The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§116.114, 116.160, 116.164, 116.196, 116.198, 116.310, 116.611, and 116.615.

If adopted, the revisions to §§116.114, 116.160, 116.164(a), 116.196, 116.198, 116.310, 116.611, and 116.615 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 4181, 85th Texas Legislature, 2017, amended Texas Health and Safety Code (THSC), §382.055 to provide TCEQ with the option to use an electronic method or system to notify new source review (NSR) air permit holders that an air permit is scheduled for review. Prior to HB 4181, these notices were required to be sent by registered or certified mail. HB 4181 requires that any electronic notice system developed by TCEQ include the capability to verify that the notice has been received by the permit holder. HB 4181 became effective on September 1, 2017. Revisions to Chapter 116, are necessary to reflect the option for TCEQ to use an electronic method of providing renewal notifications.

By providing TCEQ with the authority to use an electronic method for providing NSR permit renewal notices, HB 4181 provides for reduced printing and postage costs and other logistical concerns associated with the use of traditional registered or certified

mail for the substantial number of renewal notices which must be provided each year. This is expected to result in a more efficient air permit renewal process for TCEQ and for air permit holders.

While the primary purpose of this rulemaking is to implement the electronic permit renewal notification process provided for by HB 4181, TCEQ is also taking this opportunity to propose several unrelated changes to Chapter 116. These other proposed revisions include: the proposed use of electronic methods to register an air quality standard permit; proposed changes to clarify when a new standard permit registration is required and when standard permit representations must be updated; proposed changes to clarify the applicability of Prevention of Significant Deterioration (PSD) permitting to certain sources emitting greenhouse gases (GHG); and the correction of outdated or erroneous cross references and terms.

The proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include: appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

In a concurrent rulemaking published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 122, Federal Operating Permits

Program, to implement another section of HB 4181 relating to the option to use an electronic method to notify federal operating permit holders and interested persons of a proposed final permit action.

Section by Section Discussion

§116.114, Application Review Schedule

The commission proposes an amendment to §116.114(c)(3)(A). The proposed amendment would correct a reference to rules relating to Constructed or Reconstructed Major Sources under the Federal Clean Air Act (FCAA), §112(g). Originally, these FCAA, §112(g) permit review requirements were adopted under Chapter 116, Subchapter C. The proposed change will update the reference to reflect the current Chapter 116, Subchapter E location of these requirements.

§116.160, Prevention of Significant Deterioration Requirements

The commission proposes an amendment to §116.160(b)(2). The proposed revision would delete a reference to §116.164(a)(4)(B), which is proposed to be deleted as part of the proposed revisions to §116.164.

§116.164, Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources

The commission proposes to amend §116.164(a) and (b). The commission proposes to revise §116.164(a) to reflect changes in GHG permitting policy and guidance resulting

from the 2014 Supreme Court decision (*Utility Air Regulatory Group v EPA*, 132 U.S. 2427 (2014)). The Supreme Court ruling determined that a project should not be subject to PSD review for an increase in GHG emissions alone; but that an increase in GHG emissions may be subject to PSD review if a different, non-GHG pollutant has an increase which triggers PSD review. In other words, GHG emissions associated with a project may be subject to review only if the PSD review was already going to be required by increased emissions of another regulated pollutant. Accordingly, the commission is proposing to add a clarifying statement to §116.164(a), and proposing to delete §116.164(a)(3) - (5), which addressed cases where there was an increase in GHG emissions alone. The Supreme Court decision and current EPA guidance have established that these cases no longer trigger PSD review for GHG emissions. The commission is also proposing a minor rephrasing of §116.164(b) to clarify that projects which do not trigger the applicability criteria of §116.164(a) are not required to obtain a permit for those GHG emissions; however, a permit or authorization of some type is still required for any other pollutants which may result from such a project.

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

The commission proposes to amend §116.196. The commission proposes to add language under §116.196(a) to document and clarify the procedures used to notify holders of Plant-wide Applicability Limit (PAL) permits that a permit is approaching expiration and needs to be renewed. The proposed amendment would require that the

TCEQ provide notification to the permit holder no less than 12 months prior to the expiration of the permit. While the commission already provides a renewal notification to holders of PAL permits as a matter of practice, the proposed language would clarify the timing of the notice and would allow for the use of an electronic method to deliver the notice to the permit holder, as an alternative to postal mail. The proposed amendment would make the renewal notification requirements for PAL permits more consistent with the notification process used for traditional NSR permits under §116.310, for which similar revisions are proposed. The commission also proposes to reletter the existing subsections of §116.196 as necessary to accommodate the proposed changes to §116.196(a).

§116.198, Expiration or Voidance

The commission proposes to amend §116.198(a) and (b). The proposed amendment would remove current references to §116.196(a) in this section and replace them with references to §116.196(b). This proposed change is necessary because the proposed relettering of the provisions of §116.196 would relocate the requirements of §116.196(a) concerning submittal of a PAL permit renewal application to §116.196(b).

§116.310, Notification of Permit Holder

The commission proposes amendments to §116.310. The proposed amendments would add language allowing the use of an electronic method to notify permit holders that a permit is approaching expiration and is need of renewal. This electronic notice

would be an alternative to the use of traditional certified or registered mail. This proposed change is necessary to maintain consistency with the corresponding changes to THSC, §382.055 enacted by HB 4181.

The commission is also proposing to revise the text of §116.310 to more closely match the timing of the notice requirement stated in THSC, §382.055, which requires that the commission provide the notice to the permit holder no less than 180 days before the date the permit renewal application is due. Under §116.315(a), the permit renewal application is, by default, to be submitted at least six months before the expiration of the permit. Therefore, in order to satisfy the combination of §116.315(a) and THSC, §382.055, the commission must send the notice no later than 180 days before the six-month period prior to the expiration of the permit. In conclusion, the commission must send the renewal notice to the permit holder approximately 12 months prior to the date the permit is scheduled to expire. The commission proposes to revise the language in §116.310 accordingly.

§116.611, Registration to Use a Standard Permit

The commission proposes an amendment to §116.611. The proposed amendment to §116.611(a) would provide for the use of an electronic method to apply for a standard permit registration, instead of requiring that registrations be submitted on paper forms using certified mail or hand delivery methods. The proposed rule language requires that standard permit registrations be provided to TCEQ using an electronic

method designated by the executive director for the applicable standard permit(s). The commission intends to use the existing ePermits system to facilitate these electronic registrations. If a designated electronic method is not available, the registration shall be sent by certified mail, return receipt requested, or hand delivered, as is currently required under the existing rules. Relevant forms, instructions, and supporting documents to support the electronic submittal of standard permit registrations will be available on the commission's website. The shift to the use of an electronic format for the receipt of standard permit registrations is intended to reduce processing time, improve efficiency, and conserve agency resources.

Fees for standard permit registrations submitted electronically would also be paid electronically through the commission's ePay system, or some other designated method.

§116.615, General Conditions

The commission proposes to amend to §116.615. The commission proposes to amend this section by revising language to clarify the requirements applicable to the holder of a registered standard permit when the permit holder intends to make changes or additions which were not previously represented in the original registration or any subsequent updates to the registration. The proposed revisions are necessary to: ensure that commission records on registered standard permit facilities are kept up-to-date; ensure that new facilities comply with appropriate public notice requirements;

and ensure that facilities which undergo changes after a standard permit has been issued continue to meet the conditions of the standard permit and are complying with appropriate requirements based on the current configuration and operation of the facility. These proposed requirements would only apply to facilities authorized under a standard permit which requires registration under §116.611.

The commission proposes to delete a portion of existing §116.615(2) relating to the requirement to notify the executive director of changes to representations for a standard permit facility. The commission proposes more detailed rule language to address changes at a registered standard permit facility under proposed §116.615(2)(A) - (D).

Proposed §116.615(2)(A) addresses the addition of new facilities at an existing operation which is authorized under a registered standard permit. The proposed rule would require that the holder of the standard permit submit a new registration and fee before beginning construction on the new facility or facilities. The new registration would be required to encompass all new and existing facilities to be authorized under the standard permit. The proposed rule also specifies that public notice is required for the new registration incorporating new and existing facilities under certain standard permits. If the applicable standard permit requires public notice, the construction of new facilities shall not commence until the public notice process is complete and the new registration has been issued by the executive director. Currently, the following

facilities, that have standard permits requiring public notices are: concrete batch plants, concrete batch plants with enhanced controls, animal carcass incinerators, and permanent rock and concrete crushers. The proposed requirements are necessary to ensure that additions of new facilities at existing standard permit sites are reviewed to verify compliance with the terms of the standard permit, and to ensure that any applicable public notice requirements are fulfilled for the entire operation being authorized under the standard permit.

If the construction of new facilities under proposed §116.615(2)(A) is associated with a standard permit which does not require public notice, then the normal timeframes of §116.611(b) apply. Construction may begin any time after receipt of written notification from the executive director that there are no objections, or 45 days after receipt by the executive director of the new registration, whichever occurs first; except when a different time period is specified for a particular standard permit.

Proposed §116.615(2)(B) addresses changes to representations which involve changes in the method of control of emissions, changes in the character of the emissions, or increases in the discharge of the various emissions. These types of changes are currently covered by rule language in existing §116.615(2). The proposed rule does not change the requirement to notify the executive director of such changes within 30 days of the change, but clarifies that a fee will be assessed for processing these types of changes in representations. The written notification should identify the current

representations which are affected and include a detailed description of the changes which are being made. A $900 fee would be assessed for this review, which is consistent with the existing fee structure for processing a new or revised registration.

Proposed §116.615(2)(C) addresses changes to representations which do not result in changes in the method of control of emissions, changes in the character of the emissions, or increases in the discharge of the various emissions. For these types of changes, the holder of the standard permit would be required to notify the executive director of such changes within 30 days of the change. No fee is being proposed for processing these types of changes.

Proposed §116.615(2)(D) addresses situations where the applicable standard permit already contains specific conditions or procedures for handling changes to representations which are different from the proposed requirements in §116.615(2). In such cases, the holder of the standard permit shall comply with the applicable requirements of the standard permit instead of the requirements in proposed §116.615(2).

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget & Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency, and no fiscal implications are anticipated for other units of

state or local government.

The proposed rules would implement HB 4181, which allows the executive director to utilize an electronic method to notify permit holders that an air permit needs to be renewed, instead of traditional mail. In addition, the rules provide clarification, update references, and revises language relating to PSD permitting of GHGs to make the rules consistent with a decision by the U.S. Supreme Court and corresponding EPA guidance.

The proposed rulemaking would allow the executive director to use electronic notification to send NSR air permit renewal notices in §116.310 and reflect changes in GHGs permitting policy resulting from the U.S. Supreme Court decision, *Utility Air Regulatory Group v EPA*, 132 U.S. 2427 (2014) in §116.160 and §116.164. It would also allow the executive director to use electronic notification to send PAL permit holders renewal notices in §116.196(a) and allow applicants to submit registration for certain types of air standard permits through TCEQ's electronic system instead of paper forms in §116.611(a). Finally, the proposed rulemaking would clarify registration, notification, and public notice requirements for registered standard permit holders when making changes to the standard permit facility; require some standard permit operations (concrete batch plants, concrete batch plants with enhanced controls, permanent rock and concrete crushers, and animal carcass incinerators) to publish public notice in a local newspaper when they add new facilities not previously represented in the original registration or subsequent updated representations in

§116.615; and provide technical corrections and remove obsolete language in §116.114(c)(3)(A) and §116.198.

The proposed rulemaking would make several changes which may have fiscal implications. First, the proposed rulemaking would allow the executive director to send certain air permit notices electronically. In Chapter 116, the utilization of electronic notifications instead of traditional mail for NSR renewal notices may result in a cost savings. The agency's cost for mailing NSR renewal notices ranges from $3,000 to $6,000 per year. It is estimated that there would be an average of approximately $4,500 in agency cost savings for a typical year.

Second, the proposed rulemaking would require some standard permit operations that are adding new facilities not previously represented in the original registration or updated representations to publish a public notice in a newspaper. This additional exposure to the public may result in a slight increase in public comments, but this increase should not require additional agency resources to address.

Public Benefits and Costs

Ms. Bearse 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 from the implementation of the proposed rules would be appropriate notice to the public when certain facilities authorized by standard air permits add new facilities which were not

previously represented in the original registration, such as, permanent rock/concrete crushers, concrete batch plants, or animal carcass incinerators. In addition, the rule changes provide greater clarity and specificity of regulatory requirements and ensure consistency with a ruling of the U.S. Supreme Court.

Costs are anticipated for a small number of businesses or individuals due to the implementation or administration of the proposed rulemaking, though these costs are not expected to be significant. The estimated cost of compliance depends on many variables, and newspaper publication rates vary greatly depending on their circulation, the days of the week, and the number of words in the notice, with a range of $600 to $9,800 per notice. The agency estimates the public notice requirement would affect five to fifteen standard permit registrations each year. Assuming ten standard permit registrations per year and a midpoint of $5,200 for newspaper publication costs, the total estimated cost each year would be approximately $52,000 (or $5,200 for each standard permit registration which is required to publish the notice).

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.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The proposed amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

The commission determined that no significant adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rulemaking is in effect. The portion of the rulemaking which may affect a small or micro-business is the requirement in §116.615 that some standard permit operations (concrete batch plants, concrete batch plants with enhanced controls, permanent rock/concrete crushers and animal carcass incinerators) would now be required to publish a public notice in a local newspaper when they add new facilities not previously represented in the original registration or subsequent updated representations. The cost of this newspaper notice would have some fiscal impact on affected businesses. Based on the commission's general experience with these industries, it is estimated that five or fewer small or micro-businesses would be affected.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small

Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect small or micro-businesses for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission reviewed this proposed rulemaking and determined that a Government Growth Impact Statement assessment is not required because the proposed rules do not: create or eliminate a government program; require the creation or elimination of new/existing employee positions; require an increase or decrease in future legislative appropriations to the agency; create a new regulation; expand or limit an existing regulation; or increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there would be an adverse impact on the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the

requirements to prepare a regulatory impact analysis (RIA).

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 amendments to Chapter 116 to implement HB 4181 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather the amendments would give the commission the option of providing notice of an air permit application renewal under Chapter 116 by an electronic method or system that has a reliable method of verifying that the notice has been received by the permit holder.

While the primary purpose of the rulemaking is to revise Chapter 116 to include the option to use an electronic method or system of notification for permit renewals, this rulemaking also includes several unrelated proposed amendments to Chapter 116. These include the use of electronic methods to register an air quality standard permit; changes to clarify when a standard permit registration is required to be updated; changes to clarify the applicability of PSD permitting to certain sources emitting GHG;

and the correction of outdated or erroneous cross references and terms.

Because these proposed rules would modify administrative procedures for registrations of standard permits in future authorizations, clarify the applicability of GHG permitting, and make minor corrections, the amendments do not add significant permitting requirements. Therefore, these proposed amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a RIA is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and does not exceed a requirement of a delegation agreement or contract to

implement a state or federal program. Finally, this rulemaking is not proposed solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB or bill) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full RIA unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major

environmental rule that exceeds federal law, then each of those rules would require the RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. The commission contends that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rule may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and, in fact, creates no additional impacts since the proposed rule does not exceed the requirement to attain and maintain the National Ambient Air Quality Standards. For these reasons, the proposed rulemaking falls under the exception in Texas Government Code, §2001.0225(a), because it is required by, and does not exceed, federal law.

The commission consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App.

Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission substantially complied with the requirements of Texas Government Code, §2001.0225.

The primary purpose of the proposed amendments is to give the commission the option of providing notice of an air permit application renewal under Chapter 116 by an electronic method or system that has a reliable process of verifying that the notice has been received by the permit holder. An additional purpose is to address other parts of Chapter 116 that require clarification, as discussed elsewhere in this preamble. The proposed amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of Texas Health and Safety Code, Chapter 382, and the Texas Water Code, which are cited in the Statutory

Authority sections of this preamble. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings 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 the Texas Constitution, §17 or §19, Article I or 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 takings impact analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to give the

commission the option of providing notice of an air permit application renewal under Chapter 116 by an electronic method or system that has a reliable process of verifying that the notice has been received by the permit holder. An additional purpose is to address other parts of Chapter 116 that require clarification, as discussed elsewhere in this preamble. The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action 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 proposal 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 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The proposed rules provide for the use of an electronic method to notify permit holders that a permit is due for renewal, update procedural rules that govern the submittal of air quality PSD GHG permit applications, and clarify registration and public notice requirements for changes at certain standard permit facilities. The CMP policy applicable to this rulemaking 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 §501.32). This rulemaking 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 is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this

preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed amendments are not expected to have a significant impact on sites subject to the Federal Operating Permits Program. Facilities which operate under a registered standard permit and also have a Site Operating Permit (SOP) should evaluate the revised applicable requirements of §116.615 to determine if an update to their SOP is necessary. The proposed amendments to the remaining sections, if adopted, will not require any revisions to federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 22, 2018, at 10:00 A.M. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance

as possible.

Submittal of Comments

Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2018-003-116-AI. The comment period closes on June 26, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Michael Wilhoit, TCEQ Air Permits Division, Operational Support Section, (512) 239-1222.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.114

Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the

commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications.

In addition, the rule is proposed under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The proposed rule would implement THSC, §§382.051, 382.0513, 382.0515, 382.0518, 382.056.

§116.114. Application Review Schedule.

(a) Review schedule. The executive director shall review permit applications in accordance with the following.

(1) Notice of completion or deficiency. The executive director shall mail written notification informing the applicant that the application is complete or that it is deficient within 90 days of receipt of the application for a new permit, or amendment to a permit or special permit.

(A) If the application is deficient, the notification must state:

(i) the additional information required; and

(ii) the intent of the executive director to void the application if information for a complete application is not submitted.

(B) Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification.

(2) Preliminary decision to approve or disapprove the application. The executive director shall conduct a technical review and send written notice to the applicant of the preliminary decision to approve or not approve the application within 180 days from receipt of a completed permit application or 150 days from receipt of a

completed permit amendment. If the applicant has provided Notice of Receipt of Application and Intent to Obtain Permit public notification as required by the executive director under Chapter 39 of this title (relating to Public Notice), one of the following shall apply:

(A) if comments are received on the proposed facility and replied to by the executive director in accordance with §39.420 of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision) and §55.156 of this title (relating to Public Comment Processing); and

(B) if no requests for public hearing or public meeting on the proposed facility have been received or the application is otherwise exempt under §39.419(e) of this title (relating to Notice of Application and Preliminary Decision), the executive director shall send a copy of the Preliminary Decision to the applicant; or

(C) if Notice of Application and Preliminary Decision is required under §39.419(e) of this title, the executive director shall authorize this notice and send copies to the applicant and all other persons are required under §39.602 of this title (relating to Mailed Notice).

(3) Review schedule for Advanced Clean Energy Projects. In addition to the applicable requirements and deadlines specified in subsections (a) - (c) of this

section, the following deadlines apply to permit applications for advanced clean energy projects as defined in Texas Health and Safety Code, §382.003, Definitions:

(A) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete, the executive director shall complete its technical review of the application.

(B) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may extend this deadline up to three months if it determines that the number of complex pending applications for permits under this chapter will prevent the commission from meeting this deadline without creating an extraordinary burden on the resources of the commission.

(4) Refund of permit fee.

(A) If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director for a refund of the permit fee.

(B) The permit fee shall be reimbursed if it is determined by the executive director that the specified period was exceeded without good cause, as provided in Texas Civil Statutes, Article 6252-13b.1, §3.

(b) Voiding of deficient application.

(1) An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the executive director under the provisions of this section, or Chapter 39 of this title.

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

(c) Notification of executive director's decision.

(1) Notification to applicant. The executive director or the chief clerk shall send to the applicant the decision to approve or not approve the application if:

(A) no timely requests for reconsideration, contested case hearing, or public meeting on the proposed facility have been received; or

(B) if hearing requests have been received and withdrawn before the executive director's Preliminary Decision; or

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted; and

(D) the applicant has satisfied all public notification requirements of Chapter 39 of this title.

(2) Notification to commenters. Persons submitting written comments under Chapter 39 of this title shall be sent the executive director's final action and given an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) at the same time that the applicant is notified. If the number of interested persons who have requested notification makes it impracticable for the commission to notify those persons by mail,

the commission shall notify those persons by publication using the method prescribed by Texas Health and Safety Code, §382.031(a) [of the Texas Health and Safety Code].

(3) Time limits. The executive director shall send notification of final action within:

(A) one year after receipt of a complete prevention of significant deterioration or nonattainment permit application, or a complete permit application for an action under Subchapter E [C] of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63) [Plant-Wide Applicability Limits]);

(B) 180 days of receipt of a completed permit or permit renewal application; or

(C) 150 days of receipt of a permit amendment or special permit amendment application.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 6: PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

§116.160, §116.164

Statutory Authority

The rules are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC,

§382.05102, concerning Permitting Authority of Commission; Greenhouse Gas Emissions, which authorizes the commission to adopt rules to implement the emissions of greenhouse gasses in a manner consistent with THSC, §382.051; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications.

In addition, the rules are also proposed under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The proposed rules would implement THSC, §§382.05102, 382.051, 382.0513, 382.0515, 382.0518, 382.056.

§116.160. Prevention of Significant Deterioration Requirements.

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

(b) *De minimis* threshold test (netting):

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

(2) is required for GHGs at existing major sources if the proposed modification results in an emissions increase, without regard to decreases, as required

in §116.164(a)(2) [and (4)(B)] of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(c) In applying the de minimis threshold test (netting), if the net emissions increases are greater than the major modification levels for the pollutant identified in 40 CFR §52.21(b)(23) and for GHGs in §116.164 of this title, the following requirements apply.

(1) In addition to those definitions in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) the following definitions from prevention of significant deterioration of air quality regulations promulgated by the United States Environmental Protection Agency (EPA) in 40 CFR §52.21 and the definitions for protection of visibility and promulgated in 40 CFR §51.301 as amended July 1, 1999, are incorporated by reference:

(A) 40 CFR §52.21(b)(12) - (15), concerning best available control technology, baseline concentrations, dates, and areas;

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

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

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

(A) 40 CFR §52.21(c) - (k), concerning increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, exemptions, control technology review, and source impact analysis;

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

(C) 40 CFR §52.21(r)(4), concerning relaxation of an enforceable limitation; and

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

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

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

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

§116.164. Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources.

(a) Greenhouse Gases (GHGs) are subject to Prevention of Significant Deterioration (PSD) review under the [following] conditions specified in paragraphs (1) or (2) of this subsection. Projects with increases in GHG emissions do not require a PSD applicability evaluation for GHGs unless the project requires PSD review for a pollutant other than GHGs. [:]

(1) New source, major for non-GHGs. The stationary source is a new major stationary source for a federally regulated new source review (NSR) pollutant that is not GHGs, and will emit or have the potential to emit 75,000 tons per year (tpy) or more carbon dioxide equivalent (CO_2e); or

(2) Existing source, major for non-GHGs. The stationary source is an existing major stationary source for a federally regulated NSR pollutant that is not GHGs, and will have a significant net emissions increase of a federally regulated NSR pollutant that is not GHGs, and a net emissions increase greater than zero tpy GHGs on a mass basis and 75,000 tpy or more CO_2e.

[(3) New source, major for GHGs Only. The new stationary source that will emit or has the potential to emit greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 Code of Federal Regulations (CFR) §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO_2e.]

[(4) GHGs major modification at an existing source that is a major stationary source for GHGs.]

[(A) The existing stationary source emits or has the potential to emit greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO_2e; and]

[(B) the stationary source undertakes a physical change or change in the method of operation that will result in a net emissions increase greater than zero tpy GHGs on a mass basis, and a net emissions increase of 75,000 tpy or more CO_2e.]

[(5) Existing source that is not major. The existing stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO_2e.]

(b) New stationary sources with emissions of GHGs, or existing stationary sources that undertake a physical change or change in the method of operations that includes emissions of GHGs, that do not meet any of the conditions in subsection (a) of this section do not require authorization for emissions of GHGs under this subchapter, Subchapter F of this chapter (relating to Standard Permits), Subchapter G of this chapter (relating to Flexible Permits), or Chapter 106 of this title (relating to Permits by

Rule) [for emissions of GHGs]. Owners or operators of these sources must keep records sufficient to demonstrate the amount of emissions of GHGs from the source as a result of construction, a physical change or a change in method of operation do not require authorization under subsection (a) of this section. Records must be made available at the request of personnel from the commission or any local air pollution control agency having jurisdiction. Records must be maintained for a minimum of five years from the date of the construction, physical change, or change in method of operation.

SUBCHAPTER C: PLANT-WIDE APPLICABILITY LIMITS

DIVISION 1: PLANT-WIDE APPLICABILITY LIMITS

§116.196, §116.198

Statutory Authority

The rules are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.128, concerning Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission. The rules are also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which

authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; THSC, §382.055, concerning Review and Renewal of Preconstruction Permit, which authorizes the commission to review and determine whether the authority to operate a preconstruction permit should be renewed; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications.

In addition, the rules are proposed under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The proposed rules would implement House Bill 4181 (85th Texas Legislature, 2017), TWC, §5.128, and THSC, §§382.051, 382.0513, 382.0515, 382.0518, 382.055, and 382.056.

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

(a) The executive director shall provide written notice to each plant-wide applicability limit (PAL) permit holder that the permit is scheduled for review. Such notice must be provided by certified or registered United States mail, or an electronic method which can provide verification of receipt of the notice, no less than 12 months prior to the scheduled expiration of the PAL permit. The notice must specify the procedure for filing an application for review and the information to be included in the application. Under Texas Occupations Code, §55.002, the commission shall exempt a permit holder from any increased fee or other penalty for failure to renew the permit if the individual establishes, to the satisfaction of the commission, that the failure to renew in a timely manner occurred because the individual was on active duty in the United States Armed Forces serving outside the State of Texas.

(b) [(a)] A stationary source owner or operator shall submit a timely application to the executive director to request renewal of a [plant-wide applicability limit (]PAL[)] permit. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. If the owner or

operator of a stationary source submits a complete application to renew the PAL permit within this time period, then the permit will continue to be effective until the revised permit with the renewed PAL is issued or the PAL permit is voided.

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

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

(1) a proposed PAL level;

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

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

(e) [(d)] The proposed PAL level and a written rationale for the proposed PAL level are subject to the public notice requirements in §116.194 of this title (relating to

Public Notice and Comment). During such public review, any person may propose a PAL level for the source for consideration by the executive director.

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

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

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

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

§116.198. Expiration or Voidance.

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

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

(c) The executive director shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each facility, or each group of facilities, as the executive director determines is appropriate. Each facility shall comply with the allowable emission limitation on a 12-month rolling basis. The executive director may approve the use of monitoring systems (source testing, emission factors, etc.) other than a continuous emission monitoring system, continuous emission rate monitoring system, predictive emission monitoring system, or continuous parameter monitoring system to demonstrate compliance with the allowable emission limitation.

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

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

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

SUBCHAPTER D: PERMIT RENEWALS

§116.310

Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.128, concerning Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission. The rule is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012,

concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; THSC, §382.055, concerning Review and Renewal of Preconstruction Permit, which authorizes the commission to review and determine whether the authority to operate a preconstruction permit should be renewed; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications.

In addition, the rule is proposed under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The proposed rule will implement TWC §5.128, and THSC, §§382.051, 382.0513,

382.0151, 382.0518, 382.055, and 382.056.

§116.310. Notification of Permit Holder.

The executive director shall provide written notice to the permit holder that the permit is scheduled for review. Such notice must be provided by certified or registered United States mail, or an electronic method which can provide verification of receipt of the notice, no less than 12 months [180 days] prior to the expiration of the permit. The notice must specify the procedure for filing an application for review and the information to be included in the application. Under Texas Occupations Code, §55.002 [Civil Statutes, Article 9027], the commission shall exempt a permit holder from any increased fee or other penalty for failure to renew the permit if the individual establishes, to the satisfaction of the commission, that the failure to renew in a timely manner occurred because the individual was on active duty in the United States Armed Forces serving outside the State of Texas.

SUBCHAPTER F: STANDARD PERMITS

§116.611, §116.615

Statutory Authority

The rules are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.128, concerning Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission. The rule is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012,

concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.05195, concerning Standard Permit, which authorizes the commission to issue a standard permit for new or existing similar facilities; THSC, §382.051963, concerning Amendment of Certain Permits, authorizes the commission to amend a standard permit; and THSC, §382.062, concerning Application, Permit, and Inspection Fees, which authorizes the commission to adopt, charge, and collect fees.

In addition, the rules are proposed under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The proposed rules would implement House Bill (HB) 4181 (85th Texas Legislature, 2017), TWC §5.128, and THSC, §§382.051, 382.0515, 382.05195, 382.051963, and 382.062.

§116.611. Registration to Use a Standard Permit.

(a) If required, registration to use a standard permit shall be submitted using the electronic method designated by the executive director for the applicable standard permit. If a designated electronic method is not available, the registration shall be sent by certified mail, return receipt requested, or hand delivered to the executive director, the appropriate commission regional office, and any local air pollution program with jurisdiction, before a standard permit can be used. The registration must be submitted using [on] the required form and must document compliance with the requirements of this section, including, but not limited to:

(1) the basis of emission estimates;

(2) quantification of all emission increases and decreases associated with the project being registered;

(3) sufficient information as may be necessary to demonstrate that the project will comply with §116.610(b) of this title (relating to Applicability);

(4) information that describes efforts to be taken to minimize any collateral emissions increases that will result from the project;

(5) a description of the project and related process; and

(6) a description of any equipment being installed.

(b) Construction may begin any time after receipt of written notification from the executive director that there are no objections or 45 days after receipt by the executive director of the registration, whichever occurs first, except where a different time period is specified for a particular standard permit or the source obtains a prevention of significant deterioration permit for greenhouse gases as provided in §116.164(a) of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(c) In order to avoid applicability of Chapter 122 of this title (relating to Federal Operating Permits), a certified registration shall be submitted. The certified registration must state the maximum allowable emission rates and 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. The certified registration shall be amended if the basis of the emission estimates changes or the maximum emission rates listed on the registration no longer reflect the reasonably anticipated maximums for operation of the facility. The certified registration shall be submitted to the executive director; to the appropriate commission regional office; and to all local air pollution control agencies having jurisdiction over the site. Certified

registrations must also be maintained in accordance with the requirements of §116.115 of this title (relating to General and Special Conditions).

(1) Certified registrations established prior to December 11, 2002, shall be submitted on or before February 3, 2003.

(2) Certified registrations established on or after December 11, 2002, shall be submitted no later than the date of operation.

(3) Certified registrations established for greenhouse gases (as defined in §101.1 of this title (relating to Definitions)) on or after the effective date of United States Environmental Protection Agency's (EPA) [EPA's] final action approving amendments to §122.122 of this title (relating to Potential to Emit) into the State Implementation Plan shall be submitted:

(A) for existing sites that emit or have the potential to emit greenhouse gases, no later than 12 months after the effective date of EPA's final action approving amendments to §122.122 of this title as a revision to the Federal Operating Permits Program; or

(B) for new sites that emit or have the potential to emit greenhouse gases, no later than the date of operation.

§116.615. General Conditions.

The following general conditions are applicable to holders of standard permits, but will not necessarily be specifically stated within the standard permit document.

(1) Protection of public health and welfare. The emissions from the facility, including dockside vessel emissions, must comply with all applicable rules and regulations of the commission adopted under Texas Health and Safety Code, Chapter 382, and with the intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public.

(2) Standard permit representations. All representations with regard to construction plans, operating procedures, pollution control methods, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §116.110 of this title (relating to Applicability). Any changes in representations are subject to the following requirements: [If the facility remains eligible for a standard permit, the owner or operator of the facility shall notify

the executive director of any change in conditions which will result in a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous notification of a change in representations. Notice of changes in representations must be received by the executive director no later than 30 days after the change.]

(A) For the addition of a new facility, the owner or operator shall submit a new registration incorporating existing facilities with a fee, in accordance with §116.611 and §116.614 of this title, (relating to Registration to use a Standard Permit and Standard Permit Fees) prior to commencing construction. If the applicable standard permit requires public notice, construction of the new facility or facilities may not commence until the new registration has been issued by the executive director.

(B) For any change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions, the owner or operator shall submit written notification to the executive director describing the change(s), along with the designated fee, no later than 30 days after the change.

(C) For any other change to the representations, the owner or operator shall submit written notification to the executive director describing the change(s) no later than 30 days after the change.

(D) Any facility registered under a standard permit which contains conditions or procedures for addressing changes to the registered facility which differ from subparagraphs (A) - (C) of this paragraph shall comply with the applicable requirements of the standard permit in place of subparagraphs (A) - (C) of this paragraph.

(3) Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under §116.110 of this title shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed.

(4) Construction progress. Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office not later than 15 working days after occurrence of the event, except where a different time period is specified for a particular standard permit.

(5) Start-up notification.

(A) The appropriate air program regional office of the commission and any other air pollution control agency having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by a standard permit in such a manner that a representative of the executive director may be present.

(B) For phased construction, which may involve a series of units commencing operations at different times, the owner or operator of the facility shall provide separate notification for the commencement of operations for each unit.

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

(D) A particular standard permit may modify start-up notification requirements.

(6) Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the commission's appropriate regional office and any other air pollution control agency having jurisdiction prior to

sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The standard permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

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

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, the United States Environmental Protection Agency, or any air pollution control agency having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include, but is not limited to, production

records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information and data sufficient to demonstrate applicability of and compliance with the standard permit must be retained for at least two years following the date that the information or data is obtained. The copy of the standard permit must be maintained as a permanent record.

(9) Maintenance of emission control. The facilities covered by the standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201 and §101.211 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern. Acceptance includes consent to the entrance of commission employees and designated

representatives of any air pollution control agency having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

(11) Distance limitations, setbacks, and buffer zones. Notwithstanding any requirement in any standard permit, if a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(A) the date new construction, expansion, or modification of a facility begins; or

(B) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.