quantifiable emissions) under this chapter and under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification.

The commission is proposing a concurrent rulemaking to Chapter 116 in this issue of the *Texas Register*.

The commission is also proposing a non-rule standard permit as an additional mechanism to authorize MSS emissions. Notice of this standard permit is also published in this issue of the *Texas Register*. These changes are proposed to assist in reducing excess emissions and improve overall air quality in Texas. In all cases, any authorized portion of normal operations must comply with national ambient air quality standards (NAAQS) and state emission standards, and be protective of public health and welfare. It is the commission's intention to allow predictable, preventative MSS operations to be authorized. This would include periodic plant turnarounds, which are very extensive facility or plant-wide maintenance events that occur every few years. It would also allow companies to group the MSS emissions of similar facilities and activities into one authorization. These changes are proposed in the following new sections: §106.263, Temporary Maintenance Facilities; §106.268, Maintenance, Startup, and Shutdown Emission Releases; and §106.269, Quantifiable, Anticipated (QUAN) Emission Releases.

The commission proposes to revise the requirements for authorization by permit by rule (PBR). These revisions include limiting emissions of carbon monoxide (CO) and nitrogen oxides (NO_x) to 100 tons

per year (tpy) per PBR claim, and limiting emissions of hazardous air pollutants (HAPs) to 10 tpy for an individual HAP and 25 tpy for combined HAPs. The commission proposes these changes to prohibit use of PBRs to authorize major sources. The commission is also proposing to repeal §106.261 and §106.262 and replace them with a new §106.261 that contains updated technical requirements and emission limitations. The proposed changes to §106.261 would further increase protectiveness of that PBR, which was found to be used frequently at some facilities.

In addition, the commission proposes amendments to §§106.2, 106.4, 106.6, 106.8, and 106.50 that are intended to more effectively focus commission resources, update administrative and technical requirements for certain PBRs, streamline the air quality PBR process where appropriate, and address unnecessary registration and fee requirements.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines.

Subchapter A - General Requirements

§106.2 - Applicability

The commission proposes to amend §106.2 to reference the proposed definition of normal operations to prescribe what types of emissions may be authorized under Chapter 106. The definition of normal operations is concurrently proposed in this issue of the *Texas Register* in §116.10(16), General Definitions. Normal operations will be defined to include emissions from production; planned MSS;

and QUAN emissions. The proposed definition of normal operations excludes emissions resulting from acts of God, accidents, malfunctions, noncompliant operations, and other releases not consistent with good engineering practices.

§106.4 - Requirements for Permitting by Rule

The commission proposes to amend §106.4(a) to specify that the amended general requirements of §106.4(a) would only apply after the effective date of the rule. Sources authorized prior to the effective date of this amendment would be subject to the general requirements that were effective at the time the facility was authorized.

Several changes are proposed in §106.4(a)(1), including the further delineation of the scope of a PBR claim, what emissions should be considered, and the total quantity of emissions that may be authorized. Specifically, proposed subsection (a)(1) specifies the scope of a particular PBR claim must include the construction or changes to any single or group of related facilities as well as any related emission increases from upstream or downstream facilities affected by the changes or construction. This amendment is intended to codify commission practices in existence since 1981 and is not anticipated to have a major impact on the regulated community. These changes are necessary to ensure consistency with federal permitting reviews and that any related emission changes remain insignificant. Additionally, this subsection is proposed to specify that PBR claims should be evaluated on the net increase in emissions, a process that is also consistent with federal permitting applicability determinations.

Another proposed change to §106.4(a)(1) would reduce the quantity of CO and NO_x emissions that may be authorized under a single PBR claim. The current rule authorizes up to 250 tpy of these pollutants per PBR claim. The proposed revisions would reduce this amount to 100 tpy. This proposed change is not retroactive and would only affect PBR claims that occur after the effective date of the adopted amendment. Existing PBR claims would maintain their authorization to emit 250 tpy of these pollutants. The commission has proposed this reduction in the quantity of CO and NO_x emissions because PBRs are intended to authorize insignificant quantities of emissions. Although 250 tpy of NO_x and CO may have not been considered significant when this requirement was originally developed, under the current regulatory and permitting structure, 250 tpy of CO and NO_x represent a significant and potentially major quantity of emissions. Under the Federal Operating Permits Program, 100 tpy of any air pollutant constitutes a major source, so the 100-tpy level was selected as a more reasonable quantity. The commission proposes a similar revision applicable to HAPs, establishing a limit of 10 tpy for any individual HAP, or 25 tpy of combined HAPs. A source is considered major for HAP if emissions exceed these levels. PBRs are intended to be used for insignificant sources and a project resulting in any emissions that exceed the major source definition cannot be considered insignificant. The final proposed revision to §106.4(a)(1) would remove language concerning the exclusion of carbon dioxide, water vapor, nitrogen, methane, hydrogen, and oxygen from the category of air contaminants for purposes of authorizations under this chapter. This change is consistent with the proposed definition in §116.10(2) where the commission proposes to exclude these compounds, as well as certain inert gases (argon, neon, helium, krypton, and xenon) from the need to obtain any air authorization under Chapter 116 or this chapter.

The commission proposes to relocate the requirements in §106.4(a)(2) concerning nonattainment NSR to proposed new §106.4(f)(1). Proposed new §106.4(a)(2) describes how net emission increases are quantified. The emissions increase at a qualified facility would be determined as the difference between the new projected emission rate and the previous allowable emission rate. For example, if a qualified facility was authorized to emit 25 tpy of a particular pollutant and the owner or operator desired to use a PBR to increase the emissions of that pollutant to 45 tpy, the emissions increase would be quantified as 20 tpy for purposes of §106.4(a)(1), regardless of the actual pre-change emission rate from the qualified facility. Qualified facilities are facilities that were issued a permit or permit amendment that included a best available control technology (BACT) review for that facility within the last 120 months, or use an emission control method at least as effective as the BACT that the commission would have required within the last 120 months. These facilities are generally better controlled than non-qualified facilities, therefore it is reasonable to extend greater flexibility to qualified facilities. However, at facilities other than qualified facilities, an emissions increase would be determined based on the difference between the new projected emission rate and the previous actual emission rate. Any additional emission decreases that the commission is asked to consider for the determination of net increases must be actual, practical, and enforceable. The proposed amendment would also provide greater consistency between this chapter and Chapter 116 for evaluating emission increases. It is important to note that this proposed rule is only applicable to the determination of "net increase" for purposes of PBR claims and that for prevention of significant deterioration (PSD) and nonattainment NSR applicability, emissions increases must continue to be reviewed in accordance with Chapter 116.

The commission proposes to relocate the requirements in currently existing §106.4(a)(3) concerning PSD to proposed new §106.4(f)(2). The commission proposes revisions to currently existing §106.4(a)(4), proposed to be renumbered as §106.4(a)(3), to contain the cumulative limit on PBR emissions at sites that have not been subject to public notice. The proposed revisions would reduce the cumulative site-wide emission limit to 100 tpy for the pollutants CO and NO_x, for consistency with the proposed changes to §106.4(a)(1). The proposed language also refers to specific permitting subchapters to more clearly identify the types of permits that satisfy this requirement. The proposed changes also specify the need for a site to have a *current* permit to avoid the cumulative emission restrictions.

The commission proposes revisions to proposed renumbered §106.4(a)(4) and (5). Proposed §106.4(a)(5) contains requirements currently located under existing §106.4(a)(6). The proposed revisions to §106.4(a)(4) and (5) also add the phrase "facility, group of related facilities, and related increases" to maintain consistency with the terminology in proposed §106.4(a)(1).

The commission proposes revisions to proposed renumbered §106.4(a)(6). Proposed §106.4(a)(6) contains requirements currently located under existing §106.4(a)(8), concerning allowances for NO_x emissions under the Chapter 101, Subchapter H, Division 3, Mass Emissions Cap and Trade Program, and includes a change in phrasing to refer to "facility, group of related facilities, and related increases" for consistency with the terminology in proposed §106.4(a)(1) and other proposed sections.

The commission proposes to transfer the contents of currently existing §106.4(a)(7) concerning permit-based restrictions on the use of PBRs to proposed new §106.4(f)(4). The proposed new §106.4(a)(7) would establish a time limit for commencing construction on facilities authorized under a PBR. The proposed time limit would only apply to those PBRs that require registration. The proposed requirements specify that construction must commence within 18 months of confirmation of registration from the commission. The executive director may grant a one-time, 18-month extension upon request. This proposed requirement is intended to make the construction timelines for PBRs consistent with the construction timelines for permitting under Chapter 116 and to ensure that applicants do not submit PBR registrations for purely speculative purposes.

Proposed new §106.4(b) includes a list of PBRs that already authorize MSS emissions. Facilities using these PBRs may not authorize additional MSS emissions under §106.268. Currently existing subsections (b) and (c) are proposed to be relettered as (d) and (e), respectively.

Historically, MSS emissions have only been claimed under a limited number of PBRs. Any MSS emissions claimed have been limited to PBRs listed in the current §106.263 or to limits specified in specific PBRs. An additional review completed by commission staff considered MSS emissions under all additional PBRs; MSS emissions were not considered when each PBR was originally promulgated. Each PBR was reviewed to determine if the MSS emissions are of the same character and quantity as the production emissions and would be within the scope of the original PBR. This review also determined that in all cases, facilities authorized by PBRs can claim only episodic releases that are quantifiable and anticipated under proposed new §106.269 and cannot authorize additional MSS

emissions to further ensure protection of public health and welfare. This review resulted in a determination of which PBRs would include MSS emissions that are expected to be equal to, or less than, the normal operating emissions. These are listed in proposed new §106.4(b).

The commission proposes new §106.4(b)(1) - (25), listing the PBRs in this chapter under which MSS emissions are expected to be equal to, or less than, the normal operating emissions, including: 1) all of Subchapter C, Domestic and Comfort Heating and Cooling; 2) all of Subchapter D, Analysis and Testing; 3) all of Subchapter E, Aggregate and Pavement, except for §106.147, Asphalt Concrete Plants; 4) all of Subchapter F, Animal Confinement; 5) all of Subchapter G, Combustion; 6) all of Subchapter I, Manufacturing; 7) all of Subchapter J, Food Preparation and Processing; 8) §106.263, Temporary Maintenance Facilities; 9) §106.265, Hand-held and Manually Operated Machines; 10) §106.266, Vacuum Cleaning Systems; 11) all of Subchapter L, Feed, Fiber, and Fertilizer; 12) all of Subchapter M, Metallurgy; 13) all of Subchapter N, Mixers, Blenders, and Packaging; 14) all of Subchapter O, Oil and Gas; 15) all of Subchapter P, Plant Operations, except for §106.371, Cooling Water Units, and §106.372, Industrial Gases; 16) all of Subchapter Q, Plastics and Rubber; 17) all of Subchapter R, Service Industries, except for §106.416, Uranium Recovery Facilities; 18) all of Subchapter S, Surface Coating; 19) all of Subchapter T, Surface Preparation; 20) §106.471, Storage or Holding of Dry Natural Gas; 21) §106.477, Anhydrous Ammonia Storage; 22) §106.494, Pathological Waste Incinerators; 23) §106.496, Air Curtain Incinerators; 24) all of Subchapter W, Turbines and Engines; 25) all of Subchapter X, Waste Processes and Remediation.

All remaining PBRs have been reviewed and the commission has determined that MSS emissions are not expected to be the same character or quantity, or controlled in the same amount or manner as normal production emissions. MSS emissions that are different, or MSS emissions that cannot be determined to be of the same character and quantity as the normal production, must use the proposed §106.268 to authorize MSS emissions. The following list details these determinations: 1) existing asphalt concrete plants under §106.147 are expected to have additional volatile organic compound (VOC) releases in the form of asphalt vapor from tank degassing that are likely to be greater than the small quantities released during normal operations; 2) new facilities or changes to existing facilities authorized under §106.261 and §106.262 may use §106.268 in order to provide additional flexibility; 3) the MSS emissions from the replacement of existing facilities under §106.264 are unknown and may possibly be unlimited in character, quantity, and duration due to the general scope of this PBR; 4) cooling towers under §106.371 may use §106.268 due to unknown quantities and character of water treatment chemicals during MSS activities; 5) industrial gas handling under §106.372 may have additional VOCs due to lubricants and oil used for compressors or solvent usage for cleaning not normally expected during production; 6) uranium recovery facilities under §106.416 may use §106.268 due to unknown quantities and character of MSS activities and releases; 7) storage, handling, loading, and unloading of liquids under §§106.472, 106.473, 106.474, 106.475, 106.476, and 106.478 may use §106.268 because emissions resulting from clean out, repairs, or pumping down of the tanks (usually opening vents to atmosphere) are expected to be greater than normal production handling or loading emissions; 8) the MSS emissions for incinerators and heat cleaning devices under §106.491 and §106.495 are expected to result in excessive opacity and particulate matter emissions from burner air-to-fuel ratio adjustments or temperature controller adjustments; and 9) emissions from flares under

§106.492 are expected to result in excessive opacity, and improper mixing or uncontrolled releases of VOCs (waste gases) during MSS. Additional details regarding these evaluations are available upon request from the Air Permits Division. The commission also requests further information on anticipated or existing MSS emissions for any of the facilities or operations listed to determine appropriate authorization mechanisms.

Proposed §106.4(c) specifies how emissions associated with QUAN releases may be authorized. These unexpected emissions are those that any well maintained, operated, and managed facility cannot eliminate entirely. These emissions are therefore anticipated, quantifiable to an extent, yet unscheduled. Examples are emissions that may be released intermittently from a pressure relief valve, line switching, compressor blow-downs, or even a burst seal well before the end of its life expectancy. QUAN emissions are arguably different in nature from the most commonly reported emissions events, those unexpected incidents resulting from inadequate maintenance, malfunctions, accidents, and disasters. Therefore QUAN emissions should be taken out of the classification of “emission event” by providing an authorization mechanism. Generally, QUAN emissions will only be authorized by PBR §106.269. However, in limited circumstances, authorization may be requested through a permit review provided that emissions are minimal, activities are part of routine operation, and releases are inherent to the process. Authorization would be only at the discretion of the division director of Air Permits Division. There are no other PBRs that authorize QUAN emissions releases.

Proposed relettered §106.4(d) contains the existing prohibition on circumvention that is currently located in §106.4(b). Other than the proposed relettering, no changes are proposed. The commission

proposes to relocate existing §106.4(d), concerning permits and registrations required by local air pollution control agencies, to new §106.4(g).

Proposed §106.4(e) contains existing general requirements concerning compliance with commission rules that are currently located in §106.4(c). In addition to the proposed relettering, the commission proposes to add the phrase "group of related facilities, and related increases" to maintain consistency with proposed §106.4(a)(1) and other proposed sections. The commission also proposes to add a statement to explicitly state that facilities authorized by a PBR are not exempted from other regulations or statutes that may apply. Registrants should be aware that PBRs may not identify all the rules and regulations that may apply to a facility.

The commission proposes new §106.4(f), which identifies facilities and situations that are not eligible to claim a PBR under Chapter 106. Proposed §106.4(f)(1) and (2) contains the existing prohibitions on projects that trigger nonattainment NSR permitting and PSD permitting, respectively. These prohibitions are currently located under existing §106.4(a)(2) and (3), respectively. The commission proposes to add the phrase "group of related facilities, and related increases" in §106.4(f)(2) to maintain consistency with proposed §106.4(a)(1) and other proposed sections. The commission also proposes minor grammatical revisions to enhance the readability of these sections.

The commission proposes new §106.4(f)(3), which would prohibit the use of a PBR to authorize construction or reconstruction of facilities that are a major source of HAPs. A source is major for HAPs if it emits 10 tpy of any individual HAP or 25 tpy of combined HAPs. This proposed restriction

will ensure that projects triggering Federal Clean Air Act (FCAA), §112(g) will undergo the required case-by-case determination of maximum achievable control technology.

The commission proposes new §106.4(f)(4), which would prohibit the use of PBRs to authorize construction or modification that is prohibited by a condition or conditions in a Chapter 116 permit. This requirement is equivalent to the similar requirement currently located in existing §106.4(a)(7), but has been rephrased to provide additional enforceability and flexibility.

The commission proposes new §106.4(f)(5), which would prohibit the use of a PBR that would result in the relaxation or degradation of emission controls on existing facilities permitted under Chapter 116. The intent of the proposed rule is to prevent "backsliding" of existing emission controls implemented to satisfy the BACT requirements of Chapter 116 permits.

The commission proposes new §106.4(f)(6), which would prohibit the use of a PBR to increase emissions of one or more compounds specified by the Air Pollutant Watch List (APWL) in the applicable areas for the pollutant(s). The APWL identifies areas where monitoring has detected elevated concentrations of pollutants of special interest. The proposed revision is necessary because the possibility of elevated background concentrations of certain pollutants in the APWL areas makes a more detailed, case-by-case impacts review necessary to protect human health and the environment. This rule is not retroactive and will not affect existing registrations or claims that authorize emissions of APWL compounds.

The commission proposes new §106.4(f)(7), which prohibits the use of a PBR to authorize additional emissions at a previously authorized facility or group of facilities that are not the direct result of construction, physical changes, or changes in method of operation. For example, proposed subsection (f)(7) would prohibit use of a PBR to incrementally authorize noncompliant emissions detected in a compliance test on a source authorized by a Chapter 116 permit. These emissions should have been evaluated and accounted for in the permit review, and therefore the use of a PBR for authorization is not appropriate in these cases. In such cases, the owner or operator of the permitted source would be required to obtain a permit amendment to authorize the higher emissions. In addition, proposed subsection (f)(7) would prohibit use of a PBR to authorize a facility that was constructed as part of a larger project, i.e., a group of facilities that was authorized by a preconstruction permit but was erroneously not represented as part of the larger project, commonly known as "as built" actions. In such cases the appropriate method to authorize the facility would be to amend the preconstruction permit. This proposed language is necessary to ensure that individual facilities that are omitted from permit review are evaluated appropriately to ensure protection of public health and compliance with federal PSD and nonattainment NSR permitting requirements. Facilities that are constructed later at a permitted site and are not part of the original permitted project would not be affected by proposed subsection (f)(7) and would still be eligible to use PBRs for authorization. This is not meant to preclude an unauthorized stand-alone or subsequently constructed facility discovered during an inspection to be allowed to obtain a PBR authorization as long as the facility could have met an applicable PBR at the time of construction, and continued to comply with that PBR. Proposed §106.4(f)(7) also provides an exclusion to allow MSS and QUAN emissions to be authorized under a PBR as specified in §106.4(b).

The commission proposes new §106.4(g), concerning permits or registrations required by local air pollution control agencies, which is an existing requirement that is currently located under §106.4(d). The commission also proposes to add the phrase "group of facilities and related increases" for consistency with proposed §106.4(a)(1) and other proposed sections.

The commission proposes new §106.4(h), which would establish a notification requirement for PBR facilities that change ownership. When a facility authorized under a PBR changes ownership, the new owner or operator would be required to submit a notification to update contact information and verify that the type and quantity of emissions have not changed. This proposed change is necessary to ensure that the commission has up-to-date information for each authorized facility.

The commission proposes new §106.4(i), which would prescribe that voluntary registrations and certifications, those not specifically required to be submitted, would be reviewed at the discretion of the executive director. This change is proposed because the review of voluntary registrations and certifications consumes commission resources that in some cases may be better used to review projects that have a larger potential impact on the environment. If the executive director declines to review such a registration, the fees shall be returned to the applicant.

§106.6 - Registration of Emissions

The commission proposes to change the title of §106.6 to Certification of Emissions. The proposed amendment would replace the term "certified registration" with "certification" throughout the section. In the current rule, "certified registration" is used to describe that process of certification by

submission of a registration form. Since the commission has developed a separate certification form specifically intended for use to comply with any certification requirement in this chapter, the term "certified registration" is outdated and potentially confusing. The commission proposes to delete §106.6(e)(1) because it requires the submission of registrations before a date (February 3, 2003) that has already passed. Additionally, the commission proposes language to remind owners or operators of the revised recordkeeping requirements in §106.8.

§106.8 - Recordkeeping

The commission proposes to amend §106.8 by adding a new subsection (d). The proposed subsection contains recordkeeping requirements that would apply to owners or operators of sites using PBRs. The proposed recordkeeping is necessary so that commission staff can verify that a site using PBRs is in compliance.

Subchapter B - Registration Fees for New Permits by Rule

§106.50 - Registration Fees for Permits by Rule

The commission proposes to amend §106.50 by revising subsection (d) to allow for the refund of PBR registration fees to the applicant when the executive director determines that a review is not required. As discussed previously, the review of voluntary registrations and certifications consumes commission resources that in some cases may be better used to review projects that have a larger potential impact on the environment. If the executive director declines to review such a registration, the fees will be returned to the applicant. Additionally, because there is no federal requirement for charging a fee for

these registrations, the commission proposes to withdraw §106.50 from consideration by EPA as a revision to the SIP.

Subchapter K - General

§106.261 - New Facilities and Changes to Authorized Facilities.

The commission proposes to repeal existing §106.261, Facilities (Emission Limitations), and §106.262, Facilities (Emission and Distance Limitations), and replace them with proposed new §106.261, which would incorporate a single PBR for general use, *New Facilities and Changes to Authorized Facilities*. The new PBR will eliminate overlapping or conflicting requirements in the current PBRs, provide greater clarity, and improve protectiveness.

The proposed new PBR includes new equations for the determination of short-term (hourly) emission limits based on distance to the receptor, stack height, and the effects screening level (ESL) of the air contaminant. The current §106.261 and §106.262 use outdated guidelines and does not consider stack height. Also, air dispersion models have changed and modeling procedures have been updated since the last protectiveness review of these rules.

The current §106.261 and §106.262 allow a maximum hourly emission rate (allowable) of 6 pounds per hour (lb/hr). The short-term emission rate in the current §106.262 is based on the *Threshold Limit Values* (TLV) as published by the American Conference of Governmental Industrial Hygienists, which are designed primarily as a guideline of acceptable exposure levels for an employee working an average eight-hour shift in an industrial or commercial setting. This is not appropriate for short-term

exposures of the general public for one-hour periods. Short-term emission rates in current §106.262 are determined by the equation, E = L/K, where L is the TLV and K is a constant based on distance to the receptor.

In proposed new §106.261, short-term emission rates for most contaminants are specified in §106.261(a)(1)(K). These limits are derived by the equation E = ESL/X, where E = the allowable emission rate in pounds per hour, ESL = the effects screening level of the contaminant, and X = a constant based on distance to the receptor and stack height. For contaminants with no published ESL, applicants would contact the Toxicology Section of the TCEQ to request an ESL. The staff would develop an ESL and post it on a Web site for use by applicants for the PBR. The commission is specifically soliciting comments on other alternatives for ESL development.

The "distance to receptor" shall be the distance in feet to the nearest recreational area or residence or other occupied structure not used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located. In the case of multiple emission points, the closest distance to the receptor shall be used. There shall be no interpolation in determining the distance to receptor or stack height. The next lowest distance or stack height value shall be used. The X-value chart is included as Table I, located in §106.261(a)(1)(K) and was taken from the commission's regulatory guidance document, *RG-324, Modeling and Effects Review Applicability*. The values were determined based on SCREEN3 modeling results and the highest X-value for each entry in the table was used.

For certain specific contaminants including particulate matter, sulfur dioxide, CO, and NO_x, the value for the ESL portion of the equation is specified in the rule language and the distance is measured to the nearest property line. For total particulate matter, §106.261(a)(1)(A) specifies that the equation is E = 400/X. This equation is based on the current standard for total suspended particulate in 30 TAC Chapter 111, Control of Air Pollution from Particulate Matter. For particulate matter less than or equal to 10 microns in size (PM_{10}), §106.261(a)(1)(B) specifies that the equation E = 150/X, which is based on the NAAQS. Section 106.261(a)(1)(C) specifies that the equation is E = 365/X for sulfur dioxide and is based on the NAAQS. The standard for CO in §106.261(a)(1)(D), represented by the equation E = 10,000/X, is based on the NAAQS. Section 106.261(a)(1)(E) specifies that the standard for NO_x is E = 1,000/X, based on the NAAQS. The standard for ozone in §106.261(a)(1)(F), represented by the equation E = 155/X, is based on the NAAQS. Section 106.261(a)(1)(G) specifies that the equation is E = 108/X for hydrogen sulfide and is based on the standard in 30 TAC Chapter 112, Control of Air Pollution from Sulfur Compounds. Section 106.261(a)(1)(H) specifies that the equation is E = 15/X for sulfuric acid fume or mist and is based on the standard in Chapter 112. Section 106.261(a)(1)(I) specifies that the equation is E = 1.5/X for lead and is based on the NAAQS.

Short-term emission limits for agricultural facilities that emit cellulose fiber are specified in §106.261(a)(1)(J). For these sources, the rule would authorize emissions of no more than the emission rate specified in §111.171, Emission Limits Based on Process Weight Method. Total allowable emissions of cellulose fiber cannot exceed 10 lb/hr. This requirement is specific for those facilities that emit particulate matter from the handling, loading, unloading, drying, manufacturing, or processing of grain, seed, legumes, or vegetable fibers. Such agricultural operations are not subject to the property

line standards in Chapter 111 and are designated in the commission's regulatory guidance document, *RG-324, Modeling and Effects Review Applicability*, as types of emissions that do not require a health effects review. However, agricultural operations must comply with §111.171 in order to meet state permitting requirements. Therefore, this requirement limits the emissions from these types of operations as stringently as a permit.

In addition to the short-term limits described previously, this section specifies annual limits for benzene, ethylene dichloride, and hydrogen chloride. These limits are based on the long-term ESLs for these contaminants. Section 106.261(a)(2) would limit benzene and ethylene dichloride to 1 tpy and hydrogen chloride to 1/2 tpy.

Section 106.261(a)(3) specifies that when other PBRs are included in a claim, all emissions shall meet the applicable emission limits in §106.261, including emissions from all proposed facilities and all related emission increases upstream and downstream of the facilities to be authorized under the PBRs, in addition to meeting the applicable requirements for construction and operation in each other PBR involved in the claim. This requirement was added to provide emission rate limitations based on an updated protectiveness review when authorizing multiple PBRs.

The current §106.262(a)(4) restricts the use and storage of certain contaminants, due to their toxic nature, based on United States Department of Transportation regulations. Also the current rule requires additional setbacks from both the property line and the nearest receptor for facilities handling these compounds. The proposed new rule would also restricts the authorization of the use of certain

quantities of compounds based on toxicity. However, these requirements are based on the Air Permits Division's NSRPD Disaster Review document, which includes a more comprehensive list of compounds. This document lists certain compounds of concern and threshold quantities for determining the need for a disaster review associated with a permit or amendment application review. Proposed §106.261(a)(4) states that facilities that have on site any of the compounds listed in Table II, which is located in §106.261(a)(4), at any time in excess of the specified threshold quantities cannot be authorized by this PBR. If these compounds have been authorized by a permit review, those quantities would not be counted against the limitations proposed in new §106.261.

The current §106.261(a)(5) and (6) prohibit visible emissions from any point or fugitive source in excess of 5% opacity. Proposed new §106.261(a)(5) would instead require that visible emissions, from any point or fugitive source, not leave the property for a period exceeding 30 seconds in any six-minute period as determined by EPA Test Method (TM) 22. This alternative method is currently used in other PBRs and numerous permits and has several advantages. Unlike EPA TM 9, proposed TM 22 does not require a certified opacity observer, which is a cost savings for the commission, regulated entities, and even the general public. In addition, TM 22 does not have the background restrictions of TM 9 and allows a great variety of observations to be made in different circumstances. This change provides some flexibility for operators regarding visible emissions at the source, focuses on emissions at the property line and beyond, and still maintains visible emissions limitations.

Neither the existing §106.261 or §106.262 allow changes or additions of air pollution abatement equipment for physical changes or modifications to existing facilities. Additions of, or changes to,

pollution control equipment or methods associated with facilities authorized by this section would be allowed by proposed §106.261(a)(6) provided they meet, at a minimum, the requirements of a qualified facility (using BACT no more than ten years old).

The commission proposes a tiered system of notification, certification, or registration depending on the type of facility authorized. The proposed §106.261(b)(1) requires the owner or operator to submit notification, with the appropriate form, to the Air Permits Division and the appropriate regional office within ten days of the start of construction or start of the operational change for increases of less than 5 tpy. The rule further requires that facilities that meet the definition of major source under §122.10(13) submit a certification summarizing all uses of this PBR for facilities or projects authorized under §106.261(b)(1)(B) to the Air Permits Division annually. This requirement was added to ensure that emissions authorized by this section have federally enforceable limits and that emissions do not trigger any additional federal review. Similarly, additions of pollution control equipment may be authorized by notification to the Air Permits Division and the appropriate regional office within ten days of the start of construction or operational change of the facility. No annual certification of the additions of control equipment is required. In order to provide required public access, notifications and certifications will be retained in the commission's files, but will not typically be reviewed or replied to by the executive director. Proposed §106.261(b)(2) requires facilities or emission increases of 5 tpy or greater to be registered. Modifications of pollution control equipment also require registration. Registrations must be submitted with the appropriate fee, but no fee is required for notifications and certifications.

Proposed §106.261(c) lists those facilities or activities that are specifically not authorized by this PBR, which consist of construction of a facility for which there is another PBR or SP in effect, any change to a facility for which there is a PBR or SP in effect, and emissions resulting from MSS or QUAN. This requirement will prevent facility changes that may circumvent the original protectiveness evaluation of a PBR or SP resulting from the backsliding of distance limits, contaminant restrictions, or control requirements. It will also prevent facilities from exceeding the annual cumulative limitations proposed in §§106.263, 106.268, and 106.269, or other specific PBRs, to ensure the emissions from these activities or facilities remain insignificant and protective of public health.

Proposed §106.261(c) also specifically allows the use of this PBR to authorize the subsequent use of additional air contaminants, which are neither authorized nor prohibited at a facility authorized by a PBR or SP as long as the facility continues to meet the conditions of the original authorization. For example, the original authorization for a storage tank may not include a certain compound that the owner or operator wishes to store. This PBR would authorize emissions from the new compound, as long as the original authorization does not prohibit use of the new compound.

§106.263 - Temporary Maintenance Facilities

The commission proposes to repeal the existing §106.263, Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities, and to replace it with proposed new §106.263, Temporary Maintenance Facilities, for ease of review and comment. The changes to this PBR are not substantive, only administrative, with regard to temporary maintenance facilities. The commission proposed revisions to this PBR to authorize temporary maintenance facilities only.

Authorization for MSS emissions is being proposed in §106.268, therefore proposed new §106.263 contains no MSS provisions. In addition, proposed §106.263 would not contain a *de minimis* exclusion because *de minimis* facilities are not required to have an authorization for air emissions. Additionally, the exclusions relating to other PBRs are no longer needed due to the proposed changes in §106.4(b).

The control device requirements of existing §106.263 would be replaced with a single requirement that all control devices comply with the requirements of §106.533(g), Remediation, which was recently updated and includes additional control devices. Proposed new §106.263 would no longer provide the option of operating a temporary maintenance facility in excess of 180 days. In the four years since this section was effective, only three facilities have registered for the extension.

§106.268 - Maintenance, Startup, and Shutdown (MSS) Emission Releases

Emissions resulting from planned MSS as part of a facility's normal operation could be authorized under proposed new §106.268. This new section could be used in conjunction with the concurrently proposed non-rule "Air Quality Standard Permit for Maintenance, Startup, and Shutdown Emission Releases" and NSR permitting criteria as proposed in this issue of the *Texas Register* in Chapter 116 for facilities at a site. However, only one of these authorization mechanisms may be used by a facility for MSS emissions. To ensure protection of public health and welfare, proposed §106.268 includes air contaminant emission limits for specific substances based on the restrictions of proposed §106.261, a PBR that is often used in conjunction with other authorizations. In addition, annual emissions are restricted by a cumulative-use limit between proposed §§106.263, 106.268, and 106.269.

Proposed new §106.268(b) identifies certain facilities, emissions, or activities not covered by this section. This authorization does not apply to MSS emissions associated with facilities or operations listed in §106.4(b); new or modified facilities; reconstruction of a facility; physical or operational changes to a facility that increase capacity or production beyond authorized performance levels or result in the emission of a new air contaminant; first-attempt repairs on piping fugitive emissions authorized by an NSR permit, SP, or another permit by rule; and emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice. These facilities, emissions, or activities would be excluded because either the MSS emissions have already been accounted for or this section is an inappropriate means of authorization. Facilities unable to meet the requirements of this PBR may be authorized under another section of Chapter 106 or Chapter 116.

Proposed new §106.268(c) would authorize MSS emissions that meet both the short-term and annual emission limitations of proposed new §106.261 to ensure protection of public health and welfare.

Proposed new §106.268(d) would limit site-wide emissions for any 12-month rolling period to less than any applicable emission limit under §106.4(a)(1) - (3) for the aggregate of emissions authorized by this section, §106.263, and §106.269. This ensures that the combined emissions from these authorizations do not exceed levels that have been determined to be protective of public health and safety.

Proposed new §106.268(e) would require facility owners to retain records with sufficient information to demonstrate compliance. Such records include the type and reason for the activity or facility

construction; the process and equipment involved; the date, time, and duration of the activity or operation; the type and amount of the air contaminants involved; and any required monitoring data.

The commission is specifically soliciting comments on the usefulness and scope of the proposed PBR for MSS emissions.

§106.269 - Quantifiable, Anticipated (QUAN) Emission Releases

The commission proposes this new PBR to authorize QUAN emissions as specified in §116.10(16)(c). These emissions are those that any well maintained, operated, and managed facility cannot eliminate entirely. These emissions are therefore quantifiable and anticipated, yet unscheduled. Examples are emissions that may be released intermittently from a pressure relief valve, line switching, compressor blow-downs, or even a burst seal well before the end of its life expectancy. QUAN emissions are arguably different in nature from the most commonly reported emissions events, those incidents resulting from inadequate maintenance, malfunctions, accidents, and disasters, and therefore should be taken out of the classification of “emission event” by providing an authorization mechanism.

Proposed new §106.269(b) identifies activities that are not authorized by the PBR. This authorization does not apply to certain additional emissions; new or modified facilities; reconstruction of a facility; physical or operational changes to a facility that increase capacity or production beyond authorized performance levels or result in the emission of a new air contaminant; first-attempt repairs on piping fugitive emissions authorized by an NSR permit, SP, or another permit by rule; and emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation,

and maintenance consistent with good engineering practice. These facilities, emissions, or activities would be excluded because either the QUAN emissions have already been accounted for or this section is an inappropriate means of authorization.

Proposed new §106.269(c) would authorize QUAN emissions that meet both the short-term and annual emission limitations of §106.261 to ensure protection of public health and welfare.

Proposed new §106.269(d) and (e) is intended to limit the amount of QUAN emissions that can be authorized and prevent stacking of QUAN and MSS emissions. Subsection (d) would limit the total of QUAN, MSS, and temporary maintenance facility emissions to an amount not to exceed any applicable emission limit in §106.4. This ensures that the combined emissions from these authorizations do not exceed levels that have been determined to be protective of public health and safety. Subsection (e) would restrict annual QUAN emissions to less than 10% of the total authorized site-wide emissions. QUAN emissions from a well maintained and properly operated facility should not approach the emission levels from normal production. Therefore, the commission proposes to establish a site-wide cap.

Proposed new §106.269(f) would require facility owners to retain records with sufficient information to demonstrate compliance. Such records include the type and reason for the activity or facility construction; the process and equipment involved; the date, time, and duration of the activity or operation; the type and amount of the air contaminants involved; and monitoring data.

The commission is specifically soliciting comments on the usefulness and scope of the proposed PBR for QUAN emissions.

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, fiscal implications, some of which may be significant, are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. After the effective date of the proposed rules, state agencies or local governments who are owners and operators of facilities with air emissions might not be able to authorize construction of new facilities or changes to existing facilities using PBRs. Instead, they may have to utilize more stringent controls or authorize facilities under more expensive permits like SPs or NSR permits.

The proposed rulemaking would amend various sections of Chapter 106 that deal with PBRs. PBRs are issued for many diverse operations under current rules. State agencies, local governments, and large, medium, and small businesses in all regions of the state utilize PBRs to authorize operations that generate air emissions. Activities permitted under PBRs range from auto body shops to petrochemical plants to refinery operations.

For facilities currently permitted by PBRs, SPs, standard exemptions, and special exemptions, the commission proposes to allow normal MSS and QUAN emissions to be authorized either under this

proposed rulemaking or the proposed revisions to Chapter 116 for SPs or NSR permits, concurrently published in this issue of the *Texas Register*.

The proposed rulemaking, which would only apply to PBR claims and registrations occurring after the effective date of these final rules, would impose more stringent operations criteria in some cases. In other cases, the proposed rules would allow greater flexibility in complying with PBR requirements. Examples of more stringent criteria are: reduced annual limits for NO_x and CO, stricter restrictions on HAPs, and restricted use of PBRs in APWL areas. Examples of requirements in the proposed rules allowing more flexibility in meeting the restrictions of PBRs are a revised method for quantifying emission increases at qualified facilities and an elimination of emission limits for certain non-hazardous compounds. The proposed rules would also allow the authorization of MSS and QUAN emissions under PBR if certain requirements are met. In addition, the proposed rules would establish an 18-month time limit for starting construction of registered PBR claims and make various other changes to the general provisions for PBRs.

Staff is currently reviewing the number of PBRs that may be affected by the proposed rulemaking, but the review of those PBRs has not been completed at this time.

Impacts to Revenue

The proposed rulemaking may decrease fee revenue received by the agency in some cases and increase it in others. For example, the proposed rulemaking will allow fees submitted with a PBR application to be refunded, thus decreasing revenue, if no review is needed or if a review is performed at the

discretion of the executive director. If the proposed rules cause a site to be classified under Title V of the FCAA as a major site, revenue could increase due to the collection of additional emission or inspection fees. The amount of revenue increase or decrease cannot be determined until the number of facilities that will be affected and the manner in which they will be affected is known.

Impacts to Costs of State Agencies and Local Governments

State agencies and local governments applying for permit authorizations after the effective date of the proposed rules may see operational or permitting costs increase if facilities cannot meet the revised standards of the rules. Governmental entities always have the option of implementing more operational controls to comply with proposed PBR requirements if current operational controls would not be sufficient to meet the proposed requirements. The cost of utilizing additional operational controls to comply with the proposed PBR requirements would depend upon the methods employed in each situation.

If the decision is made to apply for a SP or NSR permit rather than a PBR, permitting costs will increase for governmental entities. Under current rules, municipalities, counties, and school districts serving populations of 10,000 or fewer pay $100 for a PBR. All other governmental entities pay $450 for a PBR. If a governmental entity cannot qualify for a PBR under the proposed rules, it may have to obtain a SP, which costs $900, or a NSR permit, which can range from $900 to $75,000 depending on the capital costs of a project. This may be an increase of $800 to $74,900 for a municipality, county, or school district serving populations of 10,000 or fewer to obtain the appropriate permit. Larger governmental entities may see an increase of $450 to $74,550 to obtain the appropriate permit. On the

other hand, if emission increases are less than 5 tpy and can be authorized by PBR, state agencies and local government would save $100 or $450, depending on their size, normally paid for a PBR because the proposed rules would eliminate the registration fee for those projects.

If state agencies and local governments elect to authorize their MSS and QUAN emissions under the proposed rules, and the site becomes a major Title V emission source as a result, their costs could increase significantly. Staff estimates that the cost to prepare a Title V permit application is $10,000. There will also be ongoing costs associated with Title V monitoring, recordkeeping, and reporting. Major sites must pay the higher of inspection fees, which range from $1,000 to $25,000, or emission fees, which range from $750 to $120,000 per pollutant per facility.

The number of state agencies or local governments that would be affected by the proposed rulemaking is not known, however, staff projects that only a small number of governmental entities would have to implement additional controls, obtain a SP or NSR permit, or comply with Title V requirements. Permitting costs may increase or decrease depending on each entity's decision to construct new facilities or change old facilities.

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 improved protection of the public health and the environment because of more stringent control requirements.

The proposed rulemaking would only apply to PBR claims and registrations occurring after the effective date of these rules. In some cases, the proposed rules would impose more stringent operations criteria on large businesses or nonprofit organizations using PBRs. In other cases, the proposed rules would allow greater flexibility in complying with PBR requirements. For example, if emission increases are less than 5 tpy and can be authorized by a PBR, a large business would save $450 because the proposed rules would eliminate the registration fee for those projects.

Large businesses or nonprofit organizations can elect to utilize additional controls to comply with the proposed PBR requirements. The variety of controls that could be employed is very wide ranging, and any additional costs to implement additional controls would depend upon how the affected facility chooses to comply with the proposed requirements.

If a facility decides to obtain a permit instead of installing additional controls, its permitting costs could increase. Instead of a PBR, which costs $450 per facility for large businesses, a large business may choose to obtain a SP, which costs $900, or a NSR permit, which can range from $900 to $75,000 depending on the capital costs of a project.

If a large business elects to authorize MSS and QUAN emissions under the proposed rules, and the site becomes a major Title V emission source as a result, costs could increase significantly. Staff estimates that the cost to prepare a Title V permit application is $10,000. There will also be ongoing costs associated with Title V monitoring, recordkeeping, and reporting. Major sites must pay the higher of

inspection fees, which range from $1,000 to $25,000, or emission fees, which range from $750 to $120,000 per pollutant per facility.

Nonprofit organizations that may be affected by the proposed rulemaking may see their permitting costs increase from the current fee of $100 for a PBR to $900 for a SP. If an NSR permit is required, costs may increase from $100 to $900 or $75,000 depending on the capital costs of a project.

Staff is unable to estimate how many large businesses or nonprofit organizations would be affected by the proposed rulemaking. It is not known how many new facilities will be proposed or what changes to existing facilities will occur. Permitting costs may increase or decrease depending on the decision of each entity.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications may be anticipated for those small or micro-businesses that will not qualify for a PBR under the proposed rules. 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. If new facility construction or changes to an existing facility are not eligible for a PBR authorization after the effective date of these proposed rules, a small business may elect to install additional controls or apply for a SP or NSR permit, which are more expensive permits. Any additional costs of those controls would depend on the control implemented. If a small or micro-business elects to apply for a different type of permit, permitting costs would increase. In general, a

small or micro-business could expect to see the same cost increases as those experienced by governmental entities serving a population of 10,000 or fewer.

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 analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, 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 rules are intended to more effectively focus commission resources, streamline the air quality PBR process, update administrative and technical requirements for certain PBRs, and address unnecessary registration and fee requirements. This includes providing flexibility for authorizing emissions that have not historically been authorized from MSS activities and from QUAN emission releases. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rules generally tend to improve regulatory flexibility and reduce costs to regulated facilities

and are therefore unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Because this rulemaking 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, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKING IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the

governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a taking impact analysis for the proposed rules. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rules will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and commission 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, commission 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)). The proposed rules are intended to more effectively focus commission resources, streamline the air quality PBR process, update administrative and technical requirements for certain PBRs, and address unnecessary registration and fee requirements. The rules would also provide flexibility for authorizing facilities that have emissions that have not historically been authorized from MSS activities and from QUAN emission releases. These changes are proposed to assist in reducing excess emissions, improve compliance with state and federal air pollution control requirements, and improve overall air quality in Texas. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure, and include several measures that will generally improve protectiveness and reduce the environmental risks associated with multiple PBR authorizations. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (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

Potential to emit (PTE) calculations, used to determine applicability of the Federal Operating Permits Program, do not include emissions that are not authorized, such as those from MSS or emission events. As of the effective date of these rules, owners and operators of sites that will have newly authorized emissions will be required to recalculate PTE to include authorized MSS emissions and re-evaluate applicability of their site to the Federal Operating Permits Program. Further, the new and amended sections in Subchapter A of this proposal are applicable requirements under 30 TAC §122.10(2). Operating permit holders will be required to revise their permits to incorporate any NSR changes, according to the appropriate operating permit revision process. 30 TAC Chapter 122 specifies that an owner or operator must submit an abbreviated operating permit application no later than 12 months after an action by the executive director that would subject the site to the requirements of Chapter 122.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin, Texas, on January 31, 2006, at 2:00 p.m. in Building F, Room 2210, at the Texas Commission on Environmental Quality complex, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

The commission is specifically soliciting comments on the usefulness and scope of the proposed authorization mechanisms and limitations for MSS, QUAN, and proposals for §106.4 and §106.261.

Comments may be submitted to Lola Brown, Texas Register Team, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-016-106-PR. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. Comments must be received by 5:00 p.m. on February 3, 2006. For further information, please contact Blake Stewart, Air Permits Division, at (512) 239-6931.

SUBCHAPTER A: GENERAL REQUIREMENTS

§§106.2, 106.4, 106.6, 106.8

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code, §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 Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under Texas Health and Safety Code, §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 a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; and §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, and 382.05196.

§106.2. Applicability.

This chapter applies to the construction of certain types of facilities or changes to [within] facilities listed in this chapter where the construction or change is commenced on or after the effective date of the relevant permit by rule. This chapter applies to all aspects of normal operation as defined in §116.10 of this title (relating to General Definitions).

§106.4. Requirements for Permitting by Rule.

(a) To qualify for any [a] permit by rule after the effective date of this rule, the following general requirements must be met.

(1) Total actual net emissions increases authorized under permit by rule from the proposed facility, group of related facilities, and related increases shall not exceed 100 [250] tons per year (tpy) of carbon monoxide (CO); 100 tpy of [or] nitrogen oxides (NO_x); [or] 25 tpy of volatile organic compounds (VOC); [or] sulfur dioxide (SO_2); [or] inhalable particulate matter (PM_{10}); 10 tpy of any individual hazardous air pollutant (HAP) or 25 tpy of combined HAPs; or 25 tpy of any other air contaminant [except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen].

(2) Net emissions increases authorized under permit by rule must be estimated by the following methods throughout this chapter unless noted otherwise in a specific permit by rule:

(A) for changes and/or related increases at qualified facilities as specified in the modification of existing facility definition in §116.10(12)(E)(ii) of this title (relating to General Definitions), the difference between the projected new emission rate and the previous allowable emission rate of each air contaminant at each facility;

(B) for increases other than qualified facilities, the difference between the projected new emission rate and the previous actual emission rate of each air contaminant at each facility; and

(C) decreases in emissions relied upon for the project must be actual, practical, and federally enforceable.

[(2) Any facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any modification which constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for a permit by rule under this chapter. Persons claiming a permit by rule under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) to ensure that any applicable netting requirements have been satisfied.]

[(3) Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for a permit by rule under this chapter.]

(3) [(4)] Unless at least one facility at a site as defined in Chapter 122 of this title (relating to Federal Operating Permits Program) has a current permit issued under [an account has been subject to public notification and comment as required in] Chapter 116, Subchapters B, D, or G - J [Subchapter B or Subchapter D] of this title (relating to New Source Review Permits; [or] Permit Renewals; Flexible Permits; Permits for Grandfathered Facilities; Electric Generating Facility Permits; and Multiple Plant Permits), total actual emissions from all facilities permitted by rule at the site [an account] shall not exceed 100 [250] tpy of CO or NO_x; or 25 tpy of VOC or SO_2 or PM_{10}; or 25 tpy of any other air contaminant [except carbon dioxide, water vapor, nitrogen, methane, ethane, hydrogen, and oxygen].

(4) [(5)] Construction [or modification] of, or changes to, a facility, group of related facilities, and related increases commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific permit by rule in this chapter must meet the revised requirements to qualify for a permit by rule.

(5) [(6)] A facility, group of related facilities, and related increases shall comply with all applicable requirements [provisions] of the Federal Clean Air Act (FCAA) [FCAA], §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of [the] FCAA, Parts [Part] C and [Part] D and regulations promulgated thereunder.

[(7) There are no permits under the same commission account number that contain a condition or conditions precluding the use of a permit by rule under this chapter.]

(6) [(8)] The owner or operator of the proposed facility, [or] group of related facilities, and related increases shall obtain allowances for NO_x if they are subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(7) For any permit by rule that requires registration, the owner or operator shall commence construction of the authorized facility, group of related facilities, and related increases within 18 months of confirmation of registration from the commission, and shall complete construction within a reasonable time. If an owner or operator fails to meet this criteria, the owner's or operator's claim to the permit by rule is void. The executive director may grant a one-time 18-month extension to the date to begin construction.

(b) Authorization of a facility under the permits by rule in paragraphs (1) - (24) of this subsection includes authorization for maintenance, startup, and shutdown (MSS) emissions with the noted exceptions. Facilities using one of the listed permits by rule may not authorize additional MSS

emissions under §106.268 of this title (relating to Maintenance, Startup, and Shutdown (MSS) Emission Releases):

(1) Subchapter C of this chapter (relating to Domestic and Comfort Heating and Cooling);

(2) Subchapter D of this chapter (relating to Analysis and Testing);

(3) Subchapter E of this chapter (relating to Aggregate and Pavement), except for §106.147 of this title (relating to Asphalt Concrete Plants);

(4) Subchapter F of this chapter (relating to Animal Confinement);

(5) Subchapter G of this chapter (relating to Combustion);

(6) Subchapter I of this chapter (relating to Manufacturing);

(7) Subchapter J of this chapter (relating to Food Preparation and Processing);

(8) §106.263 of this title (relating to Temporary Maintenance Facilities);

(9) §106.265 of this title (relating to Hand-held and Manually Operated Machines);

(10) §106.266 of this title (relating to Vacuum Cleaning Systems);

(11) Subchapter L of this chapter (relating to Feed, Fiber, and Fertilizer);

(12) Subchapter M of this chapter (relating to Metallurgy);

(13) Subchapter N of this chapter (relating to Mixers, Blenders, and Packaging);

(14) Subchapter O of this chapter (relating to Oil and Gas);

(15) Subchapter P of this chapter (relating to Plant Operations) except for §106.371 and §106.372 of this title (relating to Cooling Water Units; and Industrial Gases);

(16) Subchapter Q of this chapter (relating to Plastics and Rubber);

(17) Subchapter R of this chapter (relating to Service Industries) except §106.416 of this title (relating to Uranium Recovery Facilities);

(18) Subchapter S of this chapter (relating to Surface Coating);

(19) Subchapter T of this chapter (relating to Surface Preparation);

(20) §106.471 of this title (relating to Storage or Holding of Dry Natural Gas);

(21) §106.477 of this title (relating to Anhydrous Ammonia Storage);

(22) §106.494 of this title (relating to Pathological Waste Incinerators);

(23) §106.496 of this title (relating to Air Curtain Incinerators);

(24) Subchapter W of this chapter (relating to Turbines and Engines); and

(25) Subchapter X of this chapter (relating to Waste Processes and Remediation).

(c) Unscheduled but quantifiable and anticipated (QUAN) emission releases can be authorized by §106.269 of this title (relating to Quantifiable, Anticipated (QUAN) Emission Releases).

(d) [(b)] No person shall circumvent by artificial limitations the requirements of §116.110 of this title (relating to Applicability).

(e) [(c)] The emissions from the facility, group of related facilities, and related increases shall comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA) [TCAA], including protection of health and property of the public, and all emissions control equipment shall be maintained in good condition and operated properly during operation of the

facilities [facility]. Facilities authorized by a permit by rule are not exempted from other regulations or statutes that may apply.

(f) The following cannot qualify for a permit by rule under this chapter:

(1) any facility, group of related facilities, and related increases that constitutes a new major stationary source, or any change that constitutes a major modification, as defined in §116.12 of this title (relating to Nonattainment Review Definitions). Persons in an ozone nonattainment area claiming a permit by rule under this chapter should refer to the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) to ensure that any applicable netting requirements have been satisfied;

(2) any facility, group of related facilities, and related increases that constitutes a new major stationary source, or any change that constitutes a major modification, as defined in 40 Code of Federal Regulations (CFR) §52.21, Prevention of Significant Deterioration of Air Quality;

(3) any construction or reconstruction of a facility, group of related facilities, and related increases that constitute a major source of HAPs for which no applicable maximum achievable control technology (MACT) emission limitation has been established under 40 CFR Part 63;

(4) construction of, or change to, a facility, group of related facilities, and related increases that is prohibited by a condition or conditions in any permit at the site issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(5) any construction of, or change to, a facility, group of related facilities, and related increases that would result in a relaxation or degradation of emission controls on existing facilities permitted under Chapter 116 of this title;

(6) any construction of, or change to, a facility, group of related facilities, and related increases in an Air Pollutant Watch List area that would result in an increase in emissions of one or more applicable Air Pollutant Watch List compounds for that area. The Air Pollutant Watch List may be obtained from the commission's Toxicology Section; or

(7) if applications where there is no construction, physical change, or change in method of operation to an otherwise authorized facility or group of related facilities, emission increases may not be claimed under this chapter. The only exception is the authorization of MSS as specified in subsection (b) of this section and QUAN as specified in subsection (c) of this section.

(g) [(d)] A facility, group of related facilities, and related increases [Facilities] permitted by rule under this chapter are not exempted from any permits or registrations required by local air pollution control agencies. Any such requirements must be in accordance with TCAA, §382.113 and any other applicable law.

(h) Within 30 days after the change of ownership of a facility authorized under this chapter, the new owner shall notify the commission and certify the following:

(1) the date of the ownership change;

(2) the name, address, phone number, and contact person for the new owner;

(3) an agreement by the new owner to be bound by all permit by rule conditions and any certifications associated with the permit by rule claim;

(4) there will be no change in the type of pollutants emitted; and

(5) there will be no increase in the quantity of pollutants emitted above that authorized by the permit by rule or certified for the permit by rule claim.

(i) Voluntary registrations and certifications will be reviewed at the discretion of the executive director. If it is determined that a voluntary registration will not be reviewed, all documentation will be maintained for reference in the commission's Central File Room and fees returned to the applicant.

§106.6. Certification [Registration] of Emissions.

(a) An owner or operator may certify [and register] the maximum emission rates from facilities permitted by rule under this chapter in order to establish federally enforceable [federally-enforceable] allowable emission rates that [which] are below the emission limitations in §106.4 of this title (relating to Requirements for Permitting by Rule). Owners or operators shall comply with the requirements of §106.8(d) of this title (relating to Recordkeeping).

(b) All representations with regard to construction plans, operating procedures, and maximum emission rates in any certification [certified registration] under this section become conditions upon which the facility permitted by rule shall be constructed and operated.

(c) It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless the certification [certified registration] is first revised.

(d) The certification [certified registration] must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility.

(e) A certification, [Certified registrations] used to demonstrate that Chapter 122 of this title (relating to Federal Operating Permits Program) does not apply to a source shall be submitted on the

required form to the executive director, [;] to the appropriate commission regional office, [;] and to all local air pollution control agencies having jurisdiction over the site.

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

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

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

(g) Copies of certifications [certified registrations] shall be included in permit applications subject to review under Chapter 116, Subchapter B of this title (relating to New Source Review Permits).

106.8. Recordkeeping.

(a) (No change.)

(b) Owners or operators of facilities operating under a permit by rule (PBR) in Subchapter C of this chapter (relating to Domestic and Comfort Heating and Cooling) or under those PBRs that only name the type of facility and impose no other conditions in the PBR itself do not need to comply with specific recordkeeping requirements of subsection (c) of this section. A list of these PBRs will be available through the commission's Austin central office, regional offices, and the commission's Web site [website]. Upon request from the commission or any air pollution control program having jurisdiction, claimants must provide information that would demonstrate compliance with §106.4 of this title (relating to Requirements for Permitting by Rule), or the general requirements, if any, in effect at the time of the claim, and the PBR under which the facility is authorized.

(c) (No change.)

(d) Owners or operators of sites as defined in Chapter 122 of this title (relating to Federal Operating Permits Program) that do not hold a federal operating permit and do not have a pending application for such a permit shall maintain records to the extent necessary to demonstrate that the site is not a major source, in addition to any recordkeeping specified in applicable PBRs and in subsections (b) and (c) of this section. Records maintained under this subsection shall be retained for at least five years. These records will include, but are not limited to, the following:

(1) records of hours of operation, on at least a monthly basis;

(2) records of throughput or production, on at least a monthly basis;

(3) records or invoices relating to the purchase of raw materials used at the site, on at least a monthly basis;

(4) records of fuel consumption and fuel composition, on at least a monthly basis;

(5) records of coating usage, solvent usage, and volatile organic compound content, on at least a daily basis; or

(6) records of continuous emission monitoring data or other monitored parameters that demonstrate the performance of emission control equipment.

SUBCHAPTER B: REGISTRATION FEES FOR NEW PERMITS BY RULE

§106.50

STATUTORY AUTHORITY

The amended section is proposed under Texas Water Code, §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 Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §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 a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; and §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, and 382.05196.

§106.50. Registration Fees for Permits by Rule.

(a) (No change.)

(b) This fee does not apply to:

(1) a certification submitted solely for the purpose of establishing a federally enforceable emissions limit under §106.6 of this title (relating to Certification [Registration] of Emissions);

(2) - (3) (No change.)

(c) (No change.)

(d) All PBR fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) and submitted concurrently with the registration to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3087. Fees will be refunded when determined that no review is needed or performed at the discretion of the executive director. [No fees will be refunded.]

SUBCHAPTER K: GENERAL

§§106.261 - 106.263

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §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 Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also proposed under Texas Health and Safety Code, §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 a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; and §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, and 382.05196.

§106.261. Facilities (Emission Limitations).

§106.262. Facilities (Emission and Distance Limitations).

§106.263. Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities.

SUBCHAPTER K: GENERAL

§§106.261, 106.263, 106.268, 106.269

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §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 Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under Texas Health and Safety Code, §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 a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; and §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities.

The proposed new sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, and 382.05196.

§106.261. New Facilities and Changes to Authorized Facilities.

(a) Except as specified under subsection (c) of this section, a facility, group of facilities, related emission increase, or physical/operational changes to existing authorized facilities are permitted by rule provided that all of the following conditions of this section are satisfied.

(1) For all uses of Table I, located in subparagraph (K) of this paragraph, associated with subparagraphs (A) - (I) of this paragraph, the "distance to property line or receptor" must be the distance in feet from the closest emission point to the nearest property line. For all uses of Table I associated with subparagraph (K) of this paragraph, the "distance to property line or receptor" must be the distance in feet from the closest emission point to the closest point on the nearest recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located. In the case of multiple emission points, use the closest distance to the property line, or receptor, as applicable. For subparagraphs (A) - (I) and (K) of this paragraph, there is a minimum distance requirement of 100 feet to either the property line or to the nearest off-property receptor. There shall be no interpolation in determining the distance to property line, distance to receptor, or stack height; the next lowest distance or stack height value must be used. For all of the following, E is the maximum allowable emission rate in pounds per hour (lb/hr) and X is the value derived from Table I, located in subparagraph (K) of this paragraph, based on facility-specific parameters:

(A) for total suspended particulates with a short-term effects screening level of 50 micrograms per cubic meter ($\mu g/m^3$) or greater, not more than E as determined using the equation E = 400/X;

(B) for particulate matter with a diameter of 10 microns or less (PM_{10}) not more than E as determined using the equation E = 150/X;

(C) for sulfur dioxide, not more than E as determined using the equation E = 365/X;

(D) for carbon monoxide, not more than E as determined using the equation E = 10,000/X;

(E) for oxides of nitrogen, not more than E as determined using the equation E = 1,000/X;

(F) for ozone, not more than E as determined using the equation E = 155/X;

(G) for hydrogen sulfide, not more than E as determined using the equation E = 108/X;

(H) for sulfuric acid fume or mist, not more than E as determined using the equation $E = 15/X$;

(I) for lead, not more than E as determined by the equation $E = 1.5/X$;

(J) for facilities that handle agricultural products, as specified in Texas Health and Safety Code, §382.020, which emit cellulose fiber, no more than the emission rate specified in §111.171 of this title (relating to Emissions Limits Based on Process Weight Method), not to exceed 10 pounds per hour;

(K) for all other air contaminants, not more than E as determined using the equation $E = ESL/X$ where the ESL is the effects screening level of the contaminant in $\mu g/m^3$ as published in the commission's Effects Screening Levels List in effect at the time of the claim.

Figure: 30 TAC §106.261(a)(1)(K)

Table I

Distance to property line or receptor	Stack Height			
	3' *	10'	20'	30'
100'	9822	1350	1300	1250
200	4790	1108	970	960
300	2645	1070	750	710
400	1675	951	610	540
500	1161	784	450	440
600	857	640	420	370
700	662	527	410	320
800	530	440	400	290
900	435	400	380	260
1000	365	355	350	230
1500	310	290	230	160
2000	190	180	160	120
3000	100	95	90	80

* This column should be used for all ground-level fugitive or point source releases.

(2) In addition to the short-term limit specified in paragraph (1)(K) of this subsection, emissions of benzene or ethylene dichloride may not exceed one ton per year and emissions of hydrogen chloride may not exceed one-half ton per year.

(3) When other permits by rule (PBR) are included in a claim, all emissions must meet the applicable emission limits of this section, including emissions from all proposed facilities and all

related emission increases upstream and downstream of the facilities to be authorized under the PBR(s), in addition to meeting the applicable requirements for construction and operation in each individual PBR involved in the claim.

(4) Facilities that have on site, at any time, any chemical identified in Table II, located in this paragraph, in quantities greater than the specified threshold levels, shall not be authorized under this section, unless those chemicals have been authorized by a case-by-case new source review permit.

Figure: 30 TAC §106.261(a)(4)

Table II

Contaminant	**CAS #**	**Threshold (lb)**
Acrolein {2-Propenal}	107-02-8	5,000
Acrylonitrile {2-Propenenitrile}	107-13-1	20,000
Acrylyl chloride {2-Propenoyl chloride}	814-68-6	5,000
Allyl alcohol {2-Propen-l-ol}	107-18-61	15,000
Allylamine {2-Propen-l-amine}	107-11-9	10,000
Allyl chloride	107-05-1	5,000
Ammonia (anhydrous)	7664-41-7	10,000
Ammonia (conc 20% or greater)	7664-41-7	20,000
Arsenous trichloride	7784-34-1	15,000
Arsine	7784-42-1	1,000
Boron trichloride {Borane, trichloro-}	10294-34-5	5,000
Boron trifluoride {Borane, trifluoro-}	7637-07-2	5,000

Contaminant	CAS #	Threshold (lb)
Boron trifluoride compound with methyl ether (1:1) {Boron, trifluoro {oxybis (methane)}},-T-4.	353-42-4	15,000
Bromine	7726-95-6	10,000
Carbon disulfide	75-15-0	20,000
Chlorine	7782-50-5	2,500
Chlorine dioxide {Chlorine oxide (ClO2)}	10049-04-4	1,000
Chlorine trifluoride	7790-91-2	1,000
Chloroform {Methane, trichloro-}	67-66-3	20,000
Chloromethyl ether {Methane, oxybis {chloro-}}	542-88-1	1,000
Chloromethyl methyl ether {Methane, chloromethoxy-}	107-30-2	5,000
Chloroprene	126-99-8	5,000
Crotonaldehyde {2-Butenal}	4170-30-3	20,000
Crotonaldehyde, (E)- {2-Butenal, (E)-}	123-73-9	20,000
Cyanogen chloride	506-77-4	10,000
Cyclohexylamine {Cyclohexanamine}	108-91-8	15,000
Diazomethane	334-88-3	1,000
Diborane	19287-45-7	2,500
Dimethyldichlorosilane {Silane, dichlorodimethyl-}	75-78-5	5,000
1,1-Dimethylhydrazine {Hydrazine, 1,1-dimethyl-}	57-14-7	15,000
Epichlorohydrin {Oxirane,(chloromethyl)-}	106-89-8	20,000
Ethylenediamine {1,2-Ethanediamine}	107-15-3	20,000
Ethyleneimine {Aziridine}	151-56-4	10,000
Ethylene oxide {Oxirane}	75-21-8	10,000
Ethyl mercaptan	75-08-1	1,000
Fluorine	7782-41-4	1,000
Formaldehyde (solution)	50-00-0	15,000

Contaminant	**CAS #**	**Threshold (lb)**
Furan	110-00-9	5,000
Hydrazine	302-01-2	15,000
Hydrochloric acid (conc 37% or greater)	7647-01-0	15,000
Hydrocyanic acid	74-90-8	2,500
Hydrogen bromide	10035-10-6	5,000
Hydrogen chloride (anhydrous) {Hydrochloric acid}	7647-01-0	5,000
Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) {Hydrofluoric acid}	7664-39-3	1,000
Hydrogen selenide	7783-07-5	500
Hydrogen sulfide	7783-06-4	10,000
Iron, pentacarbonyl- {Iron carbonyl(Fe(CO)5),11)-}	13463-40-6	2,500
Isobutyronitrile {Propanenitrile, 2-methyl-}	78-82-0	20,000
Isopropyl chloroformate {Carbonochloridic acid, 1-methylethyl ester}	108-23-6	15,000
Methacrylonitrile {2-Propenenitrile, 2-methyl-}	126-98-7	10,000
Methyl amine	74-89-5	5,000
Methyl bromide	74-83-9	1,000
Methyl chloroformate {Carbonochloridic acid, methylester}	79-22-1	5,000
Methyl hydrazine {Hydrazine, methyl-}	60-34-4	15,000
Methyl isocyanate {Methane, isocyanato-}	624-83-9	10,000
Methyl mercaptan {Methanethiol}	74-93-1	10,000
Methylthiocyanate {Thiocyanicacid, methyl ester}	556-64-9	20,000
Methyltrichlorosilane {Silane, trichloromethyl-}	75-79-6	5,000
Nickel carbonyl	13463-39-3	1,000
Nitric acid (conc 80% or greater)	7697-37-2	15,000
Nitrogen dioxide	10102-44-0	5,000

Contaminant	**CAS #**	**Threshold (lb)**
Nitric oxide {Nitrogen oxide (NO)}	10102-43-9	10,000
Oleum (Fuming Sulfuric acid) {Sulfuric acid, mixture with sulfur trioxide}	8014-95-7	10,000
Oxygen difluoride	7783-41-7	1,000
Ozone	10028-15-6	1,000
Pentaborane	19624-22-7	10,000
Peracetic acid {Ethaneperoxoic acid}	79-21-0	10,000
Perchloryl fluoride	7616-94-6	2,000
Perchloromethylmercaptan {Methanesulfenyl chloride, trichloro-}	594-42-3	10,000
Phosgene {Carbonic dichloride}	75-44-5	500
Phosphine	7803-51-2	5,000
Phosphorus oxychloride {Phosphoryl chloride}	10025-87-3	5,000
Phosphorus tri- (TB-chloride) {Phos-5-phorous tri-Isobutyronitrile chloride}	7719-12-2	15,000
Piperidine	110-89-4	15,000
Propionitrile {Propanenitrile}	107-12-0	10,000
Propyl chloroformate {Carbonochloridic acid, propylester}	109-61-5	15,000
Propyleneimine {Aziridine, 2-methyl-}	75-55-8	10,000
Propylene oxide {Oxirane, methyl-}	75-56-9	10,000
Selenium hexafluoride	7783-79-1	1,000
Stibine	7803-52-3	1,000
Sulfur dioxide (anhydrous)	7446-09-5	5,000
Sulfur pentafluoide	5714-22-7	1,000
Sulfur tetrafluoride {Sulfur fluoride (SF4), (T-4)-}	7783-60-0	2,500
Sulfur trioxide	7446-11-9	10,000
Tellurium hexafluoride	7783-80-4	1,000

Contaminant	**CAS #**	**Threshold (lb)**
Tetramethyllead {Plumbane, tetramethyl-}	75-74-1	10,000
Tetranitromethane {Methane, tetranitro-}	509-14-8	10,000
Titanium tetrachloride {Titanium chloride (TiCl4) (T-4)-}	7550-45-0	2,500
Trimethylchlorosilane {Silane, chlorotrimethyl-}	75-77-4	10,000
Vinyl acetate monomer {Acetic acid ethenyl ester}	108-05-4	15,000

(5) Visible emissions, except uncombined water, to the atmosphere from any point or fugitive source shall not leave the site for a period exceeding 30 seconds in any six-minute period as determined by United States Environmental Protection Agency (EPA) Test Method 22, found in 40 Code of Federal Regulations Part 60, Appendix A.

(6) Additions of, or changes to, pollution control equipment or methods associated with facilities authorized by this section shall meet, at a minimum, the requirements of a qualified facility as defined in §116.10(12)(E)(ii) of this title (relating to General Definitions).

(b) Facilities authorized by this section are subject to the following notification, certification, and registration requirements.

(1) Emissions increases of less than 5 tons per year of any air contaminant will be noticed or certified according to subparagraphs (A) and (B) of this paragraph:

(A) submit notification to the appropriate regional office and the Air Permits Division within ten days of construction or operational change of the facility; and

(B) for any major source as defined by §122.10(13) of this title (relating to General Definitions), submit certification, using the required form, to the Air Permits Division by March 31 of the following year summarizing all uses of this PBR under this paragraph in the previous calendar year.

(2) For emission increases of 5 tons per year or greater of any air contaminant, applicants shall submit a registration using the required form within ten days following the installation of, or changes to, the facilities.

(3) Additions of pollution control equipment or methods require submission of notification to the appropriate regional office and the Air Permits Division within ten days of construction or operational change of the facility using the required form. Changes to existing pollution control equipment including changes to the inlet stream(s) must be registered prior to construction of the facility or the control equipment.

(c) The following are not authorized under this section except for the addition of other air contaminants not addressed in an existing authorization:

(1) construction of a facility for which there is another section of this chapter or for which a standard permit is in effect;

(2) any change to any facility for which there is another section of this chapter or authorized under a standard permit; and

(3) emissions resulting from maintenance, startup, shutdown, or quantifiable, anticipated (QUAN) emission releases unless part of a specific project otherwise authorized under this section.

§106.263. Temporary Maintenance Facilities.

(a) This section authorizes specific temporary maintenance facilities except as specified in subsection (b) of this section.

(b) The following are not authorized under this section:

(1) construction of or changes to any permanent facility;

(2) reconstruction under 40 Code of Federal Regulations §60.15 (concerning Reconstruction); or

(3) physical or operational changes to a facility that increase capacity or production beyond previously existing performance levels or result in the emission of a new air contaminant.

(c) Temporary maintenance facilities include only the following:

(1) facilities used for abrasive blasting, surface preparation, and surface coating on immovable fixed structures;

(2) facilities used for testing and repair of engines and turbines;

(3) compressors, pumps, or engines and associated pipes, valves, flanges, and connections not operating as a replacement for an existing authorized unit;

(4) flares, vapor combustors, catalytic oxidizers, internal combustion engines, carbon adsorption units, and other control devices used to control vent gases released during the degassing of immovable, fixed process vessels, storage vessels, and associated piping to atmospheric pressure, plus any cleaning apparatus that will have or cause emissions;

(5) temporary piping required to bypass a unit or pipeline section undergoing maintenance; and

(6) liquid or gas-fired vaporizers used for the purpose of vaporizing inert compounds.

(d) In addition to the emission limits in subsection (e) of this section, specific temporary maintenance facilities as listed in subsection (c) of this section must meet the following additional requirements.

(1) Any control device must meet the requirements of §106.533(g) of this title (relating to Remediation).

(2) Temporary maintenance facilities may not operate at a given location for longer than 180 consecutive days.

(e) Any temporary maintenance facility that cannot meet all applicable limitations of this section must obtain authorization under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

§106.268. Maintenance, Startup, and Shutdown (MSS) Emission Releases.

(a) This section authorizes emissions from maintenance, startup, or shutdown (MSS) activities, as defined in the definition of normal operations in §116.10 of this title (relating to General Definitions), that are predictable or planned at any authorized facility.

(b) The following are not authorized under this section:

(1) MSS associated with those facilities authorized under the permits by rule listed in §106.4(b) of this title (relating to Requirements for Permitting by Rule);

(2) MSS emissions from a facility that already has MSS emissions authorized;

(3) construction of any new or modified permanent facility;

(4) reconstruction of a facility under 40 Code of Federal Regulations §60.15 (concerning Reconstruction);

(5) physical or operational changes to a facility that increase capacity or production beyond authorized performance levels or result in the emission of a new air contaminant;

(6) first-attempt repairs on piping fugitive emissions authorized by a new source review permit, standard permit, or another permit by rule; and

(7) emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice.

(c) Emission releases of any specific air contaminant must meet both the short-term emissions limitations and annual emission limitations of §106.261 of this title (relating to New Facilities and Changes to Authorized Facilities).

(d) The total of site-wide annual MSS emissions plus the emissions authorized under §106.263 and §106.269 of this title (relating to Temporary Maintenance Facilities; and Quantifiable, Anticipated (QUAN) Emission Releases) may not exceed any applicable emission limit under §106.4(a)(1) - (3) of this title for any rolling 12-month period.

(e) Facility owners or operators shall retain records containing sufficient information to demonstrate compliance with this section. Documentation must be separate and distinct from records maintained for any other air authorization (except §106.263 and §106.269 of this title). Records must identify the following:

(1) the type and reason for the activity or facility construction;

(2) the processes and equipment involved;

(3) the date, time, and duration of the activity or facility operation;

(4) the air contaminants and amounts that are emitted as a result of the activity or facility operation; and

(5) records to demonstrate compliance with any required monitoring.

§106.269. Quantifiable, Anticipated (QUAN) Emission Releases.

(a) This section authorizes unscheduled but quantifiable and anticipated (QUAN) emissions releases as specified in the definition of normal operations in §116.10 of this title (relating to General Definitions) from any authorized facility.

(b) The following are not authorized under this section:

(1) additional emissions, if QUAN emissions from the facility are already authorized;

(2) construction of any new or modified permanent facility;

(3) reconstruction of a facility under 40 Code of Federal Regulations §60.15 (concerning Reconstruction);

(4) physical or operational changes to a facility that increase capacity or production beyond authorized performance levels or result in the emission of a new air contaminant;

(5) first-attempt repairs on piping fugitive emissions authorized by a new source review permit, standard permit, or another permit by rule; and

(6) emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice.

(c) Emission releases of any specific air contaminant must meet both the short-term emissions limitations and annual emission limitations of §106.261 of this title (relating to New Facilities and Changes to Authorized Facilities).

(d) The total of site-wide annual QUAN emissions plus the emissions authorized under §106.263 and §106.268 of this title (relating to Temporary Maintenance Facilities; and Maintenance, Startup, and Shutdown (MSS) Emission Releases) may not exceed any applicable emission limit under §106.4(a)(1) - (3) of this title (relating to Requirements for Permitting by Rule) for any rolling 12-month period.

(e) Total site-wide annual QUAN emissions must be less than 10% of all maximum allowable emissions rates authorized at the site for any rolling 12-month period.

(f) Facility owners or operators shall retain records containing sufficient information to demonstrate compliance with this section. Documentation must be separate and distinct from records maintained for any other air authorization except §106.263 and §106.268 of this title. Records must identify the following:

(1) the type and reason for the activity or facility construction;

(2) the processes and equipment involved;

(3) the date, time, and duration of the activity or facility operation;

(4) the air contaminants and amounts that are emitted as a result of the activity or facility operation; and

(5) records to demonstrate compliance with any required monitoring.