

The commission proposes 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, concerning the federal operating permit program.

EXPLANATION OF PROPOSED RULES. The purpose of the repeals is to allow the adoption of new requirements contained in §§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, 122.220, 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.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeals are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the repeals.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the improved consistency between state and federal requirements for permitting major air emission sources and more cost-effective regulation and control of air emissions. There are no economic costs

anticipated to any person, including small businesses, who are required to comply with the repeals as proposed.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a takings impact assessment for the proposed rulemaking under Texas Government Code, §2007.043. The following is a summary of that assessment. The agency was granted interim program approval in the June 25, 1996, issue of the *Federal Register* (61 FR 32693). Interim program approval provides the agency with the authority to implement the operating permit program (OPP) in Texas for two years. The agency will be required to submit a request for full program approval of the OPP to the United States Environmental Protection Agency (EPA) by January 26, 1998. The purpose of this rulemaking is to address comments received from EPA, the regulated community, and public interest groups, in addition to regulatory changes. In addition, the commissioners directed staff to revise certain aspects of the OPP. The proposed rulemaking will achieve its stated purpose by addressing EPA's comments from the interim program approval notice, allowing options in permit application review and post permit processing, and allowing the request for full program approval to be submitted by January 26, 1998. The proposed rulemaking will not be considered a burden on private real property because it is mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The commission has determined that the proposed rulemaking 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 Resource 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, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies. The permits issued under Chapter 122, concerning Federal Operating Permits, do not authorize the increase in air emissions nor do these permits authorize new air emissions. Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

PUBLIC HEARING. A public hearing on the proposal will be held June 12, 1997, at 10:00 a.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments regarding this proposal may be mailed to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96159-122-AI. Comments must be received by 5:00 p.m., June 13, 1997. For further information or questions

concerning this proposal, contact Cheryl Covone of the Operating Permits Division, Office of Air Quality, (512) 239-1144.

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

STATUTORY AUTHORITY. The repeals are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed repeals implement the Texas Health and Safety Code, §382.017, concerning Rules.

SUBCHAPTER A : DEFINITIONS

§§122.10-122.12

§122.10. General Definitions.

§122.11. Grandfather Definitions for State Only Requirements.

§122.12. Acid Rain Definitions.

SUBCHAPTER B : PERMIT REQUIREMENTS

UH - APPLICABILITY

§122.120

§122.120. Applicability.

UH - PERMIT APPLICATION

§§122.130, 122.132-122.136, 122.138, 122.139

§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.

UH - PERMIT CONTENT

§§122.141, 122.143, 122.145

§122.141. Authority.

§122.143. Permit Conditions.

§122.145. Permit Content Requirements.

UH - PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§§122.150, 122.152-122.155

§122.150. Applicability.

§122.152. Public Notification Requirements.

§122.153. Public Notice Format.

§122.154. Sign Posting Requirements.

§122.155. Public Comment Period.

UH - MISCELLANEOUS

§§122.161, 122.163-122.165

§122.161. Miscellaneous.

§122.163. Effective Date.

§122.164. Confidential Information.

§122.165. Certification by a Responsible Official.

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

UH - PERMIT ISSUANCE

§§122.201, 122.202, 122.204

§122.201. Permits.

§122.202. General Permits.

§122.204. Temporary Sources.

UH - PERMIT REVISIONS

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

§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.

UH - PERMIT REOPENINGS

§122.231, §122.233

§122.231. Permit Reopenings.

§122.233. Permit Reopening Procedures.

UH - PERMIT RENEWALS

§122.241, §122.243

§122.241. Permit Renewals.

§122.243. Permit Expiration.

SUBCHAPTER D : AFFECTED STATE REVIEW, UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY REVIEW,

AND CITIZEN PETITION

§§122.310-122.312, 122.314

§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).

SUBCHAPTER E : ACID RAIN

UH - GENERAL ACID RAIN PERMITS REQUIREMENTS

§§122.410, 122.411

§122.410. Standard Acid Rain Requirements.

§122.411. Operating Permit Interface.

UH - ACID RAIN APPLICATION

§§122.420-122.422, 122.425, 122.427

§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.

UH - ACID RAIN PERMIT ISSUANCE, REVOCATIONS, AND REOPENINGS

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

§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.

UH - ACID RAIN APPEALS

§122.440

§122.440. Acid Rain Appeals Procedure.

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

Issued in Austin, Texas, on April 30, 1997.

The commission proposes 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, 122.220, 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.

EXPLANATION OF PROPOSED RULES. The commission has chosen to propose revisions to the operating permit program 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 proposed as the result of comments received from the EPA, the regulated community, and public interest groups, in addition to regulatory reform changes.

The proposed revisions will 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 proposed 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.

If during the 1997 Texas Legislative Session, the Legislature proposes and enacts legislation revising the operating permit requirements, that legislation may be addressed in 30 TAC 122 at adoption. In addition, changes to the proposed rule language may be necessary to address concerns regarding program approval raised during the comment period, or as a result of negotiations with EPA.

REGULATORY REFORM. Proposed 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 are proposed to be moved to more appropriate sections or chapters. Definitions that apply agencywide 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 are being moved to Chapter 3. The nonattainment classifications for the counties in Texas which were listed under the definition of major sources are also being moved to Chapter 3. Furthermore, the definition of fugitive emissions is proposed to be removed because it is redundant with the essentially equivalent definition in Chapter 101. The definitions of affected state and responsible official are proposed to be moved to §122.330 and §122.165 respectively, where these terms have the most relevance. The definition of general permit is proposed to be removed because it does not provide any information beyond referring to the section of the rules addressing general permits.

Under the original Subchapter E, 40 CFR 72 (relating to the Acid Rain Program) was incorporated by reference; however, several Part 72 requirements are also explicitly stated in the state regulation. Through the regulatory reform process, the commission has determined that the combination of incorporating by reference and restating some of the federal requirements is inefficient and confusing. Therefore, except for the identification of the application deadlines, the redundant language is proposed to be removed from Subchapter E. The definitions in §122.12, relating to Acid Rain Definitions, that were redundant with the definitions in 40 CFR 72, incorporated by reference in Subchapter E, are also proposed to be removed. The only definition proposed 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 proposes the repeal of existing sections and the proposal of 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), while subsection (b) is proposed to be 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, are proposed to be created to contain requirements originally grouped together under §122.143. The original §122.145, relating to Permit Content Requirements, is proposed to be moved to §122.142. Furthermore, §§122.150 and 122.152-122.155, concerning Public Notice Requirements, are proposed to be moved to Subchapter D; and §122.202, relating to General Permits, is proposed to be moved to Subchapter F. Section 122.163, relating to Effective Date, is proposed to be deleted, because it was determined to be unnecessary, while §122.164, relating to Confidential Information, is proposed to be deleted because 30 TAC §1.5 (d) addresses confidential information. Finally, the information in the original §122.243, relating to Permit Expiration, is proposed to be moved to §122.241.

RESPONSE TO EPA COMMENTS. In its June 7, 1995, proposal to grant interim approval, the 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, the 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, the EPA stated in the June 25, 1996, notice that it would rely on the version of Part 70 in effect at the time of full program submittal (see 61 FR 32693). The EPA expects the final Part 70 revisions to be adopted no earlier than September 1997. Because it would 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), the EPA recently clarified this remark by stating that the commission may comply with either the July 21, 1992, Part 70 regulation or a later version (March 27, 1997, letter from Lydia Wegman, Deputy Director, EPA Office of Air Quality Planning and Standards to Dan Pearson, Executive Director, TNRCC).

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 proposed revisions to 30 TAC 122 are intended to be consistent with the July 21, 1992, Part 70 regulations (see 57 FR 32295). In certain cases, the proposed revisions to 30 TAC 122 reflect the commission's most current understanding of the Part 70 revisions that are expected to be finalized no earlier than September 1997. In the event that the supplemental proposal is promulgated before the end of the comment period for this rulemaking, the commission may revise 30 TAC 122 based on the final revisions.

1. Minor New Source Review (NSR)/Part 70 Integration. In the June 7, 1995 notice, the EPA pointed out that 30 TAC 122 does not properly address minor NSR as an applicable requirement. Specifically, the 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, the 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, the EPA commented that for full program approval, the commission must provide operating permits that include all minor NSR permits (see 61 FR 32694).

In response, the commission is proposing to revise the definition of applicable requirement in 30 TAC 122 to include those elements of the Texas minor NSR program necessary to meet the requirements of the Federal Clean Air Act, §110(a)(2)(C) and 40 CFR Part 51 §§51.160-51.164. The revised definition of applicable requirement would include the following: “after the adoption of this chapter, any requirement in state regulations implementing federal new source review requirements for control of air pollution for new construction or modification, upon approval by the commission and approval as a State Implementation Plan revision by EPA, for the modification and construction of any stationary source within the areas covered by the State Implementation Plan as necessary to assure that national ambient air quality standards are achieved.” This proposed definition would be in addition to the current definition of applicable requirement that includes any term or condition of any PSD or nonattainment preconstruction permit.

In addition to PSD and nonattainment permits, those federal NSR requirements that are approved by the commission through rulemaking and approved as a State Implementation Plan (SIP) revision by EPA as

necessary to assure compliance with the National Ambient Air Quality Standards (NAAQS) would be codified in the site's federal operating permit, if applicable.

The commission is in the process of proposing revisions to Chapter 116 and possibly creating a new chapter that will clarify the new source review regulations that are necessary to assure compliance with the NAAQS. At this time, it has not been determined which subsections of Chapter 116 will contain these revisions or whether an entirely new chapter will be proposed. However, the adopted version of 30 TAC 122 will reference the appropriate Chapter 116 subsections and/or the new chapter containing the regulations necessary to assure compliance with the NAAQS. Under the proposed 30 TAC 122, minor NSR requirements would not be codified through the operating permit until rulemaking was completed on Chapter 116 and/or the new chapter and the EPA approved these revisions into the SIP.

The revisions to Chapter 116 and/or the new chapter are expected to be proposed in mid-to-late 1997. Comments pertaining to the portions of Chapter 116 necessary to assure compliance with the NAAQS will only be addressed at the time of the proposed revisions to Chapter 116 and/or the new chapter.

2. Compliance with the June 20, 1996, Part 70 Rule. In the June 7, 1995, notice, the 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, the 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 Part 70. In the June 7, 1995, notice, the EPA states that §122.120(4)(A)-(C), regarding applicability of Part 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 reads §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 apply to non-major sources. The purpose of subparagraphs (A)-(C) was to define non-major sources consistent with Part 70.

In the October 3, 1995, letter to Jole Luehrs, Chief, New Source Review Section, EPA Region 6 from Jeff Saitas, Deputy Director, Office of Air Quality, TNRCC responding to the 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, the EPA noted that the commission did not adequately address revisions to §122.120(4)(C) (see 61 FR 32695). Specifically, the 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 proposes to revise §122.120(4)(A)-(C) as indicated in this proposed rulemaking.

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

The commission believes that the preamble to the July 21, 1992, Part 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 Part 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 Part 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 Part 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 proposes to revise 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 proposed revision is consistent with White Paper Number 1 and will be consistent with the final Part 70 revisions.

5. Definition of Regulated Air Pollutant. In the June 7, 1995 notice, the 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, 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 will revise 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).”

6. Definition of Regulated Major Source. In the June 7, 1995, and the June 25, 1996 notices, the 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

(July 21, 1992) Part 70 (see 60 FR 30041, 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 Part 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, Part 70 does not limit the stationary source categories to those which existed as of August 7, 1980.

In EPA's August 29, 1994, proposed Part 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 a 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 Part 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. At this time, the commission is proposing a revision of 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 the 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, the 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 Part 70.

In the June 25, 1996 notice, the EPA stated that if the definition of Title I modification was finalized as proposed in the supplemental proposal, then the commission's proposed definition would be consistent with Part 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 Part 70.

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

Similarly, the commission is not proposing to reference Title I modification in the revision process proposed in 30 TAC 122. As such, the commission is proposing to delete the definition of Title I modification from 30 TAC 122, resulting in an approach that should be consistent with the final Part 70 revisions.

8. Compliance Schedule Requirements. In the June 7, 1995, notice, the 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 is proposing to revise 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, the 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 is proposing to delete 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, the 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 Part 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 is proposing to revise §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, the 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, the EPA further states that the commission must comply with the version of Part 70 in effect at the time of full program submittal (see 61 FR 32696). As previously mentioned, the EPA recently clarified this remark by stating that the commission may comply with either the July 21, 1992, Part 70 regulation or a later version (March 27, 1997, letter from Lydia Wegman, Deputy Director, EPA Office of Air Quality Planning and Standards to Dan Pearson, Executive Director, TNRCC).

In response, the commission is proposing to replace the existing revision process contained in Subchapter C of 30 TAC 122. In doing so, permit additions would be deleted and replaced with a revision process substantially equivalent to the revision process outlined in EPA's July 21, 1992, final Part 70 regulation.

12. Public Notice to Include Emissions Change. In the June 7, 1995 notice, the 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, 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 is proposing 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, the 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, the 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 Part 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.

However, if emission rates are necessary to verify compliance with an applicable requirement, then the source must provide that information. For purposes of computing a fee associated with Part 70, sources in Texas are required to base the fee on either their most recent emissions inventory or the potential emissions represented in their preconstruction authorizations or an enforceable commission order. The public can access a source's emissions inventory and fee-related information if desired.

The commission is not proposing to require any specific emissions data to be submitted with operating permit applications. However, the commission will 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, the 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 the EPA did not cite a deficiency associated with this issue and no revisions to §122.122 are proposed, the commission is taking this opportunity to respond to EPA’s comments.

The commission uses a similar registration procedure in the New Source Review Division to establish federally-enforceable emission rates for standard exempted facilities. Under this procedure that has been used since September 13, 1993, under §116.213, 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 the EPA, commission, or any other air pollution control agency having jurisdiction. The commission staff believes this is an acceptable certification process and intends 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, the 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 is proposing to revise §122.505(a) to require that authorizations to operate under general operating permits expire no later than five years from the date of the initial authorization to operate or renewal of the authorization. Prior to the expiration of the five-year authorization to operate, the permittee must submit a renewal application to the commission.

16. Section 122.145(e) Interpretation Shield. In the June 7, 1995 notice, the 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 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 satisfied these requirements 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 is proposing to delete the "interpretation shield" concept outlined in §122.145(e) and replace it with a more traditional permit shield described in 40 CFR 70, §70.6(f). The commission believes the permit shield proposed under §122.148 is consistent with §70.6(f).

17. Emergency Provisions. In the June 7, 1995 notice, the 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, the EPA states that in order for Texas to receive full approval, 30 TAC 122 must be consistent with Part 70 (see 61 FR 32696).

Section 70.6(g)(3)(iv) requires that emergencies be reported to the agency *not later than two working days* after the onset of the emergency. Section 101.6 requires a major upset to be reported to the agency as soon as possible.

As discussed in the supplemental proposal (see 60 FR 45559), the emergency provisions of 40 CFR §70.6(g) provide states the *option* of allowing an affirmative defense to an action brought for noncompliance with technology-based emission limitations due to an “emergency” if the conditions of 40 CFR §70.6(g)(3) are met. This affirmative defense option is in addition to any emergency or upset provision contained in any applicable requirement.

The commission is not proposing its own version of 40 CFR §70.6(g). In fact, the commission did not intend for §122.143(3)(C) to be used as an affirmative defense for noncompliance with applicable requirements in the event of an emergency. Rather, §122.143(3)(C) specifies that emissions resulting from an upset, start-up, shutdown, or maintenance activity be reported according to the requirements of Chapter 101. Therefore, the commission does not plan to make any changes regarding the reporting requirements specified in 30 TAC 122 relating to upset, start-up, shutdown, or maintenance activities.

However, the commission will continue to implement the upset and maintenance rules contained in §101.6 and §101.7, respectively, in accordance with §101.11, governing exemptions from the commission rules and regulations.

18. Operational Flexibility. In the June 7, 1995 notice, the 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, the EPA states that in order for Texas to receive full approval, 30 TAC 122 must be consistent with the version of Part 70 in effect at the time of full program submittal (see 61 FR 32696). As previously mentioned, the EPA recently clarified this remark by stating that the commission may comply with either the July 21, 1992, Part 70 regulation or a later version (March 27, 1997, letter from Lydia Wegman, Deputy Director, EPA Office of Air Quality Planning and Standards to Dan Pearson, Executive Director, TNRCC).

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 is proposing to delete the operational flexibility provisions previously contained in §122.221 to be consistent with the anticipated final Part 70 revisions.

Operational flexibility would be provided largely through the proposed revision process outlined in Subchapter C of the proposed 30 TAC 122.

19. Off-permit Changes Compared with Permit Additions. In the June 7, 1995 notice, the 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 proposes to delete references to off-permit changes under the permit addition revision process outlined in §122.215 and replace them with a new revision process that would not allow an applicant to make changes to EPA considers to be off-permit. The proposed revision process has been structured to provide a level of flexibility substantially equivalent to that outlined in the July 21, 1992, Part 70. As previously mentioned, the commission is proposing to broaden the definition of applicable requirement by including those elements of the Texas minor NSR program necessary to meet the requirements of FCAA, §110(a)(2)(C) and 40 CFR Part 51 §§51.160-51.164, which should further address EPA's concerns with off-permit changes.

20. Permit Fee Demonstration - (see 60 FR 30044, first and second column). In the June 7, 1995 notice, the 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.

SUBCHAPTER A : DEFINITIONS. Several other changes to the rule language are being proposed as the result of comments received from the regulated community and public interest groups. In addition to the changes proposed as a result of incorporating aspects of the Texas minor NSR program, the definition of applicable requirement is proposed to be revised to include only those sections of the state regulations within the scope of the federal operating permit program.

Those are the state regulations which implement relevant requirements of Title I of the FCAA and were developed for the SIP. This includes the SIP revisions submitted by the commission that EPA may not have acted on. Subparagraph (G) of the definition of applicable requirement is proposed to address future state rulemaking by specifying that any requirement in Chapters 111-113, 115, 117, and 119 will be an applicable requirement under 30 TAC 122 unless identified in this or subsequent rulemaking as a state only requirement. Each time the commission goes through rulemaking for one of these chapters, an analysis of whether the new requirement is an applicable requirement will be made and the public will be provided an opportunity to comment on the resulting determination. By establishing whether or not new requirements are applicable requirements at the time they are adopted, the commission can avoid revising 30 TAC 122 each time one of the relevant chapters is amended.

In addition, the definition of applicable requirement is proposed to be 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.

Furthermore, the definition of applicable requirement is proposed to be 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 the EPA, but have not been adopted by and delegated to the commission. Until such action 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 under the operating permit program.

Several other changes to the definitions are proposed to accommodate revisions to the program. In order to remove any ambiguity, the definition of deviation is proposed to be tied to the requirements codified in the permit. The definition for emission allowable under the permit is proposed to be removed, because this terminology is never used within the rule language. The definition of major source is proposed to be revised to account for any exemptions granted under FCAA, §182(f), relating to NO_x requirements. For purposes of clarification, a definition for notice and comment hearing is proposed to be included in response to a request from a public interest group. The definition of preconstruction authorization is proposed to be expanded to include requirements established under FCAA, §122(g) and (j), which will be implemented through Texas' New Source Review Program.

Furthermore, a definition of provisional terms and conditions is proposed to address the new revision process outlined in the discussion of revisions to Subchapter C.

In addition, a definition for state only requirement is proposed. Although state only requirements are not applicable requirements, they will be included in the permit in order to provide a more comprehensive compliance and enforcement tool. The requirements in Chapters 111-113, 115, 117, and 119, which do not implement relevant requirements of Title I of the FCAA and were not developed for the SIP are designated as state only requirements. State only requirements will be listed in the operating permit and will be subject to requirements for public notice, affected state review, notice and comment hearing, recordkeeping, and six-month monitoring reporting. All reference to state only requirements throughout this chapter are subject to the definition in §122.10.

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, is proposed to be repealed. All other references to grandfather requirements, including §122.132(a)(5) and §122.135, are also proposed to be removed from the rule language. The deleted grandfather requirements do not implement any part of Title V or 40 CFR 70.

SUBCHAPTER B : PERMIT REQUIREMENTS. At the direction of the commission, the proposed §122.110 provides for delegation of authority to the executive director to take action on any permit on behalf of the commission. The executive director may delegate authority to staff, as appropriate.

Section 122.130, concerning When Applications Are Due, is proposed to be revised to allow the executive director to meet the deadline under §122.139. Section 122.139 requires that the executive director take final action on one-third of the applications submitted within the first year of the full operating permit program by the end of the first year of the operating permit program. In order to meet this deadline, the proposed rule language requires that applications be submitted for sites with specified SIC major groups within six months of the full program effective date. During the comment period, staff will evaluate the processing of the interim program application and determine whether the proposed rule language will allow the executive director to meet the requirements under §122.139 for full program applications. Based on this determination, the proposed language may be changed at adoption to require that applications be submitted earlier or increase the number applications required to be submitted early. The commission will set reasonable deadlines to allow applicants sufficient time to prepare and submit applications. The SIC major groups required to be submitted at six months, or earlier if necessary, are those belonging to sites expected to have less complicated permit applications and sites expected to be potential candidates for full program general operating permits. This section is also proposed to be revised to address application deadlines for sites that become subject to the program as the result of some action by the EPA or the commission. For instance, the reclassification of a county's attainment or nonattainment status or the release of new calculation methods by the EPA could cause a site to exceed the major source thresholds and become subject to the operating permit program.

The phased application process is a new concept introduced in the proposed §122.131 as a result of the large number of complex sources in Texas. This approach will allow applicants who qualify more time to submit accurate and complete application information and provide the OPD the extra time needed to

thoroughly review that 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 that the source is subject to. The remaining detailed applicability determinations will be incorporated into the permit annually through the reopening 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.

The proposed §122.132(c) allows, at the executive director's discretion, applicants to submit abbreviated applications. The abbreviated application will include at a minimum, a general application form identifying the applicant and the site and 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.

Proposed §122.132(e)(4) contains language found originally in §122.132(b), related to application compliance plan and schedules. The original language is proposed to be modified to provide clarity as to the basis on which the compliance status statements are to be made. The proposed changes will narrow the demonstrations of monitoring to specific regulatory citations and descriptions of the monitoring method used, thus removing doubt as to what monitoring was conducted.

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

A new §122.140, concerning Representations in Application, is proposed 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.

The requirements in the original §122.143(1)(H) are proposed to be moved to §122.143(10) and revised to specify that a new applicable requirement or state only requirement must be incorporated into a permit within 12 months of promulgation, regardless of the length of time remaining in the permit term. This change was initiated by public interest groups as a suggestion to make the requirement consistent with the revision process proposed in Subchapter C that requires most revisions to be submitted annually by the permit holder.

Section §122.143 is also proposed to be modified to include procedures for revising a permit to incorporate changes in federally enforceable only or state only designations. In addition, new language is proposed to specify 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).

Permit requirements found originally in §122.143(1)(D), (2), and (3) related to recordkeeping and reporting requirements are proposed to be moved to and clarified in §122.144, concerning Recordkeeping Terms and Conditions, and §122.145, concerning Reporting Terms and Conditions. In addition, the proposed changes affect the frequency of some of the reporting requirements.

The annual compliance certification requirements are proposed to be moved from the original §122.143(4) to §122.146(5). The requirements for annual certification closely mirror those of the application compliance plan and certification in style. The content of the annual certification is clarified for emission units that experience deviations over a certification period. The intent of the annual compliance certification is to identify all emission units subject to the permit and identify units that have had deviations. The proposed change highlights the emission units that have potential complaint problems and provides significant detail for a meaningful assessment of compliance.

The Certification by Responsible Official information is proposed to be consolidated into §122.165. In this proposed section, a definition of duly authorized representative (DAR) is provided to allow a streamlined assignment of signature authority while reducing unnecessary case-by-case procedural steps related to agency approval of the DAR. Through this rulemaking, the commission is proposing to approve in advance, the delegation of authority to anyone meeting the qualifications for a DAR. In revising the definition of responsible official, the commission is relying in part on the flexibility provided in White Paper Number 1 as well as the expected final revisions to Part 70. In addition, language is proposed that would allow for certification of required submittals by persons consistent with the relative significance of the content of the submittals. For example, permit applications or annual compliance certifications would be certified by a person with overall control of the facility; while routine submittals for a given emission unit would be certified by a person more familiar with the particular unit (e.g., six-month deviation reports could be certified by the person responsible for the emission unit in question). The definition of responsible official is proposed to be revised to allow an alternate designated representative to sign the acid rain portion of the permit, and to allow the

designated representative, the alternate designated representative, or the responsible official to sign the Title V portion of the permit. In addition, the definition of responsible official is proposed to be revised to allow delegation to a duly authorized representative for a partnership, or sole proprietorship, or a municipality, state, federal, or other public agency as well as a corporation.

SUBCHAPTER C : INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND RENEWALS. To provide adequate, streamlined, and reasonable procedures for expeditiously processing permit revisions, the commission proposes to replace the existing revision process under 30 TAC 122 with a process that is substantially equivalent to the July 21, 1992, Part 70 revision process. In general, the proposed revision process provides for an annual review of changes at a site allowing the source to operate changes meeting specified criteria prior to issuance of the permit revision.

For those revisions not requiring approval, the permit holder must submit and comply with provisional terms and conditions as defined in §122.10. Provisional terms and conditions must be consistent with the applicable requirements and state only requirements and shall not authorize the violation of any applicable requirement or state only requirement. In addition, the provisional terms and conditions must contain the applicable requirements and state only requirements in the same level of detail a will be required in the permit. If the permit holder fails to comply with the provisional terms and conditions, the existing terms and conditions shall be enforceable. With all types of revisions, 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.

For administrative permit revisions, the permit holder would maintain a record of all the changes occurring over each 12-month period that meet the criteria in §122.211. The permit holder would then submit a permit application for those changes to the executive director on an annual basis. Changes requiring an administrative permit revision could be operated prior to permit revision, provided the requirements in §122.213 are satisfied.

For minor permit revision, the permit holder would be required to submit a notice to the executive director for any change specified in §122.215 no later than two weeks of the end of the calendar month in which the change took place. For example, if a change took place on June 7th, then the permit holder would be required to submit a notice to the executive director no later than July 14. Likewise, if a change took place on June 30th, then the permit holder would also be required to submit a notice to the executive director no later than July 14. The notice would include the information required to be submitted in a permit application and the application would be submitted on an annual basis. The executive director would then act on all minor permit revisions after the end of each 12-month period after permit issuance or renewal. Changes requiring a minor permit revision could be operated prior to permit revision, provided the requirements in §122.217 are satisfied.

A significant permit revision would be required if the permit holder triggers a change defined in §122.219. The significant permit revision procedures will be subject to procedures identical to initial permit issuance. Significant permit revisions would require, in some cases, approval prior to operation; while the remaining significant permit revisions would require notification to the executive director within two weeks of the end of the calendar month in which the change took place.

For those significant permit revisions that may be operated before issuance of the permit revision, the permit holder would also be required to submit an application to the executive director for all significant permit revisions that took place over each 12-month period. The executive director would then act on those significant permit revisions after the end of 12-month period after permit issuance or renewal. Consistent with the previous discussion of changes made without prior approval, significant permit revisions not requiring prior approval are subject to all requirements for provisional terms and conditions. The permit holder may be subject to enforcement action if the provisional terms and conditions are not complied with.

The commission requests comments recommending whether the agency adopt the proposed revision process or retain the existing process, or certain aspects of the existing process.

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 adequate, streamlined, and reasonable public notice procedures, the public announcement alternative is proposed to be utilized for the minor permit revisions. The process was developed to match the significance of the change to the level of public review. The public announcement will be available statewide on the agency's electronic bulletin board. The announcement can be accessed electronically with a modem or through the Internet. The public announcement will allow for expeditious permit revisions in a more streamlined fashion while providing the public an adequate opportunity to comment. The EPA, the public, and regulated

community will have an opportunity to comment for 30 days after the notice of the draft permit is posted electronically.

At the direction of the commission, the proposed 30 TAC 122 provides for bilingual notice and a single publication in a newspaper of general circulation in the city where a site is located. These changes are consistent with statutory requirements and the requirements of 40 CFR 70. In a previous rule proposal, the commission proposed to allow a combination of the public notice of the draft permit and the notice of hearing. At the direction of the commission, the proposed 30 TAC 122 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. The public notice requirements will apply to initial issuance, significant permit revisions, reopenings, and renewals.

SUBCHAPTER E : ACID RAIN PERMITS. The acid rain requirements of 40 CFR 72, 74, and 76 are proposed to be incorporated by reference into Subchapter E. The agency has not been delegated the authority to enforce the acid rain program; consequently, 40 CFR Parts 73, 75, 77, and 78 have not been included. In order to provide a more streamlined and efficient process, a provision is proposed to allow the requirements in 30 TAC 122 to substitute for any references to Part 70 in Parts 72, 74, and 76. In addition, language is proposed 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. For purposes of clarification, the deadlines for submitting acid rain permit applications are proposed to be included in §122.412. Except for the application deadlines, the requirements specifically listed in the original Subchapter E that are redundant to the requirements incorporated by reference are proposed to be

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 are proposed to be consolidated in Subchapter F. General Permits are operating 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 is proposed to clearly identify which procedural requirements the general operating permits will undergo at adoption. 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. Therefore, public notice and notice and comment hearing requirements specifically tailored for general operating permits are proposed 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 are proposed in §122.503. Section 122.504 is also proposed to clarify the requirements for reapplying for a general operating permit that is amended, and §122.505 is proposed to address procedures for renewing the authorizations to operate under general operating permit.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections. The sections are proposed to replace existing sections governing the operating permit program under the FCAAA. While the operating permit program represents a major federal environmental rule with significant implementation costs, the new sections are not anticipated to result in fiscal implications either to state government or to affected persons that are materially different from those resulting from administration of and compliance with the existing rules proposed to be replaced.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved consistency between federal and state requirements and in the enforcement of both state and federal rules. Revisions to the operating permit program will enable affected facility operators to achieve compliance with air permit standards with greater flexibility. There will also be a clearer understanding by both the regulated community and the public of the emission standards applicable to each facility throughout the codification of these standard into operating permits. The recordkeeping requirements that are specifically stated in each federal operating permit will provide assurance that the affected facility is in compliance with its operations and emission limitations. There are no significant fiscal implications anticipated for small businesses as a result of the proposed rules. Implementation of these rules may result in minor cost savings for persons required to comply with the rules; however, these cost savings have not been estimated.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a takings impact assessment for this rule proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. The agency was granted interim program approval in the June 25, 1996, issue of the *Federal Register* (61 FR 32693). Interim program approval provides the agency with the authority to implement the OPP in Texas for two years. The agency will be required to submit a request for full program approval of the OPP to the EPA by January 26, 1998. The purpose of this rulemaking is to address comments received from EPA in the June 7, 1995, proposal to grant interim approval and the June 25, 1996, interim approval notice, the regulated community, and public interest groups, in addition to regulatory reform changes. In addition, the commissioners directed staff to revise certain aspects of the operating permit program. The proposed rulemaking will achieve its stated purpose by addressing EPA's comments from the interim program approval notice, allowing options in permit application review and post-permit processing, and allowing the request for full program approval to be submitted by January 26, 1998. The adoption and enforcement of these 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 the proposed rulemaking 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 Resource 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, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies

of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies. The permits issued under Chapter 122, concerning Federal Operating Permits, do not authorize the increase in air emissions nor do these permits authorize new air emissions. Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

PUBLIC HEARING. A public hearing on the proposal will be held June 12, 1997, at 10:00 a.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments regarding this proposal may be mailed to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96159-122-AI. Comments must be received by 5:00 p.m., June 13, 1997. For further information or questions concerning this proposal, contact Cheryl Covone of the Operating Permits Division, Office of Air Quality, (512) 239-1144.

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

STATUTORY AUTHORITY. The new sections are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

SUBCHAPTER A : DEFINITIONS

§122.10, §122.12

§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.

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).

Applicable requirement -

(A) All of the following 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:

(i) §111.111(c)(1) and (2) of this title (relating to Requirements for Specified Sources);

(ii) §111.141 of this title (relating to Geographic Areas of Application and Date of Compliance), but only as it applies to El Paso and the Fort Bliss Military Reservation;

(iii) §111.143 of this title (relating to Materials Handling), but only as it applies to El Paso and the Fort Bliss Military Reservation;

(iv) §111.145 of this title (relating to Construction and Demolition), but only as it applies to El Paso and the Fort Bliss Military Reservation;

(v) §111.147 of this title (relating to Roads, Streets, and Alleys), but only as it applies to El Paso and the Fort Bliss Military Reservation; and

(vi) §111.149 of this title (relating to Parking Lots), but only as it applies to El Paso and the Fort Bliss Military Reservation.

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

(i) §112.1 of this title (relating to Definitions);

(ii) §112.2 of this title (relating to Compliance, Reporting, and Recordkeeping);

(iii) §§112.5-112.9 of this title (relating to Allowable Emission Rates - Sulfuric Acid Plant Burning Elemental Sulfur; Allowable Emission Rates - Sulfuric Acid Plant; Allowable Emission Rates - Sulfur Recovery Plant; Allowable Emission Rates From Solid Fossil Fuel-Fired Steam Generators; and Allowable Emission Rates - Combustion of Liquid Fuel);

(iv) §112.14 of this title (relating to Allowable Emission Rates - Nonferrous Smelter Processes);

(v) §112.15 of this title (relating to Temporary Fuel Shortage Plan Filing Requirements);

(vi) §112.16 of this title (relating to Temporary Fuel Shortage Plan Operating Requirements);

(vii) §112.17 of this title (relating to Temporary Fuel Shortage Plan Notification Procedures);

(viii) §112.18 of this title (relating to Temporary Fuel Shortage Plan Reporting Requirements);

(ix) §112.41(b) of this title (relating to Allowable Emissions);

(x) §112.43(b) and (c) of this title (relating to Calculation Methods);

(xi) §112.45 of this title (relating to Inspection and Recordkeeping Requirements);

(xii) §112.47 of this title (relating to Compliance Schedules);

(xiii) §112.51 of this title (relating to Emissions Limits for TRS Compounds From Kraft Pulp Mills);

(xiv) §112.53 of this title (relating to Alternate Emission Limitations);

(xv) §112.55 of this title (relating to Inspection Requirements);

(xvi) §112.57 of this title (relating to Monitoring and Recordkeeping Requirements); and

(xvii) §112.59 of this title (relating to Compliance Schedules).

(C) All of the requirements of Subchapter B of Chapter 113 of this title (relating to Lead from Stationary Sources) 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), except Subchapter D of Chapter 117 of this title (relating to Administrative Provisions), 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 new requirement in Chapters 111, 112, 113, 115, 117, and 119 of this title, unless specifically identified in rulemaking as a state only requirement or exempted under subparagraph (J) of this definition.

(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) After the adoption of this chapter, any requirement in state regulations implementing federal new source review requirements for control of air pollution for new construction or modification, upon approval by the commission and approval as a State Implementation Plan revision by EPA, for the modification and construction of any stationary source within the areas covered by the State Implementation Plan as necessary to assure that national ambient air quality standards are achieved;

(J) 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), except requirements established under §112(g) or (j);

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

(K) State and federal ambient air quality standards, net ground level concentration limits, and ambient atmospheric concentration limits are not applicable requirements under this chapter, except as noted in subparagraph (J)(x) of this definition.

(L) 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.

Deviation - Any indication of noncompliance with a term or condition of the permit, as found using compliance method data from required monitoring, recordkeeping, reporting, or testing specified in and required to be collected by the permit.

Draft permit - The version of a permit available for public announcement or public notice and affected state review.

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.

Final action - Issuance or denial of the permit by the executive director.

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 such hazardous air pollutant listed under FCAA, §112(b); or

(iii) any quantity less than those identified in subparagraph (A)(i) or (ii) of this definition 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 definition, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this definition.

(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 wells (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 definition.

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.

Permit -

(A) any federal operating permit, or group of federal operating 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.

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.

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.

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).

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.

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) 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, 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).

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

Provisional terms and conditions - Temporary terms and conditions for an emission unit affected by a change at a site, under which the permit holder is authorized to operate prior to a revision or renewal of a permit.

(A) Provisional terms and conditions will only apply to changes not requiring prior approval by the executive director under Subchapter C of this chapter (relating to Permits Issuances, Revisions, Reopenings, and Renewals).

(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 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; and

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

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 or §122.505 of this title (relating to Permit Renewals or Renewal of the Authorization to Operate Under a General Operating Permit).

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.

State only requirement -

(A) All of the following requirements of Chapter 111 of this title as they apply to the emission units at a site:

- (i) §111.111 of this title, except §111.111(a)(5) and (6) and (c)(1) and (2);
- (ii) §111.113 of this title (relating to Alternate Opacity Limitations);
- (iii) §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators);
- (iv) §§111.123-111.125 of this title (relating to Medical Waste Incinerators; Burning Hazardous Waste Fuels in Commercial Combustion Facilities; Testing Requirements);
- (v) §111.127 of this title (relating to Monitoring and Recordkeeping Requirements);
- (vi) §111.129 of this title (relating to Operating Requirements);
- (vii) §111.131 of this title (relating to Definitions);
- (viii) §111.133 of this title (relating to Testing Requirements);
- (ix) §111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead);

- (x) §111.137 of this title (relating to Control Requirements for Surfaces with Coatings Containing Less Than 1.0% Lead);
- (xi) §111.139 of this title (relating to Exemptions);
- (xii) §111.141 of this title, but only as they apply to Harris County and Nueces County;
- (xiii) §111.143 of this title, but only as they apply to Harris County and Nueces County;
- (xiv) §111.145 of this title, but only as they apply to Harris County and Nueces County;
- (xv) §111.147 of this title, but only as they apply to Harris County and Nueces County;
- (xvi) §111.149 of this title, but only as they apply to Harris County and Nueces County;
- (xvii) §111.151 of this title (relating to Allowable Emissions Limits);
- (xviii) §111.153 of this title (relating to Emissions Limits For Steam Generators);
- (xix) §111.171 of this title (relating to Emissions Limits Based on Process Weight Method);
- (xx) §111.173 of this title (relating to Emissions Limits Based on Alternate Method);
- (xxi) §111.175 of this title (relating to Exemptions);
- (xxii) §111.181 of this title (relating to Exemption Policy);

(xxiii) §111.183 of this title (relating to Requirements for Exemption);

(xxiv) §111.201 of this title (relating to General Prohibition);

(xxv) §111.203 of this title (relating to Definitions);

(xxvi) §111.205 of this title (relating to Exception for Fire Training);

(xxvii) §111.207 of this title (relating to Exception for Fires Used for Recreation, Ceremony, Cooking, and Warmth);

(xxviii) §111.209 of this title (relating to Exception for Disposal Fires);

(xxix) §111.211 of this title (relating to Exception for Prescribed Burn);

(xxx) §111.213 of this title (relating to Exception for Hydrocarbon Burning);

(xxxi) §111.215 of this title (relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning);

(xxxii) §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning); and

(xxxiii) §111.221 of this title (relating to Responsibility for Consequences of Outdoor Burning).

(B) Any other requirement in Chapters 111, 112, 113, 115, 117, and 119 of this title identified in rulemaking as being a state only requirement.

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.

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.

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 Code of Federal Regulations, Parts 72, 73, 74, 75, 76, 77, and 78.

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

Issued in Austin, Texas, on April 30, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

GENERAL REQUIREMENTS

§122.110, §122.120, and §122.121

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

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§122.110. Delegation of Authority to Executive Director.

(a) The purpose of this section is to delegate authority to the executive director to 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. Who Shall Apply for a Permit.

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 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 Who Shall Apply for a Permit) shall not operate emission units at those sites without a permit issued or granted under this chapter.

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

Issued in Austin, Texas, on April 30, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

PERMIT APPLICATION

§§122.130-122.134, 122.136, 122.138-122.140

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

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§122.130. When Applications Are Due.

(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 subsection (a)(1)(B) of this section, 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, except those identified in subsection (a)(1) of this section shall submit initial applications under the full operating permit program.

(2) Applications for sites with the following primary SIC major groups shall be submitted by January 25, 1999 (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, applications for all other sites under the full operating permit program shall be submitted by July 25, 1999.

(c) After effective date of the interim or full operating permit program. Owners or operators of sites that become subject to this chapter after the effective date of either the interim operating permit program (July 25, 1996) or the full operating permit program (July 25, 1998), as applicable, shall submit permit applications as follows:

(1) no later than 12 months after the issuance or approval date of the preconstruction authorization, required under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or

(2) no later than 12 months after an action by the executive director or the EPA that subjects the site to the requirements of this chapter.

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

(1) If 40 CFR Part 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 Part 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.

(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 the initial permit application.

(b) Applicants with sites that qualify for the phased application process may submit in the initial permit application a portion of the 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) 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 two weeks after the end of each 12 calendar month period after initial issuance. The month in which the permit is issued shall be counted as the first calendar month; however, the reporting period will not begin until the day after permit 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 requiring prior approval.

§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, 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) At the discretion of the executive director, an applicant may submit an abbreviated initial permit application, containing only the information in this section deemed necessary by the executive director. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(d) An application for a site qualifying under §122.131 of this title (relating to Phased Application Process) 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, the following information:

(A) each potentially applicable requirement and potentially applicable state only requirement (e.g., NSPS Kb, or 30 TAC Chapter 111);

(B) the applicability determination for each potentially applicable requirement and potentially applicable state only requirement; 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: “Based on my (the responsible official’s) actual knowledge formed after reasonable inquiry at the time of submittal of an application under this chapter, all emission units shall comply, by the compliance dates, with any applicable requirements identified in the application that become effective during the permit term.”;

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

(C) for any emission unit not in apparent 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 calendar 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 applicant shall submit a copy of the permit application to the EPA, if requested by EPA in writing.

§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 When Applications Are Due);

(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 an amended general operating permit, by the date specified in the amended general operating permit, but no later than six months after the date of the adoption of the amended 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 grant of 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 an amended general operating permit, the information required by §122.504 of this title (relating to Application Revisions When a General Operating Permit is Amended or Repealed).

(c) At the discretion of the executive director, 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 executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

§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 of 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.

(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 in writing 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 on 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.

(2) Under the full operating permit program, for those initial applications required to be submitted, by January 25, 1999, or July 25, 1999, 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 within nine months of 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 within 18 months of the date on which the executive director deems an 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

PERMIT CONTENT

§§122.142-122.146, 122.148

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

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§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 applicable requirements and state only requirements (e.g., NSPS Kb, 30 TAC Chapter 111);

(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 established through the applicable requirements and state only 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).

(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.

§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 of the permit and any provisional terms and conditions. Except as provided for in paragraph (5) of this section, any noncompliance with the permit terms and conditions constitutes a violation of the FCAA and the TCAA and may be grounds for enforcement action.

(5) The permit holder shall comply with any provisional terms and conditions before issuance or denial of a requested revision or renewal.

(6) The permit holder need not comply with terms and conditions that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal.

(7) If the permit holder fails to comply with any provisional terms and conditions, the existing terms and conditions shall be enforceable.

(8) The permit may be revised, reopened for cause, 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.

(9) The executive director may request in writing any information to determine compliance 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.

(10) If a new applicable requirement or state only requirement is promulgated after permit issuance, it must be incorporated into the permit.

(A) If the compliance date is earlier than the permit expiration date, the permit holder shall request a permit revision no later than 12 months after the requirement is promulgated.

(B) If the compliance date for the new requirement is later than the permit expiration date, the new requirement may be incorporated at renewal.

(C) The permit holder may apply, no later than 12 months after the requirement is promulgated, for another permit that codifies the new requirement.

(11) 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.

(12) 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 within 12 months of the determination by the commission that the requirement is an applicable requirement.

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

(14) 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.

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

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

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

(18) 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).

§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) Records of all monitoring data and support information required by the permit shall be maintained for a period of at least five years from the date of the monitoring sample, measurement, report, or application.

(A) If an applicable requirement or state only requirement specifies a shorter data retention period, the records shall be maintained for at least five years.

(B) 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.

(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.

(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 Code of Federal Regulations, Part 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 or state only requirement, shall be submitted to the executive director.

(B) Reports shall be submitted for at least each six calendar month period after permit issuance.

(i) If an applicable requirement or state only requirement specifies less frequent reporting, reports shall be submitted for at least every six calendar month period.

(ii) If an applicable requirement or state only requirement specifies more frequent reporting, reports shall be submitted for at least each reporting period specified in the applicable requirement or state only requirement.

(iii) The month in which the permit is issued shall be counted as the first calendar month; however, the reporting period will not begin until the day after permit issuance.

(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 or state only 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.

(B) A deviation report shall be submitted for at least each six calendar month period after permit issuance.

(i) If an applicable requirement specifies less frequent reporting, reports shall be submitted for at least every six calendar month period.

(ii) If an applicable requirement specifies more frequent reporting, reports shall be submitted for at least each reporting period specified in the applicable requirement.

(iii) The month in which the permit is issued shall be counted as the first calendar month; however, the reporting period will not begin until the day after permit issuance.

(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 upset, start-up, shutdown, or maintenance report containing details related to the deviation.

(E) State only requirements are not subject to the requirements of this subparagraph.

(3) Upset, start-up, shutdown, or maintenance reports. Reports of deviations resulting from any upset, start-up, shutdown, or maintenance activities shall be submitted in accordance with Chapter 101 of this title (relating to General Rules).

§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 calendar month period following initial permit issuance. The month in which the permit is issued shall be counted as the first calendar month; however, the certification period will not begin until the day after permit issuance.

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

(3) Upon written request by the EPA, a copy of the compliance certification shall be provided to the EPA.

(4) State only requirements are not subject to the annual compliance certification requirements.

(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 apparent compliance over the entire 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 apparent 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 required by the permit to be used to assess apparent compliance;

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

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

§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. Within 90 days of 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 will be replaced by a provisional term or condition or the basis of the term or condition changes.

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

Issued in Austin, Texas, on April 30, 1997.

SUBCHAPTER B : PERMIT REQUIREMENTS

MISCELLANEOUS

§122.161, §122.165

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

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§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.

(d) FCAA, §112(g) (relating to Modifications) shall apply only to sites subject to the requirements of this chapter. FCAA, §112(g), shall apply at the earliest time at which the sites are required to apply in accordance §122.130 of this title (relating to When Applications Are Due).

§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) reports required by the permit; and

(7) 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 one of the following individuals.

(1) Responsible official - any person meeting the requirements of subparagraphs (A), (B), (C), or (D) of this paragraph. Except for matters pertaining to the Acid Rain Program under FCAA, Title IV, the responsible official may authorize a duly authorized representative to certify documents. A corporation, a partnership, sole proprietorship, municipality, state, federal, other public agency, or an affected source may have multiple responsible officials if each meets the requirements noted in this definition.

(A) The responsible official for a corporation may be 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.

(B) The responsible official for a partnership or sole proprietorship may be a general partner or the proprietor, respectively.

(C) The responsible official for a municipality, state, federal, or other public agency may be either a principal executive officer or ranking elected official. For the purposes of this chapter, 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 the EPA).

(D) The responsible official for an affected source subject to the acid rain program shall be the following:

(i) the designated representative or the alternate designated representative for matters pertaining to the Acid Rain Program; and

(ii) the designated representative, the alternate designated representative, or a person meeting the provisions of subparagraph (A), (B), or (C) of this definition for any other purposes under this chapter.

(2) Duly authorized representative - A person employed by the owner or operator and authorized by the responsible official, as defined in this section, to certify documentation requiring certification under this section. The responsible official may designate a particular job classification

(e.g., production manager or environmental coordinator) as having the authority necessary to allow the person holding that classification to serve as the duly authorized representative. The responsible official may designate duly authorized representatives to certify documentation as follows.

(A) Any person responsible for the overall operation of one or more manufacturing, production, or operating facilities subject to this chapter may be authorized to certify any documents requiring certification under this section.

(B) Any person responsible for compiling documentation requiring certification may be authorized to certify that documentation, unless the documentation pertains to the submittal of an initial application, application compliance certification, annual compliance certification, renewal application, significant permit revision, or permit reopening.

(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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

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

INITIAL PERMIT ISSUANCES

§122.201, §122.204

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

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§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) Upon written request by the EPA, the executive director shall provide a copy of the permit application, the permit, and any required notices to the EPA.

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

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

(e) 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 Chapter 122 of this title (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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 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 proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§122.210. General Requirements for Revisions.

(a) The permit holder shall submit a complete 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 term or condition.

(b) The permit holder shall submit a complete application to the executive director for a revision to a permit to address the following:

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

(2) if applicable, the promulgation of a new applicable requirement;

(3) if applicable, the adoption of a new state only requirement; or

(4) a change in a state only designation.

(c) Upon written request by the EPA, the executive director shall provide a copy of the permit application, the permit, and any required notices 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.

§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) identifies a change in the name, address, or phone number of any person identified in the permit;
- (3) increases the frequency of monitoring or reporting requirements without changing any existing emission limitations or standards;
- (4) 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;
- (5) removes a federally enforceable only designation and does not otherwise affect the permit; or
- (6) is similar to those in paragraphs (1)-(5) of this section and approved by EPA.

§122.212. Applications for Administrative Permit Revisions.

(a) A complete application must include a record of any changes that took place over the previous 12 calendar months. The month in which the permit is issued shall be counted as the first calendar month; however, the reporting period will not begin until the day after permit issuance.

(b) A complete 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 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) within two weeks of the end of the calendar month in which the change took place; and

(3) the permit holder maintains the information required by paragraph (2) of this subsection with the permit until the permit is revised.

(b) If the permit holder fails to comply with the provisional terms and conditions, the existing terms and conditions shall be the enforceable terms and conditions.

(c) After operation of a change and before issuance or denial of the requested permit revision, the permit holder need not comply with the existing permit terms and conditions affected by the change.

(d) The permit holder shall submit an application for a permit revision to the executive director no later than two weeks after the end of each 12 calendar month period after permit issuance or renewal.

(1) The application shall address all changes requiring permit revision that took place during the previous 12 calendar month period.

(2) The month in which the permit is issued shall be counted as the first calendar month; however, the reporting period will not begin until the day after permit issuance.

(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 a complete application; and
- (3) the conditions of the permit provide for compliance with the requirements of this chapter.

§122.215. Minor Permit Revisions.

A change to a permit may qualify as a minor permit revision if the change 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) affects or adds a requirement designed to limit potential to emit;
- (4) incorporates an approved alternative means of control;

(5) incorporates new applicable requirements that are promulgated or new state only requirements that are adopted; or

(6) does not meet the criteria for an administrative permit revision or significant permit revision.

§122.216. Applications for Minor Permit Revisions.

(a) A complete application must include a record of any changes that took place over the previous 12 calendar months. The month in which the permit is issued shall be counted as the first calendar month; however, the reporting period will not begin until the day after permit issuance.

(b) A complete 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, state only requirements, or any new requirements designed to limit potential to emit;

(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 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 the information required in §122.216(b) of this title (relating to Applications for Minor Permit Revisions) within two weeks of the end of the calendar month in which the change took place;

(3) the permit holder maintains the information required by paragraph (2) of this subsection until the permit is revised.

(b) If the permit holder fails to comply with the provisional terms and conditions, the existing terms and conditions shall be the enforceable terms and conditions.

(c) After operation of a change and before issuance or denial of the requested permit revision, the permit holder need not comply with the existing permit terms and conditions affected by the change.

(d) The permit holder shall submit an application for a permit revision to the executive director no later than two weeks after the end of each 12 calendar month period after permit issuance or renewal.

(1) The application shall address all changes requiring permit revision that took place during the previous 12 calendar month period.

(2) The month in which the permit is issued shall be counted as the first calendar month; however, the reporting period will not begin until the day after permit issuance.

(e) 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 a complete 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 and affected state review have been satisfied.

(f) The minor permit revision shall not be final until the public petition requirements of this chapter have been satisfied.

§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) removes monitoring, recordkeeping, reporting, or testing terms and conditions for an emission unit remaining in operation and the applicable requirement or state only requirement remains in effect;

(2) removes a term or condition established through the permit for an emission unit remaining in operation and the applicable requirement or state only requirement remains in effect;

(3) changes a state only designation to an applicable requirement designation;

(4) affects an applicable requirement or state only requirement resulting from emissions averaging as allowed under an applicable requirement or state only requirement;

(5) affects an applicable requirement or state only requirement 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 an applicable emission limit or standard that requires, but does not specifically define monitoring, recordkeeping, reporting, or testing requirements;

(7) affects an applicable requirement resulting from early reductions under FCAA, §112(i)(5) (relating to Early Reductions);

(8) changes 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 an applicable requirement resulting from a determination established under FCAA, §112(g) (relating to Modifications) or §112(j) (relating to Equivalent Emission Limitation by Permit); or

(11) affects a term or condition established under FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air Quality or Plan Requirements for Nonattainment Areas).

§122.220. Applications for Significant Permit Revisions.

(a) A complete application must include a record of any changes that took place over the previous 12 calendar months. The month in which the permit is issued shall be counted as the first calendar month; however, the reporting period will not begin until the day after permit issuance.

(b) A complete application for changes identified in §122.219(1)-(4) of this title (relating to Significant Permit Revisions) must also include, at a minimum, the following:

- (1) a description of each change;
- (2) a description of the emission units affected;
- (3) a description of the emissions affected by the change;

(4) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions) that codify the new applicable requirements, state only requirements, or other new requirements;

(5) a statement that the change qualifies under §122.219(1)-(4) of this title; and

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

(c) A complete application for changes identified in §122.219(5)-(11) of this title must include, at a minimum, those requirements in subsection (b) of this section except paragraph (4).

§122.221. Procedures for Significant Permit Revisions.

(a) If the following requirements are met, changes identified in §122.219(1)-(4) of this title (relating to Significant Permit Revisions) 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 the information required in §122.220(b) of this title relating to (Applications for Significant Permit Revisions) within two weeks of the end of the calendar month in which the change took place; and

(3) maintains together with the permit the information required by paragraph (2) of this subsection until the permit is revised.

(b) If the permit holder fails to comply with the provisional terms and conditions, the existing terms and conditions shall be the enforceable terms and conditions.

(c) After operation of a change and before issuance or denial of the requested permit revision, the permit holder need not comply with the existing permit terms and conditions affected by the change.

(d) The permit holder shall submit an application for a permit revision to the executive director no later than two weeks after the end of each 12 calendar month period after permit issuance or renewal.

(1) The application shall address all changes requiring permit revision that took place during the previous 12 calendar month period.

(2) The month in which the permit is issued shall be counted as the first calendar month; however, the reporting period will not begin until the day after permit issuance.

(e) Changes identified in §122.219(5)-(11) of this title shall not be operated before the permit revision. For those changes, the permit holder shall do the following:

(1) comply with Chapter 116 of this title;

(2) submit to the executive director a request for a permit revision including the information required in §122.220(c) of this title.

(f) A significant permit revision may be issued by the executive director only if all of the following conditions have been satisfied:

(1) the changes meet the criteria for a significant permit revision;

(2) the permit holder has submitted a complete 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.

(g) 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

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

PERMIT REOPENINGS

§122.231

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

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§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 of a new applicable requirement or adoption of a state only requirement affecting emission units at the permitted site, unless one of the following applies:

(A) the new requirement is incorporated in another 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) additional requirements become applicable to an affected unit under the acid rain program;

(3) the permit contains a material mistake;

(4) inaccurate statements were made in establishing the emissions standards or other terms and conditions of the permit;

(5) the executive director determines that the permit must be revised to assure compliance with the applicable requirements or state only requirements; or

(6) a phased application schedule in the permit requires a reopening.

(b) No later than 180 days after receipt of written notification by the EPA that cause, as defined in this section, exists to terminate, revise, or revoke and reissue a permit under this section, the executive director shall terminate, revise, or revoke and reissue the permit in accordance with EPA's direction.

(c) Reopenings shall be completed and the permit issued by the executive director not later than 18 months after promulgation of the applicable requirement or adoption of the state only requirement.

(d) For reopenings, 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

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

PERMIT RENEWALS

§122.241, §122.243

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

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§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) Upon written request by the EPA, the executive director shall provide a copy of the renewal application, draft permit, and any required notices to the EPA.

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

(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 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.

(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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 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 proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§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) name, address, and phone number of the commission office to be contacted for further information;
- (5) 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; and
- (6) a description of the comment procedures, which include the duration of the public announcement comment period.

(c) Upon written request by the EPA, the executive director shall furnish a copy of the public announcement and date of publication 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 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 proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§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) permit application number;
- (2) applicant's or permit holder's name and address;
- (3) description of the location of the site or proposed location of the site;
- (4) 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) description of the comment procedures, including the duration of the public notice comment period and a statement of procedures to request a hearing;

(8) notification that a person who may be affected by the emission of air pollutants from the site is entitled to request a hearing; and

(9) name, address, and phone number of the commission office to be contacted for further information.

(c) 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.

(d) 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 (g) of this section has been posted consistent with the provisions of that subsection.

(e) Upon written request by the EPA, the executive director shall provide a copy of the permit application, the draft permit, and any required notices to the EPA.

(f) 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.

(g) 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 regional 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 regional 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.

(h) 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.

(i) 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.

(j) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(k) 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 once a week or more frequently, then notice shall be published in two successive issues. Otherwise, only one publication shall be required.

(7) 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.

(8) Each alternate language publication shall follow the requirements of §122.320 of this title (relating to Public Notice) not otherwise inconsistent with this subsection.

(9) 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.

(10) The alternate language signs shall be posted adjacent to each English language sign required in public notice.

(11) 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 (relating to Public Notice) 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 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 proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed new section implements the Texas Health and Safety Code, §382.017, concerning Rules.

§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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 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 proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed new section implements the Texas Health and Safety Code, §382.017, concerning Rules.

§122.350. EPA Review.

(a) EPA review requirements apply to initial issuances, significant permit revisions, reopenings, and renewals.

(b) EPA review requirements do not apply to state only requirements.

(c) After the end of the public comment period, the executive director shall submit the proposed permit to the EPA.

(d) Upon receipt of the proposed permit, the EPA shall have 45 days to object, in writing, to the issuance of the proposed permit.

(e) 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.

(f) If the executive director fails, within 90 days of receipt of an objection, to revise the proposed permit and submit a revised permit 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 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 proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed new section implements the Texas Health and Safety Code, §382.017, concerning Rules.

§122.360. Public Petition.

(a) Public petition requirements apply to initial issuances, significant permit revisions, minor permit revisions, reopenings, and renewals.

(b) Public petition requirements do not apply to state only requirements.

(c) 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.

(1) For initial issuance, reopening, renewal, and significant permit revision, the petition must be filed with the EPA within 60 days after the expiration of EPA's 45-day review period.

(2) For minor permit revision, the petition must be filed with the EPA within 60 days of the close of public announcement comment 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 to terminate, modify, or revoke and reissue 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

SUBCHAPTER E : ACID RAIN PERMITS

§§122.410, 122.412, 122.414

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

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§122.410. Operating Permit Interface.

(a) The commission hereby adopts and incorporates by reference, except for 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 Title IV of the Act.

(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. When Acid Rain Permit Applications Are Due.

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 §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 §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 §72.6(a)(3)(iv)-(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 meets the subject acid rain program requirements defined in §72.30(b)(2)(v)-(viii).

(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 an acid rain permit 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 Chapter 122 of this title (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 within ten working days after the date of final action on the revision.

(2) The provisions of §122.216 and §122.217(e) and (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.

(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(f) and (g) 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 with the following restrictions.

(A) Changes shall not be operated before the permit is revised.

(B) Provisional terms and conditions do not apply.

(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 be added 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

SUBCHAPTER F : GENERAL OPERATING PERMITS

PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

§§122.501-122.506, 122.508

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

The proposed new sections implement the Texas Health and Safety Code, §382.017, concerning Rules.

§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) The 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) Upon written request by the EPA, the executive director shall provide a copy of the draft general operating permit to the EPA.

§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) Upon written request by the EPA, the executive director shall provide a copy of the general operating permit application 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 those activities at a site which change, add, or remove any applicability determinations or the basis of any determinations in the existing general operating permit application.

(1) The updated application for a general operating permit under this subsection shall contain at a minimum the following:

(A) a description of each change;

(B) a description of the emission unit affected;

(C) any changes in the applicability determinations;

(D) any changes in the bases of the applicability determinations;

(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) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director:

(A) the permit holder complies with the following:

(i) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(ii) all applicable requirements; and

(iii) all state only requirements;

(B) the permit holder submits to the executive director the information required in paragraph (1) of this subsection within two weeks of the end of the calendar month in which the change took place;

(C) the permit holder maintains with the authorization to operate under the general operating permit, the information required by paragraph (1) of this subsection until the application is revised; and

(D) the permit holder operates under the representations in the application required by this subsection.

(b) After operation of a change and before the granting of the new authorization to operate, the permit holder need not comply with the representations in the existing application. However, if the permit holder fails to comply with the representations in the updated application, the representations in the existing application shall be enforceable.

(c) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who qualify.

(d) 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.

(e) 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.

(f) 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 Amended or Repealed.

(a) This section applies if the permit holder's authority to operate under a general operating permit is affected by the amendment of a general operating permit, and the permit holder intends to operate under the amended general operating permit.

(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) a statement that the emission units qualify for the general operating permit;
and

(E) 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 date specified in the general operating permit, but no later than six months after the date of adoption of the general operating permit.

(b) If the permit holder submits a timely and complete application under §122.133 and §122.134 of this title (relating to Timely Application and Complete Application), the permit holder may continue to operate under the terms and conditions of the previously adopted permit until the grant is issued or denied.

(c) The permit holder need not reapply for an amended general operating permit, provided the following:

(1) the emission units addressed in the authorization to operate qualify for the amended general operating permit;

(2) the applicability determinations remain unchanged; and

(3) basis for each applicability determination remain unchanged.

(d) If a general operating permit is repealed, the authorization to operate under the general operating permit is revoked.

(e) If 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.

§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 an application.

(3) Failure to receive notice does not affect the requirements under subsections (c) and (d) of this section.

(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) Permit holders 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 of the authorization to operate under a 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 application submittal, 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 issued 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) Upon written request by the EPA, the executive director shall provide a copy of the renewal application, general operating permit, and any required notices 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) 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) name, address, and phone number of the commission office to be contacted for further information.

(b) Upon written request by the EPA, the executive director shall provide a copy of the proposed draft general operating permit rule and any required notices 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 Government Code, Administrative Procedure Act, Chapter 2001 or 2002.

(c) Any person may submit oral or written statements and data concerning the proposed draft general operating permit rule.

(1) Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(2) The period for submitting written comments shall be 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.