

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of §§116.10, 116.11, 116.13, 116.14, 116.110-116.112, 116.114-116.118, 116.120-116.126, and 116.310-116.314 and new §§116.10, 116.11, 116.13-116.15, 116.110-116.112, 116.114-116.118, 116.120-116.126, 116.180-116.183, and 116.310-116.314, concerning Control of Air Pollution by Permits for New Construction or Modification.

The commission also proposes amendments to §§116.130-116.134, 116.136, 116.137, 116.140, 116.141, 116.143, 116.160, 116.161, 116.170, 116.174, 116.610, 116.611, 116.614, 116.615, 116.617, 116.620, 116.621, 116.710, 116.711, 116.714, 116.715, 116.721, 116.730, 116.740, and 116.750, concerning Control of Air Pollution by Permits for New Construction or Modification.

This action constitutes the commission's proposal to review the rules contained in 30 TAC Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification, in accordance with Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

EXPLANATION OF PROPOSED RULES. The commission proposes a new §116.15 and a new Subchapter C, §§116.180-116.183, for the purpose of implementing a program to meet the requirements of the 1990 Federal Clean Air Act (FCAA) amendments, §112(g), as set forth in 40 Code of Federal Regulations (CFR) Part 63, §§63.40-63.44, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology (§112(g)).

Chapter 116 will implement the requirements of Title III of the FCAA, concerning Hazardous Air Pollutants, §112(g), Modifications, and 40 CFR Part 63. After June 29, 1998, the effective date of §112(g)(2)(B), and the approval date of a Title V permit program in the state, all owners and operators of major sources subject to the §112(g) program that are constructed or reconstructed will be required to install maximum achievable control technology (MACT) unless specifically exempted. Included in Title III of the 1990 FCAA amendments, §112(g) was designed to ensure that emissions of toxic air pollutants meet the requirements of a case-by-case MACT if a facility is constructed or reconstructed before the United States Environmental Protection Agency (EPA) issues a MACT standard or air toxics regulation for that particular category of sources or facilities.

Changes have been made throughout the rules as the result of ongoing efforts by the commission for regulatory reform. 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. These changes will not be noted in the discussion in the following paragraphs concerning the proposed amendments to Chapter 116 in each subchapter. Although sections of Subchapter F, concerning Standard Permits, and Subchapter G, concerning Flexible Permits, were revised, these subchapters were not included in this extensive regulatory reform effort. In addition, not all of Subchapter B was included. These subchapters and remaining sections will be reviewed at a later date for purposes of regulatory reform.

The subchapters of the rule related to nonattainment permitting and emergency orders have not been included in this rulemaking, since they are expected to be revised in subsequent rulemakings that are on a different schedule. Those subchapters will be reviewed for regulatory reform purposes at that time.

The following paragraphs describe the proposed amendments to Chapter 116 by subchapter.

SUBCHAPTER A: DEFINITIONS. The commission proposes to amend Subchapter A by deleting those definitions that are identical or essentially the same as those in 30 TAC Chapter 101, concerning General Rules. As a result, in Chapter 116, the commission proposes to delete the definitions of “de minimis impact” and “emissions unit,” to eliminate redundancy.

In addition, the commission proposes to amend the definitions that reference exemptions from permitting by referring to 30 TAC Chapter 106, concerning Exemptions from Permitting. These references were proposed in response to the recent revision to Chapter 116 that moved exemptions to Chapter 106. Correct references to the new exemption chapter, or specific sections within that chapter, have been made throughout the rules.

The definition of “federally enforceable” is revised to include the requirements of 30 TAC Chapter 113, Subchapter C, concerning National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63). These standards (commonly referred to as MACTS) are

incorporated by reference into Chapter 113 and this reference is being included simply to direct the reader to the correct chapter of the commission's rules.

The definition of "lead smelting plant" plant is revised to correct an internal conflict. The definition states that processing may include "oxidizing into lead oxide." This conflicts with the last sentence of the definition, which says that a facility that remelts lead bars or ingots is not a lead smelting plant. The conflict arises because lead oxide is only made by melting lead ingots.

Finally, the commission proposes new §116.15, concerning Section 112(g) Definitions. The definitions contained in §116.15 will be used in conjunction with Subchapter C, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63). The definitions in §116.15 are essentially the same as those contained in 40 CFR 63, §63.41, concerning Definitions under Subpart B, Requirements for Control Technology (see 61 FR 68399).

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS. The commission proposes to amend §116.110, concerning Applicability, to reference standard permits that currently exist in Chapter 321, Subchapter K, concerning Concentrated Animal Feeding Operations; Chapter 332, concerning Composting; and Chapter 330, Subchapter N, concerning Landfill Mining. This amendment is proposed so that all the standard permits (for air emissions) currently available are referenced in Chapter 116.

The commission proposes to delete the operations certification requirements contained in the existing §116.110(b) as a result of recommendations made by the TNRCC regional offices and the Office of Compliance and Enforcement. The commission believes that the operations certification requirement created unnecessary reporting and paperwork and could be implemented more effectively through new source review (NSR) permits on a case-by-case basis.

The commission proposes a new §116.110(c), concerning Exclusion, to make it clear that facilities subject to Subchapter C are not authorized to use an exemption under Chapter 106, or an authorization under §116.116(e), concerning changes to qualified facilities. Facilities subject to Subchapter C can use standard permits under Subchapter F of this chapter if the terms and conditions of the standard permit meet the criteria of Subchapter C. As currently written, none of the existing standard permits meet the criteria of Subchapter C (e.g., there is no requirement for public notice). These changes are being made to ensure that applicants obtain the appropriate authorization under Subchapter C and are described in more detail in the section of the preamble addressing Subchapter C.

The commission proposes a new §116.110(d), concerning change in ownership (formerly §116.110(c)). This subsection is proposed to be revised to specify that new owners must submit information on the date of the change in ownership, the name of the new owner, a contact person for the new owner, and the address and phone number of the new owner.

The commission proposes a new §116.110(e) to reflect the recent revisions to the Texas Engineering Practice Act (TEPA) which now refers to “licensed” engineers instead of “registered” engineers. The correct name of the Texas Board of Professional Engineers is included. The rule is revised to make clear that for projects with a capital cost above \$2 million, the project must be submitted under the seal of a Texas licensed professional engineer. This change is being made to make this section consistent with longstanding agency practice concerning seals of Texas professional engineers.

Section 116.111(6), concerning national emissions standards for hazardous air pollutants for source categories, is revised to reference the requirements of Chapter 113, Subchapter C. These standards (commonly referred to as MACTS) are incorporated by reference into Chapter 113 and this reference is being included simply to direct the reader to the correct chapter of the commission’s rules.

Changes are proposed to implement FCAA, §112(g) and 40 CFR Part 63, Subpart B, requirements in §116.111(11), concerning general application, to ensure that applicants submit information in permit applications that demonstrates that the requirements of Subchapter C are met.

Section 116.112, concerning Distance Limitations, is revised to be consistent with the statutory provisions in the Texas Solid Waste Disposal Act, §361.102, concerning Prohibition on Permit for Hazardous Waste Management Facilities Within a Certain Distance of Residence, Church, School, Day Care Center, Park, or Public Drinking Water Supply. The current §116.112(b)(4) contained a typographical error that would have allowed the construction of any new commercial hazardous waste

management facility or units of a facility to be located within 2,640 feet of any off-site receptor. The statutory provision prohibits the construction of a new commercial hazardous waste management facility that would be within 2,640 feet of any off-site receptor.

Section 116.115(c), concerning special conditions, is revised to include a reference to the new requirements in Subchapter C. This change will allow the executive director to include a special condition in permits requiring permit holders to obtain prior written approval before constructing a source using a standard permit under Subchapter F or an exemption under Chapter 106, if the change would cause the facility to become subject to Subchapter C.

Section 116.116(b)(3) is added to require permit amendments that concern a change subject to Subchapter C to comply with the provisions for public notice and comment under Subchapter B of this chapter. This change is being made because 40 CFR Part 63, §63.43(c)(2)(ii), requires case-by-case MACT determinations to be subject to public notice.

Subsection (f) is being added to §116.116 to authorize the use of discrete emission reduction credits (DERCs) to exceed permit allowables under certain conditions. The commission recently adopted a revised emissions banking and trading rule (22 TexReg 12517) to allow a source to meet emission control requirements by purchasing and using credits generated by another source which has reduced its emissions below the level required by rule or permit. The revised banking rule allows for the use of DERCs to exceed permitted allowable emission levels by a certain amount once within any 24-month

period. In ozone nonattainment areas, this exceedance must be 25 tons or less of nitrogen oxides or five tons or less of volatile organic compounds. In other areas, the amount may not exceed the prevention of significant deterioration significance levels as provided in 40 CFR §52.21(b)(23). In addition to other requirements, these uses must be approved by the executive director and may not cause or contribute to a condition of air pollution. The proposed language of §116.116(f) would be the final step in allowing the use of credits to authorize certain exceedances of permit allowables.

Section 116.117, concerning Documentation and Notification of Changes to Qualified Facilities, is revised to require persons making changes to qualified facilities under §116.116(e) to maintain documentation that demonstrates that the project will comply with Subchapter C.

A minor amendment is proposed in §116.118 that would add the word “or” in §116.118(a)(1). This is being done to correct a previous typographical error.

The commission proposes to amend §116.130(a), concerning applicability of public notification and comment procedures, by adding a reference to permit renewals. Applications for permit renewals are already required to go through public notice. This change merely includes a reference to renewals in this section. Subsection (a) is also revised to more closely track Texas Clean Air Act (TCAA), §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, by including the phrase “or to be located.” This revision does not change the current requirement to publish notice in a newspaper of general circulation in the municipality where the facility is located, or to be located.

Section 116.130 is also revised by adding a new subsection (c) that requires applications subject to review under Subchapter C to go through public notice. All applications subject to the requirements of FCAA, §112(g) and 40 CFR Part 63, Subpart B, whether initial applications or amendments to existing case-by-case MACT determinations, must go through the public notice process. This is because 40 CFR Part 63, Subpart B, §63.43(c)(2)(ii), requires that all such determinations be subject to public notice.

To assist in the implementation of the commission's directive to facilitate and improve the public notice process, the commission proposes to provide the phone number of the appropriate commission office to contact for further information as a part of the public notice required in §116.132(a)(11) and §116.133(a)(6) rather than the phone number of the appropriate TNRCC regional office.

Section 116.136(a) is proposed to be revised to correctly refer to the requirement that the executive director make a preliminary determination to issue or deny a permit subject to the FCAA, Title I, Parts C or D or to 40 CFR §51.165(b) or the availability of the preliminary analysis that is required for other permitting actions. This change will make §116.136(a) consistent with the requirements of §116.132(a)(6) and (7), concerning public notice format.

The commission proposes to amend §116.140, concerning Applicability of Permit Fees, by deleting reference to operating permits and standard exemptions, because these types of authorizations are no longer included in Chapter 116. The reference to operating permits is deleted because the commission no longer issues state operating permits. This should not be confused with federal operating permits

issued under 30 TAC Chapter 122, concerning Federal Operating Permits. Exemptions from permitting are now contained in Chapter 106.

The commission proposes to amend §116.141(b)(1) to specify that any application for new or modified facilities controlled by the federal government will be charged a fee of \$450. The existing provision qualifies the fee requirement for federal government applications submitted after January 1987. Since all of the pre-1987 applications from the federal government have been acted on by the commission, this provision is no longer necessary.

Section 116.141(c)(1)(A) is revised to address an interpretation problem with the current rule. As currently written, the rule has confused some applicants and staff concerning the computation of direct costs for facilities that are no longer permitted (e.g., the permit expired and was not renewed). A historical review of this section indicates that the original fee language was added prior to any requirements for renewal (and expiration) of permits. The confusion lies around whether “permitted” means currently permitted or ever permitted regardless of current status. With two possible interpretations, neither has been consistently applied and the proposed language will rectify this situation. The commission does not believe that it is appropriate to allow the direct costs of process and control equipment of a facility to be excluded if the facility once had a permit but no longer does. Allowing this exclusion would promote the argument that higher renewal fees could be avoided in favor of a minimum new permit fee. It is not expected that this change will result in significantly higher fees and it will ensure that all applications are reviewed consistently for fee determinations.

The commission proposes to amend §116.143 by correcting the TNRCC mailing address where permit fees are submitted. The previous mailing address was a street address rather than a post office box.

**SUBCHAPTER C: HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING
CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (FCAA, §112(g), 40 CFR Part 63).**

The proposed revisions contain a new Subchapter C which is intended to meet the requirements of the 1990 FCAA amendments, §112(g), as set forth in 40 CFR 63, §§63.40-63.44. Included in Title III of the 1990 FCAA amendments, §112(g) was designed to ensure that emissions of toxic air pollutants meet the requirements of case-by-case MACT if a facility is constructed or reconstructed before EPA issues a MACT standard or air toxics regulation for that particular category of sources or facilities.

40 CFR Part 63, Subpart B, requires the commission to make case-by-case MACT determinations for sources that become subject to §112(g) prior to the EPA promulgating a MACT that would apply to the source. 40 CFR 63, §63.42 allows states to rely on existing NSR permitting programs to implement the requirements of §112(g) if the NSR program meets the requirements of that subpart. The commission believes that, with some modifications, the existing NSR program can implement the requirements of §112(g) and 40 CFR Part 63, Subpart B. Accordingly, the commission believes that the Best Available Control Technology (BACT) determinations made in the NSR program will be the equivalent to the requirements for case-by-case MACT determinations.

After June 29, 1998, the effective date of §112(g)(2)(B), and the approval date of a Title V permit program in the state, all owners and operators of major sources subject to the §112(g) program that are constructed or reconstructed will be required to install MACT unless specifically exempted. As originally implemented, Chapter 122 was a source category limited interim approved program. This meant that only certain standard industrial classification codes were required to apply for an operating permit under the interim program. The remaining sources were to apply upon the approval of the full program by the EPA. Chapter 122 was recently revised (November 1997) to require all sources subject to that program to submit an abbreviated application by February 1, 1998. This revision has the effect of bringing all sources in the state who are subject to the rule into the program well before the expected date required for full program approval. Therefore, after June 29, 1998, and after the EPA approves the recent revisions to Chapter 122, sources that trigger §112(g) review must apply to the commission for a case-by-case MACT determination under §116.182, concerning Application. The TNRCC staff expects Chapter 122 to be revised prior to June 29, 1998. Administratively complete applications that are submitted prior to June 29, 1998, and the approval of the revised Chapter 122, will not be subject to the requirements of Subchapter C.

After the effective date of §112(g)(2)(B) and upon approval of the state's federal operating permit program, sources subject to the requirements of Subchapter C will not be able to use a Chapter 106 exemption or a standard permit under Subchapter F (unless the particular standard permit's terms and conditions meet the requirements of Subchapter C) because all case-by-case MACT determinations are subject to the public notice requirements of Subchapter B.

Sources will not be able to use §116.116(e), concerning changes to qualified facilities, because the staff interprets §63.43(d) to require the case-by-case MACT determinations to be equivalent to current BACT determinations. Section 63.43(d)(1) provides that the MACT emission limitation “shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the permitting authority.” Section 116.116(e) allows for the use of ten-year old BACT for qualified facilities. In some cases, ten-year old BACT may not necessarily be equivalent to today’s BACT. An additional prohibition on the use of §116.116(e) is the requirement for case-by-case MACT determinations to go through public notice.

Sources will have limited use of flexible permits under Subchapter G. Currently, flexible permits allow for control that exceeds BACT on one facility in lieu of installing controls on other facilities. The staff believes that §112(g) and 40 CFR Part 63, Subpart B, require the case-by-case MACT determination to be applied to the specific affected facilities. Therefore, §116.711(3) was revised to indicate that BACT shall be applied to specific facilities that must comply with Subchapter C. As long as a facility applies BACT and conducts public notice, the facility would still be able to use flexible permits in conjunction with determinations made under Subchapter C.

In §116.181, concerning Exclusions, the commission is currently proposing the same set of exclusions that are provided in 40 CFR 63, §63.40(c)-(f). The commission has determined that in order to provide a program consistent with the requirements of 40 CFR Part 63, §§63.40-63.44, the same set of exclusions should be provided.

In general, if the owner or operator wants to construct or reconstruct a major source (as specified in §116.180(a)(1) and (2), concerning Applicability), then prior to that construction or reconstruction, the owner or operator must apply to the commission for a case-by-case MACT determination under §116.182, concerning Application. The application must contain the information required by the commission as provided in §116.111, concerning General Application. In addition, the application must specify the emission controls that will ensure that MACT will be met. Finally, the application for the proposed constructed or reconstructed major source must undergo the public notice requirements required by §116.130, which includes a 30-day public comment period and opportunity for a contested case hearing. After fully considering public comments and the results of any hearing, the commission would then issue (or deny) a permit, or approve a permit amendment, authorizing the construction or reconstruction of the major source. The case-by-case MACT determination codified in a permit issued under Chapter 116 would become an applicable requirement of Chapter 122 after satisfying the appropriate operating permit revision process and would be included in as a condition in an operating permit.

In proposing Chapter 116, Subchapter C, the executive director is certifying that the proposed §112(g) program satisfies all applicable requirements established by 40 CFR §§63.40-63.44. After June 29, 1998, the effective date of §112(g)(2)(B), and upon approval of the recently revised Chapter 122, all owners and operators of major sources subject to the §112(g) program that are constructed or reconstructed will be required to install MACT unless specifically exempted. As outlined in the EPA

preamble to the final rules implementing §112(g) (see 61 FR 68390), the program proposed is not required to have EPA approval before taking effect.

SUBCHAPTER D: PERMIT RENEWALS. The commission proposes a new §116.311(a)(4) to include the requirement that applicants submit information in applications for permit renewals demonstrating that the facility meets the requirements of any MACT listed under Chapter 113, Subchapter C.

Section 116.311(5) is added to include the requirement that applicants submit information in applications for permit renewals demonstrating that the facility meets the requirements of Subchapter C of this chapter.

Section 116.314, concerning Review Schedule, is amended to refer to the correct chapters of the commission's regulations concerning contested case hearings.

SUBCHAPTER F: STANDARD PERMITS. The commission proposes amendments to §116.610(a)(5), concerning applicability of standard permits, to include the requirement that applicants submit information in applications for standard permits demonstrating that the facility meets the requirements of any MACT listed under Chapter 113, Subchapter C.

The commission proposes a new §116.610(d) to clarify that facilities subject to Subchapter C of this chapter are not eligible for a standard permit under Chapter 116, unless the particular standard permit's terms and conditions meet the requirements of Subchapter C. This is because 40 CFR Part 63, §63.43(c)(2)(ii), requires all case-by-case MACT determinations to be subject to public notice.

The commission proposes to amend §116.614, concerning Standard Permit Fees, by correcting the TNRCC mailing address where permit fees are submitted. The previous mailing address did not have the correct mail code or zip code.

The commission proposes to amend §116.620, concerning Installation and/or Modification of Oil and Gas Facilities, to reference the appropriate exemptions under Chapter 106 rather than the former standard exemption. In addition, §116.620(a)(13) also includes reference to case-by-case MACT review under Subchapter C. Section 116.620(a)(16) is added to require applicants to submit information in applications for standard permits demonstrating that the facility meets the requirements of any MACT listed under Chapter 113, Subchapter C.

The commission also proposes to amend §116.621(2)(F), concerning municipal solid waste landfills, to refer to the correct exemptions under Chapter 106 rather than the former standard exemption. In addition, §116.621(2)(F) includes reference to review under Subchapter C.

SUBCHAPTER G: FLEXIBLE PERMITS. Consistent with the proposal to delete §116.110(b), the commission proposes to delete the operations certification requirements contained in §116.710(b) as a result of recommendations made by the TNRCC regional offices and the Office of Compliance and Enforcement. The commission believes that the operations certification requirement created unnecessary reporting and paperwork and could be implemented more effectively through Chapter 116 permits on a case-by-case basis.

Section 116.710(c) is revised to be consistent with the changes proposed to §116.116(e), concerning seals of Texas licensed professional engineers.

Section 116.711(3) is revised to require applicants to demonstrate that the proposed control technology meets the current BACT requirements for any constructed or reconstructed facility that is required to meet Subchapter C. Section 116.711(6) is added to require applicants to submit information in applications for flexible permits demonstrating that the facility meets the requirements of any MACT listed under Chapter 113, Subchapter C.

The commission also proposes amendments to §116.711(11), concerning flexible permit applications, by adding a requirement that facilities subject to review for constructed or reconstructed major sources of hazardous air pollutants under FCAA, §112(g) and 40 CFR Part 63 must comply with Subchapter C.

Along the same lines, the commission proposes to amend §116.715(a), concerning general and special conditions, to include the case-by-case MACT review under Subchapter C when considering whether a facility is eligible for a flexible permit under §116.710. A reference to Subchapter C was added because the commission wants to ensure that a facility operating under the terms of a flexible permit is in compliance with the federal permitting requirements of Subchapter C. As noted in the preamble discussion concerning Subchapter C, as long as a facility applies BACT and conducts public notice, the facility would still be able to use flexible permits in conjunction with case-by-case MACT determinations. In addition, §116.715 is amended to make the correct reference to Chapter 106. In order to properly refer to the Engineering Services Section, the commission proposes to amend §116.715(c)(4) by deleting a reference to the Source and Mobile Monitoring Section.

Section 116.740(b), concerning public notice and comment, is added to require public notice for flexible permit amendments that address a case-by-case MACT determination under Subchapter C. Flexible permit amendments that do not concern case-by-case MACT determinations are not required to complete the public notice process. This change is being made to allow sources to continue to fully utilize flexible permits while meeting the conditions of Subchapter C.

In addition, the commission proposes to amend §116.721 and §116.750, concerning Amendments and Alterations and Flexible Permit Fee, to correctly reference Chapter 106 rather than the former Chapter 116 for standard exemptions. Section 116.750(b) is amended to clarify that the minimum fee for a flexible permit amendment is \$450. This is not a change to the existing fee structure; rather, it is to

correct an oversight to include the \$450 minimum fee. The \$450 minimum fee has been applied, when applicable, to all applications for flexible permit amendments. This correction will make this section consistent with Subchapter B regarding fees for NSR permit amendments.

REVIEW OF AGENCY RULES. The commission also proposes to review the rules contained in 30 TAC Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification, as mandated by the General Appropriations Act, Article IX, Section 167. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in Chapter 116 and determined that the rules in Chapter 116 are still necessary they implement critical provisions of the Texas Health and Safety Code, Texas Clean Air Act, Chapter 382, as well as 42 United States Code Annotated, §7401 to 7671q, of the Federal Clean Air Act. Chapter 116 provides the procedures for action on any application for a permit for construction or modification or renewal of a permit for a facility that will emit air contaminants into the air of the state.

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 anticipated for state or local government as a result of enforcing or administering the sections.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be that the rules will conform to the commission's guidelines for regulatory reform. This will increase the readability of the rule, thus assisting the public and the regulated community in their understanding of the regulation. The additional changes are proposed to clarify existing rule language and make the rule consistent with current procedures will benefit the public in that the rule will better reflect the TNRCC's current operating procedures.

The provisions of Chapter 116 will also implement the new requirements of Title III of the FCAA for the permitting of construction or reconstruction of major sources of hazardous air pollutants. After June 29, 1998, the effective date of §112(g)(2)(B), and the approval date of a Title V permit program in the state, all owners and operators of major sources subject to the §112(g) program that are constructed or reconstructed will be required to install MACT unless specifically exempted. The public benefit from the implementation of this program is that the commission, and not the EPA, will be the agency responsible for the oversight of the new program. Since the existing NSR permitting process, with some modifications, will be used to implement the requirements of §112(g) and 40 CFR Part 63, Subpart B, the regulated community and the public will already be familiar with that process.

The proposed revisions do not impose significant new requirements on the regulated community, small businesses, or persons who are required to comply with the sections as proposed.

DRAFT REGULATORY IMPACT ANALYSIS. The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Code. The portions of the rules implementing the FCAA, §112(g) do not meet the definition because the obligations have already been established by federal law and thus are not new requirements. The other portions of the rules correcting typos, clarifying language, and instituting regulatory reform changes are not of a magnitude to affect the economic factors in a material way.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments and repeals is to implement the requirements of Title III of the FCAA, Hazardous Air Pollutants, §112(g), Modifications, and 40 CFR Part 63, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology (§112(g)). The rule amendments and repeals will also implement the commission’s guidelines on regulatory reform as well as provide clarifications to existing rule language, streamline procedures, and make the rule consistent with other commission rules. Promulgation and enforcement of the rule amendments and repeal will not create a burden on private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The commission has determined that this proposed rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Conservation Commission. Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and §505.22(a), 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 applicable CMP goals and policies. The commission has reviewed this proposed rulemaking action for consistency, and has determined that this proposed rulemaking action is consistent with the applicable CMP goals and policies.

Chapter 116 proposes a new program that implements the requirements of Title III of the FCAA, Hazardous Air Pollutants, §112(g), Modifications, and 40 CFR Part 63, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology. The proposed rule revisions are consistent with the goals and policies of the CMP because they are being proposed to implement the new §112(g) program. The new §112(g) program requires preconstruction review of major sources of hazardous air pollutants. This new program will require a review of the controls proposed for these major sources and could result in a reduction in air emissions.

The majority of the proposed revisions will not impact air emissions since they are being done under the commission's guidelines on regulatory reform or for the purpose of clarification of existing procedures. The proposed changes concerning fees should not impact the status quo of the NSR permitting program, since the changes concerning direct costs provide consistency when calculating fees for new construction permits. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

PUBLIC HEARING. A public hearing on the proposal and rules review will be held April 16, 1998, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments regarding this proposal may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98001-116-AI. Comments must be received by 5:00 p.m., April 20, 1998. The commission requests that comments on the results of the review of its rules be clearly identified separately from comments on the proposed changes in order to facilitate their assessment. For further information or

questions concerning this proposal, please contact Mark Gibbs of the New Source Review Permitting Division, Office of Air Quality, (512) 239-1297.

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, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Section 167, General Appropriations Act, 75th Legislature, 1997.

The proposed repeals implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

SUBCHAPTER A : DEFINITIONS

§§116.10, 116.11, 116.13, 116.14

§116.10. General Definitions.

§116.11. Compliance History Definitions.

§116.13. Flexible Permit Definitions.

§116.14. Standard Permit Definitions.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PERMIT APPLICATION

§§116.110-116.112, 116.114-116.118

STATUTORY AUTHORITY. The repeals are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed repeals implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.110. Applicability.

§116.111. General Application.

§116.112. Distance Limitations.

§116.114. Application Review Schedule.

§116.115. General and Special Conditions.

§116.116. Changes to Facilities.

§116.117. Documentation and Notification of Changes to Qualified Facilities.

§116.118. Pre-change Qualification.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

COMPLIANCE HISTORY

§§116.120-116.126

STATUTORY AUTHORITY. The repeals are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed repeals implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.120. Applicability.

§116.121. Exemptions

§116.122. Contents of Compliance History.

§116.123. Effective Dates.

§116.124. Public Notice of Compliance History.

§116.125. Preservation of Existing Rights and Procedures.

§116.126. Voidance of Permit Applications.

SUBCHAPTER D : PERMIT RENEWALS

§§116.310-116.314

STATUTORY AUTHORITY. The repeals are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed repeals implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.310. Notification of Permit Holder.

§116.311. Permit Renewal Application.

§116.312. Public Notification and Comment Procedures.

§116.313. Renewal Application Fees.

§116.314. Review Schedule.

SUBCHAPTER A : DEFINITIONS

§§116.10, 116.11, 116.13-116.15

STATUTORY AUTHORITY. The new sections are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed new sections implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.10. General Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Actual emissions** - The highest rate of emissions of an air contaminant actually achieved from a qualified facility within the 120-month period prior to the change. This rate cannot exceed any applicable federal or state emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title (relating to Changes to Facilities).

(2) **Allowable emissions** - The authorized rate of emissions of an air contaminant from a facility as determined in accordance with this section. This rate cannot exceed any applicable state or federal emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title.

(A) **Permitted facility** - For a facility with a preconstruction permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a MAERT and any emission limit contained in representations in the permit application which was relied upon in issuing the permit, plus any allowable emissions authorized by an exemption under Chapter 106 of this title (relating to Exemptions from Permitting).

(B) **Exempted facility** - For a facility operating under Chapter 106 of this title, the allowable emissions shall be the least of the emissions rate allowed in Chapter 106, Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable exemption, or the federally enforceable emission rate established on a PI-8 form.

(C) Grandfathered facility - For a qualified grandfathered facility, the allowable emissions shall be the maximum annual emissions rate after the implementation of any air pollution control methods to become a qualified facility, plus 10% of the maximum annual emissions rate prior to the implementation of such control methods, but in no case shall the allowable emissions be greater than the maximum annual emissions rate prior to the implementation of such control methods. The maximum annual emissions rate is the emissions rate at the maximum annual capacity according to the physical or operational design of the facility, data from actual operations over a period of no more than 12 months that demonstrates the maximum annual capacity, or other information that demonstrates the maximum annual capacity. Except where a grandfather facility has been modified, the allowable emissions for the modification shall be determined as a permitted facility.

(D) Standard permit facility - For a facility authorized by standard permit, other than §116.617(2) of this title (relating to Standard Permits for Pollution Control Projects), the allowable emissions shall be the maximum emissions rate represented in the registration for the standard permit.

(E) Special exemption facility - For a facility operating under a special exemption, the allowable emissions shall be the emissions rate represented in the original special exemption request.

(F) The allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls.

(3) **Best available control technology (BACT)** - BACT with consideration given to the technical practicability and the economic reasonableness of reducing or eliminating emissions from the facility.

(4) **Facility** - A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(5) **Federally enforceable** - All limitations and conditions which are enforceable by the EPA, including:

(A) those requirements developed under Title 40 of the Code of Federal Regulations (CFR) Parts 60 and 61 (40 CFR 60 and 61);

(B) Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63));

(C) requirements within any applicable state implementation plan (SIP);

(D) any permit requirements established under 40 CFR §52.21; or

(E) any permit requirements established under regulations approved under 40 CFR Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(6) **Grandfathered facility** - Any facility that is not a new facility since it was constructed prior to the permit requirements of this chapter.

(7) **Lead smelting plant** - Any facility which produces purified lead by melting and separating lead from metal and nonmetallic contaminants and/or by reducing oxides into elemental lead. Raw materials consist of lead concentrates, lead-bearing ores or lead scrap, drosses, or other lead-bearing residues. Additional processing may include refining and alloying. A facility which only remelts lead bars or ingots for casting into lead products is not a lead smelting plant.

(8) **Maximum allowable emissions rate table (MAERT)** - A table included with a preconstruction permit issued under this chapter that contains the allowable emission rates established by the permit for a facility.

(9) Modification of existing facility - Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, under the TCAA, §382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, an air pollution control method that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of any air contaminant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only under Chapter 106 of this title; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with TCAA, §382.060, as that section existed prior to September 1, 1991.

(10) **New facility** - A facility for which construction is commenced after August 30, 1971, and no contract for construction was executed on or before August 30, 1971, and that contract specified a beginning construction date on or before February 29, 1972.

(11) **New source** - Any stationary source, the construction or modification of which is commenced after March 5, 1972.

(12) **Nonattainment area** - A defined region within the state which is designated by the EPA as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, §107(d).

(13) **Public notice** - The public notice of application for a permit as required in this chapter.

(14) **Qualified facility** - An existing facility that satisfies the criteria of either paragraph (9)(E)(i) or (ii) of this section.

(15) Source - A point of origin of air contaminants, whether privately or publicly owned or operated.

§116.11. Compliance History Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in §§116.120-116.126 of this title (relating to Compliance History) shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Adjudicated decision** - Any conviction, final order, judgment, or decree as follows:

(A) a criminal conviction of the applicant in any court for violation of any law of this state, another state, or of the United States governing air contaminants;

(B) a final order, judgment, or decree of any court or administrative agency, or agreement entered into settlement of any legal or administrative action brought in a court or administrative agency, addressing:

(i) the applicant's past performance or compliance with the laws and rules of this state, another state, or of the United States governing air contaminants; or

(ii) the terms of any permit or order issued by the commission; or

(C) an order of any court or administrative agency, whether final or not, respecting air contaminants for the facility that is the subject of the permit application.

(2) **Compliance event** - An adjudicated decision or compliance proceeding as defined in paragraphs (1) and (4) this section.

(3) **Compliance history** - The record of an applicant's adherence to air pollution control laws and rules of the State of Texas, other states, and of the United States except as provided in §116.123 of this title (relating to Effective Dates). The history shall be for the five-year period prior to the date on which the application for issuance, amendment, or renewal is filed. The compliance history shall include all compliance events, as defined in this section.

(4) **Compliance proceeding** - A notice of violation issued by the commission or other agency for which the commission has recommended formal enforcement action and has notified the applicant of such recommendation.

(5) Existing site - A plant property that is not a new site.

(6) New site - A plant property having an operating history less than five years in length as of the date of application.

§116.13. Flexible Permit Definitions.

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

(1) Emission cap - Emission limit for a specific air contaminant based on total emissions of that pollutant adjusted by an insignificant emissions factor from all sources that are included in a flexible permit.

(2) Expected maximum capacity - The maximum capacity of a facility according to its physical and operational design and planned operation.

(3) Individual emission limitation - Emission limit for a specific air contaminant not covered by an emission cap for an individual facility adjusted by an insignificant emissions factor.

§116.14. Standard Permit Definitions.

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

(1) **Off-plant receptor** - For the purposes of Subchapter F of this chapter (relating to Standard Permits) only, shall be defined as any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or owner of the property upon which the facilities are located.

(2) **Oil and gas facility** - For the purposes of Subchapter F of this chapter only, shall be defined as facilities which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth's surface. These oil and gas facilities include, but are not limited to: oil or gas production facilities; water injection facilities; carbon dioxide separation facilities; or oil or gas pipeline facilities consisting of one or more tanks, separators, dehydration units, free water knock-outs, gunbarrels, heater treaters, vapor recovery units, flares, pumps, internal combustion engines, gas turbines, compressors, natural gas liquid recovery units, or gas sweetening and other gas conditioning facilities. This definition does not include sulfur recovery units.

(3) Sulfur recovery unit - For the purposes of Subchapter F of this chapter only, shall be defined as a process device whose primary purpose is to recover elemental sulfur from acid gas.

§116.15. Section 112(g) Definitions.

The following words and terms, when used in Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected source - The stationary source or group of stationary sources which, when fabricated (on-site), erected, or installed meets the criteria in §116.180(a)(1) and (2) of this title (relating to Applicability).

(2) Control technology - Measures, processes, methods, systems, or techniques to limit the emission of HAPs including, but not limited to, measures that:

(A) reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;

(B) enclose systems or processes to eliminate emissions;

(C) collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 United States Code 7412(h); or

(E) are a combination of subparagraphs (A)-(D) of this paragraph.

(3) **Electric utility steam generating unit** - Any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(4) **Greenfield site** - A contiguous area under common control that is an undeveloped site.

(5) **Hazardous air pollutant (HAP)** - Any air pollutant listed under the FCAA, §112(b).

(6) **List of source categories** - The Source Category List required by FCAA, §112(c).

(7) Maximum achievable control technology emission limitation for new sources -

The emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions that the executive director, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

(8) Process or production unit - Any collection of structures and/or equipment, that

processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(9) Research and development activities - Activities conducted at a research or

laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a *de minimis* manner.

(10) Similar source - A stationary source or process that has comparable emissions

and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PERMIT APPLICATION

§§116.110-116.112, 116.114-116.118

STATUTORY AUTHORITY. The new sections are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed new sections implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.110. Applicability.

(a) Permit to construct. Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall either:

(1) obtain a permit under §116.111 of this title (relating to General Application);

(2) satisfy the conditions for a standard permit under the requirements in:

(A) Subchapter F of this chapter (relating to Standard Permits);

(B) Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);

(C) Chapter 332 of this title (relating to Composting); or

(D) Chapter 330, Subchapter N of this title (relating to Landfill Mining);

(3) satisfy the conditions for a flexible permit under the requirements in Subchapter G of this chapter (relating to Flexible Permits); or

(4) satisfy the conditions for exempt facilities under Chapter 106 of this title (relating to Exemptions from Permitting) before any actual work is begun on the facility.

(b) Modifications to existing permitted facilities. Modifications to existing permitted facilities may be handled through the amendment of an existing permit or an existing flexible permit.

(c) Exclusion. Owners or operators of constructed or reconstructed facilities subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)) are not authorized to use:

(1) an exemption under Chapter 106 of this title;

(2) standard permits under Subchapter F of this chapter that do not meet the requirements of Subchapter C of this chapter; or

(3) §116.116(e) of this title (relating to Changes to Facilities).

(d) Change in ownership.

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

(A) the date of the ownership change;

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

(C) an agreement by the new owner to be bound by all permit conditions and all representations made in the permit application and any amendments and alterations;

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

(E) there will be no increase in the quantity of pollutants emitted.

(2) The new owner shall comply with all permit conditions and all representations made in the permit application and any amendments and alterations.

(e) Submittal under seal of Texas licensed professional engineer. Applications for permit or permit amendment with an estimated capital cost of the project above \$2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a Texas licensed professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas Board of Professional Engineers. The estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

(f) Responsibility for permit application. The owner of the facility or the operator of the facility authorized to act for the owner is responsible for complying with this section.

§116.111. General Application.

In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that all of the following are met.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the “Texas Natural Resource Conservation Commission (TNRCC) Sampling Procedures Manual.”

(C) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) National Emission Standards for Hazardous Air Pollutants for Source Categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under Chapter 113, Subchapter C of this title

(relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review. If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification.

(K) Hazardous air pollutants. If the proposed constructed or reconstructed facility is a major source for hazardous air pollutants, it shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)).

§116.112. Distance Limitations.

The following facilities must satisfy the following distance criteria.

(1) Lead smelters. New lead smelting plants shall be located at least 3,000 feet from any individual's residence where lead smelting operations have not been conducted before August 31, 1987. This subsection does not apply to:

(A) a modification of a lead smelting plant in operation on or before August 31, 1987;

(B) a new lead smelting plant or modification of a plant with the capacity to produce 200 pounds or less of lead per hour; or

(C) a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations.

(2) Hazardous waste permits. Permits for hazardous waste management facilities shall not be issued if the facility is to be located in the vicinity of specified public access areas under the following circumstances.

(A) No permit shall be issued for a new hazardous waste landfill or land treatment facility or an areal expansion of an existing facility if the boundary of the facility or expansion is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(B) No permit shall be issued for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within 1/2 mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(C) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with subparagraph (B) of this paragraph, distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(D) No permit shall be issued for a new commercial hazardous waste management facility unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment.

(E) The measurement of distances shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the permit application is filed with the commission. The restrictions imposed by subparagraphs (A) - (C) of this paragraph do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, or a dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(F) The measurement of distances shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be no more than 75 feet from the edge of the proposed hazardous waste management unit.

§116.114. Application Review Schedule.

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

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

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

(i) the additional information required; and

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

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

(2) Decision to approve or disapprove the application. The executive director shall mail written notice to the applicant of his decision to approve or not approve the application. If the applicant has provided public notification as required by the executive director, and no requests for public hearing or public meeting on the proposed facility have been received, the executive director shall send notice within:

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

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

(3) Refund of permit fee.

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

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

(b) Voiding of deficient application.

(1) An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the executive director under the provisions of this section, or §116.131 of this title (relating to Public Notification Requirements).

(2) If an applicant fails to make such good faith effort, the executive director shall void the application and notify the applicant. If the application is resubmitted within six months of the voidance, it shall be exempt from the requirements of §116.140 of this title (relating to Applicability).

§116.115. General and Special Conditions.

(a) General and special conditions. Permits, special permits, standard permits, and exemptions may contain general and special conditions.

(b) General conditions. Holders of permits, special permits, standard permits, and exemptions shall comply with the following:

(1) the general conditions contained in the permit document if issued or amended prior to August 16, 1994; or

(2) the following general conditions if the permit or amendment is issued or amended on or after August 16, 1994, regardless of whether they are specifically stated within the permit document.

(A) Voiding of permit. A permit or permit amendment under this chapter is automatically void if the permit holder does one of the following:

(i) fails to begin construction within 18 months of date of issuance.

The executive director may grant a one-time 18-month extension to the date to begin construction;

(ii) discontinues construction for more than 18 consecutive months
prior to completion; or

(iii) fails to complete construction within a reasonable time.

(B) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(C) Start-up notification.

(i) The permit holder shall notify the appropriate air program regional office of the commission prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow representative of the commission to be present at the commencement of operations.

(ii) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(D) Sampling requirements.

(i) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(ii) All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission.

(iii) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

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

(F) Recordkeeping. The permit holder shall:

(i) maintain a copy of the permit along with information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(ii) keep all records required by this paragraph in a file at the plant site. If, however, the facility normally operates unattended, records shall be maintained at the nearest staffed location within Texas specified in the application;

(iii) make the records available at the request of personnel from the commission or any air pollution control program having jurisdiction;

(iv) comply with any additional recordkeeping requirements specified in special conditions attached to the permit; and

(v) retain information in the file for at least two years following the date that the information or data is obtained.

(G) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(H) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for upsets and maintenance in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements; and Maintenance, Startup and Shutdown Reporting, Recordkeeping and Operational Requirements).

(I) Compliance with rules.

(i) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit.

(ii) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall be the standard by which compliance shall be demonstrated.

(iii) Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) Special conditions. The holders of permits, special permits, standard permits, and exemptions shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of Title 30 of the Texas Administrative Code.

(2) Special condition for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit under Subchapter F of this chapter (relating to Standard Permits); or

(ii) an exemption under Chapter 106 of this title (relating to Exemptions from Permitting).

(B) Such written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review under:

(I) Subchapter C of this chapter (relating to Hazardous Air

Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA §112(g) 40
CFR Part 63)); or

(II) the provisions in §116.150 and §116.151 of this title
(relating to Nonattainment Review) and §§116.160-116.163 of this title (relating to Prevention of
Significant Deterioration Review).

§116.116. Changes to Facilities.

(a) Representations and conditions. Conditions upon which a permit, special permit, or special
exemption are issued include:

(1) representations with regard to construction plans and operation procedures in an
application for a permit, special permit, or special exemption; and

(2) any general and special conditions attached to the permit, special permit, or special exemption itself.

(b) Permit amendments.

(1) Except as provided in subsection (e) of this section, the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause:

(A) a change in the method of control of emissions;

(B) a change in the character of the emissions; or

(C) an increase in the emission rate of any air contaminant.

(2) Any person who requests permit amendments must receive prior approval by the executive director or the commission. Applications must be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

(3) Any person who applies for an amendment to a permit that concerns a determination for constructed or reconstructed sources under Subchapter C of this chapter (relating to

Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA §112(g) 40 CFR Part 63) shall comply with the provisions in §§116.130-116.134, 116.136, and 116.137 of this title (relating to Public Notification and Comment Procedures).

(c) Permit alteration.

(1) A permit alteration is:

(A) a decrease in allowable emissions; or

(B) any change from a representation in an application, general condition, or special condition in a permit that does not cause:

(i) a change in the method of control of emissions;

(ii) a change in the character of emissions; or

(iii) an increase in the emission rate of any air contaminant.

(2) Requests for permit alterations that must receive prior approval by the executive director are those that:

(A) result in an increase in off-property concentrations of air contaminants;

(B) involve a change in permit conditions; or

(C) affect facility or control equipment performance.

(3) The executive director shall be notified in writing of all other permit alterations not specified in paragraph (2) of this subsection.

(4) A request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(3) of this title.

(5) Permit alterations are not subject to the requirements §116.111(3) of this title.

(d) Exemption under Chapter 106 of this title (relating to Exemptions from Permitting) in lieu of permit amendment or alteration.

(1) A permit amendment or alteration is not required if the changes to the permitted facility qualify for an exemption under Chapter 106 of this title unless prohibited by permit condition as provided in §116.115 of this title (relating to General and Special Conditions).

(2) All exempted changes to a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed.

(e) Changes to qualified facilities.

(1) Notwithstanding any other subsection of this section, a physical or operational change may be made to a qualified facility if it can be determined that the change does not result in:

(A) a net increase in allowable emissions of any air contaminant; and

(B) the emission of any air contaminant not previously emitted.

(2) In making the determination in paragraph (1) of this subsection, the effect on emissions of the following shall be considered:

(A) any air pollution control method applied to the qualified facility;

(B) any decreases in allowable emissions from other qualified facilities at the same commission air quality account number that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and

(C) any decrease in actual emissions from other qualified facilities at the same commission air quality account number that are not included in subparagraph (B) of this paragraph.

(3) The determination in paragraph (1) of this subsection shall be based on the allowable emissions for air contaminant categories and any allowable emissions for individual compounds. If a physical or operational change would result in emissions of a air contaminant category or compound above the allowable emissions for that air contaminant category or compound, the amount above the allowable emissions must be offset by an equivalent decrease in emissions at the same facility or a different facility. In making this offset, the following applies.

(A) The offset shall be based on the same time periods (e.g., hourly and annual rates) as the allowable emissions for the facility at which the change will occur.

(B) Emissions of different compounds within the same air contaminant category may be interchanged.

(C) For allowable emissions for individual compounds, any interchange shall adjust the emission rates for the different compounds in accordance with the ratio of the effects screening levels of the compounds.

(D) For allowable emissions for air contaminant categories, interchanges shall use the unadjusted emission rates for the different compounds.

(E) The effects screening level shall be determined by the executive director.

(F) An air contaminant category is a group of related compounds, such as volatile organic compounds, particulate matter, nitrogen oxides, and sulfur compounds.

(4) Persons making changes to qualified facilities under this subsection shall comply with the applicable requirements of §116.117 of this title (relating to Documentation and Notification of Changes to Qualified Facilities) and §116.118 of this title (relating to Pre-change Qualification).

(5) As used in this subsection, the term "physical and operational change" does not include:

(A) construction of a new facility; or

(B) changes to procedures regarding monitoring, determination of emissions and recordkeeping that are required by a permit.

(6) Additional air pollution control methods may be implemented for the purpose of making a facility a qualified facility. The implementation of any additional control methods shall be subject to the requirements of this chapter. The owner or operator shall:

(A) utilize additional control methods that are as effective as best available control technology (BACT) required at the time the additional control methods are implemented; or

(B) demonstrate that the additional control methods, although not as effective as BACT, were implemented to comply with a law, rule, order, permit, or implemented to resolve a documented citizen complaint.

(7) For purposes of this subsection and §116.117 of this title, the following subparagraphs apply.

(A) Intraplant trading means the consideration of decreases in allowable and actual emissions from other qualified facilities in accordance with paragraph (2) of this subsection.

(B) The allowable emissions from facilities that were never constructed shall not be used in intraplant trading.

(C) The decreases in allowable and actual emissions shall be based on emission rates for the same time periods (e.g., hourly and annual rates) as the allowable emissions for the facility at which the change will occur and for which an intraplant trade is desired.

(D) Actual emissions shall be based on data that is representative of the emissions actually achieved from a facility during the relevant time period (e.g., hourly or annual rate).

(8) The existing level of control may not be lessened for a qualified facility.

(f) Use of credits. Notwithstanding any other subsection of this section, discrete emission reduction credits may be used to exceed permit allowables as described in §101.29(d)(4)(v) of this title (relating to Emission Credit Banking and Trading) if all applicable conditions of §101.29 of this title are met. This subsection does not authorize any physical changes to a facility.

§116.117. Documentation and Notification of Changes to Qualified Facilities.

(a) Persons making changes under §116.116(e) of this title (relating to Changes to Facilities) shall maintain documentation at the plant site demonstrating that the changes satisfy §116.116(e) of this

title. If the plant site is unmanned, the regional manager may authorize an alternative site to maintain the documentation. The documentation shall be made available to representatives of the commission upon request. The documentation shall include:

(1) quantification of all emission increases and decreases associated with the physical or operational change;

(2) a description of the physical or operational change;

(3) a description of any equipment being installed; and

(4) sufficient information as necessary to show that the project will comply with §116.150 and §116.151 of this title (relating to Nonattainment Review) and §§116.160-116.163 of this title (relating to Prevention of Significant Deterioration Review) and with Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA §112(g) 40 CFR Part 63)).

(b) Persons making such changes to qualified facilities shall comply with the following notification requirements.

(1) Annual report. For changes to qualified facilities when there is no intraplant trading under §116.116(e)(2) of this title, an annual report shall be submitted to the appropriate regional office of the commission by August 1 of each year. The report shall include all changes made under §116.116(e) during the immediately preceding annual period July 1-June 30. This reporting period and the due date may be changed with the agreement of the commission's regional office. The annual report shall contain a PI-E form for each change. The report need not include changes previously submitted by PI-E form to the commission under paragraphs (2) or (3) of this subsection or which have been incorporated into the permit for the facility.

(2) Post-change notification. Post-change notification shall be required for changes to qualified facilities for which there is intraplant trading below the reportable limit. The notification shall be submitted on a PI-E form to the commission's New Source Review Permits Division within 30 days after the change occurs.

(3) Pre-change notification only. Pre-change notification shall be required if a physical or operational change at a qualified facility will affect compliance with a permit special condition. The notice shall be made to the commission prior to the change. It shall identify the affected special condition and indicate the change needed or the desire to remove the special condition from the permit. The permit holder is relieved from complying with the permit special condition upon the filing of the notice, provided the change complies with §116.116(e) of this title.

(4) Pre-change notification and approval. Pre-change notification shall be required for changes to qualified facilities for which there is intraplant trading above the reportable limit. The notification of the change shall be submitted on a PI-E form to the commission's New Source Review Permits Division before the change may occur. The change may occur after the receipt of written notification from the commission that there are no objections, or 45 days after the PI-E is received by the commission, whichever occurs first.

(5) Reportable limit. The executive director shall establish reportable limits. A reportable limit is either:

(A) an emission rate that is adjusted based on a factor that accounts for a ratio of the effects screening levels of the different compounds and the difference in location of emissions involved in an intraplant trade; or

(B) an emission rate that results in a sum total of modeled ground level concentration for the account that shall not exceed two times the effects screening level.

(c) For facilities that have received a preconstruction permit, all changes for which the notification procedure of subsection (b) of this section has been used shall be incorporated into the permit when the permit is amended or renewed.

(d) Nothing in this section shall limit the applicability of any federal requirement.

§116.118. Pre-change Qualification.

(a) If either of the following conditions exists, it will be necessary to establish that a facility is a qualified facility before a physical or operational change may be made under the notification procedure of §116.117 of this title (relating to Documentation and Notification of Changes to Qualified Facilities):

(1) the facility is a qualified facility on the basis of best available control technology and the requirement for the facility type has not been previously established by the executive director;

or

(2) the facility does not have allowable emissions established for an air contaminant relevant to the change in a maximum allowable emissions rate table, PI-8 form, or PI-E form.

(b) The pre-change qualification shall be made by submitting a PI-E form to the commission's New Source Review Permits Division. The facility shall be qualified in accordance with the information contained in the PI-E form after receipt of written notification from the commission that there are no objections, or 45 days after the PI-E form is received by the commission, whichever occurs first. The

pre-change qualification may be submitted at the same time as a pre-change notification under §116.117(b) of this title or at any other time prior to making a change to a qualified facility.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

COMPLIANCE HISTORY

§§116.120-116.126

STATUTORY AUTHORITY. The new sections are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed new sections implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.120. Applicability.

As part of the review of a construction permit, amendment, or renewal:

(1) The executive director shall compile a compliance history for:

(A) the existing site when the application is for a new permit, amendment, or renewal at the existing site;

(B) a site with similar facilities, if any, owned or operated by the applicant in Texas when the application is for a new facility at a new site. The commission may require the applicant to indicate which facilities the applicant considers to be similar.

(2) The applicant shall provide the commission with a compliance history for sites with similar facilities, if any, owned or operated by the applicant in other states when:

(A) the application is for a new facility at a new site; and

(B) the applicant does not own or operate similar facilities in Texas.

(3) If the applicant has no compliance history in the United States, the applicant shall provide the commission with a compliance history for any similar facilities owned or operated by:

(A) a person who is presently an officer, director, or agent of the applicant;

(B) a parent corporation, subsidiary, or predecessor in interest of the applicant;

(C) one who owns 20% or more of the applicant, whether directly, as a shareholder, partner, beneficiary, or otherwise; or

(D) one who controls the applicant or has the ability to direct the conduct of the applicant.

§116.121. Exemptions.

The compliance history is not required if the total increased actual emissions of any specific substance (e.g., benzene, arsenic, etc.) at the site will be accompanied by greater than a 1.1 to 1 reduction of the same specific substance at the site.

§116.122. Contents of Compliance History.

(a) The compliance history shall include all of the following compliance events and associated information involving the facility that is the subject of the permit application:

(1) for Texas facilities:

(A) criminal convictions known to the commission and civil orders, judgments, and decrees identified by stating:

(i) the style of the case;

(ii) the tribunal issuing the conviction or judgment;

(iii) the docket number and the date of action; and

(iv) the general nature of the alleged violation;

(B) administrative enforcement orders identified by stating:

(i) the name or style of action;

(ii) the agency issuing the order;

(iii) the docket number and the date of the order; and

(iv) the general nature of the alleged violation;

(C) compliance proceedings identified by stating:

(i) the name or style of action;

(ii) the general nature of the alleged violation;

(2) for United States facilities outside Texas:

(A) criminal convictions and civil judgments identified by stating:

(i) the style of the case;

(ii) the tribunal issuing the conviction or judgment;

(iii) the docket number and date of action; and

(iv) the general nature of the alleged violation;

(B) administrative enforcement orders identified by stating:

(i) the name or style of action;

(ii) the agency issuing the order;

(iii) the docket number and the date of the order; and

(iv) the general nature of the alleged violation;

(C) for notices of violation issued by the EPA:

(i) the name of the action;

(ii) the EPA identification number and date of notice; and

(iii) the general nature of the alleged violation.

(b) A violation of fugitive emission monitoring and recordkeeping requirements imposed either by §101.20(1) and (2) of this title (relating to Compliance with Environmental Protection Agency Standards), or state implementation plan requirements applicable to major sources in nonattainment areas shall not be included in the compliance history where:

(1) the violation occurred after the effective date of this rule, has been the subject of a commission administrative enforcement action, and the commission classified the violation as not being subject to compliance history review; or

(2) the violation occurred during the five years preceding the effective date of this rule and has been the subject of a commission administrative enforcement action in which:

(A) the commission did not classify the violation as either major seriousness or major impact for the purpose of administrative review; and

(B) the commission assessed a total administrative penalty of less than \$20,000 for the violation.

(c) The commission may request an analysis of the significance of the compliance events identified in the compliance history and their relevance to the facility that is the subject of the application. The commission request shall list specific compliance events requiring such an analysis.

§116.123. Effective Dates.

(a) The requirements under §§116.120-116.126 of this title (relating to Compliance History) apply only to applications filed on or after December 9, 1992.

(b) For applications filed:

(1) before June 1, 1993, neither the commission nor the applicant is required to include compliance events occurring before June 1, 1988;

(2) on or after June 1, 1993, neither the commission nor the applicant is required to include compliance events occurring more than five years prior to the date on which the application is filed.

§116.124. Public Notice of Compliance History.

When public notice is required under §116.131 of this title (relating to Public Notification Requirements), the applicant shall include the following statement in the notice: “The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Natural Resource Conservation Commission.”

§116.125. Preservation of Existing Rights and Procedures.

Nothing in this subchapter (concerning Compliance History) shall:

(1) diminish the rights of any party in a contested case hearing to raise any issue authorized by Texas Health and Safety Code, §382.0518(c);

(2) diminish the rights of any person to request and obtain compliance history information from the commission;

(3) limit the authority of the commission to request and consider any other information that is relevant to the application under the law; or

(4) create any right in third parties which did not exist before the effective date of this subchapter.

§116.126. Voidance of Permit Applications.

If an applicant does not submit compliance history information within 180 days after written request from the executive director, the commission will void the permit application. The applicant shall also forfeit the fees associated with the permit application. A new permit application shall be required for further consideration by the commission.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS
PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§§116.130-116.134, 116.136, 116.137

STATUTORY AUTHORITY. The amendments are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.130. Applicability.

(a) Any person who applies for a new permit or permit renewal shall be required to publish notice of the intent to construct a new facility or modify an existing facility or renew a permit. The notice shall be published in a newspaper in general circulation in the municipality where the facility is

located or to be located. Any person who applies for a permit amendment shall provide public notification as required by the executive director.

(b) Upon written request by the owner or operator of a facility which previously has received a permit or special permit from the commission [Texas Air Control Board], the executive director, or designated representative may exempt the relocation of such facility from the requirements of this section if there is no indication that operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

(c) Applications subject to the requirements of Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA §112(g) 40 CFR Part 63)), whether for construction or reconstruction, are subject to the public notice requirements of this section.

§116.131. Public Notification Requirements.

(a) Notification by applicant. If the application is complete, for any permit subject to the FCAA [Federal Clean Air Act (FCAA)], Title I, Part C or D, or to Title 40 Code of Federal Regulations (CFR), Part 51.165(b), the executive director shall state a preliminary determination to issue or deny the permit and require the applicant to conduct public notice of the proposed construction.

If an application is received for a permit not subject to the FCAA, Part C or D, or to 40 CFR 51.165(b), the executive director shall require the applicant to conduct public notice of the proposed construction. In all cases, public notice shall include the information specified in §116.132 of this title (relating to Public Notice Format) and the applicant shall provide such notice using each of the methods specified in §116.132 of this title. The executive director may specify that additional information needed to satisfy public notice requirements of 40 CFR §52.21 also be included in the notice published under [pursuant to] §116.132 of this title.

(b) Availability of application for review. The executive director shall make the completed application (except sections relating to confidential information) and the preliminary analyses of the application completed prior to publication of the public notice available for public inspection during normal business hours at the commission's [Texas Air Control Board (TACB)] Austin office and at the appropriate commission [TACB] regional office in the region where construction is proposed throughout the comment period established in the notice published under [pursuant to] §116.132 of this title [(relating to Public Notice Format)].

§116.132. Public Notice Format.

(a) Publication in public notices section of newspaper. At the applicant's expense, notice of intent to obtain a permit to construct a facility, modify an existing facility, or to seek permit renewal review shall be published in the public notice section of two successive issues of a newspaper of general

circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. The notice shall contain the following information:

(1) - (5) (No change.)

(6) preliminary determination of the executive director to issue or not issue the permit (for permits subject to the FCAA [Federal Clean Air Act], Title I, Part C or D, or to 40 Code of Federal Regulations 51.165(b));

(7) location and availability of copies of the completed permit application and the executive director's [Texas Air Control Board's (TACB's)] preliminary analyses;

(8) - (9) (No change.)

(10) notification that a person who may be affected by emission of air contaminants from the facility is entitled to request a hearing in accordance with commission [TACB] rules; and

(11) name, address, and phone number of the appropriate commission [regional TACB] office to be contacted for further information.

(b) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issue of the newspaper and shall contain the information specified in subsection (a)(1)-(4) of this section and note that additional information is contained in the notice published under [pursuant to] subsection (a) of this section in the public notice section of the same issue.

(c) Additional alternate language public notice. The requirements of this subsection are applicable whenever either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by the Education Code, Chapter 29, Subchapter B [§21.109], and 19 TAC §89.1205(a) [§89.2(a)] or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.1205(g) [§89.2(g)]. Schools not governed by the provisions of 19 TAC §89.1205 [§89.2] shall not be considered in determining applicability of the requirements of this subsection. Each affected facility shall meet the following requirements.

(1) The applicant shall publish an additional notice 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 §89.1205(a) [§89.2(a)] under 19 TAC §89.1205(g) [§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) - (8) (No change.)

(d) Exemptions from alternate language notification. Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e) [§89.2(d)], and are not otherwise affected by 19 TAC §89.1205(a) [§89.2(a)], will not trigger the requirements of subsection (c) of this section.

§116.133. Sign Posting Requirements.

(a) At the applicant's expense, a sign or signs shall be placed at the site of the proposed facility declaring the filing of an application for a permit and stating the manner in which the commission [Texas Air Control Board (TACB)] may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:

(1) - (4) (No change.)

(5) signs shall include the words "Texas Natural Resource Conservation Commission" ["Texas Air Control Board"], and the address of the appropriate commission [TACB] regional office in no less than one-inch boldface capital lettering and 3/4-inch boldface lower case lettering; and

(6) signs shall include the phone number of the appropriate commission [TACB regional] office in no less than two-inch boldface numbers.

(b) (No change.)

(c) Each sign placed at the site must be located within ten [10] feet of each (every) property line paralleling a street or other public thoroughfare. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare. The commission [TACB] may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public.

(d) The commission [TACB] may approve variations from the requirements of subsection (c) of this section if the applicant has demonstrated that it is not practical to comply with the specific requirements of subsection (c) of this section and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the commission [TACB] under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) (No change.)

(f) Alternate language sign posting. The requirements of this subsection are applicable whenever either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by the Education Code, Chapter 29, Subchapter B [§21.109], and 19 TAC §89.1205(a) [§89.2(a)] or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.1205(g) [§89.2(g)]. Schools not governed by the provisions of 19 TAC §89.1205(a) [§89.2] shall not be considered in determining applicability of the requirements of this subsection. Each affected facility shall meet the following requirements.

(1) The applicant shall post an additional sign 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 §89.1205(a) [§89.2(a)] under 19 TAC §89.1205(g) [§89.2(g)], the alternate language signs 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) - (4) (No change.)

(g) Exemption from alternate language sign posting. Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e) [§89.2(d)], and are not otherwise affected by 19 TAC §89.1205(a) [§89.2(a)], will not trigger the requirements of subsection (f) of this section.

§116.134. Notification of Affected Agencies.

When newspaper notices are published in accordance with §116.132 of this title (relating to Public Notice Format), the permit applicant shall furnish a copy of such notices and date of publication to the commission [Texas Air Control Board (TACB)] in Austin; the EPA [United States Environmental Protection Agency] regional administrator in Dallas; all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; and the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility. Along with such notices furnished to the commission [TACB], the permit applicant shall certify that the signs required by §116.133 of this title (relating to Sign Posting Requirements) have been posted in accordance with the provisions of that section.

§116.136. Public Comment Procedures.

(a) Comment period. Interested persons may submit written comments, including requests for public hearings under TCAA [under Texas Clean Air Act], §382.056, on the permit application and on the executive director's preliminary determination or analysis [decision to issue or not to issue the permit]. The public comment and timely hearing requests shall be processed under Chapter 55, Subchapter B of this title (relating to Hearing Requests, Public Comment).

(b) (No change.)

§116.137. Notification of Final Action by the Texas Natural Resource Conservation Commission

[Texas Air Control Board].

(a) - (b) (No change.)

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PERMIT FEES

§§116.140, 116.141, 116.143

STATUTORY AUTHORITY. The amendments are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.140. Applicability.

Any person who applies for a permit to construct a new facility or to modify an existing facility, or for an amendment to an existing permit under [pursuant to] §116.110 of this title (relating to Applicability) shall remit, at the time of application for such permit, a fee based on the estimated capital cost of the project. The fee will be determined as set forth in §116.141 of this title (relating to

Determination of Fees). Fees will not be charged for [operating permits,] permit alterations, amendments to special permits, [standard exemptions,] site approvals for permitted portable facilities, changes of ownership, or changes of location of permitted facilities.

§116.141. Determination of Fees.

(a) (No change.)

(b) The following fee schedule may be used by a permit applicant to determine the fee to be remitted with a permit application.

(1) If the estimated capital cost of the project is less than \$300,000 or if the project consists of new facilities controlled and operated directly by the federal government [for which an application is submitted after January 1, 1987,] and the federal regulations for Prevention of Significant Deterioration (PSD) Review do not apply, the fee is \$450. The provisions of subsections (c) and (d) of this section do not apply to a project consisting of new facilities controlled and operated directly by the federal government.

(2) (No change.)

(c) If the estimated capital cost of the project is less than \$50 million, the permit applicant shall include a certification that the estimated capital cost of the project is correct. Certification of the estimated capital cost of the project may be spot-checked and evaluated for reasonableness during permit processing. The reasonableness of project capital cost estimates used as a basis for permit fees shall be determined by the extent to which such estimates include fair and reasonable estimates of the capital value of the direct and indirect costs listed as follows.

(1) Direct costs are as follows:

(A) process and control equipment not previously owned by the applicant and not currently authorized under this chapter [permitted in Texas];

(B) - (G) (No change.)

(2) (No change.)

(d) - (e) (No change.)

§116.143. Payment of Fees.

All permit fees will be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission or TNRCC [Texas Air Control Board (TACB)] and delivered with the application for permit or amendment to the TNRCC, P. O. Box 13088, MC 214, Austin, Texas 78711-3088 [TACB, 12124 Park 35 Circle, Austin, Texas 78753]. Required fees must be received before the agency will begin examination of the application.

(1) (No change.)

(2) Return of fees. Fees must be paid at the time an application for a permit or amendment is submitted. If no permit or amendment is issued by the agency or if the applicant withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded except that the entire fee will be refunded for any such application for which an exemption under Chapter 106 of this title (relating to Exemptions from Permitting) [a standard exemption] is allowed. No fees will be refunded after a deficient application has been voided or after a permit or amendment has been issued by the agency.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS
PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

§116.160, §116.161

STATUTORY AUTHORITY. The amendments are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.160. Prevention of Significant Deterioration Requirements.

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the EPA [United States Environmental Protection Agency (EPA)] in Title 40 Code of Federal Regulations (CFR) at 40 CFR 52.21 as amended June 3, 1993 (effective June 3, 1994) and the

Definitions for Protection of Visibility promulgated at 40 CFR 51.301, hereby incorporated by reference.

(b) - (d) (No change.)

§116.161. Source Located in an Attainment Area with a Greater Than De Minimis Impact.

The commission [Texas Air Control Board] may not issue a permit to any new major stationary source or major modification located in an area designated as attainment or unclassifiable, for any National Ambient Air Quality Standard (NAAQS) under FCAA [pursuant to the Federal Clean Air Act], §107, if ambient air impacts from the proposed source would cause or contribute to a violation of any NAAQS. In order to obtain a permit, the source must reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to eliminate the predicted exceedances of the NAAQS. A major source or major modification will be considered to cause or contribute to a violation of a NAAQS when the emissions from such source or modification would, at a minimum, exceed the de minimis impact levels specified in §101.1 [§116.10] of this title (relating to [General] Definitions) at any locality that is designated as nonattainment or is predicted to be nonattainment for the applicable standard.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

EMISSION REDUCTIONS: OFFSETS

§116.170, §116.174

STATUTORY AUTHORITY. The amendments are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.170. Applicability for Reduction Credits.

At the time of application for a permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the executive director to use such emission reductions to offset emissions expected from the facility for which the permit is sought, provided that the following conditions are met.

(1) The emission reductions are not required by any provision of the Texas State Implementation Plan as promulgated by the EPA [United States Environmental Protection Agency] in 40 Code of Federal Regulations, Part 52, Subpart SS, nor by any other federal regulation under the FCAA [Federal Clean Air Act], as amended, such as New Source Performance Standards. Minimum offset ratios as specified in Table I of §116.12 of this title (relating to Nonattainment Review Definitions) shall be used in areas designated as nonattainment areas.

(2) (No change.)

(3) Emissions increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source, shall be allowed to be offset by alternative or innovative means, provided the following conditions are met:

(A) (No change.)

(B) the source demonstrates to the satisfaction of the commission [Texas Air Control Board (TACB)] that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source;

(C) (No change.)

(D) the source will comply with an alternative measure, imposed by the commission [TACB], designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the commission [TACB] may impose an emissions fee to be paid which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years.

§116.174. Determination by Executive Director To Authorize Reductions.

The executive director may grant authority to a permit applicant to use prior emission reductions and emission reductions granted to the applicant by another entity (either public or private) in accordance with §116.170 of this title (relating to Applicability for Reduction Credits) if the commission [Texas Air Control Board] determines that the prior emission reductions have, in fact, occurred and, when considered with other emission reductions that may be required by the permit as well as contaminants that will be emitted by the new source, will result in compliance with §116.150(b) of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas [Required]), §116.151 of this title (relating to New Major Source or Major Modification in Nonattainment Areas Other Than Ozone), §116.160 of this title (relating to Prevention of Significant Deterioration Requirements), and §116.162 [§116.152] of this title (relating to Evaluation of Air Quality Impacts), as applicable, in the area where the new source is to be located. Prior as well as future emission reductions to be used as an offset shall be made conditions for granting authority to construct the proposed new source and shall be enforced.

**SUBCHAPTER C : HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING
CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES**

(FCAA §112(G)) 40 CFR PART 63)

§§116.180-116.183

STATUTORY AUTHORITY. The new sections are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed new sections implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.180. Applicability.

(a) The provisions of this subchapter are intended to implement FCAA, §112(g), Modifications, and 40 Code of Federal Regulations Part 63, Hazardous Air Pollutants: Regulations

Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control

Technology. For purposes of this subchapter:

(1) “Construct a major source” means the following:

(A) to fabricate, erect, or install at any green field site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit ten tons per year of any hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPs;

(B) to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit ten tons per year of any HAP or 25 tons per year of any combination of HAPs, unless the process or production unit satisfies clauses (i)-(vi) of this subparagraph:

(i) all HAPs emitted by the process or production unit that would otherwise be controlled under the requirements of this subchapter will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(ii) either of the following regarding control of HAP emissions:

(I) the executive director has determined within a period of five years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT), lowest achievable emission rate (LAER) under Title 40 Code of Federal Regulations (CFR) Part 51 or 52, toxics-best available control technology (T-BACT), or maximum achievable control technology (MACT) based on state air toxic rules for the category of pollutants which includes those HAPs to be emitted by the process or production unit; or

(II) the executive director determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or state air toxic rule MACT determination);

(iii) the executive director determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(iv) the executive director has provided notice and an opportunity for public comment concerning its determination that criteria in clauses (i)-(iii) of this subparagraph apply

and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or state air toxic rule MACT determination;

(v) if any commenter has asserted that a prior LAER, BACT, T-BACT, or state air toxic rule MACT determination is no longer adequate, the executive director has determined that the level of control required by that prior determination remains adequate; and

(vi) any emission limitations, work practice requirements, or other terms and conditions upon which the determinations in clauses (i)-(v) of this subparagraph by the executive director are predicated will be construed by the executive director as applicable requirements under FCAA, §504(a), and either have been incorporated into any existing permit issued under Chapter 122 of this title (relating to Federal Operating Permits) for the affected facility or will be incorporated into such permit upon issuance.

(2) "Reconstruct a major source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit ten tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under this subchapter.

(b) The requirements of this subchapter apply to an owner or operator who constructs or reconstructs a major source of HAPs after June 29, 1998, the effective date of §112(g)(2)(B), and the approval date of a federal operating permit program in Texas or local jurisdiction in which the major source is or would be located, unless the major source in question has been specifically regulated or exempted from regulation under a standard issued under the FCAA, §112(d), (h), or (j) and incorporated in another subpart of Part 63, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before the effective date of §112(g)(2)(B). Administratively complete applications submitted prior to June 29, 1998, and prior to approval of a federal operating permit program in Texas are not subject to the requirements of this subchapter.

(c) Sources subject to the requirements of this subchapter are not eligible to use a standard permit under Subchapter F of this chapter (relating to Standard Permits) unless the terms and conditions of the specific standard permit meet the requirements of this subchapter.

§116.181. Exclusions.

(a) The requirements of this subchapter do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list under FCAA, §112(c)(5).

(b) The requirements of this subchapter do not apply to stationary sources that are within a source category that has been deleted from the source category list under FCAA, §112(c)(9).

(c) The requirements of this subchapter do not apply to research and development activities, as defined in 40 Code of Federal Regulations, §63.41.

(d) Nothing in this subchapter shall prevent a state or local agency from imposing more stringent requirements than those contained in this subchapter.

§116.182. Application.

Consistent with the requirements of 40 Code of Federal Regulations, §63.43 (concerning maximum achievable control technology determinations for constructed and reconstructed major sources), the owner or operator of a new facility (major source) or the reconstruction of an existing facility (as defined in §116.15 of this title (relating to Section 112(g) Definitions)) shall submit a permit application as described in §116.110 of this title (relating to Applicability) for those sources subject to

an approved federal operating permit program under Chapter 122 of this title (relating to Federal Operating Permits).

§116.183. Public Notice Requirements.

If the proposed new facility or reconstructed facility is a major source for hazardous air pollutants, it shall comply with the public notice requirements contained in §116.130 of this title (relating to Applicability).

SUBCHAPTER D : PERMIT RENEWALS

§§116.310-116.314

STATUTORY AUTHORITY. The new sections are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed new sections implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.310. Notification of Permit Holder.

The executive director shall provide written notice to the permit holder that the permit is scheduled for review. Such notice must be provided by certified or registered United States mail no less than 180 days prior to the expiration of the permit. The notice must specify the procedure for filing an application for review and the information to be included in the application. Under Texas Civil Statutes, Article 9027, the commission shall exempt a permit holder from any increased fee or other

penalty for failure to renew the permit if the individual establishes, to the satisfaction of the commission, that the failure to renew in a timely manner occurred because the individual was on active duty in the United States Armed Forces serving outside the State of Texas.

§116.311. Permit Renewal Application.

(a) In order to be granted a permit renewal, the permit holder shall submit information in support of the application which demonstrates that:

(1) the facility is being operated in accordance with all requirements and conditions of the existing permit, including representations in the application for permit to construct and subsequent amendments, and any previously granted renewal, unless otherwise authorized for a qualified facility;

(2) the facility meets the requirements of any applicable New Source Performance Standards as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA under the authority of the FCAA, §111, as amended;

(3) the facility meets the requirements of any applicable emission standard for hazardous air pollutants as listed under Title 40 CFR Part 61, promulgated by EPA under the authority of the FCAA, §112, as amended; and

(4) the facility meets the requirements of any applicable maximum achievable control technology standard as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(5) the facility meets the requirements of Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)).

(b) In addition to the requirements in subsection (a) of this section, if the commission determines it necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements, then:

(1) the applicant may be required to submit additional information regarding the emissions from the facility and their impacts on the surrounding area; and

(2) the commission shall impose as a condition for renewal only those requirements the executive director determines to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area.

(c) A compliance history review must be conducted in accordance with §§116.120-116.126 of this title (relating to Compliance History). The renewal application must demonstrate that the facility is

or has been in substantial compliance with the provisions of the TCAA and the terms of the existing permit. Failure to demonstrate substantial compliance shall result in the renewal not being granted. If it is found that violations in the compliance history constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including failure to make a timely and substantial attempt to correct the violations, the renewal shall be denied. If a contested case hearing has not been called, the executive director must notify the applicant of the intent to recommend denial and state the basis of the findings. The applicant will be given an opportunity to respond to the notice. If the findings reflect a pattern of disregard for applicable regulations which do not warrant denial, additional conditions may be placed in the permit.

(d) An application for renewal must be submitted within 90 days prior to expiration of the permit or the permit will expire. The executive director may extend the time period for submitting an application.

(e) Any permit issued:

(1) before December 1, 1991, is subject for review 15 years after the date of issuance;

(2) on or after December 1, 1991, is subject for review every ten years after the date of issuance.

(3) at nonfederal sources on or after December 1, 1991, may, for cause, contain a provision requiring renewal between five and ten years.

§116.312. Public Notification and Comment Procedures.

(a) The executive director shall mail a written notice to the permit holder within 30 days after an application is complete. The notice will confirm receipt of the application and shall require the applicant to provide public notice of the application for permit renewal in accordance with Subchapter B of this chapter (relating to New Source Review Permits).

(b) The sign heading required under §116.133(a)(2) of this title (relating to Sign Posting Requirements) shall read "PROPOSED RENEWAL OF AIR QUALITY PERMIT."

§116.313. Renewal Application Fees.

(a) The fee for renewal is based on the total annual allowable emissions from the permitted facility to be renewed, according to the following table.

RENEWAL FEE TABLE*

<u>X = TOTAL ALLOWABLE</u>		<u>INCREMENTAL</u>
<u>(TONS/YEAR)</u>	<u>BASE FEE</u>	<u>FEE</u>
<u>X ≤ 5</u>	<u>\$300</u>	<u>=</u>
<u>5 < X ≤ 24</u>	<u>\$300</u>	<u>\$35/ton</u>
<u>24 < X ≤ 99</u>	<u>\$965</u>	<u>\$25/ton</u>
<u>99 < X ≤ 994</u>	<u>\$2,840</u>	<u>\$8/ton</u>
<u>X > 994</u>	<u>\$10,000</u>	<u>=</u>

Minimum fee: \$300

Maximum fee: \$10,000

* To calculate the fee, multiply the number of tons in excess of the lower limit of the appropriate category by the incremental fee, then add this amount to the base fee. For example, if total emissions of all air contaminants are 50 tons per year, the total fee would be \$1,615 (base fee of \$965, plus incremental fee of \$25 x 26 tons or \$650).

(b) Fees are due and payable at the time the renewal application is filed. No fee will be accepted before the permit holder has been notified by the commission that the permit is scheduled for review. All permit review fees shall be remitted by check or money order payable to the Texas Natural Resource Conservation Commission (TNRCC) and mailed to the TNRCC, P.O. Box 13088, MC 214,

Austin, Texas 78711-3088. Required fees must be received before the agency will consider an application to be complete.

§116.314. Review Schedule.

(a) Renewal of permit. The executive director shall renew a permit and notify the permit holder in writing if it is determined that the facility meets the requirements of this subchapter.

(b) Denial of renewal. Prior to denial, the executive director shall provide notice to the permit holder with a report which describes the basis for denial.

(1) If denial is based on failure to meet the requirements of §116.311(a) or (b) of this title (relating to Permit Renewal Application), the report shall establish a schedule for compliance with the renewal requirements.

(A) The report shall be forwarded to the permit holder no later than 180 days after the commission receives a completed application.

(B) The permit shall be renewed if the requirements are met according to the schedule specified in the report. The executive director shall notify the permit holder in writing of the permit renewal.

(2) If denial is based on failure to maintain substantial compliance with the TCAA or the terms of the existing permit under §116.311(c) of this title, the renewal denial shall be final. The executive director shall notify the permit holder in writing of the denial.

(c) Contested case hearing. After failure to satisfy the commission requirements for corrective action by the deadline specified in the executive director's report, the applicant shall show cause in a contested case proceeding why the permit should not expire. The proceeding will be conducted under the APA and Chapters 1, 55, and 80 of this title (relating to Purpose of Rules, General Provisions; Request for Contested Case Hearings; Public Comment; and Contested Case Hearings).

(d) Effective date of existing permit. An existing permit shall remain effective:

(1) until it is renewed;

(2) until the deadline specified in the executive director's report to the permit holder;

(3) during the course of a contested case hearing if the hearing extends beyond the expiration date; or

(4) until a date specified in any commission order entered following a contested case hearing.

SUBCHAPTER F : STANDARD PERMITS

§§116.610, 116.611, 116.614, 116.615, 116.617, 116.620, 116.621

STATUTORY AUTHORITY. The amendments are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.610. Applicability.

(a) Under the TCAA [Pursuant to the Texas Clean Air Act (TCAA)], §382.051, a project which meets the requirements for a standard permit listed in this subchapter is hereby entitled to the standard permit; provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration claim.

(1) - (2) (No change.)

(3) the proposed project must comply with the applicable provisions of the FCAA [Federal Clean Air Act (FCAA)], §111 (regarding [Federal] New Source Performance Standards) as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA [and §112 (regarding Hazardous Air Pollutants)];

(4) the proposed project must comply with the applicable provisions of FCAA, §112 (regarding Hazardous Air Pollutants) as listed under 40 CFR 61, promulgated by the EPA;

(5) the proposed project must comply with the applicable maximum achievable control technology standards as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(6) [(4)] the owner or operator of the facility shall register the proposed project in accordance with §116.611 of this title (relating to Registration Requirements).

(b) - (c) (No change.)

(d) Any project which constitutes a new or reconstructed facility and is a major source of hazardous air pollutants, shall comply with all applicable requirements under Subchapter C of this

chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)). Sources subject to Subchapter C of this chapter may use a standard permit under this subchapter only if the terms and conditions of the specific standard permit meet the requirements of Subchapter C of this chapter.

§116.611. Registration Requirements.

(a) Registration for a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the commission's [Texas Natural Resource Conservation Commission (commission)] Office of Air Quality, the appropriate commission regional office [Regional Office], and any local air pollution program with jurisdiction, before a standard permit can be claimed. The registration must be submitted on a Form PI-1S and must document compliance with the requirements of this section, including, but not limited to:

(1) - (6) (No change.)

(b) - (c) (No change.)

§116.614. Standard Permit Fees.

Any person who claims a standard permit shall remit, at the time of registration, a flat fee of \$450 for each standard permit claimed. All standard permit fees will be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and delivered with the permit registration to the TNRCC, P.O. Box 13088, MC 214, Austin, Texas 78711-3088 [P.O. Box 13087, Austin, Texas 78753]. No fees will be refunded.

§116.615. General Conditions.

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

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

(2) (No change.)

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

(4) - (7) (No change.)

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, the EPA [United States Environmental Protection Agency], or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information and data sufficient to demonstrate applicability of and compliance with the standard permit must be retained for at least two years following the date that the information or data is obtained. The copy of the standard permit must be maintained as a permanent record.

(9) Maintenance of emission control. The facilities covered by the standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in

good working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements; and Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements [Notification Requirements for Major Upset and Notification Requirements for Maintenance]).

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern [governs]. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control program having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

§116.617. Standard Permits for Pollution Control Projects.

This standard permit applies to the installation of emissions control equipment or implementation of control techniques as required by any governmental standard, or undertaken voluntarily, or to replace existing emission control equipment or control techniques. This standard

permit also authorizes the substitution of compounds used in manufacturing processes for the purpose of complying with governmental standards or to reduce emission effects.

(1) - (4) (No change.)

(5) Installation of the control equipment or implementation of the control technique must not result in an increase in the facility's production capacity unless the capacity increase occurs solely as a result of the installation of control equipment or the implementation of control techniques on existing units. This paragraph is not intended to limit the owner or operator's ability to recover lost capacity caused by a derate resulting from the installation of control equipment or the implementation of a control technique.

(A) The owner or operator shall obtain or qualify for any necessary authorization under [pursuant to] §116.110 of this title (relating to Applicability) or §116.116 of this title (relating to Changes to Facilities) prior to utilizing any production capacity increase from a pollution control project required by any governmental standard that:

(i) - (ii) (No change.)

(B) Any production capacity increase resulting from the voluntary installation of controls or the implementation of control techniques may not be utilized until the owner or operator

obtains or qualifies for any necessary authorization under [pursuant to] §116.110 or §116.116 of this title.

(6) - (7) (No change.)

(8) If the project, without consideration of any other increases or decreases not related to the project, will result in a significant net increase in emissions of any criteria pollutant, a person claiming this standard permit shall submit, with the registration, information sufficient to demonstrate that the increase will meet the conditions of subparagraph (A) of this paragraph.

(A) - (B) (No change.)

(C) Netting is not required when determining whether this demonstration must be made for the proposed project. The increases and decreases in emissions resulting from the project must be included in any future netting calculation if they are determined to be otherwise creditable under PSD and nonattainment new source review provisions of the FCAA [Federal Clean Air Act (FCAA)], Parts C and D and regulations promulgated thereunder.

(9) For purposes of compliance with the PSD and nonattainment new source review provisions of the FCAA, Parts C and D and regulations promulgated thereunder, any increase that is less than significant, or satisfies the requirements of paragraph (8) of this section does not constitute a

physical change or a change in the method of operation. For purposes of compliance with the Standards of Performance for New Stationary Sources regulations promulgated by the EPA [United States Environmental Protection Agency] at 40 CFR §60.14 (effective December 16, 1975), an increase that satisfies the requirements of paragraph (8) of this section also satisfies the requirements of 40 CFR §60.14(e)(5).

§116.620. Installation and/or Modification of Oil and Gas Facilities.

(a) Emission specifications.

(1) - (3) (No change.)

(4) New or modified internal combustion reciprocating engines or gas turbines permitted under this standard permit shall satisfy all of the requirements of §106.512 of this title (relating to Stationary Engines and Turbines (Previously SE 6)) [Standard Exemption Number 6], except that registration using the Form PI-7 or PI-8 shall not be required. Emissions from engines or turbines shall be limited to the amounts found in §106.4(a)(1) of this title (relating to Requirements for Exemption from Permitting) [§116.211(a)(1) of this title (relating to Standard Exemption List)].

(5) - (12) (No change.)

(13) Appropriate documentation shall be submitted to demonstrate that compliance with the Prevention of Significant Deterioration (PSD) and nonattainment new source review provisions of the FCAA [Federal Clean Air Act], Parts C and D, and regulations promulgated thereunder, and with Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)) are being met. The oil and gas facility shall be required to meet the requirements of Subchapter B of this chapter (relating to New Source Review Permits) instead of this subchapter if a PSD or nonattainment permit or a review under Subchapter C of this chapter is required.

(14) Documentation shall be submitted to demonstrate compliance with applicable New Source Performance Standards (NSPS, 40 CFR Part 60) [and National Emission Standards for Hazardous Air Pollution (NESHAP, 40 CFR 61)].

(15) Documentation shall be submitted to demonstrate compliance with applicable National Emission Standards for Hazardous Air Pollution (NESHAP, 40 CFR Part 61).

(16) Documentation shall be submitted to demonstrate compliance with applicable maximum achievable control technology standards listed in Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(17) [(15)] New and increased emissions shall not cause or contribute to a violation of any National Ambient Air Quality Standard or regulation property line standards as specified in Chapters 111, 112, and 113 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter; Control of Air Pollution from Sulfur Compounds; and Control of Air Pollution from Toxic Materials). Engineering judgment and/or computerized air dispersion modeling may be used in this demonstration. To show compliance with §116.610(a)(1) of this title (relating to Applicability) for H₂S emissions from process vents, ten milligrams per cubic meter shall be used as the "L" value instead of the value represented by §116.610(a)(1) of this title.

(18) [(16)] Fuel for all combustion units and flare pilots shall be sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (dscf) [(scdf)], or field gas. If field gas contains more than 1.5 grains of H₂S or 30 grains total sulfur compounds per 100 dscf [scdf], the operator shall maintain records, including at least quarterly measurements of fuel H₂S and total sulfur content, which demonstrate that the annual SO₂ emissions from the facility do not exceed the limitations listed in the standard permit registration. If a flare is the only combustion unit on a property, the operator shall not be required to maintain such records on flare pilot gas.

(b) Control requirements.

(1) Floating roofs or equivalent controls shall be required on all new or modified storage tanks, other than pressurized tanks which meet §106.476 of this title (relating to Pressurized Tanks or Tanks Vented to Control (Previously SE 83)) [Standard Exemption 83], unless the tank is less than 25,000 gallons in nominal size or the vapor pressure of the compound to be stored in the tank is less than 0.5 pounds per square inch absolute (psia) at maximum short-term storage temperature.

(A) - (E) (No change.)

(2) (No change.)

(c) Inspection requirements.

(1) Owners or operators who are subject to subsection (a)(7) or (8) of this section shall comply with the following requirements.

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is detected to exceed a VOC concentration greater than 10,000 parts per million by volume (ppmv) above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound for all components. The VOC fugitive emission components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.5 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC

fugitive emission components are in service where the operating pressure is at least 0.725 pounds per square inch (psi) (five kilopascals (Kpa)) below ambient pressure, then these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by the agency representatives, the EPA [United States Environmental Protection Agency (EPA)], or any other air pollution agency having jurisdiction. All piping and valves two inches nominal size and smaller, unless subject to federal NSPS requiring a fugitive VOC emissions leak detection and repair program or Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds), are also exempt from this requirement.

(B) - (I) (No change.)

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Air Quality, New Source Review Permitting [Permits] Division that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) - (ii) (No change.)

(2) Owners or operators who are subject to subsection (a)(9) or (10) of this section shall comply with the following requirements.

(A) - (I) (No change.)

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Air Quality, New Source Review Permitting [Permits] Division that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that have been developed to justify the following modifications in the monitoring schedule.

(i) - (ii) (No change.)

(K) (No change.)

(3) (No change.)

(d) Approved test methods.

(1) - (2) (No change.)

(3) Proper operation of any condenser used as a VOC emissions control device to comply with subsection (a)(5) of this section shall be tested to demonstrate compliance with the minimum control efficiency. Sampling shall occur within 60 days after start-up of new or modified facilities. The permittee shall contact the Engineering Services Section, Office of Compliance and Enforcement [Air Quality Enforcement Division] 45 days prior to sampling for approval of sampling protocol. The appropriate regional office in the region where the source is located shall also be contacted 45 days prior to sampling to provide them the opportunity to view the sampling. Neither the regional office nor the Engineering Services Section, Office of Compliance and Enforcement [Air Quality Enforcement Division] personnel are required to view the testing. Sampling reports which comply with the provisions of the "TNRCC Sampling Procedures Manual," Chapter 14 ("Contents of Sampling Reports," dated January 1983 and revised July 1985), shall be distributed to the appropriate regional office, any local programs, and the Engineering Services Section, Office of Compliance and Enforcement [Air Quality Enforcement Division].

(e) Monitoring and recordkeeping requirements.

(1) If the operator elects to install and maintain ambient H₂S property line monitors to comply with subsection (a)(11) of this section, the monitors shall be approved by the Engineering Services Section, Office of Compliance and Enforcement [Air Quality Enforcement Division] office in

Austin, and shall be capable of detecting and alarming at H₂S concentrations of ten ppmv. Operations personnel shall perform an initial on-site inspection of the facility within 24 hours of initial alarm and take corrective actions as listed in subsection (c)(3)(A)-(C) of this section within eight hours of detection of a leak.

(2) The results of the VOC leak detection and repair requirements shall be made available to the executive director [, his or her designated representative,] or any air pollution control agency having jurisdiction upon request. Records, for all components, shall include:

(A) - (E) (No change.)

(3) - (8) (No change.)

§116.621. Municipal Solid Waste Landfills.

A person may claim a standard permit for the construction or modification to a municipal solid waste landfill (MSWLF) or municipal solid waste facility (MSW facility) as defined in §101.1 of this title (relating to Definitions), including, but not limited to, Type I, Type 1-AE, Type II, Type III, Type IV, Type IV-AE, Type VI, and Type IX sites as defined in §330.41 of this title (relating to Types of Municipal Solid Waste Sites).

(1) (No change.)

(2) Separate permit authorization under Subchapter B of this chapter (relating to New Source Review Permits) must be obtained for the following:

(A) - (E) (No change.)

(F) any project which constitutes a new major source, or major modification under the new source review requirements of the FCAA [Federal Clean Air Act], Part C (Prevention of Significant Deterioration review), [or] Part D (nonattainment review) and regulations promulgated thereunder, or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)) shall be subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(3) (No change.)

(4) The permit holder shall comply with the air emissions standards as specified in 40 CFR Part 60, Subpart WWW, with the following additions and changes.

(A) (No change.)

(B) The GCCS shall be designed to control nonmethane organic compounds (NMOC) gas emissions in one or more of the following ways by routing the total collected gas to:

(i) an open flare with a minimum height of 30 feet and which satisfies all of the requirements of Chapter 106, Subchapter A of this title (relating to General Requirements) [§116.211 of this title (relating to Standard Exemption List), Standard Exemption Number 80,] and §106.492 of this title (relating to Flares (Previously SE 80)), except that registration using Form PI-7 or PI-8 [P1-7 or P1-8] shall not be required;

(ii) - (iii) (No change.)

(iv) gas or liquid fuel-fired stationary internal combustion reciprocating engines or gas turbines that satisfy all of the requirements of Chapter 106, Subchapter A of this title and §106.512 of this title (relating to Stationary Engines and Turbines (Previously SE 6)) [§116.211 of this title, Standard Exemption Number 6], except that registration using Form PI-7 or PI-8 shall not be required; or

(v) boilers, heaters, or other combustion units, but not including stationary internal combustion engines or turbines, that satisfy all of the requirements of Chapter 106, Subchapter A of this title and §106.183 of this title (relating to Boilers, Heaters, or Other Combustion Devices (Previously SE 7)) [§116.211 of this title, Standard Exemption Number 7].

(C) The active GCCS may be capped or removed only if, in addition to the requirements listed in 40 CFR, §60.752(b)(2)(v), the MSWLF is permanently closed under [pursuant to] §§330.250-330.256 of this title (relating to Closure and Post-closure).

(5) (No change.)

(6) High volume air sampling for net ground level concentrations of total particulate matter shall be performed upon request of the executive director or a designated representative. Each test shall consist of at least one upwind and one downwind sample taken simultaneously. The tests shall be performed during normal operations. A monitoring plan for high volume sampling shall be developed in accordance with the Office of Air Quality Management Plan, Appendix I (EPA [United States Environmental Protection Agency (EPA)] Requirements for Quality Assurance Project Plans, dated February 1995) and the “TNRCC Sampling Procedures Manual,” Chapter 11 ([“Particulate Matter,”] dated January 1983 and revised July 1985), and shall require approval by the executive director or a designated representative prior to sampling. The executive director or a designated representative shall be afforded the opportunity to observe all such sampling equipment, operations, and records upon request.

(7) GCCS components (compressor seals, pipeline valves, pressure relief valves in gaseous service, flanges, and pump seals) at an MSWLF or MSW facility, where the total of all estimated uncontrolled fugitive emissions from all components is greater than ten tons per year, shall be

inspected and maintained under [pursuant to] the requirements of §116.620(c)(1)(A)-(J) of this title (relating to Installation and/or Modification of Oil and Gas Facilities), with the following changes and additions.

(A) - (E) (No change.)

(8) The owner or operator of each MSWLF unit shall maintain complete and up-to-date records sufficient to readily determine continuous compliance with the requirements of this section for the previous five years of operation. All the records shall be maintained in an operating record in accordance with §330.113(b)(11) of this title (relating to Recordkeeping Requirements). The records shall be available for review upon request by representatives of the commission or any local air pollution agency having jurisdiction. The following recordkeeping requirements shall apply, in addition to those specified in 40 CFR 60, Subpart WWW.

(A) Permit holders who are subject to the exemptions of Chapter 106 of this title (relating to Exemptions from Permitting), as [a standard exemption] specified in paragraph (4) of this section shall maintain any records specified in the exemption.

(B) (No change.)

SUBCHAPTER G : FLEXIBLE PERMITS

§§116.710, 116.711, 116.714, 116.715, 116.721, 116.730, 116.740, 116.750

STATUTORY AUTHORITY. The amendments are proposed under the Texas Health and Safety Code, TCAA, §§382.017, 382.051, 382.0518, and 382.0541, which provide the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA and approve all general policy of the commission. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature, 1997.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, §382.051, concerning Permitting Authority of Commission; Rules, §382.0518, concerning Preconstruction Permit, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.710. Applicability.

(a) Flexible permit. A person may obtain a flexible permit which allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Amendments and Alterations). A person may obtain a flexible

permit under [pursuant to] §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account before any actual work is begun, provided however:

(1) - (4) (No change.)

[(b) Operations certification. Any person who obtains a flexible permit under this subchapter shall comply with §116.110(b) of this title.]

(b) [(c)] Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(c) of this title, provided however, that all facilities covered by a flexible permit must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the emission caps or individual emission limitation prior to the transfer of the permit by the commission [Texas Natural Resource Conservation Commission (TNRCC)]. After the sale of a facility, or facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing flexible permit and all rules and regulations of the commission [TNRCC].

(c) [(d)] Submittal under seal of Texas licensed [registered] professional engineer. All applications for a flexible permit or flexible permit amendment shall comply with §116.110 (e) [(d)] of this title.

(d) [(e)] Responsibility for flexible permit application. The owner of the facility, group of facilities, or account or the operator of the facility, group of facilities, or account who is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (b) [(c)] of this section.

§116.711. Flexible Permit Application.

Any application for a new flexible permit or flexible permit amendment must include a completed Form PI-1 General Application. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information which must be provided before the application is deemed complete. In order to be granted a flexible permit or flexible permit amendment, the owner or operator of the proposed facility shall submit information to the commission [Texas Natural Resource Conservation Commission (TNRCC)] which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the proposed facility, group of facilities, or account as determined under [pursuant to] §116.716 of this title (relating to Emission Caps and Individual Emission Limitations), will comply with all rules and regulations of the commission [TNRCC] and with the intent of the TCAA [Texas Clean Air Act (TCAA)], including protection of the health and physical property of the people. In considering the issuance of a flexible permit for construction or modification of any facility, group of facilities, or account within 3,000 feet

or less of an elementary, junior high/middle, or senior high school, the commission [TNRCC] shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility, group of facilities, or account may have on the individuals attending these school facilities.

(2) Measurement of emissions. The proposed facility, group of facilities, or account will have provisions for measuring the emission of air contaminants as determined by the executive director [Executive Director]. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the “Texas Natural Resource Conservation Commission Sampling Procedures Manual” [“Compliance Sampling Manual”].

(3) Best Available Control Technology (BACT). The proposed facility, group of facilities, or account will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility on a proposed facility, group of facilities, or account basis. Control technology beyond BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of facilities or account basis, provided however, that the existing level of control may not be lessened for any facility. For new facilities and physical changes to existing facilities which concern a maximum available control technology (MACT) determination for constructed or reconstructed sources under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed

or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)), the use of BACT shall be demonstrated for the individual facility.

(4) [Federal] New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR), Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by the EPA under [United States Environmental Protection Agency (EPA) pursuant to] authority granted under the FCAA [Federal Clean Air Act (FCAA)], §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAPS) [and Maximum Achievable Control Technology (MACT)]. The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61 [, or any MACT standard], promulgated by EPA under [pursuant to] authority granted under the FCAA, §112, as amended.

(6) NESHAPS for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable MACT standard as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(7) [(6)] Performance demonstration. The proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit application. The applicant may be required to submit additional engineering data after a flexible permit has been issued in order to demonstrate further that the proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit. In addition, initial compliance testing with ongoing compliance determined through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing may be required.

(8) [(7)] Nonattainment review. If the proposed facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements under the undesignated head concerning nonattainment review in Subchapter B of this chapter (relating to New Source Review Permits).

(9) [(8)] Prevention of Significant Deterioration (PSD) review. If the proposed facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements under the undesignated head concerning PSD in Subchapter B of this chapter.

(10) [(9)] Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's New Source Review Permitting Division [TNRCC Permits Program] to determine the air quality impacts from the facility, group of facilities, or account.

(11) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the proposed new or reconstructed facility is a major source for hazardous air pollutants, it shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)).

(12) [(10)] Application content. In addition to any other requirements of this chapter, the applicant shall:

- (A) identify each air contaminant for which an emission cap is desired;
- (B) identify each facility to be included in the flexible permit;
- (C) identify each source of emissions to be included in the flexible permit and for each source of emissions identify the Emission Point Number (EPN) and the air contaminants emitted;
- (D) for each emission cap, identify all associated EPNs and provide emission rate calculations based on the expected maximum capacity and the proposed control technology;

(E) for each individual emission limitation, identify the EPN and provide emission rate calculations based on the expected maximum capacity and the proposed control technology.

(13) [(11)] Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each unit to meet the emission cap and demonstrate compliance with all emission caps at expected maximum production capacity.

§116.714. Application Review Schedule.

The flexible permit application will be reviewed by the commission [Texas Natural Resource Conservation Commission] in accordance with §116.114 of this title (relating to Application Review Schedule).

§116.715. General and Special Conditions.

(a) Flexible permits may contain general and special conditions. The holders of flexible permits shall comply with any and all such conditions. Upon a specific finding by the executive director [Executive Director] that an increase of a particular air contaminant could result in a significant impact on the air environment, or could cause the facility, group of facilities, or account to become subject to review under §116.150 and §116.151 and §§116.160-116.163 of this title [the undesignated headings of

Subchapter B of this chapter] (relating to Nonattainment Review or Prevention of Significant Deterioration Review) or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)), the permit may include a special condition which requires the permittee to obtain written approval from the executive director [Executive Director] before constructing a facility under a standard permit or an exemption under Chapter 106 of this title (relating to Exemptions from Permitting) [exemption or standard permit].

(b) (No change.)

(c) The following general conditions shall be applicable to every flexible permit.

(1) Voiding of permit. A flexible permit or flexible permit amendment under this subchapter is automatically void if the holder fails to complete construction as specified in the flexible permit. Upon request, the executive director [Executive Director] may grant a one time 12-month extension of the date to complete construction. This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).

(2) Construction progress. The start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office of

the commission [Texas Natural Resource Conservation Commission (TNRCC)] not later than 15 working days after occurrence of the event.

(3) Start-up notification. The appropriate regional office of the commission [Air Program Regional Office of the TNRCC] and any local program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the commission [TNRCC] may be present. Phased construction, which may involve a series of facilities commencing operations at different times, shall provide separate notification for the commencement of operations for each facility.

(4) Sampling requirements. If sampling of stacks or process vents is required, the flexible permit holder shall contact the commission's Engineering Services Section, Office of Compliance and Enforcement [Source and Mobile Monitoring Section of the TNRCC Office of Air Quality] prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director [Executive Director] and coordinated with the appropriate regional office of the commission [Air Program Regional Office of the TNRCC]. The flexible permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(5) Equivalency of methods. It shall be the responsibility of the flexible permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other

emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the flexible permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director [Executive Director] prior to their use in fulfilling any requirements of the permit.

(6) Recordkeeping. A copy of the flexible permit along with information and data sufficient to demonstrate continuous compliance with the emission caps and individual emission limitations contained in the flexible permit shall be maintained in a file at the plant site and made available at the request of personnel from the commission [TNRCC] or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information may include, but is not limited to, emission cap and individual emission limitation calculations based on a 12-month rolling basis and production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the flexible permit. Information in the file shall be retained for at least two years following the date that the information or data is obtained.

(7) - (8) (No change.)

(9) Maintenance of emission control. The facilities covered by the flexible permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good

working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements; and Maintenance, Startup and Shutdown Reporting, Recordkeeping and Operational Requirements [Notification Requirements for Major Upset and Notification Requirements for Maintenance]).

(10) Compliance with rules. Acceptance of a flexible permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all Rules, Regulations, and Orders of the commission [Commission] issued in conformity with the TCAA [Texas Clean Air Act] and the conditions precedent to the granting of the permit. If more than one state or federal rule or regulation or flexible permit condition are applicable, then the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. Acceptance includes consent to the entrance of commission [Commission] employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the flexible permit.

(d) (No change.)

§116.721. Amendments and Alterations.

(a) Flexible permit amendments. All representations with regard to construction plans and operation procedures in an application for a flexible permit, as well as any general and special provisions attached, become conditions upon which the subsequent flexible permit is issued. It shall be unlawful for any person to vary from such representation or flexible permit provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions, unless application is made to the executive director [Executive Director] to amend the flexible permit in that regard and such amendment is approved by the executive director [Executive Director] or commission [Commission]. Applications to amend a flexible permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.711 of this title (relating to Flexible Permit Application).

(b) Flexible permit alterations.

(1) (No change.)

(2) All flexible permit alterations which may involve a change in a general or special condition contained in the flexible permit, or affect control equipment performance must receive prior approval by the executive director [Executive Director]. The executive director [Executive Director] shall be notified in writing of all other flexible permit alterations within ten [10] days of implementing the change, unless the permit provides for a different method of notification. Any flexible permit alteration request or notification shall include information sufficient to demonstrate that the change does

not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.711 of this title, including the protection of public health and welfare. The appropriate commission regional office [Texas Natural Resource Conservation Commission Regional Office] and any local air pollution program having jurisdiction shall be provided copies of all flexible permit alteration documents.

(3) (No change.)

(c) (No change.)

(d) Exemption under Chapter 106 of this title (relating to Exemptions from Permitting)

[Standard exemption] in lieu of permit amendment or alteration.

(1) Notwithstanding subsections (a) or (b) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for an exemption under Chapter 106 of this title (relating to Exemptions from Permitting) [Subchapter C of this chapter (relating to Permit Exemptions)] unless prohibited by permit provision as provided in §116.715 of this title (relating to General and Special Conditions). All such exempted changes to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(2) Emission increases authorized by Chapter 106 of this title [standard exemption] at an existing facility covered by a flexible permit shall not cause an exceedance of the emissions cap or individual emission limitation.

§116.730. Compliance History.

As part of a flexible permit review, or the review of an amendment of a flexible permit, or renewal of an existing flexible permit, the provisions found in §§116.120-116.126 of this title (relating to Compliance History) [the undesignated head regarding Compliance History in Subchapter B of this chapter] shall be applicable to the facility, group of facilities, or account being permitted, amended, or renewed.

§116.740. Public Notice and Comment.

(a) Any person who applies for a flexible permit or an amendment to a flexible permit shall comply with the provisions in §§116.130-116.134, 116.136, 116.137 of this title (relating to Public Notification and Comment Procedures) [the undesignated head regarding Public Notification and Comment Procedures in Subchapter B of this chapter].

(b) Any person who applies for an amendment to a flexible permit that concerns a maximum achievable control technology determination for constructed or reconstructed sources under Subchapter

C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)) shall comply with the provisions in §§116.130-116.134, 116.136, and 116.137 of this title.

§116.750. Flexible Permit Fee.

(a) (No change.)

(b) Fee amounts. The fee to be remitted with a flexible permit application shall be based on the total annual allowable emissions from the permitted facility, group of facilities, or account for which the flexible permit is being sought. The fee shall be \$25 per ton with the minimum fee being \$450 and the maximum fee \$75,000. For flexible permit amendments, the fee shall be calculated based on \$25 per ton for the incremental emission increase with the minimum fee being \$450 and the maximum fee being \$75,000.

(c) Payment of fees. All permit fees for a flexible permit shall be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission [(TNRCC)] and delivered with the application for flexible permit or flexible permit amendment to the commission's New Source Review Permitting Division [TNRCC Office of Air Quality New Source Review Program]. Required fees must be received before the agency will begin examination of the application.

(d) Return of fees. Fees must be paid at the time an application for a flexible permit or flexible permit amendment is submitted. If the applicant withdraws the application prior to issuance of the flexible permit or flexible permit amendment, one-half of the fee will be refunded, except that the entire fee will be refunded for any such application for which an exemption under Chapter 106 of this title (relating to Exemptions from Permitting [a standard exemption] is allowed. No fees will be refunded after a deficient application has been voided, denied, or after a flexible permit or flexible permit amendment has been issued by the agency.