

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts the repeal of §§122.10-122.12, 122.120, 122.130, 122.132-122.136, 122.138, 122.139, 122.141, 122.143, 122.145, 122.150, 122.152-122.155, 122.161, 122.163-122.165, 122.201, 122.202, 122.204, 122.210-122.213, 122.215-122.217, 122.219-122.221, 122.231, 122.233, 122.241, 122.243, 122.310-122.312, 122.314, 122.410, 122.411, 122.420-122.422, 122.425, 122.427, 122.430, 122.432, 122.434, 122.435, 122.437, 122.438, and 122.440, and new §§122.10, 122.12, 122.110, 122.120, 122.121, 122.130-122.134, 122.136, 122.138-122.140, 122.142-122.146, 122.148, 122.161, 122.165, 122.201, 122.204, 122.210-122.213, 122.215-122.217, 122.219-122.221, 122.231, 122.241, 122.243, 122.312, 122.320, 122.322, 122.330, 122.350, 122.360, 122.410, 122.412, 122.414, 122.501-122.506, and 122.508, concerning the federal operating permit program.

Sections 122.10, 122.12, 122.110, 122.120, 122.121, 122.130-122.134, 122.136, 122.139, 122.142-122.146, 122.148, 122.161, 122.165, 122.201, 122.210-122.213, 122.215-122.217, 122.219-122.221, 122.231, 122.243, 122.312, 122.320, 122.322, 122.350, 122.360, 122.410, 122.412, 122.414, 122.501-122.506, and 122.508 are adopted with changes to the proposed text as published in the May 13, 1997, issue of the *Texas Register* (22 TexReg 4140) and May 20, 1997, issue of the *Texas Register* (22 TexReg 4347). Sections 122.138, 122.140, 122.204, 122.241, and 122.330 and the repeals are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULES. The commission has chosen to revise the rule language through the repeal of affected sections and their replacement with new sections. This approach was

determined to be more efficient than amending the existing sections due to the extensive nature of the revisions.

Title V of the Federal Clean Air Act Amendments of 1990 (FCAAA), enacted on November 15, 1990, requires the United States Environmental Protection Agency (EPA) to promulgate regulations within 12 months of enactment that require and specify the minimum elements of state operating permit programs. Part 70 of Chapter I, Title 40 of the Code of Federal Regulations (40 CFR 70) contains these provisions. Title 30 Texas Administrative Code Chapter 122 (30 TAC 122) was adopted August 23, 1993, to implement the regulatory authority of the federal operating permit program required by 40 CFR 70. Revisions to 30 TAC 122 are adopted as the result of comments received from EPA, the regulated community, and public interest groups.

The revisions reorganize 30 TAC 122 into six subchapters: Subchapter A, concerning Definitions; Subchapter B, concerning Permit Requirements; Subchapter C, concerning Initial Permit Issuances, Revisions, Reopenings, and Renewals; Subchapter D, concerning Public Announcement, Public Notice, Affected State Review, Notice and Comment Hearing, Notice of Proposed Final Action, EPA Review, and Public Petition; Subchapter E, concerning Acid Rain Permits; and Subchapter F, concerning General Operating Permits. These revisions reflect changes based on EPA's proposed and final interim approval notices, discussions with the regulated community and public interest groups, and a regulatory reform effort by the agency to make rule language more straightforward and easy to understand.

Regulatory Reform. Changes to the rule language as the result of ongoing efforts by the commission for regulatory reform appear throughout the rules and will not be individually discussed in this preamble. These changes are for purposes of simplification and clarification only and do not involve substantive changes in the requirements of this chapter. In general, these changes involve using shorter sentences, limiting each citation to one main concept, reordering requirements into a more logical sequence, and using more commonplace terminology. In addition, some of the definitions have been moved to more appropriate sections or chapters. Definitions that apply agency-wide belong in 30 TAC Chapter 3, while definitions that apply to the all the air rules are appropriate in 30 TAC Chapter 101. Both the definitions for Act or Federal Clean Air Act (FCAA) and United States Environmental Protection Agency or EPA have been moved to Chapter 3. The nonattainment classifications for the counties in Texas which were listed under the definition of major source have also been moved to Chapter 3. Furthermore, the definition of fugitive emissions has been removed because it was redundant with the essentially equivalent definition in Chapter 101. The definitions of affected state and responsible official have been moved to §122.330 and §122.165 respectively, where these terms have the most relevance.

Under the original Subchapter E, 40 CFR 72 (relating to the Acid Rain Program) was incorporated by reference; however, several Part 72 requirements were also explicitly stated in the state regulation. Through the regulatory reform process, the commission determined that the combination of incorporating by reference and restating some of the federal requirements was inefficient and confusing. Therefore, except for the identification of the application deadlines, the redundant language has been removed from Subchapter E. The definitions in §122.12, relating to Acid Rain Definitions, that were

redundant with the definitions in 40 CFR 72 have also been removed. The only definition in §122.12 that appears in 40 CFR 72 is the definition of acid rain program, which is included because the term is used several places in the rule language before the incorporation by reference of 40 CFR 72 in Subchapter E.

In addition, the commission is repealing some sections and adopting new sections to conform with regulatory reform efforts. The new §122.121, relating to Prohibition on Operation, contains the requirement originally in §122.201(f). Section 122.141, relating to Authority, was determined to contain an unnecessary statement in subsection (a), and subsection (b) has been moved to §122.161. New §§122.144-122.146, relating to Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions, have been created to contain requirements originally grouped together under §122.143. The original §122.145, relating to Permit Content Requirements, has been moved to §122.142. Furthermore, §§122.150 and 122.152-122.155, concerning Public Notice Requirements, have been moved to Subchapter D; and §122.202, relating to General Permits, has been moved to Subchapter F. Section 122.163, relating to Effective Date, has been deleted, because it was determined to be unnecessary, while §122.164, relating to Confidential Information, has been deleted because 30 TAC §1.5(d) addresses confidential information. Finally, the information in the original §122.243, relating to Permit Expiration, has been moved to §122.241.

Response to Deficiencies Noted by and/or Negotiated with EPA. In its June 7, 1995, proposal to grant interim approval, EPA noted 19 specific deficiencies that the commission needed to address prior to obtaining both interim and full program approval (see 60 FR 30037). The commission responded to

EPA's deficiencies in a letter to Jole Luehrs, Chief, New Source Review Section, EPA Region 6 from Jeff Saitas, Deputy Director, Office of Air Quality, TNRCC dated October 3, 1995.

In its June 25, 1996, notice of final interim approval, EPA provided 18 specific comments, some of which cited deficiencies that the commission needed to address prior to full program approval (see 61 FR 30037). Many of the deficiencies that EPA noted in the June 25, 1996, notice restated original deficiencies raised in the June 7, 1995, notice. In addition, the June 25, 1996, notice also included EPA's comments (i.e., further deficiencies) on the commission's responses to the deficiencies stated in the June 7, 1995, notice.

With regard to the criteria used for full program approval, EPA stated in the June 25, 1996, notice that it would rely on the version of 40 CFR 70 in effect at the time of full program submittal (see 61 FR 32693). However, since there is so much uncertainty as to when the 40 CFR 70 revisions will be final, it may be unreasonable for Texas (or any other state) to fully comply with a major rule revision by the time the full program submittal is due to EPA (January 26, 1998). Therefore, EPA recently clarified this remark by stating that it is EPA's intent to provide in the final rule revising 40 CFR 70 that the criteria governing state or local program approvals will be either the original July 21, 1992, regulation or the final 40 CFR 70 revisions, or some appropriate combination of the two (March 27, 1997, letter from Lydia Wegman, Deputy Director, EPA Office of Air Quality Planning and Standards to Dan Pearson, Executive Director, TNRCC).

It should also be noted that EPA promulgated an extension of states' interim program approvals on August 29, 1997 (see 62 FR 45732). The extension automatically extends all operating permits program interim approvals until October 1, 1998. In addition, states may also request an additional extension (between 18 and 24 months) if they choose to combine corrections to their interim approvals with program revisions necessary to implement the revisions to Part 70 which are expected to be promulgated mid-summer of 1998. The commission intends on requesting the additional extension immediately after the Part 70 revisions are promulgated. Assuming no statutory changes are required by the Part 70 revisions, the commission would receive an additional 18-month extension after the date the Part 70 revisions are promulgated.

As a result of the extension, interim approval deficiencies do not have to be corrected until the commission submits its combined program submittal (addressing interim approval deficiencies and Part 70 revisions). However, the commission has attempted to correct the majority of deficiencies noted by EPA in the proposed rulemaking. In some cases, the commission has decided to wait until the combined program submittal to correct more difficult and complicated deficiencies. Specifically, the commission has decided to postpone determining how minor new source review (NSR) will be codified in Chapter 122. Until that time, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on the complicated issue.

The following summarizes the commission's response to the deficiencies that EPA indicated in both its June 7, 1995, and June 25, 1996, *Federal Register* notices. It should be noted that unless otherwise indicated in this preamble, the revisions to 30 TAC 122 are intended to be consistent with the July 21,

1992, 40 CFR 70 regulations (see 57 FR 32295). In certain cases, the revisions to 30 TAC 122 reflect the commission's most current understanding of the proposed 40 CFR 70 revisions. The commission has limited changes based on the proposed 40 CFR 70, to those minor issues that are not expected to change upon promulgation of the final revisions. Those issues are limited to the definition of site, regarding research and development facilities; the reference to FCAA, §302(j), regarding the consideration of fugitive emissions for FCAA, §111 and §112 sources; the definition of Title I modification; and operational flexibility.

1. Minor NSR/40 CFR 70 Integration. In the June 7, 1995 notice, EPA pointed out that 30 TAC 122 does not properly address minor NSR as an applicable requirement. Specifically, EPA noted that the definition of applicable requirement, sections on permit application, permit revisions, and permit content do not properly include minor NSR. For full program approval, EPA maintains that the appropriate sections of 30 TAC 122 must be revised to include minor NSR (see 60 FR 30039). In the June 25, 1996 notice, EPA commented that for full program approval, the commission must provide operating permits that include all minor NSR permits (see 61 FR 32694).

Due to the recent interim approval extension promulgated by the EPA, the commission has decided not to address how minor NSR will be codified in Chapter 122 at this time. Rather, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on this complicated issue and address it in the combined program submittal 12 month after the Part 70 revisions are promulgated.

2. Compliance with the June 20, 1996, 40 CFR 70 Rule. In the June 7, 1995 notice, EPA stated that if the August 29, 1994, proposal for Operating Permit Program Interim Approval Criteria became final (see 59 FR 44572), the commission would be required to meet the requirements of that rule in order to receive *interim approval*. On June 20, 1996, EPA promulgated the final rule that provided a mechanism to approve programs (on an interim basis) that did not include minor NSR requirements (see 61 FR 31443). For any program that does not include minor NSR requirements, the final rule requires that each permit issued during the interim program comply with the following: include a statement in permits that minor NSR requirements are not included in permits issued during the interim period; indicate how citizens may obtain access to excluded minor NSR permits; include a cross-reference in each operating permit to the minor NSR permit; include a statement indicating that the excluded minor NSR requirements are not eligible for the permit shield under 40 CFR §70.6; and require reopening of permits for incorporation of minor NSR permit conditions upon or before granting of full approval.

The commission will include standardized permit provisions in each operating permit issued under the interim program to meet the requirements of the first four items listed in the previous paragraph.

Furthermore, as requested in the June 25, 1996 notice, the commission will also include a standardized permit provision that clearly states that major NSR authorizations (prevention of significant deterioration and nonattainment authorizations) are incorporated in each operating permit issued during the interim program.

With regard to the requirement to reopen the operating permit to include minor NSR upon or before granting full program approval, if it is finally determined necessary, the commission is proposing to follow the permit revision procedure in effect for incorporating minor NSR at the time that EPA grants Texas full program approval. This approach is consistent with 40 CFR §70.4(d)(3)(ii)(D) provided in the final rule promulgated on June 20, 1996 (see 61 FR 31448-31449).

3. Source Applicability of 40 CFR 70. In the June 7, 1995 notice, EPA states that §122.120(4)(A)-(C), regarding applicability of 40 CFR 70 and the Texas federal operating permit program, is inconsistent with the federal definition specified in 40 CFR §70.3(a) (see 60 FR 30039-30040).

With regard to §122.120(4)(A) and (B), EPA believes that there could be some confusion over whether the rule exempts major sources subject to FCAA, §111 or §112 from the requirement to obtain a federal operating permit.

The commission read the original §122.120(4) to clearly state that non-major sources are not required to obtain a federal operating permit until EPA no longer exempts these sources through rulemaking. Therefore, it follows that subparagraphs (A)-(C) only applied to non-major sources. The purpose of subparagraphs (A)-(C) was to define non-major sources consistent with 40 CFR 70.

In the October 3, 1995, letter to Jole Luehrs, Chief, New Source Review Section, EPA Region 6 from Jeff Saitas, Deputy Director, TNRCC Office of Air Quality responding to EPA's June 7, 1995 notice, the commission proposed revisions to §122.120(4)(A)-(C) to address the deficiency.

In the June 25, 1996 notice, EPA noted that the commission did not adequately address revisions to §122.120(4)(C) (see 61 FR 32695). Specifically, EPA disagreed with the commission proposal that included “any area source, in a source category designated by the Administrator.” EPA maintained that the administrator may designate a number of different types of sources subject to Title V permitting, not just area sources.

In order to minimize any confusion and to resolve these deficiencies, the commission has revised §122.120(4) to clarify that the rule is not exempting major sources from applicability to 30 TAC 122. In addition, the language has been revised to clarify that EPA may designate any non-major source in a source category, not just FCAA, §111 and §112 sources, as being subject to the operating permits program.

4. Treatment of Research and Development (R&D) Facilities. In the June 7, 1995 notice, EPA maintains that the treatment of research and development facilities through the definition of site in 30 TAC 122 is inconsistent with the original 40 CFR 70 (July 21, 1992) (see 60 FR 30040). Furthermore, EPA states that the commission must treat research and development facilities consistent with 40 CFR 70 in order to obtain full program approval.

The commission believes that the preamble to the July 21, 1992, 40 CFR 70 rule clearly states that research and development facilities would be treated as though they were a separate source (and required to have a Title V permit) only if the research and development facility were itself a major source (see 57 FR 32264). “White Paper Number 1,” Streamlined Development of 40 CFR 70 Permit

Application, published on July 10, 1995, seems to clarify EPA's position on research and development facilities. As stated in the White Paper Number 1, EPA intends to clarify through final rulemaking of 40 CFR 70 that research and development facilities will only be considered major sources if the research and development facility itself is major or the research and development facility is a support facility making a significant contribution to the product of a collocated manufacturing facility and the combined emissions exceed the major source thresholds. In the August 31, 1995, supplemental proposal to 40 CFR 70, referred to as the "supplemental proposal," EPA proposed a definition of major source which reflects its position in White Paper Number 1 (see 60 FR 45565).

The commission has revised the definition of site in 30 TAC 122 to clearly reflect that if research and development facilities produce products for commercial sale, they will be included with the collocated facility for purposes of Title V applicability and permitting. Otherwise, research and development facilities will be considered a separate site. The commission believes that this revision is consistent with White Paper Number 1 and will be consistent with the final 40 CFR 70 revisions.

5. Definition of Regulated Air Pollutant. In the June 7, 1995 notice, EPA points out that 30 TAC 122 does not define regulated air pollutant, but rather air pollutant (see 60 FR 30040). The EPA claims in the proposed interim approval notice that major sources should be determined on the potential to emit *any* air pollutant including those compounds *listed* in FCAA, §112 (including §112(r)(3)), regardless of whether the compounds are subject to a standard or other requirement.

However, in the supplemental proposal (see 60 FR 45565), EPA revised its position and proposed that being listed in FCAA, §112(r)(3) is not a criterion in determining the status of a regulated air pollutant. Therefore, the commission has revised the 30 TAC 122 definition of air pollutant as follows: “(F) any pollutant subject to a standard promulgated under FCAA, §112 (relating to Hazardous Air Pollutants) or other requirements established under §112, including §112(g) and (j). However a pollutant shall not be considered an air pollutant under this chapter solely because it is subject to standards or requirements under §112(r).”

6. Definition of Regulated Major Source. In the June 7, 1995, and the June 25, 1996 notices, EPA stated that the 30 TAC 122 definition of major source as it relates to requiring the inclusion of fugitive emissions for source categories regulated under FCAA, §111 or §112 is not consistent with the existing 40 CFR 70 (see 60 FR 30041 and 61 FR 32695). For full program approval, EPA indicated that the commission definition of major source as it relates to requiring the inclusion of fugitive emissions must be consistent with 40 CFR 70.

Specifically, in the 30 TAC 122 definition, source category xxvii only applies to "any other stationary source category which as of August 7, 1980, is being regulated under the Act, §111 or §112" whereas the July 21, 1992, 40 CFR 70 does not limit the stationary source categories to those which existed as of August 7, 1980.

In EPA's August 29, 1994, proposed 40 CFR 70 revisions (see 59 FR 44527), the definition of major source, source category xxvii, was revised to include references to those source categories regulated by

an FCAA, §111 or §112 standard promulgated as of August 7, 1980, and would be consistent with the definition in 30 TAC 122 if adopted. However, in the supplemental proposal (see 60 FR 45565), EPA again revised the definition of major source, source category xxvii. This proposed revision requires fugitive emissions be included for source categories subject to standards promulgated under FCAA, §111 or §112 for which the *administrator has made an affirmative determination under FCAA, §302(j)*. In the preamble to the supplemental proposal (see 60 FR 45547), EPA states that "until it promulgates this future 302(j) rulemaking, EPA believes that fugitives should not be counted for source categories subject to section 111 or 112 standards promulgated after August 7, 1980."

Both proposed 40 CFR 70 revisions seem to indicate that fugitive emissions will not be included for source categories subject to FCAA, §111 or §112 standards promulgated after August 7, 1980, until further FCAA, §302(j) rulemaking. The commission has revised the definition of major source (category (xxvii)) to be consistent with the supplemental proposal as follows: "(xxvii) any stationary source category regulated under FCAA, §111 or §112 for which EPA has made an affirmative determination under FCAA, §302(j) (relating to Definitions)."

7. Definition of Title I Modification. In the June 7, 1995 notice, EPA points out that if the definition of Title I modification is finalized to include minor NSR changes, Texas would be eligible for interim but not final approval (see 60 FR 30041). However, if the final definition excludes changes reviewed under minor NSR and changes that trigger a pre-1990 National Emission Standards for Hazardous Air Pollutants requirement, the commission's definition of Title I modification would be consistent with 40 CFR 70.

In the June 25, 1996 notice, EPA stated that if the definition of Title I modification was finalized as proposed in the supplemental proposal, the commission's proposed definition would be consistent with 40 CFR 70 (see 61 FR 32695). However, if the definition of Title I modification was changed from that proposed in the supplemental proposal, the commission would have to revise the definition consistent with 40 CFR 70.

The supplemental proposal (see 60 FR 45565) indicates that minor NSR is not included in the definition of Title I modification. In addition, the revision process proposed in the supplemental proposal does not make reference to Title I modification.

Similarly, the commission does not reference Title I modification in the 30 TAC 122 revision process. As such, the commission has deleted the definition of Title I modification from 30 TAC 122, resulting in an approach that should be consistent with the final 40 CFR 70 revisions.

8. Compliance Schedule Requirements. In the June 7, 1995, notice, EPA stated that §122.132(b)(3)(B) was not as stringent as 40 CFR §70.5(c)(8)(iii)(C) because it did not require the compliance schedules to be at least as stringent as "any judicial consent decree or administrative order to which the source is subject." (see 60 FR 30041).

As such, the commission has revised this section (now §122.132(e)(4)(C)(iii)) to clarify that the compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.

9. Application Shield for Significant Modifications. In both the June 7, 1995, notice and the June 25, 1996 notice, EPA stated that the provisions in §122.138 incorrectly allow an application shield for significant permit modifications (see 60 FR 30041 and 61 FR 32695). The EPA stated that 40 CFR §70.7(b) does not allow significant permit modifications to be afforded an application shield for a timely and complete application, but rather only applies to a "timely and complete application for permit issuance (including for renewal)."

In response, the commission has deleted the reference to "significant permit modification" from the application shield provisions of §122.138.

10. Changes Allowed Under Administrative Amendment. In the June 7, 1995 notice, EPA objected to the procedure specified in §122.211(5), because it allowed "changes similar to those in §122.211(1)-(4)" to be made by administrative amendment without approval by EPA as a part of the approved 40 CFR 70 program (see 60 FR 30041). For full approval, EPA suggests that §122.211(5) specifically list those "similar" changes to be allowed under administrative amendment.

In response, the commission has revised §122.211(5) (now §122.211(6)) to require that "similar" changes be approved by EPA.

11. Permit Addition Procedures. In the June 7, 1995 notice, EPA stated that it does not consider the permit addition procedures outlined in §122.215 to be equivalent with the minor permit modification procedures specified in 40 CFR §70.7(e)(2) and stipulates that it must be revised for Texas to gain full

approval (see 60 FR 30042). In the June 25, 1996 notice, EPA further states that the commission must comply with the version of 40 CFR 70 in effect at the time of full program submittal (see 61 FR 32696). As previously mentioned, EPA recently clarified this remark by stating that it is EPA's intent to provide in the final rule revising 40 CFR 70 that the criteria governing state or local program approvals will be either the original July 21, 1992, regulation or the final 40 CFR 70 revisions, or some appropriate combination of the two.

In response, the commission has replaced the previous revision process with a new process contained in Subchapter C of 30 TAC 122. As discussed in the section of this preamble addressing changes to Subchapter C, permit additions have been deleted and replaced with a revision process substantially equivalent to the revision process outlined in EPA's July 21, 1992, final 40 CFR 70 regulation.

12. Public Notice to Include Emissions Change. In the June 7, 1995 notice, EPA stated that 40 CFR §70.7(h) requires that the public notice include the emissions change involved in any permit modification. EPA pointed out that §122.153 does not specify this requirement (see 60 FR 30042). The EPA reiterated this point in the June 25, 1996, notice by stating that in order to obtain full program approval, the commission must include the emissions changes in (the public notice for) any permit modification (see 61 FR 32696).

In response, the commission emphasizes that 40 CFR §70.7(h) seems to require that "emissions change" information be included in the public notice for significant permit modifications only, not all modifications. Section 70.7(h) begins by stating "Except for modifications qualifying for minor permit

modification procedures....” Therefore, because administrative permit revisions don’t involve public notice, it follows that “emissions change” information need only be included in the public notice for significant permit modifications, not all modifications. As a result, in §122.320(b)(5), the commission has required that the public notice for all significant permit revisions, as defined in §122.219, include “the air pollutants with emission changes.”

13. Fugitive Emissions Included in Permit Application. In the June 7, 1995 notice, EPA stated that the permit application must include fugitive emissions from units not subject to an applicable requirement as specified in 40 CFR §70.3(d) (see 60 FR 30043). EPA stated that 30 TAC 122 may not include such fugitive emissions. Furthermore, EPA believes that this omission is tied to the fact that minor NSR was not an applicable requirement of the original 30 TAC 122 regulation (adopted August 23, 1993).

In the June 25, 1996 notice, EPA maintains that in order to obtain full program approval, the commission must require sources to quantify fugitive emissions from units covered by an applicable requirement. For fugitive emission units that are not covered by an applicable requirement, EPA states that a general description of the emissions would suffice (see 61 FR 32696).

It should be noted that when determining whether a site in Texas is major and therefore subject to the operating permit program, the potential emissions from all emission units are summed for each individual air pollutant, regardless of whether the emission unit has an applicable requirement. Thus, the potential emissions of both point sources and fugitive sources (if the source is one of the 27 named source categories) should be included when determining a site’s major source status.

With respect to describing emissions of regulated pollutants for all emission units “(including fugitive emissions) from units without any applicable requirements,” White Paper Number 1 (issued by EPA on July 10, 1995) and “White Paper Number 2,” White Paper Number 2 for Improved Implementation of the 40 CFR 70 Operating Permits Program (issued by EPA on March 6, 1996) seem to indicate that additional emissions information will not be necessary where a source would stipulate to the applicability of a requirement and/or its major status. With the emphasis on defining applicable requirements, rather than emission rates, it is not necessary to quantify the emissions of fugitive emission sources (or a point source, for that matter) unless it has an associated applicable requirement.

The commission is not requiring any specific emissions data to be submitted with operating permit applications, unless it is necessary for an applicability determination. Any emission rates necessary to verify compliance with an applicable requirement must be provided. The commission will also require applicants to provide a general description of the site’s emissions in the process description submitted with the initial permit application.

14. Limiting a Source's Potential to Emit. In the June 7, 1995 notice, EPA stated that §122.122 may serve as a mechanism for sources that choose to establish federally-enforceable emission limitations during the transition period set out by EPA in a January 25, 1995, policy memorandum (“Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under 112 and Title V of the Clean Air Act (Act),” John Seitz) if an acceptable certification process can be developed between Texas and EPA addressing the source's acceptance of federal enforceability (see 60 FR 30043). The commission notes that the transition period was extended from January 25, 1997 to July 31, 1998 in an August 27, 1996,

policy memorandum (“Extension of January 25, 1995 Potential to Emit Transition Policy,” John Seitz).

Although EPA did not cite a deficiency associated with this issue and no revisions to §122.122 have been made, the commission is taking this opportunity to respond to EPA’s comments.

The commission uses a similar registration procedure in the NSR Division to establish federally-enforceable emission rates for standard exempted facilities. Under this procedure that has been used since September 13, 1993, under §106.6, a source may establish federally-enforceable emission rates in a registration that is maintained on-site. The certified registration of emissions established under §122.122 is required to be kept on-site and will be submitted to the commission or EPA upon request. These registrations would be available for inspection and review for EPA, commission, or any other air pollution control agency having jurisdiction. The commission staff believes this is an acceptable certification process and will continue to use this certification process to ensure federal enforceability for those sites limiting their potential to emit under the operating permit program.

15. Renewal of General Permits. In the June 7, 1995 notice, EPA stated that 40 CFR §70.4(b)(3)(iii) requires states to issue operating permits for a period not to exceed five years, and therefore the commission should limit the general operating permit term to a maximum of five years (see 60 FR 30043).

In response, the commission has revised Subchapter F to require the general operating permit rules to be renewed once every five years. In addition, general operating permit holders will be required to submit applications for the renewal of their authorizations to operate at least every five years.

16. Section 122.145(e) Interpretation Shield. In the June 7, 1995 notice, EPA expressed concerns with the potential ambiguities surrounding the "interpretation shield" outlined in §122.145(e) and called out three specific items that had to be addressed through a written commitment by the commission *prior to obtaining final interim approval* (see 60 FR 30043). These items included: interpretations made under §122.145(e) must be limited to applicability issues only; EPA shall have the opportunity to review and veto every §122.145(e) action; and interpretations must be based on the most recent EPA guidance and any commission written guidance pre-approved by EPA.

The commission agreed to those conditions and was granted final interim approval by EPA on June 25, 1996. For full program approval, EPA insisted that the commission revise §122.145(e) to reflect the three requirements mentioned. However, the commission has deleted the "interpretation shield" concept outlined in §122.145(e) and replaced it with a more traditional permit shield described in 40 CFR 70, §70.6(f). The commission believes the permit shield requirements under §122.148 are consistent with §70.6(f).

17. Emergency Provisions. In the June 7, 1995 notice, EPA stated that the notification requirements for major upsets outlined in Chapter 101 (General Rules), §101.6, are inconsistent with the emergency provisions of 40 CFR §70.6(g)(3)(iv) (see 60 FR 30043-30044). In addition, in the June 25, 1996 notice, EPA states that in order for Texas to receive full approval, 30 TAC 122 must be consistent with 40 CFR 70 (see 61 FR 32696).

As discussed in the response to comments portion of this preamble, 30 TAC 122 does not provide for an affirmative defense from noncompliance for sources. However, in 30 TAC §101.11, the recently adopted amendments to Chapter 101 (22 TexReg 7040, July 29, 1997) do provide, conditions for an exemption of unauthorized emissions from limits in permits, rules, and orders of the commission during upsets, maintenance, and start-ups and shutdowns. The commission believes that, as the result of the amendments, §§101.6, 101.7, and 101.11 provide sufficient relevant evidence to meet the requirements of §70.6(g).

18. Operational Flexibility. In the June 7, 1995 notice, EPA stated that the operational flexibility section of 30 TAC 122, §122.221, is inconsistent with 40 CFR §70.4(b)(12) and §502(b)(10) because it could potentially allow modifications that violate what EPA considers applicable requirements (see 60 FR 30044). In addition, in the June 25, 1996 notice, EPA states that in order for Texas to receive full approval, 30 TAC 122 must be consistent with the version of 40 CFR 70 in effect at the time of full program submittal (see 61 FR 32696). As previously mentioned, EPA recently clarified this remark by stating that it is EPA's intent to provide in the final rule revising 40 CFR 70 that the criteria governing state or local program approvals will be either the original July 21, 1992, regulation or the final 40 CFR 70 revisions, or some appropriate combination of the two.

As evidenced in the supplemental proposal, EPA has decided to delete the definition of FCAA, §502(b)(10) from 40 CFR §70.(2) as well as delete the reference to §502(b)(10) changes in 40 CFR §70.4(b)(12). As such, the commission has deleted the operational flexibility provisions previously

contained in §122.221 to be consistent with the anticipated final 40 CFR 70 revisions. Operational flexibility will be provided largely through the revision process outlined in Subchapter C.

19. Off-permit Changes Compared with Permit Additions. In the June 7, 1995 notice, EPA stated that the permit addition procedures specified in §122.215 would allow companies to make changes that EPA does not consider "off-permit" (See 60 FR 30044). The EPA cited the commission's narrow definition of "applicable requirement" as the main problem.

In response, the commission has deleted references to off-permit changes under the permit addition revision process outlined in §122.215 and replaced them with a new revision process that will not allow an applicant to make changes that EPA considers to be off-permit. As discussed in the section of this preamble addressing changes to Subchapter C, the revision process has been structured to be substantially equivalent to the process outlined in the July 21, 1992, 40 CFR 70. With regard to EPA's concern that the definition of applicable requirement is too narrow, the commission restates that because of the recent interim approval extension, the commission has decided not to address the issue of how minor NSR is codified in Chapter 122 at this time. Rather, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on this complicated issue and address it in the combined program submittal 12 months after the Part 70 revisions are promulgated.

20. Four-Year Permit Program Cost. (see 60 FR 30044, first and second column). In the June 7, 1995, notice, EPA pointed out that 40 CFR §70.4(b)(8)(v) requires the state to provide an estimate of

the permit program costs for the first four years after approval and a description of how the state plans to cover the costs.

The commission has provided EPA with the agency's operating budget for fiscal years 1994 and 1995. On March 11, 1997, the commission provided EPA with the approved 1996-1997 budgets, which included the estimated costs of the operating permit program (OPP) in a letter from Karen Olson, Director, TNRCC Operating Permits Division to Allyn Davis, Director, Multimedia Planning and Permitting Division, EPA Region 6. In addition, the commission will forward the budgets for 1998-2000 to EPA as they are available.

Subchapter A: Definitions. Several other changes to the rule language have been made as a result of comments received from the regulated community and public interest groups.

The definition of applicable requirement has been revised to remove the references to 30 TAC Chapter 114 (relating to Control of Air Pollution from Motor Vehicles) and 30 TAC Chapter 118 (relating to Control of Air Pollution Episodes), neither of which are within the scope of the federal operating permit program. In addition, the exemption, previously contained in subparagraph (L) of the definition of applicable requirement and now contained in §122.10(2)(K), has been expanded to clarify that requirements for mobile sources and any state-only requirements are not applicable requirements under the OPP. Furthermore, the definition of applicable requirement has been revised to include a subset of requirements termed federally enforceable only applicable requirements. Federally enforceable only applicable requirements are those applicable requirements which have been promulgated by EPA, but

have not been adopted by and delegated to the commission. Until adoption by the commission, these requirements will be federally enforceable only and will be designated as such in the permit. Federally enforceable only applicable requirements will be subject to all the procedural requirements of the OPP. This designation is necessary, because although the commission does have the broad statutory authority to enforce rules, it does not have the specific regulatory authority to enforce rules until the requirements for state rulemaking, including an opportunity for public comment, have been satisfied. This issue is further discussed in the response to comments.

Several other changes to the definitions have been made to accommodate revisions to the program. In order to remove any ambiguity, the definition of deviation has been tied to the monitoring, recordkeeping, reporting, and testing requirements codified in the permit. The definition for emission allowable under the permit has been removed, because this term is not used within the rule language. The definition of major source has been revised to account for any federal exemptions granted under FCAA, §182(f), relating to NO_x requirements. For purposes of clarification, a definition for notice and comment hearing has been included in response to a request from a public interest group. The definition of preconstruction authorization has been expanded to include requirements established under FCAA, §112(g) and (j), which will be implemented through Texas' NSR Program. Furthermore, a definition of provisional terms and conditions has been added to address the new revision process outlined in the discussion of revisions to Subchapter C.

In addition, a definition for state-only requirement has been included. Although state-only requirements are not applicable requirements, they will be codified in the permit in order to provide a more

comprehensive compliance and enforcement tool. A state-only requirement is any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the FCAA or under any applicable requirement. While state-only requirements will be codified in the permit, they will not be subject to any of the following requirements: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

As a result of Senate Bill 1126 enacted by the 74th Texas Legislature and the subsequent changes made to Chapter 116, the agency has decided not to address the establishment of grandfather rates through the provisions of 30 TAC 122. Consequently §122.11, concerning Grandfather Definitions, has been repealed. All other references to grandfather requirements, including §122.132(a)(5) and §122.135, have also been removed from the rule language. The deleted grandfather requirements did not implement any part of Title V or 40 CFR 70.

Subchapter B: Permit Requirements. Section 122.110 has been added to provide for delegation of authority to the executive director to take action on any permit on behalf of the commission. In addition, the executive director may delegate authority to take action on any permit to the director of the Operating Permits Division. The initial application due dates have been revised in §122.130 in order to provide the executive director sufficient time to fulfill the statutory requirement to take final action on one-third of the full program applications in each of the first three years of the full program.

Further discussion of the revised application dates is provided in the response to comments. The commission has also revised §122.130 to address application deadlines for sites that become subject to the program as the result of some action by EPA or the commission. For instance, the reclassification of a county's attainment or nonattainment status or the release of new calculation methods by EPA could cause a site's potential to emit to exceed the major source thresholds and become subject to the operating permit program.

The phased application process is a new concept introduced in §122.131 as a result of the large number of complex sources in Texas. This approach will allow qualified applicants more time to submit accurate and complete application information and provide staff the extra time needed to thoroughly review and process the information. As agreed by EPA in the February 7, 1996, letter from Mary Nichols, EPA Assistant Administrator for Air and Radiation, the phased application process will allow applicants with 75 or more emission units in a nonattainment area, or 150 or more emission units in an attainment area, to submit a portion of their detailed applicability information in phases. All general applicability determinations (e.g., New Source Performance Standards (NSPS) Kb, or 30 TAC Chapter 111) must be submitted with the initial application. For each emission unit, the initial permit application must include detail sufficient to clarify the applicant's obligations with respect to its applicable requirements, including emission limits and compliance terms. The initial application will include a portion of the detailed applicability determinations, identifying the specific regulatory citations within the rules and regulations to which the source is subject. The remaining detailed applicability determinations will be incorporated into the permit annually through either the reopening process or the significant permit revision process. Upon renewal, any detailed applicability determinations not yet

addressed in the permit will be incorporated through the renewal process. All permits will include all detailed applicability determinations by no later than July 25, 2003.

The EPA is currently in the process of establishing requirements pursuant to FCAA, §504(b) and §114(a)(3) through the proposed Compliance Assurance Monitoring (CAM) rule, 40 CFR 64. Based on EPA's August 2, 1996, draft rule, CAM is anticipated to satisfy the enhanced monitoring requirements under the FCAA. The agency will review and address additional monitoring requirements when the CAM rule is promulgated. Periodic monitoring requirements will be addressed as discussed in the response to comments.

Section 122.132(c) allows applicants to submit abbreviated applications. The abbreviated application will include identifying information regarding the site and the applicant as well as a certification by a responsible official. The executive director will require the remaining information to be submitted when it is needed for review of the application. Because the initial applications will be reviewed and issued over a period of several years, this approach will help minimize the number of times the applications need to be updated before the review begins. The concept of the abbreviated application is consistent with guidelines in EPA's White Paper Number 1. Further discussion of the abbreviated application is provided in the response to comments.

The application compliance certification requirements in §122.132 have been revised to clarify that the statements of future compliance are based on the intent of the responsible official at the time of application. This revision was made because, given that there is always the possibility of unforeseen

and unavoidable circumstances, the responsible official cannot reasonably be expected to make an absolute statement of future compliance. These requirements were also revised to clarify that the certification must be based on, at a minimum, any compliance method specified in the permit. Further discussion of these changes is provided in the response to comments. Additionally, the revised rule specifies that for units that are not in compliance with the applicable requirements, the certification must identify the method used to assess compliance. This information is important for staff evaluating and working to remedy instances of noncompliance.

An application's timely and complete status determines whether or not the applicant qualifies for an application shield. Therefore, §122.133 and §122.134, concerning Timely Application and Complete Application, have been revised to address only those situations in which an application shield is relevant. The references to permit revisions have been removed, because the applicant is already operating under a permit and is in no need of an application shield.

The commission has also revised §122.139 to specify that the executive director has the authority to approve, void, or deny a permit application.

A new §122.140, concerning Representations in Application, has been adopted to clarify that for general permit applications and acid rain permit applications, representations in the applications do become conditions under which the owner or operator must operate. This clarification is important because in both these cases, it is the application in conjunction with the permit that assures compliance with the applicable requirements.

The requirements in the original §122.143(1)(H) have been deleted. These requirements allowed the permit holder to wait until permit renewal to have newly promulgated requirements incorporated into the permit, if less than three years remained in the permit term. This change was initiated by public interest groups as a suggestion to make the requirement consistent with the revision process in Subchapter C that requires applications for administrative and minor permit revisions to be submitted annually.

Section §122.143 has also been modified to include procedures for revising a permit to incorporate changes in federally enforceable only or state-only designations. In addition, new language has been adopted specifying that the permit (or authorization to operate, application, and a copy of the general operating permit) must be maintained at the location specified in the permit (or authorization to operate). In most cases, this information will need to be maintained on-site to assist the permit holder with compliance and the inspectors with enforcement. However, for unmanned sites this may not be practical and the permit will specify another location at which the information will be maintained.

Permit requirements found originally in §122.143, relating to recordkeeping, reporting, and compliance certification requirements, have been moved to and clarified in §122.144, relating to Recordkeeping Terms and Conditions, §122.145, relating to Reporting Terms and Conditions, and §122.146, relating to Compliance Certification Terms and Conditions. As discussed in the response to comments, the frequency of deviation reporting has been revised such that deviations will be reported under Chapter 101 and as required by the applicable requirement, but never less frequently than every six months. The requirements for the annual compliance certification in §122.146 have been revised for clarity when

certifying compliance with terms and conditions that are not based on emission limitations or standards and to address require additional information to be submitted for emission units that have had deviations. This information is necessary for staff to effectively evaluate instances of noncompliance.

The certification by responsible official information has been consolidated in §122.165. For acid rain sources, the definition of a responsible official has been revised to allow a responsible official that does not qualify as a designated representative, to sign the Title V portion of the permit. This change is consistent with the proposed revisions to 40 CFR 70.

Subchapter C: Initial Permit Issuances, Revisions, Reopenings, And Renewals. To provide adequate, streamlined, and reasonable procedures for expeditiously processing permit revisions, the commission has replaced the existing revision process under 30 TAC 122 with a process that is substantially equivalent to the July 21, 1992, 40 CFR 70 revision process. Title 40 CFR 70.7(e) specifies that for a program to be approved as substantially equivalent, it must not provide less permitting authority, EPA or affected state review, or public participation than is provided in 40 CFR 70. The 30 TAC 122 permit revision process meets or exceeds the 40 CFR 70 requirements in each of these respects. As is required by 40 CFR 70, all permit revisions will be subject to review and approval by the permitting authority. Consistent with 40 CFR 70, administrative permit revisions under 30 TAC 122 are not subject to any procedural requirements such as public notice or EPA review. Minor permit revisions will be subject to an electronically announced 30-day public comment period, an affected state review, and a 45-day EPA review; while EPA's minor permit modification process involves only EPA review and affected state review. As is required by 40 CFR 70, significant permit revisions will undergo all the

procedural requirements associated with initial issuance. Those requirements are a 30-day public comment period noticed in a newspaper, affected state review, opportunity for a hearing, 45-day EPA review, and a 60-day public petition period. For each type of permit revision, the 30 TAC 122 process meets or exceeds the federal requirements based on the criteria established in 40 CFR 70 for evaluating substantially equivalent programs.

The new permit revision process includes three different tracks: administrative permit revisions, minor permit revisions, and significant permit revisions. Administrative permit revisions are those of the least environmental significance and involve correcting typographical errors, changing name, address, phone, increasing monitoring frequency, etc. Minor permit revisions are of more environmental concern and involve, for example, adding new applicable requirements or removing emission units no longer in operation from the permit. Significant permit revisions, on the other hand, are of the most environmental significance and include removing requirements from emission units remaining in operation, establishing permit shields, and case-by-case determinations.

The new revision process matches the environmental significance of the change to the degree and type of review required to process the permit revision. Under the new procedures, changes requiring administrative permit revisions and minor permit revisions may be operated before the permit is revised, provided certain conditions are satisfied. The procedures for making a change without prior approval, specified in §122.213(a) and §122.217(a), are optional. If the permit holder chooses not to comply with those requirements, the permit must be revised before the change can be operated. In order to make a change without prior approval, the permit holder must first obtain and comply with all

required preconstruction authorizations under 30 TAC Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification. The permit holder must also comply with all underlying applicable requirements and state-only requirements. Furthermore, the permit holder must establish and maintain enforceable provisional terms and conditions that contain all the new applicable requirements and state-only requirements the source is subject to as the result of the change.

The provisional terms and conditions must codify the new requirements to the same level of detail as required in the permit. Provisional terms and conditions must be consistent with and accurately incorporate the applicable requirements and state-only requirements and cannot authorize the violation of any applicable requirement or state-only requirement. The provisional terms and conditions must be maintained with the permit and become enforceable terms and conditions of the permit. In every case, the applicable requirements and state-only requirements are always enforceable. The permit holder may also be subject to enforcement action if the permit holder makes a change using one of the revision tracks and the change is later determined not to qualify as that type of permit revision.

If a change qualifying as an administrative permit revision is made without prior approval, the permit holder must record, and maintain with the permit, all the information that will be required to be submitted with the application for the permit revision. If the change is a minor permit revision, the permit holder must submit a notice to the agency containing all the information required in the application before the change is made. In both cases, this information will include: a description of the change, a description of the emission units affected, the provisional terms and conditions, a statement that the change qualifies for the revision, and a certification by a responsible official. The permit holder

will then collect all the changes for each year and submit an application to have the permit revised on an annual basis. This annual process allows the permit holder to consolidate the procedural requirements such as public announcement and EPA review. Through this process, staff can thoroughly review all changes qualifying as administrative and minor permit revisions once each year instead of continually processing small changes throughout the year. In addition to allowing the applicant the flexibility to make necessary changes at a site while still assuring compliance with the underlying requirements, this process allows for a more efficient use of commission and EPA resources.

Changes requiring significant permit revision are the most environmentally significant and cannot be made without prior approval. These changes are subject to all the procedural requirements of initial issuance, which include public notice, affected state review, notice and comment hearing, EPA review, and public petition.

Subchapter D: Public Announcement, Public Notice, Affected State Review, Notice And Comment Hearing, Notice of Proposed Final Action, EPA Review, And Public Petition. In order to provide additional access to the public, the commission has developed public announcement procedures to be used for minor permit revisions. These procedures provide a 30-day public comment period that will be announced on the Texas Natural Resource Conservation Commission bulletin board system and on the Internet. By taking advantage of electronic media, the commission is able to provide a 30-day public comment period for the middle permit revision track. This additional public comment period is not required in 40 CFR 70.

The rule provides for a single publication in a newspaper of general circulation in the city where a site is located. Bilingual newspaper notices and sign postings will be provided as they are under Chapter 116. These revisions are consistent with statutory requirements and the requirements of 40 CFR 70. In a previously adopted rule, the commission has allowed a combination of the public notice of the draft permit and the notice of hearing. The rule provides that if the notices are combined, and a bilingual notice is required to be published, the complete combined notice will be published in the appropriate alternate language. In addition, since subsection 122.201(e) specifies that more than one permit may be issued for a site, subsection 122.320(c) was added to the rule language to clarify that references to multiple permits may be included in one public notice for the site. The public notice requirements will apply to initial issuance, significant permit revisions, reopenings, and renewals.

Section §122.350(c) and §122.360(d) were also revised to be consistent with 40 CFR 70.8(c)(1) and to clarify that EPA can only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

Subchapter E: Acid Rain Permits. The acid rain requirements of 40 CFR 72, 74, and 76 have been incorporated by reference into Subchapter E. The commission has not been delegated the authority to enforce the acid rain program; consequently, 40 CFR 73, 75, 77, and 78 have not been included. A provision has been added to allow the requirements in 30 TAC 122 to substitute for any references to 40 CFR 70 in 40 CFR 72, 74, and 76. This allows the executive director to implement one OPP in Texas rather than trying to implement certain aspects of the federal program while implementing the state program. In addition, language has been added to allow the acid rain portion of the permit to be

revised through procedures similar to those used for revising the Title V portion of the permit. Again, this will allow the executive director to implement a single program rather than both a federal and state revision process. For purposes of clarification, the deadlines for submitting acid rain permit applications have been included in §122.412. Except for the application deadlines, the requirements specifically listed in the original Subchapter E that are redundant with the requirements incorporated by reference have been deleted. EPA published proposed revisions to 40 CFR Parts 72 and 74 in the *Federal Register* on December 27, 1996. Since these proposed revisions are not expected to be promulgated before November 1997, any consequences from the revisions will be addressed in future rulemaking.

Subchapter F: General Operating Permits. The requirements for general operating permits have been consolidated in Subchapter F. General operating permits are permits for numerous similar sources which are developed through rulemaking consistent with the requirements of the Government Code, Administrative Procedure Act, Chapter 2001 or 2002. Section 122.501 was added to clearly identify which procedural requirements the general operating permits will undergo at adoption. Consistent with 40 CFR 70, the adoption of general operating permits will be subject to public notice, affected state review, notice and comment hearings, EPA review, and public petition, as are all permits issued under 30 TAC 122. Because the public notice and notice and comment hearing requirements in Subchapter D are not appropriate for permits that apply to multiple sites, public notice and notice and comment hearing requirements specifically tailored for general operating permits have been included in §122.506 and §122.508.

Since representations in a general operating permit application become conditions under which the permit holder must operate, procedures for revising the application to address changes at a site have been included in §122.503. Section 122.504 has also been added to specify the requirements for reapplying for a general operating permit that is revised. Both the procedures for changes at a site and changes in rules require the permit holder to establish provisional terms and conditions to ensure the general operating permits in conjunction with the applications are a current representation of the requirements at the site. Section §122.505 has been included to address procedures for renewing the authorizations to operate under a general operating permit. Further discussion of these requirements is provided in the response to comments.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a takings impact assessment for the rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The commission was granted interim program approval in the June 25, 1996, issue of the *Federal Register* (61 FR 32693). Interim program approval provides the commission with the authority to implement the OPP in Texas for two years. On August 29, 1997, the EPA automatically extended all operating permits program interim approvals until October 1, 1998 (62 FR 45732). In addition, states may also request an additional extension (between 18 and 24 months) if they choose to combine corrections to their interim approvals with program revisions necessary to implement the revisions to Part 70 which are expected to be promulgated mid-summer of 1998. The commission intends on requesting the additional extension immediately after the Part 70 revisions are promulgated. Assuming no statutory changes are required by the Part 70 revisions, the commission would receive an additional 18-month extension after the date the Part 70 revisions are promulgated.

As a result of the extension, interim approval deficiencies do not have to be corrected until the commission submits its combined program submittal (addressing interim approval deficiencies and Part 70 revisions). However, the commission has attempted to correct the majority of deficiencies noted by EPA in the proposed rulemaking. In some cases, the commission has elected to wait until the combined program submittal to correct more difficult and complicated deficiencies. Specifically, the commission has decided to postpone determining how minor NSR will be codified in Chapter 122. Until that time, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on this complicated issue.

The purpose of this rulemaking is to address comments received from EPA, the regulated community, and public interest groups. The rules will achieve their stated purpose by addressing most of EPA's comments from the interim program approval notice and allowing options in permit application review and post permit processes. The rules will not be considered a burden on private real property because they are mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and

policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. The permits issued under 30 TAC 122, concerning Federal Operating Permits, do not authorize the increase in air emissions nor do these permits authorize new air emissions.

HEARING AND COMMENTERS. A public hearing regarding the proposed rules was held in Austin on June 12, 1997. No oral testimony was received at the hearing. The public comment period closed June 20, 1997. Six commenters submitted written comments on the proposal. One individual commenter opposed the proposal overall while the following five commenters suggested changes without directly stating their overall position on the proposal: the EPA; Central and South West Services, Inc. (CSWS); the Texas Chemical Council (TCC); the Sierra Club; and the Title V Planning Committee (TVPC), an organization comprised of a representative cross-section of the regulated community.

An individual requested that the entire proposal be withdrawn, revised, and submitted for public comment. The individual also requested that a series of public meetings be held on this issue.

The commission held a 30-day public comment period on the proposed rules during which one individual and one public interest group, in addition to three industry organizations and EPA submitted comments. On June 12, 1997, a public hearing announced in six major Texas newspapers, the *Texas Register*, and on the Internet, was held at which no testimony was

presented. The commission understands that individuals and public interest groups may have limited resources for participating in the rulemaking process and greatly appreciates the time and effort these individuals and groups are able to contribute to the process; however, the commission does not believe that there is sufficient basis to warrant withdrawal of the proposal and additional public meetings. The EPA recently extended the deadline for submitting requests for full program approval to April of 1998 and indicated that an additional extension to October of 1999 may be granted; however, the extension does not allow states to postpone the permitting of full program sources and the 30 TAC 122 revisions include provisions providing the authority to permit these sources. Consequently, staff believes that it is important to move forward with revisions to 30 TAC 122 to address the interim program deficiencies to the extent possible at this time and to provide the authority to permit full program sources. In addition, the revisions will ensure that the permits issued under the extension are more consistent with the direction received from EPA in the proposed and final interim program approval notices. Therefore, the commission did not withdraw the proposal.

CSWS commented that it was unable to locate "Chapter 3 of this title," referred to in the introductory paragraph of §122.10.

30 TAC Chapter 3 is the chapter that contains definitions that apply agency-wide. The proposed rules did not involve changes to this chapter; therefore, it was not published along with the proposed revisions to Chapter 122. For information on accessing electronic or hard copies of commission rules, please contact the Texas Natural Resource Conservation Commission, Office of

the Executive Director, Agency Communications Division, Publishing Section at (512) 239-0028.

The commission rules are also available at libraries that maintain copies of the Texas Administrative Code or the *Texas Register*, from the Office of the Secretary of State, or West Publishing Company, which publishes the Texas Administrative Code.

An individual commented that it was not clear in §122.10 that the definition of “air pollutant” was broad enough to encompass all of the air pollutants that may need to be regulated in the future.

The commission agrees that the definition should be broad enough to encompass air pollutants regulated in the future and believes that the proposed definition is sufficiently broad. Because the definition is based primarily on the types of rules a pollutant is subject to, when a new rule is established, any pollutant regulated under that rule automatically becomes an air pollutant as defined in this chapter. In addition, this definition is consistent with the federal definition of “regulated air pollutant” in 40 CFR 70. Therefore, no change has been made in response to this comment.

EPA commented that subparagraph (I) of the definition of Applicable requirement states that minor NSR requirements will not be incorporated into the operating permits until rulemaking is completed on the revised chapter for “new construction or modification” and EPA approves these revisions into the State Implementation Plan (SIP). EPA maintains that this condition must be deleted. Currently, EPA notes that the state has a minor new source pre-construction program, which EPA has approved into the SIP. Until EPA takes final action on any SIP revision submitted by the state, EPA maintains that the

requirements of the current approved SIP are applicable requirements for Title V purposes. Thus, in order to gain full approval, EPA states that the final rulemaking must make clear that minor NSR requirements approved into the SIP are presently applicable requirements of operating permits and the OPP, and that SIP-approved minor NSR requirements must be incorporated as applicable requirements into operating permits at the time of permit issuance like any other SIP requirement.

As previously mentioned, EPA promulgated an extension of states' interim program approvals on August 29, 1997 (see 62 FR 45732). The extension automatically extends all operating permits program interim approvals until October 1, 1998. In addition, states may also request an additional extension (between 18 and 24 months) if they choose to combine corrections to their interim approvals with program revisions necessary to implement the revisions to Part 70 which are expected to be promulgated mid-summer of 1998. The commission intends to request the additional extension immediately after the Part 70 revisions are promulgated. Assuming no statutory changes are required by the Part 70 revisions, the commission would receive an additional 18-month extension after the date the Part 70 revisions are promulgated.

As a result of the extension, interim approval deficiencies do not have to be corrected until the commission submits its combined program submittal (addressing interim approval deficiencies and Part 70 revisions). However, the commission has attempted to correct the majority of deficiencies noted by EPA in the proposed rulemaking. In some cases, the commission has elected to wait until the combined program submittal to correct more difficult and complicated deficiencies. Specifically, the commission has decided to postpone determining how minor NSR will be codified

in Chapter 122. Until that time, the commission will continue to work with EPA, the regulated community, and the public to find a mutually agreeable solution on this complicated issue.

EPA also commented that in §122.10, subparagraph (J)(ii) of the definition of Applicable requirement should not exclude FCAA, §112(g) and (j).

Because FCAA, §112(g) and (j) are federal requirements that implement relevant requirements of the FCAA, the commission agrees that they should be applicable requirements under Chapter 122. The commission has made this change as requested.

EPA commented that there is no basis for designating requirements that have been promulgated by EPA but not adopted by and delegated to the state as federally enforceable only. EPA also stated that Texas was granted interim approval based on the representation that the state has adequate authority to issue permits and enforce all permit terms and conditions, including applicable requirements. EPA referenced 40 CFR 70 requirements that “the laws of the State...provide adequate authority to carry out all aspects of the program” and the state must have adequate legal authority to “assure compliance with each applicable requirement,” and to “incorporate into permits all applicable requirements.” For these reasons, EPA concluded that the “federally enforceable only” limitation must be deleted from 30 TAC 122.

The commission believes that EPA has created the need for this designation by retaining enforcement authority of the acid rain program and stratospheric ozone requirements. For

example, the acid rain requirements must be codified in the operating permit; however, since EPA is not delegating enforcement of the acid rain program, those requirements must be identified as federally enforceable only. Furthermore, the commission does have broad statutory authority to enforce federal applicable requirements; however, the commission must complete rulemaking to adopt the specific regulatory authority upon which to base any enforcement action. The commission plans to adopt new federal rules such as the Maximum Available Control Technology (MACT) standards as soon as possible. It is the intent of the commission that before these requirements must be incorporated into any permit, state rulemaking will be completed and the designation will not be necessary. However, the designation will be necessary for those requirements for which EPA is not delegating enforcement authority. Compliance with federally enforceable only requirements will be assured, just as it is for any other applicable requirement, through the detailed codification in the permit of the monitoring, testing, recordkeeping, and reporting requirements contained in the federal rule. Compliance will be further assured through the codification of the recordkeeping, six-month monitoring reporting, deviation reporting, and compliance certification requirements of this chapter. The federally enforceable only designation in no way interferes with the executive director's ability to incorporate into permits all applicable requirements and the compliance assurance methods associated with those standards. For these reasons, the commission has not deleted the federally enforceable only designation.

The commission received several comments regarding the proposed state-only requirements. EPA commented that the requirements listed as state-only included requirements in the SIP, and those requirements would be considered applicable requirements and thus federally enforceable.

The commission has revised the rule to remove the rule citations from the definition of state-only requirement, except §§111.131-111.139. However, the commission has retained a revised definition for state-only requirement, consistent with 40 CFR §70.6(b)(2), to accommodate any requirements that may qualify as state-only. Because there is no longer a need to specifically identify portions of the regulations as either applicable requirements or state-only requirements, the definition of Applicable requirement has been revised to reference the regulations generally and provide exceptions in subparagraph (K) for those requirements not within the scope of the OPP, such as requirements for mobile sources. In addition, the reference to 30 TAC Chapter 113 has been expanded to include the MACT standards the commission is currently in the process of adopting. 30 TAC Chapter 117, Subchapter D, addressing compliance dates, has also been included in the definition of Applicable requirement. The only requirements that are state-only at this time are those in §§111.131 - 111.139 as specified in the proposed rule. The commission recently requested that EPA not incorporate §§111.131 - 111.139 into the SIP since they were not written to satisfy a federal requirement. EPA has concurred and will not take any further action to include these sections in the SIP.

TCC and TVPC both commented that they did not believe that it was appropriate for state-only requirements to be subject to Title V procedural requirements such as public notice, affected state review, notice and comment hearings, recordkeeping, and six-month monitoring reporting. In addition, CSWS requested clarification regarding which requirements apply to state-only requirements.

The commission agrees with the commenters and has specified in §122.143(20), consistent with 40 CFR 70, that any requirement designated as state-only will not be subject to any of the following requirements of 30 TAC 122: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring. Because state-only requirements are not subject to public notice, EPA review, etc., any changes regarding state-only requirements will be processed as administrative permit revisions, which are the only types of revisions that are not subject to these procedural requirements.

TCC and TVPC suggested revising subparagraph (B) of the definition of State-only requirement and subparagraph (G) of the definition of Applicable requirement to correct three flaws. First, they were concerned that these subparagraphs, which specified that any new requirement in Chapters 111, 112, 113, 115, 117, and 119 would be applicable requirements unless identified in rulemaking as state-only requirements, were written under the assumption that all requirements in those regulations would be either state-only or applicable requirements. The commenters pointed out that requirements such as §111.111(a)(5) and (6) relate to automobiles, locomotives, and ships and, therefore, are neither applicable requirements nor state-only requirements under the OPP. To address this concern, the commenters requested that the rule be revised to specify that new requirements would be applicable requirements only if designated as such in the new regulation.

The commenters also stated that the term “new” could create confusion in the future and recommended referring to the effective date of the rule instead. Finally, the commenters believed that the use of the

word “rulemaking” was ambiguous because it could refer to either the rule or the preamble and requested it be replaced with the word “rule.”

The commission agrees that the rule should clarify that requirements for mobile sources are not within the scope of the operating permits program. To address this concern, the commission has modified the exemption in the definition of Applicable requirement, subparagraph (K) such that it excludes requirements for mobile sources as well as state-only requirements. The commission also agrees that the suggested changes regarding the use of the word “new” and “rulemaking” provide additional clarity; however, due to other changes to the definition of Applicable requirement, the proposed subparagraph (G) is no longer necessary and has been deleted. Subparagraph (G) was proposed because the proposed definition of Applicable requirement referenced specific sections of 30 TAC 111 and 112 rather than the rules as a whole; consequently, any new sections adopted under those chapters would not have been included in the definition of Applicable requirement.

TCC and TVPC also requested that Chapter 117, Subchapter E be designated as a state-only requirement instead of an applicable requirement.

The commission believes that Chapter 117, Subchapter E contributes to the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), and has determined to continue relying on it for demonstration of attainment and maintenance of the NAAQS; therefore, Subchapter E will not be designated as state-only.

An individual commented that in §122.10, the phrase “or by an inspector who has documented noncompliance” should be added to the definition of Deviation. The commenter was concerned that the definition did not specify that photographs or inspection reports may be used to document noncompliance.

The term "Deviation" identifies the type of an event that indicates that an emission limitation or standard may not have been met, not who can make the finding or how that finding can be documented. Documentation of the event would be based on the monitoring method required to be used, and would not preclude anyone from identifying a deviation based on at least the required monitoring method specified in the permit. Texas Health and Safety Code, §382.016(b) provides, in part, that, “[a] member, employee, or agent of the commission may examine during regular business hours any records or memoranda relating to the operation of any air pollution or emission control equipment or facility, or relating to emission of air contaminants.” Therefore, the commission has made no change in response to this comment.

CSWS commented that in §122.10 the definition of Draft permit should be revised to include the review time period to be consistent with the other permit definitions.

The commission agrees that the length of the public comment period should be included in the definition of Draft permit for consistency, and has made this change.

Regarding the definitions in §122.10, the Sierra Club and an individual commenter stated that fugitive emissions should be considered in determining whether a source is major.

The commission agrees that in some cases fugitive emissions should be considered in determining whether a source is major. Fugitive emissions are required to be considered if the source belongs to one of the 27 source categories identified in the definition of Major source. This is consistent with EPA's approach for determining major source status for Title V as well as Prevention of Significant Deterioration and nonattainment. Therefore, the commission has made no change in response to this comment.

An individual commenter disagreed with subparagraph (G) of the definition of Major source in §122.10. This subparagraph states that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units to determine whether the units or stations are major sources under FCAA, §112.

The commission understands the commenter's concern; however, not only is this language taken directly from 40 CFR 70, but it is also a statutory requirement established by the United States Congress in FCAA, §112(n). For this reason, the commission has made no change in response to this comment.

CSWS requested definitions in §122.10 for the terms “federal operating permit” and “general operating permit.”

The commission has clarified that the definition of Permit also applies to Federal operating permit and provided a definition for General operating permit.

TCC and TVPC requested a definition in §122.10 for Reopen.

To be consistent with the definitions of Renewal and Revision, the commission has provided a definition for Reopening in response to this comment.

Again regarding the definitions in §122.10, the Sierra Club commented that when there are many similar facilities in close proximity, they should be considered a single source.

The commission agrees that many similar facilities in close proximity should generally be considered a single source when determining major source status. The definition of Major source is based on the definition of Site, which specifies that sites must be contiguous or adjacent and under common control to be considered a single source. These criteria were specified in 40 CFR 70; however, 40 CFR 70 requires that the sources also belong to the same major industrial grouping (i.e., two-digit Standard Industrial Classification (SIC) number) to be considered a single source. The §122.10 definition does not use this final qualifier and is therefore more

inclusive than the federal requirement. The commission believes that the intent of this comment has already been accomplished and has made no change in response to this comment.

CSWS requested that the title of §122.120, “Who Shall Apply for a Permit,” be changed to “Applicability” for consistency with other permit regulations.

The commission agrees with this recommendation and has changed the title as requested.

TCC and TVPC suggested language for §122.130(c)(1) to more clearly define when applications are due for sources that become subject to the requirements of this chapter after the effective date of the full or interim program.

The commission agrees that the suggested language is more clear; however, due to inconsistencies with other parts of the regulation, this language has been significantly revised. The language in the proposed rule required applications to be submitted within 12 months of the issuance of a preconstruction authorization. At the same time, §122.121 specified that no source subject to the requirements of this chapter could operate without a permit or an application shield. The commission believes that for the operating permit program, it is more appropriate to base the application deadline on operation rather than preconstruction. The commission has revised the language to require owners and operators to submit applications before the source begins operation. This will eliminate the confusion regarding when applications are due for sources that are not yet operating or constructed within 12 months. Abbreviated applications may be used to

meet this application deadline and the Operating Permits Division staff will work with NSR staff to ensure that owners and operators are aware of the operating permit application deadline before their preconstruction authorizations are issued.

TCC and TVPC recommended language regarding the phased application process in §122.131(a) to clarify that units in all the initial applications for the site would be considered in determining eligibility for the phased process.

The commission agrees that the recommended language more clearly reflects the intent of the commission and has made the change as requested.

TCC and TVPC had three concerns with the phased application requirements in §122.131(b). First, they were concerned that the reference to §122.132(e)(3) might be interpreted to require some portion of the detailed citations for every emission unit.

All the high-level applicability determinations (i.e., the rules the source is subject to) for all emission units will be included in the initial permit. The detailed citations within the rules, required by §122.132(b)(3), will be included for a portion of the emission units, and phased in for the remaining units, in accordance with a schedule in the permit. The commission has revised the language in §122.131(b) as requested in order to make the intent more clear.

TCC and TVPC also suggested that the discussion of the proposed phase-in schedule in §122.131(b) reference the citation requiring a proposed schedule in §122.132.

The commission believes that the requirement is clear without the reference to §122.132. In order to be consistent with regulatory reform and avoid unnecessary internal references, the commission has made no change in response to this comment.

Finally, TCC and TVPC requested that in §122.131(b) the statement “the initial permit application must include detail sufficient to clarify the applicant’s obligations with respect to its applicable requirements...” be deleted or reworded to specify that the high-level applicability determinations under §122.132(e)(2) would be sufficient to clarify these obligations.

All general applicability determinations will be included in the initial application for all emission units; and the portion of the detail that is phased in will be determined by whether it is needed to clarify the applicant’s obligations with respect to the applicable requirements. The commission believes that this criteria is necessary to assure EPA’s approval of the phased process and, therefore, has not revised this language.

TCC and TVPC commented that the last part of the sentence in §122.131(d) which refers to the reporting period is inappropriate in the section on the phased application process.

The commission agrees that because there is no reporting required by the phased application process, this reference was inappropriate. This language has been deleted as requested.

TCC and TVPC commented that the requirement in §122.131(e) to incorporate all phased applicability determinations into the permit by permit renewal seems superfluous, since the rule also contains the requirement that the detail be incorporated in the permit by July 25, 2003; and it is not likely that permit renewal for a phased permit would ever occur before July 25, 2003.

The commission agrees that for full program sources, permit renewal will not occur before July 25, 2003. However, since permit renewal could occur before July 25, 2003, for interim program sources, some phased permits may be required to contain all detailed applicability determinations upon renewal. For this reason, and to assure EPA's approval of the phased process, the renewal deadline will be retained.

TCC and TVPC requested that in §122.132(a) the word "any" be removed from "any information" and "any applicable requirement" and the word "business" be added to read "confidential business information."

The commission does not believe that the removal of the word "any" from §122.132(a) would change the meaning of the subsection. In addition, this language was approved by EPA in 1996 for the interim operating permit program; therefore, the commission has not revised the rule in response to this comment. Regarding the second comment on §122.132(a), the commission has not

added the word “business” to “confidential information” because this requirement is governed by Chapter 1, concerning Purpose of Rules, General Provisions, which addresses confidential information rather than confidential business information. However, the commission has included a reference to Chapter 1 in this subsection in order to direct readers to the requirements governing confidential information.

TCC and TVPC submitted comments regarding the provision for abbreviated applications in §122.132(c). Both commented that “at the discretion of the executive director” should be deleted from the provisions in §122.131(c) and §122.134(c) allowing abbreviated applications. The commenters mentioned that this would be consistent with their understanding that the staff was considering recommending that all sources submit abbreviated applications early for resource planning purposes.

The commission agrees that it is appropriate to delete “at the discretion of the executive director” from these citations. As discussed in the preamble to the proposed rule, staff has evaluated the required processing time for the interim program applications to determine whether the proposed application dates would provide the executive director sufficient time to meet the statutory requirement to issue one-third of the full program permits each of the first three years of the full program. The commission has revised §122.130(b) to require all full program sources to submit abbreviated applications by February 1, 1998, in order to allow for more thorough implementation planning and resource allocation for the full program. The February 1st deadline is also the date by which a source must establish any potential to emit limit which will be used to avoid the requirement to submit an application. The commission has specified in the rule that the

remaining application information for sources belonging to the specified SIC major groups and sources applying for general operating permits will be required by July 25, 1998. For all other full program sources, the remaining application information will be submitted upon request by the executive director. The executive director will provide a reasonable length of time for submitting this information.

TVPC also requested that the name “abbreviated application” be changed to “initial application.”

The commission believes that the term “initial application” would be inappropriately associated with the term “initial permit” used throughout the regulation. To avoid this confusion, the commission will retain the term “abbreviated application.”

In addition, TCC and TVPC both suggested language defining the content of the abbreviated application.

In response to this comment, the commission has specified in §122.132(c) that the abbreviated application will include at a minimum identifying information regarding the site and the applicant and a certification by a responsible official.

The Sierra Club and an individual commenter objected to the provisions in §122.132 and §122.134 allowing an abbreviated application. The individual commented that a list of all units subject to the

program should be submitted initially. Both commenters were concerned that the abbreviated application would restrict the public's access to the information required by §122.132.

An abbreviated application will include general identifying information regarding the site and the applicant and a certification by a responsible official. Then, once staff begin reviewing the application, all the remaining information required by §122.132, including the identification of all emission units, will be requested and submitted. All the information required by §122.132 will be available to the public before and during the public comment period. In addition, the staff is currently exploring options for notifying the public through electronic means when the remaining information has been submitted. The commission has revised §122.130(b) to require all full program sources to submit abbreviated applications by February 1, 1998, in order to allow for more thorough implementation planning and resource allocation for the full program. Once the technical information is submitted, the applicant must update the application as necessary to keep it current. Consequently, if the commission did not provide for abbreviated applications, the applicant could be obligated to update the application several times before the application review even begins. To reduce unnecessary paper work and processing time, and to allow for planning and resource allocation, the commission will continue to provide for abbreviated applications.

EPA commented that it was not clear how fugitives were addressed in the permit and the permit application. EPA also stated that the permit application should contain enough information to determine major source status, and to verify the applicability of 40 CFR 70 or an applicable requirement. In addition, EPA stated that a general description of fugitive emissions not subject to any applicable

requirement must be provided, as well as the quantification of fugitive emissions subject to an applicable requirement. However, EPA also specified that unless a source stipulates to the applicability of a requirement and/or its major status, the state must preserve its ability to require quantification of fugitive emissions as necessary to determine whether a particular requirement is applicable or whether a source is major for a particular pollutant.

Fugitive emissions will be addressed in the application and permit wherever they are required to determine applicability (§122.132(2) and (3)) or are necessary to codify an applicable requirement (§122.142(b)(2)). In response to EPA's comment regarding program applicability, the permit application is not the appropriate place to verify major source status and applicability to 40 CFR 70, because those affirmative determinations have already been made when the application is submitted. The executive director verifies major source status through the authority in Chapter 101, concerning General Rules. This verification occurs outside of the application review process so that sources that may be subject to the program, but have not submitted applications can be identified. Regarding applicability of requirements, §122.132(a), (e)(2)(C), and (e)(3)(B) do require any information necessary to determine whether a particular requirement, including any fugitive requirement, is applicable. The executive director also has the authority to request any additional information necessary to evaluate or take final action on the application in §122.136(d). Finally, by the act of submitting an application, the owner or operator has acknowledged the source's major source status; therefore, as EPA has stated in its comment, quantification of fugitives for determining major source status is not necessary.

TCC and TVPC recommended that the application certification language in §122.132(e)(4)(A) be revised to be based on information and belief formed after reasonable inquiry to be consistent with the language in §122.165.

The commission agrees that two different certification statements are not necessary and has revised the rule to rely exclusively on the certification language in §122.165 for the entire application.

EPA stated that the compliance plan required with the initial application in §122.132(e)(4) must include a statement that the source will continue to comply with applicable requirements that become effective during the permit term, consistent with 40 CFR §70.5(c)(8).

The commission agrees to require the following statement in the application: "As the responsible official it is my intent that all emission units shall continue to be in compliance with all applicable requirements they are currently in compliance with, and all emission units shall be in compliance by the compliance dates with any applicable requirements that become effective during the permit term." The commission believes that this statement of intent is appropriate, because the responsible official cannot rule out at the time of application all unforeseen and unavoidable circumstances that may result in noncompliance.

EPA commented that in §122.132(e)(4) the responsible official must certify to compliance, not apparent compliance, with the applicable requirements.

Based on this comment, the commission has deleted the word “apparent” from §122.132(e)(4) and (5) and §122.146(5).

EPA commented that the basis of the compliance certification in §122.132(e)(4)(B) cannot be limited to the compliance methods specified in the applicable requirements, and must be based upon consideration of “credible evidence” as well as any compliance method specified in the applicable requirements.

The commission agrees to allow compliance methods in addition to those established in the operating permit to be used to certify compliance. However, the commission believes that to adequately assure compliance with the applicable requirements and the permit, the certification must be based on, at a minimum, those compliance methods specified in the applicable requirement or the permit. Therefore, §122.132(e)(4)(B) and §122.146(3) have been modified to require that the certification be based on, at a minimum, any compliance method specified in the applicable requirement or permit as appropriate. The qualifier “at a minimum” has also been included in the definition of Deviation for consistency.

EPA also commented that §122.132(e)(4)(C), noting the information required for sources having emission units not in apparent compliance, lacks two statements required by 40 CFR §70.5(c)(8)(iii): a statement that the source will continue to comply with applicable requirements which the source is complying with and a statement that the source will meet in a timely manner applicable requirements that become effective during the permit term. To be consistent with 40 CFR §70.5(c)(8)(iii), EPA stated that §122.132 must be revised to include this language.

As discussed previously, the commission has revised §122.132(e)(4) to include statements of intent regarding future compliance. These statements apply to all emission units in the application, including those out of compliance, and to avoid redundancy, they have not been repeated in §122.132(e)(4)(C).

TCC and TVPC commented that in §122.132(e)(8) it was not logical to require in the initial application any information requested by the executive director to determine whether to grant a permit shield. The commenters stated that at the time the initial application is submitted, the executive director will not have had the opportunity to request information regarding the permit shield and the applicant will therefore not know what to submit.

The initial application includes not only the information first submitted but also any information submitted in response to requests for information during the processing of the application. In addition, the director will provide clarification on the types of information that may be required for a permit shield in guidance documents. Consequently, no change to the rule language has been made in response to this comment.

The Sierra Club, an individual, and EPA objected to the requirement appearing throughout the rule (including §§122.132, 122.146, 122.210, 122.243, and 122.501) that information be submitted to EPA upon written request. The EPA requested that instead the rule require the information to be made accessible by electronic means; while the other two commenters requested that the information be automatically submitted to EPA.

This language was added to the rule because it was the executive director's understanding that EPA staff did not want to automatically receive this large volume of information. It is the intent of the executive director to provide EPA electronic access to application and permit information through the information management system. However, if the regulation specified electronic access, and the system failed, the regulatory requirement would be violated. Therefore, to address concerns that the information may not be readily available, the rule language has been revised to specify that the information "will be made accessible to the EPA" and the requirement for EPA to request the information in writing has been deleted.

The Sierra Club and an individual objected to the language in §122.134(a) specifying that an application is considered complete on the 61st day after receipt unless the executive director has notified the applicant of incompleteness.

This default completeness is required by 40 CFR §70.5(a)(2). Furthermore, the executive director always has the authority, under §122.136(d), to request additional information after the application has been deemed complete. The applicant is also obligated under §122.136(b) to correct the application no later than 60 days after discovering any omissions or errors. Therefore, default completeness will not interfere with the executive director's ability to receive and evaluate information. For these reasons, the rule language has not been revised in response to this comment.

TCC and TVPC commented that the requirement in §122.136(c) to submit information addressing any additional requirements the site becomes subject to, should specify that the information be submitted within a certain time period, such as within 60 days. The commenters also suggested that rather than requiring updates whenever the site becomes subject to new requirements, the commission might consider requiring one complete update once the executive director is ready to begin the application review.

The commission agrees that it is appropriate to include a 60-day deadline for submitting this information and has revised §122.136(c) accordingly. In addition, the commission understands the concern that applicants should not be required to continually update an application before the executive director is prepared to begin the application review. The commission believes that this concern will be addressed by the abbreviated application. However, the commission has clarified in §122.136(c) that if only an abbreviated application has been submitted, information regarding any new applicable requirement is not required to be submitted before the remaining information is requested by the executive director.

An individual commented that the word “may” in the provision in §122.136(d) stating “...the executive director may request the information in writing...” should be changed to a shall.

The commission understands that the “may” in this provision could imply that in some cases the information, or the request, will be in writing and in some cases it will not. Because §122.132 and §122.165 require any application information to contain a certification by a responsible official,

the transmitted information will always be in writing. Therefore, the commission believes that the commenter's concern has already been addressed. Because the "in writing" does not provide any additional authority and has created confusion, it has been deleted from this subsection.

EPA commented that the requirement in §122.142(c) that the permit contain periodic monitoring as required by the applicable requirements does not satisfy the periodic monitoring requirements of 40 CFR 70. EPA stated that periodic monitoring consistent with 40 CFR §70.6(a)(3)(B) must be included in the permit content requirements.

In response to this comment, §122.142 has been revised to provide the executive director the authority to implement periodic monitoring sufficient to assure compliance with the applicable requirements.

EPA commented that §122.143 does not state as a general term and condition of the permit that where an applicable requirement of the FCAA is more stringent than an applicable requirement under Title IV of the FCAA, both provisions are to be incorporated into the permit. EPA stated that to be consistent with 40 CFR 70, §122.143 must include this provision from 40 CFR §70.6(a)(1)(ii).

In response to this comment, the commission has included a provision consistent with 40 CFR §70.6(a)(1)(ii) in §122.142.

EPA stated that in §122.143, it is not clear whether site-specific SIP requirements issued under FCAA, Title I are required to be in the permit.

The commission acknowledges that this was an oversight and has, rather than revising §122.143, revised the definition of Applicable requirement to include site-specific SIPs.

TCC and TVPC requested clarification in §122.143(10) that the commission, rather than any permit holder, will incorporate new applicable requirements and new state-only requirements into general operating permits.

The commission agrees that the commission rather than the permit holder will initiate revisions to general operating permits and understands the commenters' concern with the identified rule language. However, the commission has also determined that the requirements in this paragraph are already addressed under permit revisions and are not necessary in this section. Therefore, consistent with the requirements in 40 CFR 70, this language has been deleted from §122.143 (concerning General Terms and Conditions).

EPA commented that the recordkeeping requirements in §122.144 must be expanded to include all monitoring information required by 40 CFR §70.6(a)(3)(C)(ii).

In response to this comment, the commission has revised the recordkeeping requirements in §122.144 to be consistent with 40 CFR §70.6(a)(3)(C)(ii).

TCC and TVPC commented that §122.144(3) should be revised to be consistent with §122.143(17), which allows information for general operating permits to be maintained at the location specified in the authorization to operate. Since the general operating permit is promulgated by rule, it cannot specify where records shall be kept for each applicant.

The commission agrees that the proposed language was inconsistent with §122.143(17) and has revised §122.144(3) accordingly.

EPA commented that §122.145 does not contain general permit terms as required by 40 CFR §70.6(a)(6)(i)-(iii). These 40 CFR 70 terms address the requirements that permits must include provisions stating that the permit holder must comply with all conditions of the permit, and provisions stating that the permit may be modified, revoked, reopened, and reissued, or terminated for cause.

Section 122.143(4) is a permit term which states that the permit holder shall comply with all terms and conditions of the permit and any provisional terms and conditions required to be included with the permit. Section 122.143(8) is a permit term stating that the permit may be revised, reopened for cause, or terminated. The commission has expanded §122.143(4) to include a statement consistent with 40 CFR §70.6(a)(6)(ii) that it shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of the permit. Therefore, all the requirements of 40 CFR §70.6(a)(6)(i)-(iii) are reflected in the final rule.

EPA stated that §122.145 does not contain a permit condition prohibiting emissions exceeding any allowances that the source holds under FCAA, Title IV and §122.145 must be revised to include this provision.

In response to this comment, the commission has included the language consistent with 40 CFR §70.6(a)(4) in §122.143.

TCC and TVPC believed that §122.145(B) could potentially require duplicate reporting and requested the language be revised to specify that if the applicable requirement specifies monitoring reporting on a calendar quarter or semiannual basis, such reporting would satisfy the requirements of this chapter. CSWS also expressed concerns that the proposed rule required reporting redundant with reporting required by the federal acid rain program.

The commission agrees that redundant reporting should not be required, and has revised the language to more clearly state that, if an applicable requirement requires reporting on a different but more frequent basis, that reporting can be used to satisfy the requirements of this chapter.

CSWS requested that the deviation reporting requirements in §122.145 be revised to clarify that deviation reporting is not required for six-month periods in which no deviations occur.

The commission agrees that deviation reporting should not be required for periods during which there have been no deviations and has made this clarification. The commission points out that

whether or not deviations have occurred, the annual compliance certification requires a positive statement relative to compliance for all emission units covered by the permit.

The EPA commented that it does not consider the reporting of deviations every six months to be prompt, as required by 40 CFR §70.6(a)(3)(iii)(B). EPA suggested that reporting of deviations within 24 to 48 hours would be more appropriate and stated that the rule must be revised to require a shorter time period for the prompt reporting of deviations.

40 CFR §70.6(a)(3)(iii)(B) requires the permitting authority to define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements. The commission has required the most significant deviations to be reported within 24 hours under the unauthorized emissions, upset or maintenance, start-up, and shutdown requirements of Chapter 101.

Deviations must also be reported as required by any underlying requirement. The commission then requires those deviations of least significant concern to be reported at least every six months. These are only those deviations that do not meet the criteria to be reported within 24 hours and are not required to be reported more frequently by any underlying requirement. This approach involves three levels of deviation reporting based on the degree and type of deviation likely to occur and the applicable requirements. If the commission were to require every deviation, regardless of its significance, to be reported within 24 hours, it would be extremely difficult for staff to quickly identify serious instances where the executive director needs to take immediate action. In addition, through post-1990 NSPS, EPA itself has set a precedent for allowing some deviations to be reported within six months. Furthermore, because the six-month deviation report

will include not only a description of all deviations reported on the six-month schedule but also a reference to any deviations submitted under Chapter 101, this report will be a comprehensive record of all deviations that occurred over the previous six months. Receiving the information in this consolidated manner will allow staff to easily identify problem trends that need to be addressed. This comprehensive list provides more relevant information regarding how well a source is complying with the applicable requirements than individual reports of each minor deviation would. For these reasons, the commission will continue to require the most serious deviations to be reported within 24 hours and allow other deviations to be reported at a frequency consistent with the reporting requirements in the permit. In every case, deviations would be reported on at least a six-month, if not more frequent, schedule. The rule language has been revised in §122.145(3) to clarify that even if a deviation is exempt from being reporting under Chapter 101, the six-month deviation reporting requirements in §122.145(2) still apply.

EPA commented that it was not clear whether the requirements in Chapter 101, referenced in §122.145(3), constitute an affirmative defense for noncompliance with the applicable requirements in the event of an emergency. EPA stated that the commission must clarify whether an affirmative defense may be used in the state. Furthermore EPA specified that should an affirmative defense exist, the allowance of time for notification is inconsistent with 40 CFR §70.6(g)(3), which requires notice to the permitting authority within two working days of an exceedence of emission limitations due to an emergency.

30 TAC 122 does not provide for an affirmative defense from noncompliance for sources.

However, in §101.11, the recently adopted amendments to Chapter 101 (22 TexReg 7040, July 29, 1997) do provide, conditions for an exemption of unauthorized emissions from limits in permits, rules, and orders of the commission during upsets, maintenance, start-ups, and shutdowns.

Qualification for an exemption is limited to those occurrences that meet certain requirements.

Owners and operators must comply with §101.6 and §101.7, which requires correct reporting and recording of unauthorized emissions. Additionally, an exemption can only be obtained for upsets if the upset was reasonably unavoidable and appropriate corrective actions were taken as soon as practicable, and, for maintenance, start-up and shutdown, if emissions are minimized.

The commission believes that §§101.6, 101.7 and 101.11 provide sufficient relevant evidence to meet the requirements of §70.6(g). Additionally, the commission notes that §101.6(a) requires notification of upsets as soon as practicable, but not later than 24 hours after discovery; and §101.7 requires notification at least ten days prior to any maintenance, start-up, or shutdown expected to cause an unauthorized emission, but in any event as soon as practicable prior to the maintenance, start-up, or shutdown. Any maintenance, start-up, or shutdown activity that results in an unauthorized emission shall be considered a reportable upset and is subject to the requirements of §101.6. Finally, the commission notes that §101.11 requires the permit holder to identify the cause of the emergency, that the upset was not reasonably avoidable, the permittee take all reasonable steps to minimize emissions and report the upset (according to §101.6, which requires reporting as soon as practicable, but not later than 24 hours after discovery).

CSWS commented that reporting under §122.145(3) regarding upset, start-up, shutdown, or maintenance could be redundant with the deviation reporting required under paragraph (2) of the same section. To eliminate redundancy, CSWS suggested that the reporting requirements be combined.

Any potential redundancy has already been addressed in §122.145(2)(C) by the statement that if a deviation is reported under paragraph (3), the six-month deviation report need only include a reference to the previously submitted report. Therefore, no change has been made in response to this comment.

Regarding the reporting requirements in §122.145, the Sierra Club and an individual commented that upset reporting should be immediate and not delayed for 48 hours.

The requirements for upset reports are not established in this chapter and are therefore not within the scope of this rulemaking. The requirement for these types of reports are established in Chapter 101.

TCC and TVPC requested that annual compliance certification reports in §122.146(2) be due 60 days rather than 30 days from the end of the certification period.

Historically, 30 days have been allowed for reporting under the NSPS; therefore, the commission believes that 30 days is sufficient time for submitting these certifications. Regarding a related issue, the proposed rule allowed two weeks, rather than 30 days for the submittal of the annual

permit revision applications. To make the deadlines for submitting reports, certifications, and applications consistent throughout the rule, the rule has been revised to allow 30 days from the end of the year to submit the annual permit revision application. The same change has been made in §122.131, regarding reopenings for the phased application process.

Also in §122.146, CSWS, TCC, and TVPC were concerned that information already available to the executive director in the operating permit would have to be reproduced in the annual compliance certification.

Because §122.146(5) states “[t]he annual compliance certification shall include or reference the following information:” the permit may simply be referenced to provided any information contained in the permit and that information need not be reproduced in the certification.

TCC and TVPC requested that the word “entire” be deleted from the reference in §122.146(5)(B) to the compliance certification period because it adds no value.

The commission agrees that the word “entire” adds no meaning to this requirement.

Additionally, it is not consistent with other references in the regulation to the certification period; therefore, it has been deleted.

TCC and TVPC suggested that the requirement for the annual compliance certification in §122.146(5)(C)(v) be revised to clarify that reporting of deviations would be based on the monitoring frequency as well as the monitoring method required by the permit.

The commission believes that the term “monitoring method” encompasses the frequency of conducting the assessment and that citations related to method and frequency are found in the permit. Because of this, the commission has determined that no change is necessary. However, because the term “monitoring method” may not appear to be broad enough to encompass recordkeeping used to demonstrate compliance, the commission has specified that the certification may be based on recordkeeping where recordkeeping is used to satisfy the monitoring requirement.

EPA commented that the provisions in §122.146(5)(B) and (C) regarding the compliance certification do not adequately address the requirement in 40 CFR §70.6(c)(5)(iii)(B) that compliance certifications include the source's “compliance status” with respect to all applicable requirements. EPA also stated that these provisions do not meet the requirement in 40 CFR §70.6(c)(5)(iii)(C) that the compliance certification certify whether “compliance was continuous or intermittent.”

As previously discussed, the word “apparent” has been deleted from the annual compliance certification requirement. In addition, §122.146(5)(B) has been revised to require the responsible official to state that units without deviations have been in continuous compliance; and

§122.146(5)(C) has been revised to reference the potentially intermittent compliance status of those units that have had deviations.

EPA commented that §122.148 does not make it clear that the permit shield does not apply to provisions of FCAA, §303 (emergency orders), the liability of an owner or operator of a source for any violation of an applicable requirement prior to, or at the time of, permit issuance, requirements of the acid rain program, or the ability to obtain information from a source under FCAA, §114. EPA stated that the rule must be revised to be consistent with 40 CFR §70.6(f)(3).

In response to this comment, the commission has incorporated language consistent with §70.6(f)(3) into §122.148.

TCC and TVPC requested clarification regarding the language in §122.161(d) specifying when FCAA, §112(g) would apply. In particular the phrase “at the earliest time” and the reference to “sites” in the plural created confusion. The commenters asked if all interim program sites would be subject to §112(g) on January 25, 1997, the first interim program application deadline.

Because §112(g) will be implemented through Chapter 116, the commissions believes that date that these requirements will apply would be more appropriately address in Chapter 116 and has deleted this language from 30 TAC 122.

EPA submitted two comments regarding the proposed requirements for the responsible official in §122.165. The first comment was that the proposed rule allowed delegation of a duly authorized representative to too low a level in the corporate hierarchy. The second comment was that 40 CFR 70 does not allow the responsible official of a sole proprietorship, municipality, state, federal, or other public agency to delegate to a duly authorized representative.

In response to these comments, the commission has replaced the language in §122.165 defining responsible official and duly authorized representative with the 40 CFR 70 definition of “responsible official.” The commission has also incorporated the proposed 40 CFR 70 revision to the definition allowing a responsible official who is not the designated representative to sign the Title V portion of the operating permit for affected sources.

TCC and TVPC requested confirmation that its interpretation that the definition of Responsible official in §122.165 was equivalent to the definition of Responsible official in 40 CFR §70.2 such that a person responsible for the overall operation of a facility which employs more than 250 persons or has gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars) is a responsible official.

Because the language has been revised to incorporate the definition of Responsible official from 40 CFR 70, this clarification is no longer necessary.

TCC and TVPC requested a change rewording §122.165(c)(2)(B), which specified the types of documentation that the higher level duly authorized representative must sign.

Because the commission has adopted the 40 CFR 70 definition of Responsible official, two levels of duly authorized representatives are no longer provided for and this language has been deleted.

An individual and the Sierra Club commented that multiple permits at a site, as provided in §122.201, should not be allowed. The individual also commented that it was his understanding, based on conversations with staff, that the purpose of the federal operating permit program was to have one permit for each site.

The purpose of the federal operating permits program is to provide a compliance and enforcement tool, which may be accomplished through a single permit at a site or multiple permits at a site.

The commission regrets any misunderstanding the commenter may have developed based on discussions with staff. The provision in §122.201(e) is necessary to allow the executive director to break larger sites into more manageable parts to ensure a thorough application review and a more reasonable volume of information to be examined during public comment, EPA review, and public petition. The rule has been revised to clarify that the executive director has the authority to determine whether it is appropriate to have multiple permits at a site.

TCC and TVPC suggested clarifying in §122.210 that the permit revision process does not generally apply to general operating permits, since the commission rather than the permit holder initiates the permit revision process.

The commission agrees with this comment and has revised §122.210 to explicitly state that general operating permits and authorizations to operate under general operating permits are not subject to the permit revision requirements of Subchapter C, but instead are subject to the requirements of Subchapter F.

TCC and TVPC commented that in the general requirements for permit revisions in §122.210(b) the use of the term “complete” is unnecessary and may create confusion.

Because the word “complete” has a specific meaning with respect to the application shield, and there is no application shield associated with a permit revision, the commission agrees that this language could be confusing. The commission has made the requested change in §§122.212, 122.216, and 122.220 as well as §122.210.

EPA commented that for the permit revision requirements in §§122.210-122.221 to be substantially equivalent to the revision process in 40 CFR 70, they must not provide for less state review, EPA or affected state review, or public participation than is provided in 40 CFR 70.

The commission agrees that the amount of review provided is the criteria for evaluating substantially equivalent under 40 CFR 70 and believes that for each of the three revision tracks, the final rule provides for equal or greater review by the executive director, EPA, affected states, and the public. Consistent with 40 CFR 70, administrative permit revisions under 30 TAC 122 are not subject to any procedural requirements such as public notice or EPA review. Minor permit revisions will be subject to an electronically announced 30-day public comment period, an affected state review, and a 45-day EPA review; while EPA's minor permit modification process involves only EPA review and affected state review. In addition, as is required by 40 CFR 70, significant permit revisions will undergo all the procedural requirements associated with initial issuance.

EPA commented that the provisions for administrative revisions in §§122.211-122.213 do not include a time period for the permitting authority to take action on complete applications, and §70.7(d)(3)(i) requires that the permitting authority take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request.

The commission has revised §122.213 to include a requirement for the executive director to take final action on an application for an administrative permit revision within 60 days of receipt.

EPA commented that the provision in §122.215(1) allowing a change that “adds a new permit term or condition” to be processed as a minor permit revision is written too broadly. EPA also stated that the criteria for minor permit revisions must be consistent with §70.7(e)(2)(i), which prohibits minor permit

revisions from violating any applicable requirement or involving significant changes to existing monitoring, reporting, or recordkeeping requirements.

In 30 TAC 122 the types of changes that can be processed as minor permit revisions are limited by the types of changes that require significant permit revision. Any change listed in §122.219 shall be processed as a significant permit revision and is therefore excluded from the minor permit revision category. To address concerns regarding the scope of minor permit revisions, the commission has revised the list of changes that must be processed as significant permit revisions. Section 122.219 now specifies that any change that “is a significant change to existing monitoring, recordkeeping, reporting, or testing terms or conditions for an emission unit remaining in operation when the applicable requirement has not been revised or repealed through rulemaking” is a significant permit revision. Both §122.215 and §122.219 also include minor wording changes to more clearly define the types of revisions belonging to each category. For example, 122.219(11) was revised to use the term "modification" to be consistent with 40 CFR §70(e)(2)(i)(A)(5) for changes that are modifications under provisions of FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air quality or Plan Requirements for Nonattainment Areas). Regarding EPA’s concern that the minor permit revision process could allow the permit holder to make changes that would violate an applicable requirement, the commission directs EPA to the permit revision procedures in §122.217(a)(1), which require the permit holder to comply with all applicable requirements. This paragraph also requires the permit holder to comply with the provisional terms and conditions, which by definition cannot authorize the violation of any

applicable requirement, and must be consistent with and accurately incorporate all applicable requirements.

EPA also commented that §122.215(3) allowing a change that “affects or adds a requirement designed to limit potential to emit” to be processed as a minor permit revision conflicts with §70.7(e)(2)(i)(A)(4) and must be deleted.

In response, the commission has added any change that “affects or adds a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject” to the list of significant permit revisions. In addition, the language in §122.215(3) has been deleted as requested.

EPA commented that §122.215(5), which allows newly promulgated applicable requirements to be incorporated into the permit through minor revisions, is in conflict with §70.7(f)(1)(i), which requires the permitting authority to reopen a permit to incorporate the new requirement if three or more years remain in the permit term.

Under §122.231, the commission is required to reopen a permit to incorporate a new applicable requirement and complete that reopening within 18 months of the promulgation of the requirement. However, because the permit holder is required to initiate a permit revision, within 12 months or less, to incorporate the new applicable requirement into the permit, the reopening

should not be necessary. In most cases, this will be less than one year from the promulgation of the new requirement. In addition, the permit holder may not wait until permit renewal to incorporate a new requirement if less than three years remain in the permit term, as is provided for in 40 CFR 70. State-only requirements will be incorporated through the administrative permit revision process because they are not subject to the FCAA, Title V procedural requirements. In the final rule, the commission has specified that both applicable requirements and state-only requirements must be codified in provisional terms and conditions by the compliance dates of the new requirements. The provisional terms and conditions will be maintained with the permit in order to provide an accurate compliance and enforcement tool for both the permit holder and inspectors. Language has been added in §122.217 to make a distinction between requirements for permit revisions resulting from changes in applicable requirements or state-only requirements and those initiated by the permit holder. Subsection (a) refers to changes initiated by the permit holder while subsection (b) addresses rule changes. For rule changes in subsection (b), the permit holder will establish provisional terms and conditions that identify the new or revised requirement and the repealed applicable requirement by the compliance date of the new requirement or effective date of the repealed requirement. A notice containing this information shall be submitted no later than 45 days after the compliance date of the new requirement or the effective date of the repealed requirement, in order for the commission staff to utilize this information for deviation reports and compliance certifications. Also, this information will allow the public to have access to the full set of requirements at a site prior to the revision of the permit. Through the minor and administrative permit revision processes, the permit will include and assure compliance with new requirements more expeditiously than is provided for under the 40 CFR 70

reopening process. In addition, the minor permit revision process provides for a 30-day public comment period and a 45-day EPA review. The commission believes that this mechanism for incorporating new requirements into the permit is clearly substantially equivalent to the 40 CFR 70 requirements.

TCC and TVPC commented that the language in §122.217(a)(2) and elsewhere specifying that the notices regarding revisions be submitted “within two weeks of the end of the calendar month” would be more clear if it were revised to be “no later than two weeks after the end of the calendar month.”

The commission agrees that the recommended language is clearer. However, because the revision process has been changed to require notification before a change is made, this language has been deleted.

EPA commented that §122.216(a) and §122.217(a)(2) suggest that a source may make a change before an application for a minor permit revision is submitted. EPA also commented that §70.7(e)(2) allows a source to make changes before issuance of a minor permit modification, but only after the source files its minor permit modification application.

In response to this comment, the commission has revised §122.217 to require the permit holder to submit the notice to the executive director, containing all the information required in the minor permit application, before the change is operated. As a result of this change, there is no longer a

need to define the reporting periods for submitting these notices, and the language throughout addressing reporting periods had been revised accordingly.

EPA also commented that the proposed minor permit revision procedures did not require a 45-day EPA review period consistent with §70.7(e)(2)(iv).

In response, the commission has revised the rule to require a 45-day EPA review period consistent with §70.7(e)(2)(iv). The EPA review period has replaced the requirement in §122.217 for a public petition period for minor permit revisions, which is not required by 40 CFR 70.

EPA stated that §122.217(e)(4) does not provide for timely notification of receipt of a permit revision application to EPA and affected states, and must be revised to be consistent with §70.7(e)(2)(iii).

Section 122.217 has been revised to require a 45-day EPA review and also requires an affected state review, as did the proposed rule. In addition, staff is working to provide EPA electronic access to all applications in a timely manner through the information management system.

EPA commented that the provisions in §122.217 allowing minor permit revisions to be incorporated into the permit on an annual basis are inconsistent with §70.7(e)(2)(iv), which requires the permitting authority to take action on the application within 90 days of receipt of the application, or 15 days after the end of EPA's 45-day review period, whichever is later.

To address this concern, the commission has revised §122.217 to require the executive director to take final action on minor permit revisions within 15 days of the end of EPA's 45-day review period or within 15 days of the resolution of any EPA objection.

EPA objected to the provisions allowing changes requiring a significant permit revision that could be considered a relaxation of permit terms and conditions, as identified in §122.219(1) to be made without prior approval. EPA was also concerned that §122.219(2) might allow the removal of an applicable requirement that should be codified in the permit.

In response, the commission has revised §122.221 to require prior approval for all significant permit revisions, including those identified in §122.219(1) and (2). Consequently, if a permit holder wishes to remove an emission limitation or standard when the basis of the determination at the site remains unchanged, the revision must undergo review by the executive director, the public, affected states, and EPA before the change can be operated.

EPA commented that the proposed regulations treated significant permit revisions in many respects in the same or similar fashion as minor permit revisions, but 40 CFR 70 requires significant permit modifications to meet all requirements of 40 CFR 70 as they apply to permit issuance and renewal.

The commission understands that EPA's concern was that some changes requiring significant permit revisions could be operated before the permit was revised and before review by the executive director, the public, affected states, and EPA. Section 122.221 has been revised to

require prior approval for all significant permit revisions; therefore, review by the executive director, the public, affected states, and EPA must occur before any change requiring a significant permit revision can be operated.

Regarding reopening for cause, an individual requested that the term “material mistake” be defined in §122.231(a)(3). The commenter also requested an expansion of the criteria for reopening for cause to include “if citizens bring up needed changes.”

The commission is concerned that if a definition of material mistake were provided and the commission did not anticipate all possible types of material mistakes, the scope of reopening for cause could be inadvertently limited. The commission agrees that a citizen may raise an issue resulting in a reopening; however, the commission believes that when this happens, the issue will fall into one of the listed categories. For example, when a citizen requests a change, it may be based on the fact that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit. The citizen comment could also initiate an evaluation of the permit resulting in a determination by the executive director that the permit does not assure compliance with the applicable requirements. The definition of reopening for cause is consistent with the requirements 40 CFR 70 and the commission has made no change in response to the comment.

EPA commented that §122.231(d) does not require that the proposed notice regarding reopenings be forwarded to EPA for review as in §70.7(g)(3).

The commission agrees that the procedures for reopenings in the proposed rule were not consistent with the requirements of 40 CFR §70.7(g) and has revised §122.231 to more closely reflect the federal requirements. The federal rule specifies that if EPA notifies the permitting authority that cause exists to reopen a permit, the permitting authority must submit a proposed determination regarding the reopening to EPA within 90 days. The federal rule also specifies that EPA will have 90 days to review the determination and if EPA objects to the determination, the permitting authority will have 90 days to resolve the objection and take final action on the permit. The commission has revised the permit reopening provisions to include the 90-day deadline for submitting the notice, the 90-day EPA review period, and the subsequent 90 days for the permitting authority to take final action on the permit.

An individual opposed minor permit revisions being announced only on electronic media and suggested that the notice be printed bilingually in a large, regional circulation newspaper instead. The Sierra Club preferred that the notice be provided bilingually in a major newspaper of the relevant areas and in the electronic media.

Neither the previous version of this rule, which became effective in 1993, nor 40 CFR 70 provided for newspaper notice for minor permit revisions. Even so, the proposed 30 TAC 122 goes beyond the requirements of 40 CFR 70 to provide for public notice in the electronic media. The purpose of the operating permit is to codify the applicable requirements of the site. To issue a permit, a great deal of information must be submitted to the executive director. Given the volume of information, it is a practical and effective use of resources to hold this information electronically.

Due to the nature of minor permit revisions and the high cost of newspaper notice, which could be thousands of dollars per notice, the commission determined that the goal of providing sufficient and timely opportunities for public participation would best be met through the electronic notice. Texas Health and Safety Code, Texas Clean Air Act, §382.056, governs the requirements for bilingual newspaper and sign notices; however, electronic notices are not required to meet these requirements. Therefore, the electronic notice meets the requirements of the Texas Clean Air Act. The electronic notice will be posted for a set amount of time in the same electronic location during the public notice period. However, the newspaper would only be printed once. By utilizing the electronic notice, the commission can provide more information in a more timely manner and for a longer period of time. The staff is exploring options to provide the public access to the Title V permitting information. The commission also intends to provide the public access to Title V permitting information at the regional offices.

An individual opposed that a single notice is required to be published for the operating permit, whereas two notices are published for an NSR permit.

The federal OPP serves a significantly different, yet complementary, function to that of the NSR program. The NSR program is designed to review applications to build or modify a facility. The purpose of that review is to ensure that appropriate control technology will be used at the facility and that proposed emissions will not adversely affect the health or safety of any citizen. The purpose of the operating permit is to codify the applicable requirements of the site. The applicable requirements that are codified by the operating permit are federal rules and state

regulations. During the rulemaking process, the applicable requirements (federal rules and state regulations) undergo public notice. During the operating permit public notice, the applicable requirements will be subject to an additional public notice. The emissions from a site may not be increased or decreased due to an operating permit.

40 CFR 70 does not require more than one newspaper notice for operating permits and does not require sign posting. Nor does the Texas Health and Safety Code, Texas Clean Air Act, §382.056, require more than one newspaper notice. Therefore, both the NSR program and the federal OPP satisfy the state and federal requirements for public notice. For these reasons, the commission has made no change in response to this comment.

An individual requested that “any person who may be affected by emissions” be defined.

Requests will require a review on a case-by-case basis in order to determine who is affected by emissions. In order to be granted, the request must also meet the requirements of the Texas Health and Safety Code, §382.0561(c). Any further definition of affected person would still have to allow for case-by-case determination of the relevant factors. Therefore, the commission has not defined affected person in the final rule.

An individual requested that the term “reasonable specificity,” used in §122.360(f) be defined.

Section 122.360 is intended to provide the petitioners with the ability to petition EPA if EPA fails to object to the issuance of an operating permit. To prevent the exclusion of some valid petitions, the commission has determined not to define the term “reasonable specificity,” which will provide flexibility for petitioners seeking to have a petition granted. Therefore, no change has been made in response to this comment.

An individual requested clarification of §122.360(h), regarding when construction of a facility may begin in the event an objection is received.

The site may begin construction after receiving the appropriate preconstruction authorization in accordance with Chapter 116. The federal operating permit is the authorization for the site to operate. These two programs serve two significantly different, yet complementary, functions. The intent of §122.360(h), which corresponds to §70.8(d), provides that if EPA has objected due to a public petition and the permit has been issued, the permit remains effective. As long as the site has an effective permit, the site has the authorization to operate. The executive director or his designee shall have 90 days from the receipt of any EPA objection to resolve any EPA objection and, if necessary, terminate or revise the permit.

EPA requested that §122.412(1)(E) be revised to clarify the acid rain application deadlines. The revision EPA recommended would involve removing the language “...meets the subject acid rain program requirements defined in §72.30(b)(2)(v)-(viii)” and replacing this language with “fails to meet

the requirements of §72.6(b)(5) or §72.6(b)(6).” The recommendation also included adding a subparagraph (F) to reference the remaining units.

The commission agrees with this comment and has made those changes as requested.

EPA commented that the final rule should require that nitrogen oxides (NO_x) early election units submit Phase II NO_x compliance plans by January 1, 1998.

The commission agrees to make the requested change to be consistent with 40 CFR 72. Section 122.412(2) has been revised to eliminate the exception for early election units.

TCC and TVPC commented that it is unclear how §122.211(2) and (4) apply to general operating permits.

The commission agrees that this type of change could not apply to a general operating permit. To revise a general operating permit, the commission would have to complete rulemaking. If administrative information changed at the site, the application must be updated appropriately by the permit holder. Additional rule language was added to §122.503(a) to address this type of change.

TCC and TVPC suggested that §122.503(a)(2)(B) be revised to require information to be submitted annually instead of within two weeks of the end of the month in which the change took place.

An annual update would not allow the commission to maintain an accurate and complete application for the inspector or the public. The commission determined that the suggested change would not be consistent with 40 CFR 70. Therefore, the proposed rule language has been retained.

TCC and TVPC recommended that §122.503(a)(2)(C) be revised to refer to the revision of the authorization to operate and not the application.

The commission agrees with the recommended language and the change was made throughout the final rule where appropriate.

TCC and TVPC commented that the references to §122.133 and §122.134 in §122.504(b) were circular.

The commission agrees and has deleted the circular reference.

TCC and TVPC commented that the reference to §122.133 in §122.505(d) was circular.

The commission recognizes that the citation referenced is circular. The commission determined that the “timely and complete” requirement in §122.505(d) is provided for in §122.505(e), so the language was removed.

TCC and TVPC commented that the proposed regulation was silent regarding the procedures regarding the repeal of a general operating permit. The commenters were concerned that permit holders might be required to apply for another permit within 20 days of the repeal of a general operating permit. The commenters stated that this would be an unreasonable burden on the applicant.

The proposed §122.504(e) stated that “[i]f a permit holder’s authority to operate under a general operating permit is affected by the amendment or repeal of a general operating permit and the permit holder no longer qualifies for the general operating permit or no longer intends to operate under the general operating permit, the permit holder must apply for another operating permit.”

The commission understands the commenters’ concerns that the proposed language was silent to the deadline to apply for another operating permit. The final rule language, §122.504, states that the permit holder must apply for a permit by the effective date of the rulemaking. There will be a two-month delay between adoption and the effective date of the general operating rulemaking to allow for application preparation. Therefore, the regulated community should always have a reasonable amount of time to apply for a permit.

In addition, the language has been revised to specify that applications to operate under revised general operating permits must also be submitted by the effective date of the revised general operating permit. Again, the effective date of the revised general operating permit will be two months after the date of adoption. Furthermore, because the general operating permit rulemaking will occur after rulemaking on the underlying requirement, the permit holder will be aware of the need to revise the general operating permit application well in advance of the

application deadline. Rule language has also been added to address potential conflicts between the general operating permits and new or revised underlying applicable requirements that may exist before the general operating permits can be updated to reflect the new requirements. The permit holder will establish provisional terms and conditions that identify the new or revised requirements and any repealed requirements by the compliance date of the new requirement. This information will be maintained with the permit in order to provide an accurate compliance and enforcement tool for both the permit holder and inspectors. A notice containing the provisional terms and conditions will be submitted no later than 45 days after the compliance date or effective date in order for the commission staff to utilize this information for deviation reports and compliance certifications. Also, this information will allow the public to have access to the full set of requirements at a site prior to the revision of the GOP. Any updates to the information submitted will be included with the application for the revised general operating permit.

EPA commented that §§122.501-122.508 should be changed to require renewal of the general operating permit every five years.

In response to the comment, the change was made appropriately throughout the final rule.

An individual requested that the commission develop a list of any interested persons to receive notice individually of any proposed general operating permits, regulation changes, or any other rulemaking.

As stated in §122.506(a), before the adoption of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the proposed draft general operating permit rule. The opportunity for public comment will be published in the *Texas Register*, regional newspapers throughout the state, and on the Internet. Currently, the commission also provides a list of rulemaking hearings on the Internet. Due to the nature of the operating permit program, a great deal of information must be submitted to the executive director. Given the volume of information, it is a practical and effective use of resources to provide this information electronically. The staff is exploring options to provide the public access to the Title V permitting information. The commission also intends to provide the public access to Title V permitting information at the regional offices.

An individual requested that the terms “reasonable limits,” “reasonable ascertainable issues,” and “all reasonable available arguments” be defined.

The commission believes that the phrases “reasonable limits,” “reasonable ascertainable issues,” and “all reasonable available arguments” are intended to mean just what they say and are intended to provide flexibility.

The individual commenter expressed concern that commission staff would “cut off public statements and require that only written statement be taken.” The commenter also stated that there was not enough time after the hearing to submit written comments concerning new information or information stated at the hearing. The commenter specifically objected to the language in §122.508(c).

The commission is required to hold public hearings for operating permits, and must conduct hearings in accordance with the Texas Clean Air Act, which authorizes the commission to delegate hearing powers to staff. It is commission policy to allow reasonable time for public statement, and to allow hearing officers to determine when additional time is necessary for submittal of written statements on a case-by-case basis. Section 122.340(g) provides that the period for submitting written comments may be extended beyond the close of the hearing. The commission has determined that these case-by-case determinations allow for input by the public and efficient processing of permits where there is little or no public comment. Therefore, the commission has made no changes in response to this comment.

Several typographical errors were noted by the commenters. The typographical errors were noted in these sections: §§122.10 (K) and (G); 122.136(b); 122.210(a); 122.217(d)(2); 122.132(e)(5); 122.320(g)(1)(B), (C), and (E); and 122.505(b)(3). The typographical errors have been corrected in the final rules.

STATUTORY AUTHORITY. The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which

provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees; §382.061, which provides for appeal of federal operating permits; §382.064, which provides for initial application dates for federal operating permits; §382.085, which prohibits unauthorized emissions; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351,

which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

SUBCHAPTER A : DEFINITIONS

§§122.10-122.12

§122.10. General Definitions.

§122.11. Grandfather Definitions for State-only Requirements.

§122.12. Acid Rain Definitions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

APPLICABILITY

§122.120

The repeal is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees; §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.120. Applicability.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

PERMIT APPLICATION

§§122.130, 122.132-122.136, 122.138, 122.139

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.130. Responsibility to Apply.

§122.132. Application and Required Information.

§122.133. Timely Application.

§122.134. Complete Application.

§122.135. Grandfather Requirements.

§122.136. Application Deficiencies.

§122.138. Application Shield.

§122.139. Application Review Schedule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

PERMIT CONTENT

§§122.141, 122.143, 122.145

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.141. Authority.

§122.143. Permit Conditions.

§122.145. Permit Content Requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§§122.150, 122.152-122.155

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.150. Applicability.

§122.152. Public Notification Requirements.

§122.153. Public Notice Format.

§122.154. Sign Posting Requirements.

§122.155. Public Comment Period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

MISCELLANEOUS

§§122.161, 122.163-122.165

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.161. Miscellaneous.

§122.163. Effective Date.

§122.164. Confidential Information.

§122.165. Certification by a Responsible Official.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER C : PERMITS ISSUANCES, REVISIONS, REOPENINGS, AND RENEWALS

PERMIT ISSUANCE

§§122.201, 122.202, 122.204

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.201. Permits.

§122.202. General Permits.

§122.204. Temporary Sources.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER C : PERMITS ISSUANCES, REVISIONS, REOPENINGS, AND RENEWALS

PERMIT REVISIONS

§§122.210-122.213, 122.215-122.217, 122.219-122.221

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.210. Applicability.

§122.211. Administrative Permit Amendments.

§122.212. Administrative Permit Amendment Application.

§122.213. Administrative Permit Amendment Procedures.

§122.215. Permit Additions.

§122.216. Application for Permit Addition.

§122.217. Permit Addition Procedures.

§122.219. Significant Permit Modifications.

§122.220. Significant Permit Modification Application and Procedures.

§122.221. Operational Flexibility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER C : PERMITS ISSUANCES, REVISIONS, REOPENINGS, AND RENEWALS

PERMIT REOPENINGS

§122.231, §122.233

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.231. Permit Reopenings.

§122.233. Permit Reopening Procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER C : PERMITS ISSUANCES, REVISIONS, REOPENINGS, AND RENEWALS

PERMIT RENEWALS

§122.241, §122.243

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.241. Permit Renewals.

§122.243. Permit Expiration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER D : AFFECTED STATE REVIEW, UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REVIEW, AND CITIZEN PETITION**

§§122.310-122.312, 122.314

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits;

§382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.310. Transmission of Information to the United States Environmental Protection Agency (EPA).

§122.311. Affected State Review.

§122.312. United States Environmental Protection Agency (EPA) Review.

§122.314. Public Petitions to United States Environmental Protection Agency (EPA).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER E : ACID RAIN

GENERAL ACID RAIN PERMITS REQUIREMENTS

§122.410, §122.411

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.410. Standard Acid Rain Requirements.

§122.411. Operating Permit Interface.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER E : ACID RAIN

ACID RAIN APPLICATION

§§122.420-122.422, 122.425, 122.427

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.420. Enforceability of Acid Rain Permit Application.

§122.421. Timely Application.

§122.422. Complete Application.

§122.425. Acid Rain Compliance Plan.

§122.427. United States Environmental Protection Agency (EPA) Review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER E : ACID RAIN

ACID RAIN PERMIT ISSUANCE, REVOCATIONS, AND REOPENINGS

§§122.430, 122.432, 122.434, 122.435, 122.437, 122.438

The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.430. Acid Rain Permit Conditions.

§122.432. Acid Rain Permit Issuance.

§122.434. Acid Rain Permit Shield.

§122.435. Acid Rain Permit Revisions.

§122.437. Acid Rain Permit Revision Procedures.

§122.438. Permit Reopenings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER E : ACID RAIN

ACID RAIN APPEALS

§122.440

The repeal is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.440. Acid Rain Appeals Procedure.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER A : DEFINITIONS

§122.10, §122.12

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of

applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Air pollutant** - Any of the following regulated air pollutants:

(A) nitrogen oxides;

(B) volatile organic compounds;

(C) any pollutant for which a National Ambient Air Quality Standard (NAAQS) has been promulgated;

(D) any pollutant that is subject to any standard promulgated under FCAA, §111 (relating to Standards of Performance for New Stationary Sources);

(E) unless otherwise specified by the EPA by rule, any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI (relating to Stratospheric Ozone Protection); or

(F) any pollutant subject to a standard promulgated under FCAA, §112 (relating to Hazardous Air Pollutants) or other requirements established under §112, including §112(g) and (j). However, a pollutant shall not be considered an air pollutant under this chapter solely because it is subject to standards or requirements under §112(r).

(2) Applicable requirement -

(A) All of the requirements of Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) as they apply to the emission units at a site.

(B) All of the requirements of Chapter 112 of this title (relating to Sulfur Compounds) as they apply to the emission units at a site.

(C) All of the requirements of Chapter 113 of this title (relating to Control of Air Pollution from Toxic Materials), as they apply to the emission units at a site.

(D) All of the requirements of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) as they apply to the emission units at a site.

(E) All of the requirements of Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds) as they apply to the emission units at a site.

(F) All of the requirements of Chapter 119 of this title (relating to Control of Air Pollution from Carbon Monoxide) as they apply to the emission units at a site.

(G) Any site specific requirement of the state implementation plan (SIP).

(H) Any term or condition of any preconstruction permits issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) as necessary to implement the requirements of regulations approved or promulgated through rulemaking under FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air Quality or Plan Requirements for Nonattainment Areas).

(I) All of the following federal requirements as they apply to the emission units at a site:

(i) any standard or other requirement under FCAA, §111 (relating to Standards of Performance for New Stationary Sources);

(ii) any standard or other requirement under FCAA, §112 (relating to Hazardous Air Pollutants);

(iii) any standard or other requirement of the Acid Rain Program;

(iv) any requirements established under FCAA, §504(b) or §114(a)(3) (relating to Monitoring and Analysis or Inspections, Monitoring, and Entry);

(v) any standard or other requirement governing solid waste incineration under FCAA, §129 (relating to Solid Waste Combustion);

(vi) any standard or other requirement for consumer and commercial products under FCAA, §183(e) (relating to Federal Ozone Measures);

(vii) any standard or other requirement under FCAA, §183(f) (relating to Tank Vessel Standards);

(viii) any standard or other requirement under FCAA, §328 (relating to Air Pollution from Outer Continental Shelf Activities);

(ix) any standard or other requirement under FCAA, Title VI (relating to Stratospheric Ozone Protection), unless EPA has determined that the requirement need not be contained in a permit; and

(x) any increment or visibility requirement under FCAA, Title I, Part C or any NAAQS, but only as it would apply to temporary sources permitted under FCAA, §504(e) (relating to Temporary Sources).

(J) State and federal ambient air quality standards, net ground level concentration limits, ambient atmospheric concentration limits, requirements for mobile sources, and state-only requirements (including §§111.131 of this title (relating to Definitions), 111.133 of this title (relating to Testing Requirements), 111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead), 111.137 of this title (relating to Control Requirements for Surface Coatings containing less than 1.0% Lead), and 111.139 of this title (relating to Exemptions)) are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph.

(K) Any requirements noted in this definition which have been promulgated by the EPA, but have not been adopted by and delegated to the commission are federally enforceable only. These applicable requirements will be designated as federally enforceable only in the permit.

(3) **Deviation** - Any indication of noncompliance with a term or condition of the permit, as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit.

(4) **Draft permit** - The version of a permit available for the 30-day comment period under public announcement or public notice and affected state review.

(5) **Emission unit** - The smallest discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants.

(A) A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emission unit. The fugitive emissions shall be collectively considered as an emission unit based on their relationship to the associated process.

(B) The term may also be used in this chapter to refer to a group of similar emission units.

(C) This term is not meant to alter or affect the definition of the term "unit" for purposes of the acid rain program.

(6) **Final action** - Issuance or denial of the permit by the executive director.

(7) **General operating permit** - A permit by rule issued under Subchapter F of this chapter (relating to General Operating Permits), under which multiple stationary sources may be authorized to operate.

(8) **Major source** -

(A) For pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate the following quantities:

(i) ten tons per year (tpy) or more of any single hazardous air pollutant listed under FCAA, §112(b) (relating to Hazardous Air Pollutants);

(ii) 25 tpy or more of any combination of hazardous air pollutant listed under FCAA, §112(b); or

(iii) any quantity less than those identified in clause (i) or (ii) of this subparagraph established by the EPA through rulemaking.

(B) For radionuclides regulated under FCAA, §112, the term "major source" shall have the meaning specified by the EPA by rule.

(C) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (Btu) per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil-fuel-fired steam electric plants of more than 250 million Btu per hour heat input; or

(xxvii) any stationary source category regulated under FCAA, §111 (relating to Standards of Performance for New Stationary Sources) or §112 for which the EPA has made an affirmative determination under FCAA, §302(j) (relating to Definitions).

(D) Any site, except those exempted under FCAA, §182(f) (relating to NO_x Requirements), which, in whole or in part, is a major source under FCAA, Title I, Part D (relating to Plan Requirements for Nonattainment Areas), including the following:

(i) any site with the potential to emit 100 tpy or more of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) in any ozone nonattainment area classified as "marginal or moderate";

(ii) any site with the potential to emit 50 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "serious";

(iii) any site with the potential to emit 25 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "severe";

(iv) any site with the potential to emit ten tpy or more of VOC or NO_x in any ozone nonattainment area classified as "extreme";

(v) any site with the potential to emit 100 tpy or more of carbon monoxide in any carbon monoxide nonattainment area classified as "moderate";

(vi) any site with the potential to emit 50 tpy or more of carbon monoxide in any carbon monoxide nonattainment area classified as "serious";

(vii) any site with the potential to emit 100 tpy or more of inhalable particulate matter (PM-10) in any PM-10 nonattainment area classified as “moderate”;

(viii) any site with the potential to emit 70 tpy or more of PM-10 in any PM-10 nonattainment area classified as “serious”; and

(ix) any site with the potential to emit 100 tpy or more of lead in any lead nonattainment area.

(E) The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source under subparagraph (D) of this paragraph, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this paragraph.

(F) Any temporary source which is located at a site for less than six months shall not affect the determination of major for other stationary sources at a site under this chapter or require a revision to the existing permit at the site.

(G) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or

under common control, to determine whether the units or stations are major sources under subparagraph (A) of this paragraph.

(9) **Notice and comment hearing** - Any hearing held under this chapter. Hearings held under this chapter are for the purpose of receiving oral and written comments regarding draft permits.

(10) **Permit or federal operating permit** -

(A) any permit, or group of permits covering a site, that is issued, renewed, or revised under this chapter; or

(B) any general operating permit, or group of general operating permits, adopted by the commission under this chapter.

(11) **Permit application** - An application for an initial permit, permit revision, permit renewal, permit reopening, general operating permit, or any other similar application as may be required.

(12) **Permit holder** - A person who has been issued a permit or granted the authority by the executive director to operate under a general operating permit.

(13) **Permit revision** - Any administrative permit revision, minor permit revision, or significant permit revision that meets the related requirements of Subchapter C of this chapter (relating to Permits Issuances, Revisions, Reopenings, and Renewals).

(14) **Potential to emit** - The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration or preconstruction authorization restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in acid rain provisions of the FCAA or the acid rain rules.

(15) **Preconstruction authorization** - Any authorization to construct or modify an existing facility or facilities under Chapter 116 of this title. In this chapter, references to preconstruction authorization will also include the following:

(A) any requirement established under FCAA, §112(g) (relating to Modifications) after delegation of §112(g) to the commission;

(B) any requirement established under FCAA, §112(j) (relating to Equivalent Emission Limitation by Permit) after delegation of §112(j) to the commission; and

(C) where appropriate, any preconstruction authorization under Chapter 120 of this title (relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities) (as effective until December 1996) or Chapter 121 of this title (relating to Control of Air Pollution from Municipal Solid Waste Management Facilities).

(16) **Proposed permit** - The version of a permit that the executive director forwards to the EPA for a 45-day review period.

(17) **Provisional terms and conditions** - Temporary terms and conditions, established by the permit holder for an emission unit affected by a change at a site, or the promulgation or adoption of an applicable requirement or state-only requirement, under which the permit holder is authorized to operate prior to a revision or renewal of a permit or prior to the granting of a new authorization to operate.

(A) Provisional terms and conditions will only apply to changes not requiring prior approval by the executive director under Subchapter C or Subchapter F of this chapter.

(B) Provisional terms and conditions shall not authorize the violation of any applicable requirement or state-only requirement.

(C) Provisional terms and conditions shall be consistent with and accurately incorporate the applicable requirements and state-only requirements.

(D) Provisional terms and conditions for applicable requirements and state-only requirements shall include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards;

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph;
and

(iii) where applicable, the specific regulatory citations identifying any repealed requirements.

(18) **Renewal** - The process by which a permit or an authorization to operate under a general operating permit is renewed at the end of its term under §§122.241, 122.501, or 122.505 of this title (relating to Permit Renewals; General Operating Permits; or Renewal of the Authorization to Operate Under a General Operating Permit).

(19) **Reopening** - The process by which a permit is reopened for cause and terminated or revised under §122.231 of this title (relating to Permit Reopenings).

(20) **Site** - The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). If a research and development operation does not produce products for commercial sale, it shall be treated as a separate site from any manufacturing facility with which it is collocated.

(21) **State-only requirement** - Any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the FCAA or under any applicable requirement.

(22) **Stationary source** - Any building, structure, facility, or installation that emits or may emit any air pollutant.

§122.12. Acid Rain Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Acid rain permit** - The legally binding and segregable portion of the federal operating permit issued under this chapter, including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

(2) **Acid rain program** - The national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with FCAA, Title IV, contained in 40 CFR 72, 73, 74, 75, 76, 77, and 78.

(3) **Designated representative** - The responsible individual authorized by the owners and operators of an affected source and of all affected units at the site, as evidenced by a certificate of representation submitted in accordance with the acid rain program, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Such matters include, but are not limited to: the holdings, transfers, or dispositions of allowances allocated to a unit; and the submission of or compliance with acid rain permits, permit applications, compliance plans, emission monitoring plans, continuous emissions monitor (CEM), and continuous opacity monitor (COM) certification notifications, CEM and COM certification and applications, quarterly monitoring and emission reports, and annual compliance certifications. Whenever the term "responsible official" is used in this chapter, it shall refer to the "designated representative" with regard to all matters under the acid rain program.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

GENERAL REQUIREMENTS

§§122.110, 122.120, 122.121

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.110. Delegation of Authority to Executive Director.

- (a) The executive director may take action on any permit on behalf of the commission.

- (b) The executive director may delegate authority, by memorandum, to the director of the Operating Permits Division to take action on any permit on behalf of the commission; but may not delegate authority to other agency personnel.

§122.120. Applicability.

Owners and operators of one or more of the following are subject to the requirements of this chapter:

(1) any site that is a major source as defined in §122.10 of this title (relating to General Definitions);

(2) any site with an affected unit as defined in 40 CFR 72 subject to the requirements of the Acid Rain Program;

(3) any solid waste incineration unit required to obtain a permit under FCAA, §129(e) (relating to Solid Waste Combustion); or

(4) any site that is a non-major source which the EPA, through rulemaking, has designated as no longer exempt from the obligation to obtain a permit. For the purposes of this chapter, those sources may be any of the following:

(A) any non-major source so designated by the EPA, and subject to a standard, limitation, or other requirement under FCAA, §111 (relating to Standards of Performance for New Stationary Sources);

(B) any non-major source so designated by the EPA, and subject to a standard or other requirement under FCAA, §112 (relating to Hazardous Air Pollutants), except for FCAA, §112(r) (relating to Prevention of Accidental Releases); or

(C) any non-major source in a source category designated by the EPA.

§122.121. Prohibition on Operation.

Except as provided in §122.138 of this title (relating to Application Shield), owners and operators of sites identified in §122.120 of this title (relating to Applicability) shall not operate emission units at those sites without a permit issued or granted under this chapter.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

PERMIT APPLICATION

§§122.130-122.134, 122.136, 122.138-122.140

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.130. Initial Application Due Dates.

(a) Interim operating permit program.

(1) Owners and operators of the following sites shall submit initial applications under the interim operating permit program:

(A) any site with an affected unit subject to the requirements of the Acid Rain Program;

(B) any site with the following primary Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) (for purposes of this subparagraph, each site shall have only one primary SIC code):

(i) Petroleum and Natural Gas, 1311;

(ii) Natural Gas Liquids, 1321;

(iii) Electric Services, 4911;

(iv) Natural Gas Transmission, 4922;

(v) Natural Gas Transmission and Distribution, 4923; or

(vi) Petroleum Bulk Stations and Terminals, 5171.

(2) Except as provided in paragraph (3) of this subsection, applications for sites subject to the interim operating permit program shall be submitted by January 25, 1997.

(3) If an owner or operator has more than one site listed in paragraph (1)(B) of this subsection, the owner or operator shall submit initial permit applications for no less than 10% of those sites by January 25, 1997. Applications for the remaining sites shall be submitted by July 25, 1997.

This paragraph does not apply to any site with an affected source.

(b) Full operating permit program.

(1) Owners and operators of any site subject to the requirements of this chapter on February 1, 1998, except those identified in subsection (a) of this section, shall submit abbreviated initial applications by February 1, 1998.

(2) The remaining application information for any site for which the applicant is applying for a general operating permit and for sites with the following primary SIC major groups shall be submitted by July 25, 1998 (for purposes of this section, each site shall have only one primary SIC code):

(A) Mining and Quarrying of Nonmetallic Mineral, Except Fuels, 14;

(B) Food and Kindred Products, 20;

(C) Lumber and Wood Products, Except Furniture, 24;

(D) Rubber and Miscellaneous Plastics Products, 30;

(E) Stone, Clay, Glass, and Concrete Products, 32;

(F) Fabricated Metal Products, Except Machinery and Transportation
Equipment, 34;

(G) Motor Freight Transportation and Warehousing, 42; and

(H) Automotive Repair, Services, and Parking, 75.

(3) Except as specified in paragraph (2) of this subsection, the executive director shall inform the applicant in writing of the deadline for submitting the remaining application information.

(c) After the effective date of the interim or full operating permit program. Owners and operators of sites identified in §122.120 of this title (relating to Applicability) that become subject to the interim or full program after the applicable application due dates identified in subsection (a) or (b) of this section, are subject to the following requirements.

(1) If the site is a new site or a site that will become subject to the program as the result of a change at the site, the owner or operator shall not operate the change, or the new emission

units, before an abbreviated application is submitted under this chapter. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(2) If the site becomes subject to the program as the result of an action by the executive director or the EPA, the owner or operator will submit an application no later than 12 months after the action that subjects the site to the requirements of this chapter.

(d) Applications submitted under 40 CFR 71 (relating to Federal Operating Permit Programs).

(1) If 40 CFR 71 is implemented in Texas by the EPA, applications will only be required to be submitted to the EPA.

(2) If all or part of 40 CFR 71 is delegated to the commission, information required by this chapter and consistent with the delegation will be required to be submitted to the commission.

§122.131. Phased Application Process for Initial Applications.

(a) Sites with 75 or more emission units in a nonattainment area, and sites with 150 or more emission units in an attainment area may qualify for the phased application process. Eligibility for the phased application process shall be based on the number of emission units individually listed in all the initial permit applications for the site.

(b) Applicants with sites that qualify for the phased application process may submit in the initial permit application detailed applicability determination information required by §122.132(e)(3) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits) for a portion of the emission units with a proposed schedule for the submission of the remaining detailed applicability determination information. For each emission unit, the initial permit application must include detail sufficient to clarify the applicant's obligations with respect to its applicable requirements, including emission limits and compliance terms.

(c) Any detailed applicability determination information not submitted with the initial permit application shall be submitted according to the schedule included as a term or condition of the permit.

(d) The schedule in the permit must require the incorporation of the remaining detailed applicability determinations into the permit at least annually through the reopening or renewal process. The applications for permit reopenings shall be submitted no later than 30 days after the end of each 12-month period after initial issuance.

(e) All detailed applicability determinations shall be codified in the permit no later than July 25, 2003, or during the first permit renewal, whichever occurs first.

(f) The reopening requirements of this section may be satisfied by the procedures for significant permit revisions or permit renewals.

§122.132. Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits.

(a) A permit application shall provide any information, including confidential information as addressed in Chapter 1 of this title (relating to Purpose of Rules, General Provisions), required by the executive director to determine the applicability of, or to codify, any applicable requirement or state-only requirement.

(b) An application for a general operating permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general operating permit.

(c) An applicant may submit an abbreviated initial permit application, containing only the information in this section deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information, except where the deadline is specified in §122.130(b)(2) of this title (relating to Initial Application Due Dates).

(d) An application for a site qualifying under §122.131 of this title (relating to Phased Application Process for Initial Applications) may be submitted under the phased application process.

(e) An application shall include, but is not limited to, the following information:

(1) a general application form and all information requested by that form;

(2) for each emission unit, information regarding the general applicability determinations, which includes the following:

(A) the general identification of each potentially applicable requirement and potentially applicable state-only requirement (e.g., NSPS Kb);

(B) the applicability determination for each requirement identified under subparagraph (A) of this paragraph; and

(C) the basis for each determination made under subparagraph (B) of this paragraph;

(3) for each emission unit, except as provided in §122.131 of this title, information regarding the detailed applicability determinations, which includes the following:

(A) the specific regulatory citations in each applicable requirement or state-only requirement identifying the following:

(i) the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements

associated with the emission limitations and standards identified under clause (i) of this subparagraph;

(B) the basis for each applicability determination identified under subparagraph

(A) of this paragraph;

(4) a compliance plan including the following information:

(A) the following statement: "As the responsible official it is my intent that all emission units shall continue to be in compliance with all applicable requirements they are currently in compliance with, and all emission units shall be in compliance by the compliance dates with any applicable requirements that become effective during the permit term.";

(B) for all emission units addressed in the application, an indication of the compliance status with respect to all applicable requirements, based on, at a minimum, any compliance method specified in the applicable requirements;

(C) for any emission unit not in compliance with the applicable requirements identified in the application, the following information:

(i) the method used for assessing the compliance status of the emission unit;

(ii) a narrative description of how the emission unit will come into compliance with all applicable requirements;

(iii) a compliance schedule (resembling and at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the site is subject), including remedial measures to bring the emission unit into compliance with the applicable requirements; and

(iv) a schedule for the submission, at least every six months after issuance of the permit, of certified progress reports;

(5) if applicable, information requested by the nationally-standardized forms for the acid rain portions of permit applications, and compliance plans required by the acid rain program;

(6) if applicable, a statement certifying that a risk management plan, or a schedule to submit a risk management plan has been submitted to the appropriate agency in accordance with FCAA, §112(r)(7) (relating to Prevention of Accidental Releases);

(7) for applicants electing the phased application process under §122.131 of this title, a proposed schedule for the incorporation of the remaining detailed applicability determinations into the permit;

(8) for applicants requesting a permit shield, any information requested by the executive director in order to determine whether to grant the shield; and

(9) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(f) The executive director shall make a copy of the permit application accessible to the EPA.

§122.133. Timely Application.

A timely application for a permit is one that is submitted as follows:

(1) for initial permit issuance, in accordance with §122.130 of this title (relating to Initial Application Due Dates);

(2) for a permit renewal, at least six months, but no earlier than 18 months, before the date of permit expiration;

(3) for the initial authorization to operate under the general operating permit, in accordance with §122.130 of this title;

(4) for a renewal of an authorization to operate under a general operating permit, at least six months, but no earlier than 18 months, before the date of expiration of the authorization; and

(5) for the authorization to operate under a revised general operating permit, by the effective date of the revised general operating permit.

§122.134. Complete Application.

(a) An application is complete on the 61st day after receipt by the executive director, unless the executive director has requested additional information or otherwise notified the applicant of incompleteness.

(b) Except as provided in subsection (c) of this section, a complete application for a permit shall include the following:

(1) for initial permit issuance, all information required in §122.132 of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits);

(2) for permit renewal, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted;

(3) for the initial authorization to operate under a general operating permit, information necessary to determine qualification for, and to assure compliance with, the general operating permit;

(4) for the renewal of an authorization to operate under a general operating permit, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted; or

(5) for the authorization to operate under a revised general operating permit, the information required by §122.504 of this title (relating to Application Revisions When a General Operating Permit is Revised or Repealed).

(c) An applicant may submit an abbreviated initial permit application, containing only the information in §122.132 of this title deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information, except where the deadline is specified in §122.130(b)(2) of this title (relating to Initial Application Due Dates).

§122.136. Application Deficiencies.

- (a) All applications submitted under this chapter are subject to the requirements of this section.

- (b) If an applicant omits any relevant facts or submits incorrect information in an application, the applicant shall submit the relevant facts or correct the information no later than 60 days after discovering the error.

- (c) If the site becomes subject to additional applicable requirements or state-only requirements after the application is submitted, the applicant shall submit any information necessary to address those requirements no later than 60 days after becoming subject to the requirements. However, if only an abbreviated application has been submitted, information regarding the newly applicable requirement is not required to be submitted before the executive director requests the remaining application information.

- (d) If while processing an application, the executive director determines that additional information is necessary to evaluate or take final action on that application, the executive director may request the information and set a reasonable deadline for a response.

§122.138. Application Shield.

- (a) Before the executive director takes final action on an application for initial permit issuance, renewal, or a general operating permit, failure to have a permit is not a violation of this chapter provided a timely and complete application has been submitted to the executive director.

(b) The executive director may remove the application shield if the applicant fails to submit by the deadline any additional information necessary to process the application.

§122.139. Application Review Schedule.

The executive director shall take final action to approve, void, or deny permit applications according to the following schedule.

(1) Under the interim operating permit program, for those initial applications required to be submitted by January 25, 1997, or July 25, 1997, the executive director shall take final action on at least one-third of those applications annually through July 25, 1999.

(2) Under the full operating permit program, for those initial applications required to be submitted, by February 1, 1998, the executive director shall take final action on at least one-third of those applications annually.

(3) For any permit application containing an early reduction demonstration under FCAA, §112(i)(5) (relating to Schedule for Compliance), the executive director shall take final action no later than nine months after receipt of the complete application.

(4) Except as noted in paragraphs (1)-(3) of this section, the executive director shall take final action on an application for an initial permit or permit renewal no later than 18 months after the date on which the executive director deems the application complete.

§122.140. Representations in Application.

The only representations in a permit application that become conditions under which a permit holder shall operate are the following:

- (1) representations in an acid rain permit application;
- (2) upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application; and
- (3) any representation in an application which is specified in the permit as being a condition under which the permit holder shall operate.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

PERMIT CONTENT

§§122.142-122.146, 122.148

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.142. Permit Content Requirements.

(a) The conditions of the permit shall provide for compliance with the requirements of this chapter.

(b) Each permit issued under this chapter shall contain the information required by this subsection.

(1) Unless otherwise specified in the permit, each permit shall include the terms and conditions in §§122.143-122.146 of this title (relating to General Terms and Conditions; Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(2) Each permit shall also contain specific terms and conditions for each emission unit regarding the following:

(A) the generally identified applicable requirements and state-only requirements (e.g., NSPS Kb);

(B) except as provided by the phased application process, the detailed applicability determinations, which include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph.

(c) Each permit shall contain specific terms and conditions for each emission unit fulfilling periodic monitoring requirements as required by the executive director sufficient to assure compliance with the applicable requirements.

(d) For permits undergoing the phased application process, the permit shall contain a schedule for phasing in the detailed applicability determinations consistent with §122.131 of this title (relating to Phased Application Process for Initial Applications).

(e) For emission units not in compliance with the applicable requirements at the time of initial permit issuance or renewal, the permit shall contain the following:

(1) a compliance schedule or a reference to a compliance schedule consistent with §122.132(e)(4)(C) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits); and

(2) a requirement to submit progress reports consistent with §122.132(e)(4)(C) of this title. The progress reports shall include the following information:

(A) the dates for achieving the activities, milestones, or compliance required in the compliance schedule;

(B) dates when the activities, milestones, or compliance required in the compliance schedule were achieved; and

(C) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(f) At the executive director's discretion, and upon request by the applicant, the permit may contain a permit shield for specific emission units.

(g) Where an applicable requirement is more stringent than a requirement under the acid rain program, both requirements shall be incorporated into the permit and shall be enforceable requirements of the permit.

§122.143. General Terms and Conditions.

Unless otherwise specified in the permit, the following general terms and conditions shall become terms and conditions of each permit.

(1) Compliance with the permit does not relieve the permit holder of the obligation to comply with any other applicable rules, regulations, or orders of the commission, or of the EPA, except for those requirements addressed by a permit shield.

(2) The term of the permit shall not exceed five years from the date of initial issuance or renewal of the permit. The authorization to operate under a general operating permit shall not exceed five years from the date the authorization was granted or renewed.

(3) Consistent with the authority in Texas Health and Safety Code, Chapter 382, Subchapter B (relating to Powers and Duties of Commission), the permit holder shall allow representatives from the commission or the local air pollution control program having jurisdiction to do the following:

(A) enter upon the permit holder's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) access and copy any records that must be kept under the conditions of the permit;

(C) inspect any emission unit, equipment, practices, or operations regulated or required under the permit; and

(D) sample or monitor substances or parameters for the purpose of assuring compliance with the permit at any time.

(4) The permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit. Except as provided for in paragraph (5) of this section, any noncompliance with either the terms or conditions codified in the permit or the provisional terms and conditions, if any, constitutes a violation of the FCAA and the TCAA and may be grounds for enforcement action. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of the permit.

(5) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal or before the granting of a new authorization to operate.

(6) In every case, the applicable requirements and state-only requirements are always enforceable.

(7) The permit may be reopened for cause and revised or terminated. Permit terms or conditions remain enforceable regardless of the following:

(A) the filing of a request by the permit holder for a permit revision, reopening, or termination;

(B) a notification of planned changes or anticipated noncompliance; or

(C) a notice of intent by the executive director for a permit reopening or termination.

(8) The executive director may request any information necessary to determine compliance with the permit or whether cause exists for revising, reopening, or terminating the permit. The permit holder shall submit the information no later than 60 days after the request, unless the deadline is extended by the executive director.

(9) If a federally enforceable only applicable requirement is adopted by the commission, the permit holder shall submit an application for an administrative permit revision for the removal of the federally enforceable only designation. The application shall be submitted no later than 12 months after the adoption of the requirement by the commission.

(10) If a state-only requirement is determined by the commission to be an applicable requirement, the permit holder shall submit an application for a significant permit revision for the incorporation of the requirement into the permit as an applicable requirement. The application shall be submitted no later than 12 months after the determination by the commission that the requirement is an applicable requirement.

(11) The permit holder shall pay fees to the commission consistent with the fee schedule in §101.27 of this title (relating to Emissions Fees).

(12) Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(13) The permit does not convey any property rights of any sort, or any exclusive privilege.

(14) A copy of the permit shall be maintained at the location specified in the permit.

(15) For general operating permits, a copy of the permit, the permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(16) Any report or annual compliance certification required by a permit to be submitted to the executive director shall contain a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(17) Representations in acid rain applications and applicability determinations and the bases for the determinations in general operating permit applications are conditions under which the permit holder shall operate.

(18) No emissions from emission units addressed in the permit shall exceed allowances lawfully held under the acid rain program.

(19) State-only requirements will not be subject to any of the following requirements of this chapter: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

§122.144. Recordkeeping Terms and Conditions.

Unless otherwise specified in the permit, the following recordkeeping requirements shall become terms and conditions of the permit.

(1) The permit holder shall maintain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. If an applicable requirement or state-only requirement specifies a longer data retention period, the records shall be maintained for at least the period of time specified in the applicable requirement or state-only requirement. The monitoring records shall include, but are not limited to, the following:

(A) the date, place as defined in the permit, and time of sampling or measurements;

(B) the date(s) analyses were performed;

(C) the company or entity that performed the analyses;

(D) the analytical techniques or methods used;

(E) the results of such analyses;

(F) the relevant operating conditions which are deemed necessary to characterize emission rates at the time of sampling or measurement;

(G) the data from all calibration and maintenance records;

(H) all strip-chart recordings for continuous monitoring instrumentation; and

(I) copies of all reports required by the permit.

(2) Records may be stored electronically.

(3) All records required to be maintained by this chapter shall be maintained at the location specified in the permit or in the authorization to operate under a general operating permit.

(4) Records required by the permit, including confidential information, shall be provided, upon request, in a legible form, to representatives from the commission or the local air pollution control program having jurisdiction within a reasonable period of time.

(5) The EPA may require that the records be sent directly to the EPA along with any claim of confidentiality. Any confidentiality claim should be made in accordance with federal law, including 40 CFR 2.

(6) Permit holders shall maintain records of the duration of the stay at a site of any temporary source.

§122.145. Reporting Terms and Conditions.

Unless otherwise specified in the permit, the following reporting requirements shall become terms and conditions of the permit.

(1) Monitoring reports.

(A) Reports of monitoring data required to be submitted by an applicable requirement, shall be submitted to the executive director.

(B) Reports shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting.

(C) The monitoring reports shall be submitted no later than 30 days after the end of each reporting period.

(D) The reporting of monitoring data does not change the data collection requirements specified in an applicable requirement.

(2) Deviation reports.

(A) The permit holder shall report, in writing, to the executive director all instances of deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit.

(B) A deviation report shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting. However, no report is required if no deviations occurred over the six-month reporting period.

(C) The deviation reports shall be submitted no later than 30 days after the end of each reporting period.

(D) If a deviation is reported, in writing, under paragraph (3) of this section, the deviation report need only include a reference to the unauthorized emissions, upset or maintenance, and start-up and shutdown report containing details related to the deviation.

(3) Unauthorized emissions, upset or maintenance, and start-up and shutdown reports.

(A) Reports of deviations resulting from any unauthorized emissions, upset or maintenance, and start-up and shutdown shall be submitted in accordance with §§101.6, 101.7, and 101.11 of this title (relating to Upset Reporting and Recordkeeping Requirements; Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; and Exemptions from Rules and Regulations).

(B) Nothing in this paragraph shall relieve the permit holder from submitting any deviation report in accordance with the requirements of paragraph (2) of this section.

§122.146. Compliance Certification Terms and Conditions.

Unless otherwise specified in the permit, the following compliance certification requirements shall become terms and conditions of the permit.

(1) The permit holder shall certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance.

(2) The certification shall be submitted no later than 30 days after the end of the certification period.

(3) The executive director shall make a copy of the compliance certification accessible to the EPA.

(4) The certification shall be based on at a minimum, the monitoring method (or recordkeeping method, if appropriate) required by the permit to be used to assess compliance.

(5) The annual compliance certification shall include or reference the following information:

(A) the identification of each term, or condition, of the permit for which the permit holder is certifying compliance and the method used for determining the compliance status of each emission unit;

(B) for emission units addressed in the permit for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period; and

(C) for any emission unit addressed in the permit for which one or more deviations occurred over the certification period, the following information indicating the potentially intermittent compliance status of the emission unit:

(i) the identification of the emission unit;

(ii) the applicable requirement for which a deviation occurred;

(iii) the monitoring method (or recordkeeping method, if appropriate) used to assess compliance;

(iv) the frequency with which sampling, monitoring, or recordkeeping was required to be conducted by the monitoring or recordkeeping requirement of the permit; and

(v) the total number of times that the assessment required by the monitoring or recordkeeping method specified in the permit indicated that a deviation had occurred;

(D) the identification of all other terms and conditions of the permit for which compliance was not achieved.

§122.148. Permit Shield.

(a) At the discretion of the executive director, and upon request by the applicant, the permit may contain a permit shield for specific emission units. The permit shield is a special condition stating that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.

(b) In order for the executive director to determine that an emission unit qualifies for a permit shield, all information required by §122.132(e)(2), (3) and (8) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits) must be submitted with the permit application.

(c) The permit shall contain the following information for the emission units addressed by the permit shield:

(1) determinations by the executive director establishing one of the following:

(A) potentially applicable requirements or potentially applicable state-only requirements specifically identified during the application review process are not applicable to the source; or

(B) duplicative, redundant, and/or contradicting applicable requirements or state-only applicable requirements specifically identified during the application review process are superseded by a more stringent or equivalent requirement; and

(2) a statement that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.

(d) Any permit that does not expressly state that a permit shield exists shall not provide a permit shield.

(e) Permit shield provisions shall not be modified by the executive director until notification is provided to the permit holder. No later than 90 days after notification of a change in a determination made by the executive director, the permit holder shall apply for the appropriate permit revision to reflect the new determination.

(f) Provisional terms and conditions are not eligible for a permit shield. Any permit term or condition, under a permit shield, shall not be protected by the permit shield if it is replaced by a provisional term or condition or the basis of the term or condition changes.

(g) Nothing in this section shall alter or affect the following:

(1) the provisions of FCAA, §303 (relating to Emergency Orders);

(2) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(3) the applicable requirements of the acid rain program; or

(4) the ability of EPA to obtain information from a source under FCAA, §114 (relating to Inspections, Monitoring, and Entry).

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

MISCELLANEOUS

§122.161, §122.165

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.161. Miscellaneous.

(a) The commission shall not grant a variance, under Texas Health and Safety Code, §382.028, from the requirements of this chapter.

(b) Unless specifically noted otherwise, requirements under this chapter do not supersede, substitute for, or replace any requirement under any other rule, regulation, or order of the commission or the EPA.

(c) None of the requirements in this chapter shall be construed as prohibiting the construction of new or modified facilities, provided that the owner or operator has obtained any necessary preconstruction authorization.

§122.165. Certification by a Responsible Official.

(a) The following documents shall include a signed certification of accuracy and completeness:

- (1) applications for initial permit issuance;
- (2) applications for revisions;
- (3) applications for reopenings;
- (4) applications for renewals;
- (5) applications for general operating permits;
- (6) general operating permit application revisions;
- (7) reports required by the permit; and

(8) annual compliance certifications.

(b) The certification of accuracy and completeness shall include the following statement: “I certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the attached documents are true, accurate, and complete.”

(c) The certification shall be signed by the responsible official, who shall be one of the following:

(1) for a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) the delegation of authority to such representatives is approved in advance by the permitting authority;

(2) for a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) for a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(4) for affected sources:

(A) the designated representative insofar as actions, standards, requirements, or prohibitions under FCAA, Title IV or the regulations promulgated thereunder are concerned; and

(B) the designated representative, the alternate designated representative, or a person meeting the provisions of paragraphs (1), (2), or (3) of this subsection for any other purposes under 40 CFR 70.

(d) The responsible official need not be the same person for each required submittal, and the selection of a responsible official does not preclude the naming of a separate technical contact.

(e) The duly authorized representative need not be the same person for each required submittal, and the selection of a duly authorized representative does not preclude the naming of a separate technical contact.

(f) If the responsible official for the permit changes, the permit holder must maintain documentation of the change with permit. The permit holder must notify the executive director of any change in the responsible official no later than at the next submittal requiring certification under this chapter.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER C : INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND
RENEWALS**

INITIAL PERMIT ISSUANCES

§122.201, §122.204

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public

hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.201. Initial Permit Issuance.

(a) A permit may be issued by the executive director provided the following:

(1) the executive director has received a complete permit application under §122.134 of this title (relating to Complete Application);

(2) the conditions of the permit provide for compliance with the requirements of this chapter; and

(3) the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied.

(b) The permit will not be final until the public petition requirements of this chapter have been satisfied.

(c) The executive director shall make a copy of the permit application, the permit, and any required notices accessible to the EPA.

(d) All permits shall have terms not to exceed five years from initial issuance or renewal.

(e) At the discretion of the executive director, more than one permit may be issued for a site.

(f) Neither the adoption of a general operating permit nor the granting of an authorization to operate under a general operating permit shall be required to meet the requirements of this section. General operating permits are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

(g) If the permit application does not meet the criteria of this chapter, the executive director may deny the permit application.

§122.204. Temporary Sources.

(a) A temporary source is a stationary source which changes location to another site at least once during any five-year period.

(b) An owner or operator of any temporary source subject to the requirements of this chapter, shall apply to the executive director for a permit consistent with this chapter.

(c) Each temporary source which is located at a site for less than six months shall not affect the determination of major for other stationary sources at a site under this chapter or require a revision to any existing permit at the site.

(d) Permit holders shall maintain records of the duration of the stay at a site of any temporary source.

(e) A single permit may be issued authorizing similar operations by the same temporary source at multiple temporary locations.

(f) The temporary source permit holder shall notify the executive director at least ten days in advance of each change in location, unless the executive director allows for a shorter notice due to an emergency.

(g) No affected unit subject to the acid rain program shall be permitted as a temporary source.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER C : INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND
RENEWALS**

PERMIT REVISIONS

§§122.210-122.213, 122.215-122.217, 122.219-122.221

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public

hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.210. General Requirements for Revisions.

(a) The permit holder shall submit an application to the executive director for a revision to a permit for those activities at a site which change, add, or remove one or more permit terms or conditions.

(b) If applicable, the permit holder shall submit an application to the executive director for a revision to a permit to address the following:

(1) the adoption of an applicable requirement previously designated as federally enforceable only;

(2) the promulgation or adoption of a new applicable requirement;

(3) the adoption of a new state-only requirement; or

(4) a change in a state-only designation.

(c) The executive director shall make a copy of the permit application, the permit, and any required notices accessible to the EPA.

(d) Provisional terms and conditions are not eligible for a permit shield.

(e) The permit holder may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision submitted.

(f) Changes qualifying as administrative permit revisions may be processed as minor or significant permit revisions at the permit holder's discretion.

(g) Changes qualifying as minor permit revisions may be processed as significant permit revisions at the permit holder's discretion.

(h) General operating permits and authorizations to operate under general operating permits are not subject to the permit revision requirements of this subchapter, but instead are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

§122.211. Administrative Permit Revisions.

A change to a permit may qualify as an administrative permit revision if the change satisfies one or more of the following:

(1) corrects typographical errors;

(2) increases the frequency of monitoring or reporting requirements without changing any existing emission limitations or standards;

(3) changes the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit;

(4) removes a federally enforceable only designation and does not otherwise affect the permit; or

(5) affects or adds a state-only requirement;

(6) is similar to those in paragraphs (1)-(5) of this section and approved by EPA.

§122.212. Applications for Administrative Permit Revisions.

(a) An application must include a record of any changes that took place over the previous 12 months that have not already been incorporated into the permit.

(b) An application must also include, at a minimum, the following:

(1) a description of each change;

(2) a description of the emission units affected;

(3) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions) that codify the new applicable requirements or state-only requirements;

(4) a statement that each change qualifies for an administrative permit revision; and

(5) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

§122.213. Procedures for Administrative Permit Revisions.

(a) If the following requirements are met, changes at a site or required as the result of the adoption of a state-only requirement, requiring an administrative permit revision may be operated before issuance of the revision:

(1) the permit holder complies with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(2) the permit holder records the information required in §122.212(b) of this title (relating to Applications for Administrative Permit Revisions) before the change is operated; and

(3) the permit holder maintains the information required by §122.212(b) of this title with the permit until the permit is revised.

(b) In every case, the applicable requirements and state-only requirements are always enforceable.

(c) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal.

(d) The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after the end of each 12-month period after permit issuance or renewal.

(e) An administrative permit revision may be issued by the executive director provided the following:

(1) the change meets the criteria for an administrative permit revision;

(2) the executive director has received an application; and

(3) the conditions of the permit provide for compliance with the requirements of this chapter.

(f) The executive director shall take final action on an administrative permit revision no later than 60 days after receipt of the application.

§122.215. Minor Permit Revisions.

A change to a permit that does not meet the criteria for an administrative permit revision or significant permit revision qualifies as a minor permit revision. Minor permit revisions include, but are not limited to, any change that satisfies one or more of the following:

- (1) adds a new permit term or condition;
- (2) removes one or more emission units from the permit that are no longer operated at the site;
- (3) adds an approved alternative means of control; or
- (4) adds a new applicable requirement that is promulgated.

§122.216. Applications for Minor Permit Revisions.

(a) An application must include a record of any changes that took place over the previous 12 months that have not already been incorporated into the permit.

(b) An application must also include, at a minimum, the following:

(1) a description of each change;

(2) a description of the emission units affected;

(3) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions) that codify the new applicable requirements,;

(4) a statement that the change qualifies for a minor permit revision; and

(5) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

§122.217. Procedures for Minor Permit Revisions.

(a) If the following requirements are met, changes at a site requiring a minor permit revision may be operated before issuance of the revision:

(1) the permit holder complies with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(2) the permit holder submits to the executive director a notice containing the information required in §122.216(b) of this title (relating to Applications for Minor Permit Revisions) before the change is operated;

(3) the permit holder maintains the information required by §122.216(b) of this title with the permit until the permit is revised.

(b) For changes to a permit required as the result of the promulgation or adoption of an applicable requirement, the following requirements apply.

(1) The permit holder shall comply with the following:

(A) Chapter 116 of this title;

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title.

(2) The permit holder shall record the information required in §122.216(b)(1)-(4) of this title before the compliance date of the new requirement or effective date of the repealed requirement. The information in §122.216(b)(1)-(5) of this title shall be submitted no later than 45 days after the compliance date of the new requirement or effective date of the repealed requirement.

(3) The permit holder shall maintain the information required in §122.216(b)(1)-(4) of this title with the permit until the permit is revised.

(c) In every case, the applicable requirements are always enforceable.

(d) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal.

(e) The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after the end of each 12-month period after permit issuance or renewal.

(f) A minor permit revision may be issued by the executive director provided the following:

(1) the changes meet the criteria for a minor permit revision;

(2) the executive director has received an application;

(3) the conditions of the permit provide for compliance with the requirements of this

chapter; and

(4) the requirements of this chapter for public announcement, affected state review, and EPA review have been satisfied.

(g) The executive director shall take final action on the permit revision application no later than 15 days after the end of the EPA review period, or no later than 15 days after the resolution of any EPA objection, whichever is later.

§122.219. Significant Permit Revisions.

A change to a permit shall qualify as a significant permit revision if the change satisfies one or more of the following:

(1) is a significant change to existing monitoring, recordkeeping, reporting, or testing terms or conditions for an emission unit remaining in operation when the applicable requirement has not been revised or repealed through rulemaking;

(2) removes an emission limitation or standard established through the permit for an emission unit remaining in operation when the basis of the determination at the site remains unchanged and the applicable requirement or has not been revised or repealed through rulemaking;

(3) changes a state-only designation to an applicable requirement designation;

(4) affects or adds a term or condition resulting from emissions averaging as allowed under an applicable requirement;

(5) affects or adds a term or condition resulting from a request by the permit holder to eliminate duplicative, redundant, and/or contradicting requirements, under §122.148(c)(1)(B) of this title (relating to Permit Shield);

(6) affects or adds an applicable emission limitation, standard, monitoring, recordkeeping, reporting, or testing requirement that is required, but not specifically defined, by an applicable requirement;

(7) affects or adds a term or condition resulting from early reductions under FCAA, §112(i)(5) (relating to Early Reductions);

(8) affects a term or condition or the basis thereof, that is subject to the permit shield and the permit holder has requested to retain the permit shield for emission units remaining in service;

(9) adds a term or condition for which the permit holder has requested a permit shield;

(10) affects or adds a term or condition resulting from a determination established under FCAA, §112(g) (relating to Modifications) or §112(j) (relating to Equivalent Emission Limitation by Permit); or

(11) is a modification under provisions of FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air Quality or Plan Requirements for Nonattainment Areas).

(12) affects or adds a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

§122.220. Applications for Significant Permit Revisions.

An application must include, at a minimum, the following:

- (1) a description of the change;
- (2) a description of the emission units affected;
- (3) a description of the emissions affected by the change;
- (4) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

§122.221. Procedures for Significant Permit Revisions.

(a) Changes requiring a significant permit revision shall not be operated before the permit is revised. For those changes, the permit holder shall do the following:

(1) comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) submit to the executive director a request for a permit revision including the information required in §122.220 of this title (relating to Applications for Significant Permit Revisions).

(b) A significant permit revision may be issued by the executive director only if all of the following conditions have been satisfied:

(1) the change meets the criteria for a significant permit revision;

(2) the permit holder has submitted an application;

(3) the conditions of the permit provide for compliance with the requirements of this chapter; and

(4) the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied.

(c) The significant permit revision shall not be final until the public petition requirements of this chapter have been satisfied.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER C : INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND
RENEWALS**

PERMIT REOPENINGS

§122.231

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public

hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.231. Permit Reopenings.

(a) The executive director shall reopen a permit for cause. Cause shall be limited to one or more of the following:

(1) the promulgation or adoption of a new applicable requirement affecting emission units at the site, unless one of the following applies:

(A) the new requirement is incorporated into a permit which addresses the emission unit subject to the new requirement; or

(B) the effective date of the requirement is later than the permit expiration date;

(2) the permit contains a material mistake;

(3) inaccurate statements were made in establishing the emissions standards or other terms and conditions of the permit;

(4) the executive director determines that the permit must be revised to assure compliance with the applicable requirements; or

(5) a phased application schedule in the permit requires a reopening.

(b) The following procedures shall apply if EPA initiates a reopening by notifying the executive director in writing that cause, as defined in this section, exists to terminate or revise a permit.

(1) The executive director shall submit a proposed determination regarding the reopening to the EPA no later than 90 days after receipt of the notification.

(2) Upon receipt of the proposed determination, the EPA shall have 90 days to object, in writing, to the proposed determination.

(3) The executive director shall have 90 days from the end of the EPA review period, or the resolution of any objection, to take action on the reopening.

(c) Reopenings shall be completed and the permit issued by the executive director not later than 18 months after promulgation or adoption of the applicable requirement.

(d) The executive director shall provide 30 day's notice of intent to reopen, unless a shorter notice is authorized by the executive director due to an emergency.

(e) Reopenings shall be subject to the requirements of §122.201 of this title (relating to Initial Permit Issuance). These procedures shall affect only those parts of the permit for which cause to reopen exists.

(f) The permit holder shall provide any information requested by the executive director to complete the reopening.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER C : INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND
RENEWALS**

PERMIT RENEWALS

§122.241, §122.243

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public

hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.241. Permit Renewals.

- (a) The permit shall expire no later than five years from initial issuance or renewal.

- (b) The permit holder shall submit a timely and complete application under §122.133 and §122.134 of this title (relating to Timely Application and Complete Application) for renewal.

(c) The executive director shall provide written notice to the permit holder that the permit is scheduled for review.

(1) The notice will be provided by mail no later than 12 months before the expiration of the permit.

(2) The notice shall specify the procedure for submitting an application.

(3) Failure to receive notice does not affect the expiration date of the permit or the requirement to submit a timely and complete application.

(d) Any information under the phased application process, that is not included in the permit by the first permit renewal, shall be submitted to the executive director with the renewal application.

(e) The permit, when renewed, shall contain specific terms and conditions for each emission unit consistent with §122.142 of this title (relating to Permit Content Requirements).

(f) After the renewal application is submitted and before the permit is renewed, the permit holder may operate the changes at a site in accordance with this subchapter provided that the renewal application is updated to include any provisional terms and conditions. These changes shall be codified in the permit through the renewal process.

(g) Permit expiration terminates the owner's or operator's right to operate, unless a timely and complete renewal application has been submitted. After a timely and complete application submittal, the permit holder may continue to operate under the terms and conditions of the previously issued permit until final action is taken on the permit renewal application.

§122.243. Permit Renewal Procedures.

(a) A permit may be renewed by the executive director only if all of the following conditions have been satisfied:

(1) the executive director has received a complete permit application under §122.134 of this title (relating to Complete Application);

(2) the conditions of the permit will provide for compliance with all requirements of this chapter;

(3) the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied.

(b) The renewed permit will not be final until the public petition requirements of this chapter have been satisfied.

(c) The executive director shall make a copy of the renewal application, draft permit, and any required notices accessible to the EPA.

(d) In determining whether and under what conditions a permit should be renewed, the executive director shall consider the following:

(1) whether the draft permit provides for compliance with all applicable requirements;

and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(e) At the discretion of the executive director, during permit renewal, any permits at a site may be combined into a single permit which satisfies the requirements of this section.

(f) The executive director may not impose requirements less stringent than those of the existing permit unless a determination is made that the proposed changes will meet the requirements of this chapter.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER D : PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE
REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION,
EPA REVIEW, AND PUBLIC PETITION**

PUBLIC ANNOUNCEMENT

§122.312

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for

federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.312. Public Announcement.

- (a) Public announcement requirements apply to minor permit revisions.

(b) The executive director shall publish an announcement of a draft permit for a minor permit revision on the commission's publicly accessible electronic media. The announcement shall contain the following:

(1) permit application number;

(2) permit holder's name and address;

(3) description of the location of the site;

(4) the location and availability of the following:

(A) copies of the complete permit application;

(B) the draft permit;

(C) all other relevant supporting materials in the public files of the agency;

(5) a description of the comment procedures, including the duration of the public announcement comment period; and

(6) name, address, and phone number of the commission office to be contacted for further information.

(c) The executive director shall make a copy of the public announcement and date of publication accessible to the EPA and all local air pollution control agencies with jurisdiction in the county in which the site is located.

(d) The executive director shall furnish a notice of the public announcement to the air pollution control agency of any affected state.

(e) The executive director shall make available for public inspection the draft permit and the complete revision application throughout the comment period during business hours at the commission's central office and at the commission's regional office where the site is located.

(f) The executive director shall receive public comment for 30 days after the announcement of the draft permit is published. During the comment period, any person may submit written comments on the draft permit.

(g) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(h) Public notice requirements satisfy public announcement requirements.

(i) The executive director shall respond to comments consistent with §122.345 of this title
(relating to Notice of Proposed Final Action).

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a
valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER D : PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE
REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION,
EPA REVIEW, AND PUBLIC PETITION**

PUBLIC NOTICE

§122.320, §122.322

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for

federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.320. Public Notice.

(a) Public notice requirements apply to initial issuances, significant permit revisions, reopenings, and renewals.

(b) The executive director shall direct the applicant to publish a notice of a draft permit, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The notice shall contain the following information:

- (1) the permit application number;
- (2) the applicant's or permit holder's name and address;
- (3) a description of the location of the site or proposed location of the site;
- (4) a description of the activity or activities involved in the permit application;
- (5) for significant permit revisions, the air pollutants with emission changes;
- (6) the location and availability of the following:
 - (A) the complete permit application;
 - (B) the draft permit;

(C) all other relevant supporting materials in the public files of the agency;

(7) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing;

(8) the notification that a person who may be affected by the emission of air pollutants from the site is entitled to request a notice and comment hearing; and

(9) the name, address, and phone number of the commission office to be contacted for further information.

(c) One notice may be published for multiple permits at a site with the approval of the executive director.

(d) The applicant shall submit a copy of the public notice and date of publication to the executive director and all local air pollution control agencies with jurisdiction in the county in which the site is located.

(e) The applicant shall submit a statement to the executive director, with a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the sign

required by subsection (h) of this section has been posted consistent with the provisions of that subsection.

(f) The executive director shall make a copy of the permit application, the draft permit, and any required notices accessible to the EPA.

(g) The executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office and at the commission's regional office where the site is located.

(h) At the applicant's expense, a sign shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the executive director may be contacted for further information.

(1) The sign shall meet the following requirements.

(A) The sign shall consist of dark lettering on a white background and shall be not smaller than 18 inches by 28 inches.

(B) The sign shall be headed by the words "APPLICATION FOR FEDERAL OPERATING PERMIT" in no less than two-inch bold face block printed capital lettering.

(C) The sign shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch bold-face block printed capital lettering.

(D) The sign shall include the words "for further information contact" in no less than 1/2-inch lettering.

(E) The sign shall include the words "TEXAS NATURAL RESOURCE CONSERVATION COMMISSION," and the address of the appropriate commission office in no less than one-inch bold-face capital lettering and 3/4-inch bold-face lower case lettering.

(F) The sign shall include the phone number of the appropriate commission office in no less than two-inch bold-face numbers.

(2) The sign shall be in place by the date of publication of the newspaper notice and shall remain in place and legible throughout the period of public comment.

(3) The sign placed at the site shall be located at or near the site main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director must approve the variations before signs are posted.

(4) One sign may be posted for multiple permits at a site with the approval of the executive director.

(i) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft permit.

(j) During the 30-day public notice comment period, any person who may be affected by emissions from a site regulated under this chapter may request in writing a notice and comment hearing on the draft permit.

(k) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(l) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

§122.322. Bilingual Public Notice.

(a) The requirements of this subsection are applicable when either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Education Code, §21.109, and 19 Texas Administrative Code (TAC) §89.2(a) (relating to Professional Development), or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.2(g). Schools not governed by the provisions of 19 TAC §89.2 shall not be considered in determining applicability of the requirements of this section. Each affected facility shall meet the following requirements.

(1) At the applicant's expense, an additional notice shall be published at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.2(a) under 19 TAC §89.2(g), the notice shall be published in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(2) Each notice under this section shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.

(3) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located.

(4) The requirements of this section are waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice.

(5) Notice under this subsection shall only be required to be published within the United States.

(6) If the alternate language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(7) Each alternate language publication shall follow the requirements of §122.320 of this title (relating to Public Notice) not otherwise inconsistent with this subsection.

(8) At the applicant's expense, an additional sign shall be posted in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.2(a) under 19 TAC §89.2(g), the alternate language signs shall be posted in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(9) The alternate language signs shall be posted adjacent to each English language sign required in public notice.

(10) The alternate language signs shall meet all other requirements of §122.320 of this title.

(b) Elementary or middle schools that offer English as a second language under 19 TAC §89.2(d), and are not otherwise affected by 19 TAC §89.2(a), will not trigger the requirements of subsection (a) of this section.

(c) If the notices required by §122.320 of this title and §122.340 of this title (relating to Notice and Comment Hearing) are combined, the combined notice is subject to the requirements of this section.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER D : PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE
REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION,
EPA REVIEW, AND PUBLIC PETITION**

AFFECTED STATE REVIEW

§122.330

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for

federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.330. Affected State Review.

(a) Affected state review requirements apply to initial issuances, minor permit revisions, significant permit revisions, reopenings, and renewals.

(b) An affected state may be New Mexico, Oklahoma, Kansas, Colorado, Arkansas, or Louisiana if either of the following criteria are satisfied:

(1) the state's air quality may be affected by the issuance or denial of a federal operating permit, revision, or renewal; or

(2) that state is within 50 miles of the site or proposed site.

(c) The executive director shall provide notice of the draft permit to any affected state on or before the time notice is provided to the public through public announcement or public notice.

(d) Affected states shall have 30 days from date of notification to comment on the draft permit.

(e) The executive director shall notify the EPA and any affected state, in writing, of the refusal to incorporate any recommendations into the proposed permit that the affected state submitted during the affected state review period. The notice shall include the executive director's reasons for not accepting any of the recommendations.

(f) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(g) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER D : PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE
REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION,
EPA REVIEW, AND PUBLIC PETITION**

EPA REVIEW

§122.350

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for

federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.350. EPA Review.

(a) EPA review requirements apply to initial issuances, minor permit revisions, significant permit revisions, reopenings, and renewals.

(b) The executive director shall submit the proposed permit to the EPA.

(1) For initial issuances, significant permit revisions, reopenings, and renewals the proposed permit shall be submitted to the EPA after the end of the public comment period.

(2) For minor permit revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public announcement period.

(c) Upon receipt of the proposed permit, the EPA shall have 45 days to object, in writing, to the issuance of the proposed permit. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

(d) The executive director may issue the permit provided the following:

(1) the EPA does not object to the issuance of the proposed permit;

(2) the EPA notifies the executive director that the EPA will not object to the issuance of the permit; or

(3) the executive director resolves any objections received.

(e) If the executive director fails, within 90 days of receipt of an objection, to revise the proposed permit and submit a revised permit, if necessary, in response to the objection, the EPA will

issue or deny the permit in accordance with the requirements of the federal program promulgated under FCAA, Title V (relating to Permit).

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

**SUBCHAPTER D : PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE
REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION,
EPA REVIEW, AND PUBLIC PETITION**

PUBLIC PETITION

§122.360

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for

federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.360. Public Petition.

(a) Public petition requirements apply to initial issuances, significant permit revisions, reopenings, and renewals.

(b) If the EPA does not file an objection with the executive director, any person, including the applicant, affected by a decision of the commission under this chapter may petition the EPA to make an objection. After receiving a petition, the EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

(c) The petition must be filed with the EPA within 60 days after the expiration of EPA's 45-day review period.

(d) A copy of the petition shall be provided to the executive director and the applicant by the petitioner.

(e) The petition does not limit the effectiveness of a permit issued by the executive director or the finality of the executive director's action for purposes of an appeal under Texas Health and Safety Code, §382.032.

(f) Petitions shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates in the petition to the EPA that it was not possible to raise the objections within the public comment period, or that the grounds for the objection arose after the public comment period. The petition shall identify all objections.

(g) If the EPA objects to the permit as a result of a petition filed under this section before issuance of the permit, the executive director shall not issue the permit until EPA's objection has been resolved.

(h) If the executive director has issued a permit before receipt of an EPA objection based on a public petition, the permit remains effective and the executive director shall have 90 days from the receipt of an EPA objection to resolve any objection and, if necessary, terminate or revise the permit.

(1) In the event additional information is needed from the permit holder, the executive director may request from EPA a 90-day extension to resolve the objection.

(2) If the executive director fails to resolve the objection, EPA will revise, terminate, or revoke the permit, and the executive director may issue only a revised permit that satisfies EPA's objection.

(3) The permit holder will not be in violation of the requirement to have submitted a timely and complete application.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER E : ACID RAIN PERMITS

§§122.410, 122.412, 122.414

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of

applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.410. Operating Permit Interface.

(a) The commission hereby adopts and incorporates by reference, except as specified in this section, the provisions of 40 Code of Federal Regulations (CFR) Part 72 (with an effective date of July 17, 1995), Part 74 (with an effective date of May 4, 1995), and Part 76 (with an effective date of February 17, 1997) for purposes of implementing an acid rain program that meets the requirements of FCAA, Title IV.

(b) Applicants for sources subject to 40 CFR 72, 74, and 76 shall comply with those requirements.

(c) If the provisions of 40 CFR 72, 74, and 76 conflict with or are not included in this chapter, the provisions of 40 CFR 72, 74, and 76 shall apply and take precedence except for the following.

(1) References to 40 CFR 70 in 40 CFR 72, 74, and 76 shall be satisfied by the requirements of this chapter for the purposes of implementing the acid rain program.

(2) The procedural requirements for acid rain permit revisions in 40 CFR 72, Subpart H (relating to Acid Rain Permit Revisions) shall be satisfied by §122.414 of this title (relating to Acid Rain Permit Revisions).

§122.412. Acid Rain Permit Application Due Dates.

The designated representative shall submit acid rain permit applications for affected units subject to 40 CFR 72, 74, or 76 to the executive director by the following dates.

(1) Sulfur dioxide.

(A) Applications for initial Phase II acid rain permits with an existing unit under 40 CFR 72.6(a)(2) shall be submitted by January 1, 1996.

(B) Applications for Phase II acid rain permits for new units shall be submitted at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

(C) Applications for Phase II acid rain permits for units under 40 CFR §72.6(a)(3)(ii) shall be submitted at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 megawatts of electricity.

(D) Applications for Phase II acid rain permits for units under 40 CFR §72.6(a)(3)(iii) shall be submitted at least 24 months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

(E) Applications for Phase II acid rain permits with a unit under 40 CFR §72.6(a)(3)(iv) or (vii) shall be submitted before the later of January 1, 1998, or the March 1 of the year following the three-year calendar period in which the unit fails to meet the requirements of 40 CFR §72.6(b)(4) or (7).

(F) Applications for Phase II acid rain permits with a unit under 40 CFR §72.6(a)(3)(v) or (vi) shall be submitted before the later of January 1, 1998, or the March 1 following the calendar year in which the unit fails to meet the requirements of 40 CFR §72.6(b)(5) or (6).

(2) Nitrogen oxide. Applications for initial Phase II acid rain permits for nitrogen dioxide for affected units subject to 40 CFR 76 shall be submitted by January 1, 1998, except for early election units.

(3) Opt-in sources. Applications for acid rain permits for opt-in sources to the acid rain program shall be submitted in accordance with 40 CFR 74.

§122.414. Acid Rain Permit Revisions.

(a) For the purposes of implementing the procedural requirements of 40 CFR 72, Subpart H (relating to Acid Rain Permit Revisions Procedural Sections), the following sections of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) shall be substituted.

(1) The provisions of §122.212 and §122.213 of this title (relating to Applications for Administrative Permit Revisions and Procedures for Administrative Permit Revisions) shall be used to satisfy the procedural requirements of 40 §CFR 72.83(b) and §72.80(d) for acid rain permit administrative amendments, except that the executive director shall submit the revised portion of the acid rain permit to EPA no later than ten working days after the date of final action on the revision.

(2) The provisions of §122.216(b) and §122.217(f) of this title (relating to Applications for Minor Permit Revisions and Procedures for Minor Permit Revisions) shall be used to satisfy the

procedural requirements of 40 CFR §72.82 for acid rain fast-track modifications with the following restrictions.

(A) The designated representative shall provide a copy of the complete application requesting a minor permit revision to the executive director, the EPA, and any person entitled to a written notice (as defined in 40 CFR §72.65(b)(1)(ii), (iii), and (iv)).

(B) Changes shall not be operated before the permit is revised.

(C) Provisional terms and conditions do not apply.

(D) The executive director shall initiate procedures for public announcement within five days of receipt of the application request. However, the application rather than the draft permit shall be the subject of public announcement.

(E) The executive director shall consider the permit application and comments received and provide approval, in whole or in part with changes or conditions as appropriate, or disapproval of the permit revision within 30 days of the close of the public announcement period.

(3) The provisions of §122.220 and §122.221 of this title (relating to Applications for Significant Permit Revisions and Procedures for Significant Permit Revisions) shall be used to satisfy the procedural requirements of 40 CFR §72.81(c) for acid rain permit modifications.

(4) The provisions of §122.231 of this title (relating to Permit Reopenings) shall be used to satisfy the procedural requirements of 40 CFR §72.85 for acid rain permit reopenings.

(b) The following provisions shall apply to the procedural requirements for acid rain permit revisions.

(1) Changes qualifying as administrative permit revisions may be processed as minor or significant permit revisions at the option of the designated representative.

(2) Changes qualifying as minor permit revisions may be processed as significant permit revisions at the option of the designated representative.

(3) The designated representative may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision submitted.

(4) Provisional terms and conditions are not eligible for a permit shield.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.

SUBCHAPTER F : GENERAL OPERATING PERMITS

PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

§§122.501-122.506, 122.508

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.030 and §382.031, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits

to the administrator; and notification to other governmental entities for federal operating permits; §382.059 and §382.0591, which provide for the revocation of federal operating permits; and denial of applications for permits if assistance has been provided by former or current employees, §382.061, which provides for appeal of federal operating permits, §382.064, which provides for initial application dates for federal operating permits, §382.085, which prohibits unauthorized emissions, and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents, §5.351, which provides for judicial review of commission acts, §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

§122.501. General Operating Permits.

(a) The commission may adopt by rule a general operating permit for numerous similar stationary sources provided the following:

(1) the conditions of the general operating permit provide for compliance with all requirements of this chapter;

(2) the requirements under §122.506 of this title (relating to Public Notice for General Operating Permits) have been satisfied;

(3) the requirements under §122.330 of this title (relating to Affected State Review) have been satisfied;

(4) the requirements under §122.508 this title (relating to Notice and Comment Hearings for General Operating Permits) have been satisfied;

(5) the requirements under §122.350 of this title (relating to EPA Review) have been satisfied; and

(6) the adoption process is consistent with the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.

(b) General operating permits are subject to the requirements under §122.360 of this title (relating to Public Petition).

(c) Each general operating permit shall identify the terms and conditions with which the permit holder shall comply.

(d) The commission may amend or repeal any general operating permit under the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.

(e) The executive director shall make a copy of the proposed draft general operating permit accessible to the EPA.

(f) General operating permits must be renewed, consistent with the procedural requirements of this section, at least every five years after the effective date.

§122.502. Authorization to Operate.

(a) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who submit a complete application under §122.134 of this title (relating to Complete Application) and who qualify for the general operating permit.

(b) Upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application become conditions under which the permit holder shall operate.

(c) The permit holder may be subject to enforcement action for operating without a permit if the permit holder, having been granted the authorization to operate under a general operating permit, is later determined not to qualify for the general operating permit.

(d) Authorizations to operate under general operating permits shall have terms not to exceed five years.

(e) More than one authorization to operate under a general operating permit may be granted for a site.

(f) A copy of the permit, the permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(g) The granting of an authorization to operate under a general operating permit shall not be a final action by the executive director, and therefore, is not subject to judicial review.

(h) General operating permits shall not be authorized for affected units under the acid rain program.

(i) The executive director shall make a copy of the authorization to operate accessible to the EPA.

§122.503. Application Revisions for Changes at a Site.

(a) The permit holder shall submit an updated application to the executive director for the following activities at a site:

(1) a change, addition, or removal of any applicability determinations or the basis of any determinations in the original general operating permit application;

(2) a correction of typographical errors;

(3) a change in the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit.

(b) The updated application for a general operating permit under this subsection shall contain at a minimum the following:

(1) a description of each change;

(2) a description of the emission unit affected;

(3) any changes in the applicability determinations;

(4) any changes in the bases of the applicability determinations;

(5) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(6) a statement that the emission units qualify for the general operating permit; and

(7) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director:

(1) the permit holder complies with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements; and

(C) all state-only requirements;

(D) the provisional terms and conditions as defined in §122.10 of this title;

(2) the permit holder submits to the executive director the information required in subsection (b) of this section before the change is operated;

(3) the permit holder maintains with the authorization to operate under the general operating permit, the information required by subsection (b) of this section until the executive director grants a revised authorization to operate; and

(4) the permit holder operates under the representations in the application required by this subsection.

(d) The permit holder need not comply with the representations in the original application that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

(e) In every case, the applicable requirements and state-only requirements are always enforceable.

(f) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who qualify.

(g) If the emission units addressed in the authorization to operate no longer meet the requirements for a general operating permit, the permit holder must submit a complete application for another operating permit.

(h) If it is later determined that the permit holder does not qualify for a revision applied for under this section, the permit holder may be subject to enforcement action for operation without a permit.

(i) Revisions to applications under this section, and the granting of authorizations to operate under a general operating permit, shall not be a final action by the executive director, and therefore, are not subject to judicial review.

§122.504. Application Revisions When a General Operating Permit is Revised or Repealed.

(a) This section applies if the permit holder's authority to operate under a general operating permit is affected by the revision or repeal of a rule.

(1) The permit holder must submit an application for the general operating permit containing at a minimum the following information:

(A) a description of the emission unit affected;

(B) any changes, additions, or removals of applicability determinations;

(C) the basis of each determination identified under subparagraph (B) of this paragraph;

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(E) a statement that the emission units qualify for the general operating permit;
and

(F) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(2) The application must be submitted by the effective date of the general operating permit.

(3) The permit holder shall comply with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions).

(4) The permit holder shall record the information required in paragraph (1)(A)-(E) of this subsection before the compliance date of the new requirement or effective date of the repealed requirement. The information in paragraph (1)(A)-(F) of this subsection shall be submitted no later than 45 days after the compliance date of the new requirement or effective date of the repealed requirement.

(5) The permit holder shall maintain the information required in paragraph (1)(A)-(E) of this subsection with the permit until a new authorization is granted.

(b) The permit holder need not reapply for a revised general operating permit, provided the following:

(1) the emission units addressed in the authorization to operate qualify for the revised general operating permit;

(2) the applicability determinations remain unchanged; and

(3) basis for each applicability determination remain unchanged.

(c) If a general operating permit is repealed and not replaced, the authorization to operate under the general operating permit is revoked.

(d) If a permit holder's authority to operate under a general operating permit is affected by the revision or repeal of a general operating permit and the permit holder no longer qualifies for the general operating permit or no longer intends to operate under the general operating permit, the permit holder must apply for another operating permit by the effective date of the revision or repeal of the general operating permit.

(e) Those representations in the application not affected by the revision remain conditions under which the permit holder shall operate.

(f) In every case, the applicable requirements and state-only requirements are always enforceable.

(g) The permit holder need not comply with the representations in the original application or the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

§122.505. Renewal of the Authorization to Operate Under a General Operating Permit.

(a) Authorizations to operate under general operating permits shall expire no later than five years from the date of the initial authorization to operate or renewal of the authorization to operate.

(b) The executive director shall provide written notice to the permit holder that the authorization to operate under the general operating permit is scheduled for review.

(1) The notice will be provided by mail no later than 12 months before the expiration of the authorization to operate under the general operating permit.

(2) The notice shall specify the procedure for submitting a renewal application.

(3) Failure to receive notice does not affect the expiration date of the authorization or the requirement to submit a timely and complete application.

(c) A renewal application shall be submitted by the permit holder to the executive director at least six months, but no earlier than 18 months, before the date of expiration of the authorization to operate under the general operating permit.

(d) The executive director shall grant a request for a renewal of an authorization to operate under a general operating permit to applicants who submit a complete application under §122.243 of this title (relating to Permit Renewal Procedures) and who qualify for the general operating permit.

(e) Expiration of the authorization to operate terminates the permit holder's right to operate unless a timely and complete renewal application has been submitted. After a timely and complete renewal application is submitted, the permit holder may continue to operate under the terms and conditions of the previous authorization to operate until the new authorization to operate is granted or denied.

(f) In determining whether and under what conditions an authorization to operate under a general operating permit should be renewed, the executive director shall consider the following:

(1) whether the general operating permit, in conjunction with the general operating permit application, provides for compliance with all applicable requirements and an accurate listing of state-only requirements; and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(g) The executive director shall make a copy of the renewal application, general operating permit, and any required notices accessible to the EPA.

(h) The renewal of an authorization to operate under a general operating permit shall not be a final action by the executive director, and therefore, is not subject to judicial review.

§122.506. Public Notice for General Operating Permits.

(a) Before the adoption of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the proposed draft general operating permit rule. In addition to the requirements of the Government Code, Administrative Procedure Act, Chapter 2001 or 2002, the notice shall contain the following information:

(1) a description of the activities involved in the proposed draft general operating permit rule;

(2) the location and availability of copies of the proposed draft general operating permit rule;

(3) a description of the comment procedures, including the duration of the public notice comment period;

(4) the time, place, and nature of the hearing that will be held regarding the proposed draft general operating permit rule;

(5) a brief description of the purpose of the hearing that will be held regarding the proposed draft general operating permit rule; and

(6) the name, address, and phone number of the commission office to be contacted for further information.

(b) The executive director shall make a copy of the renewal application, general operating permit, and any required notices accessible to the EPA.

(c) The executive director shall make the proposed draft general operating permit rule available for public inspection throughout the comment period during business hours at the commission's central office.

(d) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the proposed draft general operating permit rule.

(e) The proposed draft general operating permit rule may be changed based on comments pertaining to whether the general operating permit provides for compliance with the requirements of this chapter.

(f) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action) and the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.

(g) The executive director shall provide 30 day's advance notice of the hearing.

§122.508. Notice and Comment Hearings for General Operating Permits.

(a) Before the adoption of any general operating permit, the executive director shall hold a notice and comment hearing regarding the proposed draft general operating permit rule.

(b) All hearings regarding general operating permits shall be conducted according to the APA.

(c) Any person may submit oral or written statements and data concerning the proposed draft general operating permit rule.

(1) Reasonable time limits may be set for oral statements, and the submission of statements in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of the hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(e) Any person who believes that any condition of the proposed draft general operating permit rule is inappropriate or that the preliminary decision to adopt the general operating permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(f) Any supporting materials for comments submitted under subsection (c) of this section shall be included in full and may not be incorporated by reference, unless the materials are one of the following:

- (1) already part of the administrative record in the same proceedings;
- (2) state or federal statutes and regulations;
- (3) EPA documents of general applicability; or
- (4) other generally available reference materials.

(g) The executive director shall keep a record of all comments and also of the issues raised in the hearing. This record shall be available to the public.

(h) The proposed draft general operating permit rule may be changed based on comments pertaining to whether the proposed draft general operating permit rule provides for compliance with the requirements of this chapter.

(i) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action) and the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.

The agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 15, 1997.