

The commission proposes new §122.135, concerning an exemption from the requirement in Title 30, Texas Administrative Code, Chapter 122 (30 TAC Chapter 122) to establish actual and presumptive grandfather emission rates. The Operating Permits Division is preparing to begin the review of federal operating permit applications upon delegation by the United States Environmental Protection Agency.

The requirement for owners or operators of a site subject to the federal operating permits program to submit grandfather emission rates required within §122.132(a)(5) is a state-only requirement, and does not implement any part of Title V or Title 40, Code of Federal Regulations, Part 70 (40 CFR 70). As a result of Senate Bill 1126 enacted by the 74th Texas Legislature and the subsequent changes made to Title 30, Texas Administrative Code, Chapter 116 (30 TAC Chapter 116), the agency has decided to address the establishment of allowable emissions for qualified grandfathered facilities solely through the provisions of 30 TAC Chapter 116. This exemption does not affect the state-only requirements to identify grandfather emission units and to list the preconstruction authorizations in the application for the emission units that are not grandfathered. These two state-only requirements are not applicable requirements according to 30 TAC Chapter 122. Therefore, the proposed new §122.135 provides an exemption from the requirement to submit grandfather emission rates in the operating permit application.

The rule regarding grandfather information is proposed for the entire State of Texas.

The proposed §122.135, concerning Grandfather Requirements, provides owners or operators with sites subject to 30 TAC Chapter 122 an exemption from the state-only requirement regarding the submission of grandfather emission rates.

The commission has prepared a Takings Impact Assessment for this rule proposal pursuant to Texas Government Code, §2007.043. The purpose of this rulemaking is to provide owners or operators with an exemption from having to submit grandfather emission rates in their federal operating permit application. This proposed rule will substantially advance this specific purpose because it will codify the exemption which may be used by the owners or operators who are required to submit an application for a federal operating permit. The promulgation and enforcement of this rule will not burden private real property because this rulemaking proposal provides an exemption from an existing requirement.

Stephen Minick, Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed section is in effect, there will be no significant costs to state government or units of local government as a result of administration or enforcement of the section.

The commission may realize some reduced demand on agency resources and a related cost savings as a result of owners or operators using the exemption proposed. The actual fiscal implications to the commission have not been determined at this time.

Mr. Minick also has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be more cost-effective regulation of sources of air emissions. The effect on owners or operators subject

to this section will be a reduction in the potential costs of application for a federal operating permit and the operation of such permitted facilities. The actual fiscal impact on any emission unit at a site subject to the provisions of 30 TAC Chapter 122 cannot be easily determined. It is estimated, however, that owners or operators will realize a reduction in cost associated with preparing an operating permit application of at least 5% as a result of providing the proposed exemption. The potential cost savings will affect small businesses on the same basis as any larger business and will vary with the grandfather status of the emission unit(s) at a site. There are no economic costs anticipated for any owners or operators required to comply with this section as proposed.

A public hearing on this proposal will be held August 19, 1996, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. 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 within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96137-122-AI. Comments must be received by 5:00 p.m., August 23, 1996. For further information or questions concerning this proposal, contact Kevin Bloomer of the Operating Permits Division, Office of Air Quality, (512) 239-5730.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new section is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new section implements Texas Health and Safety Code, §382.051(b)(2) and §382.054.

Subchapter B : Permit Requirements

Permit Application

§122.135

§122.135. Grandfather Requirements.

The portions of this chapter, specifically §122.132 of this title (relating to Application and Required Information), which address the requirements dealing with the submission of actual or presumptive grandfather emission rates are not applicable to the owners or operators of sites subject to the federal operating permits program. Sites subject to the federal operating permits program are identified in §122.130 of this title (relating to Responsibility to Apply).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 10, 1996.