

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§106.1, 106.2, and 106.4 - 106.6 and new §§106.1 - 106.8, concerning general requirements for an exemption from permitting.

EXPLANATION OF PROPOSED RULES

Texas Health and Safety Code, §382.057(a), prohibits an exemption from permitting for a facility defined as “major” under the Federal Clean Air Act (FCAA) or regulations adopted under it. The proposed changes conform to the limits set in the FCAA, §112(a)(1) for hazardous air pollutants (HAPs), and §302(j) for other air pollutants. The maximum emissions for a facility that may use an exemption from permitting are proposed to be changed to conform to the federal limits for major sources. The limits for carbon monoxide and nitrogen oxides are lowered from 250 tons per year (tpy) to less than 100 tpy. Limits for HAPs are established at less than ten tpy of any individual HAP or 25 tpy of total HAPs. As a matter of policy, the commission believes that it is inappropriate to exempt facilities that are major sources of air pollution.

As part of the commission’s regulatory reform initiative, §§106.1, 106.2, and 106.4 are rewritten for clarity, readability, and improved organization. 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. Rewritten, they are proposed as §§106.1 - 106.6. Since *Texas Register* rules do not allow for the amendment of rule numbers, the commission proposes the repeal of existing §106.5 and §106.6, and

proposes to readopt them as §106.7 and §106.8. Clarifications were made to the proposed §106.8 as discussed in this preamble. The repeals and readoptions facilitate the reorganization of Subchapter A for regulatory reform purposes.

In addition to these repeals and new sections, the commission concurrently proposes in this issue of the *Texas Register*, a change to Chapter 116, Subchapter F, §116.620(a)(4), concerning the standard permit for installation and/or modification of oil and gas facilities. The change is needed as a direct result of the commission proposing lower emission rates in §106.4. The standard permit change is limited to replacing the cross-reference to §106.4(a) with the actual emission limits designated for each pollutant that are contained in the current rule. This change will maintain the status quo for facilities authorized under the standard permit.

The new §106.1 establishes a terminology section. A definition is proposed for “site” that will apply throughout Chapter 106. Site has been defined in 30 TAC Chapter 122, concerning Federal Operating Permits, as: “The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). If a research and development operation does not produce products for commercial sale, it shall be treated as a separate site from any manufacturing facility with which it is collocated.” Currently, exemptions may refer to either “site” or “account.” Changes will be made, when appropriate, to those exemptions that use the word “account,” if they are revised in future rulemaking.

The commission proposes to use “site” as defined in Chapter 122, because “site” represents all of the facilities and accounts under common control at a particular location and it is more appropriate to view the significance of the entire site when relating the public notice requirements in §106.4(a) and (b) to the total emission limits in §106.4(a)(1). It is also more appropriate to use the site-wide definition in viewing restrictions or prohibitions to the use of exemptions that may be contained in a particular permit.

The commission does not anticipate that defining “site” using the Chapter 122 definition will have a significant impact on the regulated community. Generally, at a site with multiple accounts, at least one facility has been through the public notice process and therefore is authorized to emit up to the maximum emission limits for each facility or a group of facilities constituting a project.

The commission proposes a new §106.2, concerning Purpose, to describe the general purpose of exemptions in Chapter 106. This language was originally in §106.1, concerning Purpose, and has been modified to meet the commission’s requirements for regulatory reform.

The existing §106.2, concerning Applicability, is proposed to be deleted. The contents of this section relating to commencement of construction authorized by exemption have been moved to §106.4.

The commission proposes a new §106.3, concerning Facilities Ineligible for Exemptions from Permitting. This section sets out the restrictions that prohibit a facility from using an exemption. Most of these restrictions were originally in §106.4 and have been moved to this new section unchanged,

except for wording revisions made for purposes of regulatory reform. However, the proposed §106.3(4) prohibits exemptions from permitting for facilities that would be considered construction or reconstruction that requires preconstruction approval under 40 Code of Federal Regulations (CFR) Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories (Part 63). This prohibition is added because Part 63 requires major sources of HAPs which are constructed or reconstructed to get preconstruction approval. Therefore, facilities which are major constructed or reconstructed sources of HAPs cannot be exempted from permitting under this chapter. In addition, those facilities seeking authorization for sources of HAPs that are major, are prohibited from using an exemption under this chapter. Facilities that are not major sources of HAPs, but still subject to Part 63, are not prohibited from using an exemption under this chapter.

The commission proposes to revise §106.4, concerning Emission Limits. The term “facility” has been replaced with the phrase “facility or a group of facilities constituting a project.” Under the current rule, some registrants have argued, and in some cases, the staff has concurred, that multiple facilities in a project could be individually authorized to emit up to the maximum emission limits allowed under the rule. However, in most cases, the practice has been to evaluate the entire project and limit all facilities connected to the project to the maximum emission limits in §106.4. This proposed change will allow staff to ascertain that the project, when viewed as a whole, is considered insignificant and meets the intent of Texas Health and Safety Code, §382.057(a) and will ensure consistent application of the requirements of §106.4.

The commission proposes changes to the emission limitations in §106.4 to be consistent with the requirements of Texas Health and Safety Code, §382.057, Exemptions. The commission is authorized by §382.057 to exempt facilities or changes to facilities that will not make a significant contribution of air contaminants to the atmosphere. Section 382.057(a) prohibits the commission from exempting any facility or modification of an existing facility that is defined as “major” under the FCAA or regulations adopted under the FCAA. The existing §106.4(a) allows the commission to exempt facilities emitting up to 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_x); 25 tpy of volatile organic compounds (VOC) or sulfur dioxide (SO₂) or inhalable particulate matter (PM₁₀); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen. This revision to lower emission limitations is necessary due to the amendments to the FCAA in 1990 and is precipitated by the adoption of the new Chapter 116, Subchapter C on June 17, 1998, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, commonly known as §112(g).

The 1990 amendments to the FCAA created the Title V Federal Operating Permit program. Title V requires major sources to obtain federal operating permits. FCAA, §501, Definitions, defines “major source” as any stationary source or group of such sources located within a contiguous area and under common control that is either a major source as defined in FCAA, §112 (Hazardous Air Pollutants), a major stationary source as defined in FCAA, §302 (definition of “major stationary source or major emitting facility”), or in Part D of Title I (nonattainment permits).

The major source threshold for HAPs under §112 is ten tpy or more of any HAP or 25 tpy or more of any combination of HAP. Exemptions cannot be used to authorize increases in HAPs which are considered new major sources or major reconstructions under Part 63. This includes §112(g) determinations and sources for which preconstruction approval is required under 40 CFR §63.5. A new limitation is added in subsection (a)(4) for HAPs.

The major source threshold under FCAA, §501 is 100 tpy or more of any air pollutant emitted by a major stationary source or major emitting facility as defined by FCAA, §302(j). It should be noted that authorizing a new major source or a major modification under Title I is not allowed under the current rule. However, the current rule could allow authorizing what is considered a major source under Title V since that level is 100 tpy of CO or NO_x rather than 250 tpy as currently allowed. It should also be noted that the major source level applies to the authorization of new major sources. Existing major sources can use exemptions to authorize insignificant changes to the site assuming that all other requirements in Chapter 106 are met. Section 106.4(a)(2) revises the emission limits for CO and NO_x from 250 tpy to less than 100 tpy.

As a result of the change to the CO and NO_x levels in §106.4, a change is proposed in this issue of the *Texas Register*, to §116.620, concerning Installation and/or Modification of Oil and Gas Facilities.

This standard permit currently cross-references the emission limits contained in the existing §106.4(a). Since there are no specific emission limitations specified by the Texas Clean Air Act (TCAA) for standard permits, a revision is proposed to the standard permit to replace the reference to §106.4(a) with the actual limits that are currently included in §106.4(a) (i.e., 250 tpy of NO_x or CO, etc.)

In spite of the lower emission limits proposed, the commission believes that most new or modified facilities which would currently be able to be authorized under this chapter would still be able to do so under this chapter, as revised, or under an applicable standard permit under Chapter 116. However, the commission solicits comment on the need, if any, to develop additional standard permits for similar facilities under Chapter 116, because of the statutorily required changes to this chapter.

The commission is interested in receiving comments on the treatment of registrations for exemptions which are pending at the time the revisions to Subchapter A become effective. In most cases, rules become effective 20 days after they are filed with the Office of the Secretary of State, as stated in Administrative Procedure Act, Chapter 2001, §2001.036, concerning Effective Date of Rules; Effect of Filing With Secretary of State. The commission believes that there are at least two ways to handle pending registrations. One is to require any registration that is pending approval at the time the revisions to this chapter become effective to be approved using the current emission limitations and requirements in Subchapter A. The second option is to require any registration that is pending approval at the time the revisions to this chapter become effective to be approved under the requirements that are newly adopted and effective. The commission seeks comment on these two options and any other options or scenarios that may be possible.

An additional requirement is proposed in §106.4(a)(6), which states that facilities authorized under Chapter 106 must meet any other applicable limit specified in this chapter. This addition is designed to serve as a reminder that rules and regulations listed in other sections of this chapter could impact the upper emission limits and what can be authorized under an exemption. Certain exemptions authorize

emission limits that are less than the proposed emission limits in §106.4. In addition, certain exemptions have different limits that must also be met. For example, if an exemption has a 15 tpy emission limit for VOC, then a facility authorized under this chapter would have to meet both the 15 tpy total VOC limit while also meeting the ten tpy single HAP limit included in §106.4. As another example, §106.512 sets a total NO_x emission limit of 250 tpy for all emissions at a property. A facility using that exemption would have to meet the exemption specific property-wide limit and the 100 tpy NO_x emission limit in §106.4 for each new or modified facility, or group of facilities constituting a project.

Under the current §106.4, if one facility at the account has gone through the public notice process, each subsequent facility to be authorized at the account can emit up to the levels authorized by the current §106.4. If no facility at the account has been to public notice, emissions from all exempted facilities at the entire site are limited to the levels authorized by the current §106.4. The commission proposes to add language which requires at least one facility at the site to obtain a permit under Chapter 116, Subchapter B, Subchapter C, or Subchapter G (concerning New Source Review Permits; Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63); or Flexible Permits) in order for the sitewide emissions from exempted facilities to exceed the maximum levels allowed under this subchapter (i.e., each facility, or group of facilities constituting a project, can then emit up to the maximum limit, unless a specific exemption has lower emission limits).

The requirement to obtain a permit under the previously referenced subchapters of Chapter 116 is new and is intended to prevent circumvention of the public notice process, which includes opportunity for public participation. In the past, there have been cases where the sitewide limit was reached using exemptions and therefore public notice was required by the existing §106.4. To satisfy the existing rule language, a permit was applied for and once public notice was published, the permit application was withdrawn. This act did not allow an opportunity for public participation and did not satisfy the intent of the rule. By adding the requirement that a permit first be obtained, the public will be provided with notice and will have an opportunity to request a hearing. Obtaining a permit will allow for a comprehensive evaluation of the significance of the site.

The commission proposes a new §106.5, concerning Applicable Regulations and Requirements. This section contains the requirement that exemptions must meet the intent of the TCAA, including protection of health and property of the public. The proposed language makes it clear that facilities operating under an exemption must comply with the netting requirements in Chapter 116, concerning Prevention of Significant Deterioration and Nonattainment Permitting, and the specific rules authorized under the FCAA, §111 (New Source Performance Standards) and §112 (National Emission Standards for Hazardous Air Pollutants (NESHAPS)). NESHAPS for Source Categories (commonly referred to as Maximum Achievable Control Technology Standards (MACTS) have been promulgated by the United States Environmental Protection Agency (EPA) in Part 63. A requirement for facilities to comply with these MACTS has been added to §106.5.

New §106.6(c), concerning Other Requirements, is added to the rule to address a concern by EPA that a demonstration of compliance with the requirements of the exemption is needed to ascertain the insignificance of the authorizations under this chapter. The commission agrees that a demonstration of compliance is appropriate. Users of exemptions must be able to demonstrate that they comply with the limits and requirements of the exemption and present the appropriate records upon request.

New §106.7, concerning Public Notice, is the same as current §106.5.

New §106.8, concerning Certification of Enforceable Emission Limits, is substantively the same as current §106.6, except that it is revised to specifically include the actual name of the certification and the form number. The PI-8 form is used when an enforceable limit is needed for federal applicability requirements under New Source Review, which is lower than the maximum allowable limits listed in §106.4(a).

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the sections. The commission reviewed the existing exemptions and believes that approximately 50 additional permit applications could be reviewed by the New Source Review Program as a result of the proposed revisions. Since this is likely a worst-case estimate of impacted businesses, the commission does not believe that the impact on state or local

government will be significant. The commission issues approximately 1,000 new permits, permit amendments, and renewals each year.

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 improved opportunity for the commission to determine the potential impact on public health of facilities emitting air contaminants by lowering the emission levels above which facilities, and sites with numerous exempted facilities, will be required to obtain a permit. This change will also make the emission limits consistent with the provisions of the TCAA and will further ensure that facilities which would be considered major under the FCAA will receive permit review.

The proposed changes provide a greater opportunity for public participation. The effect on businesses, including small businesses, is expected to be insignificant since most individual exemptions from permitting currently include similar or lower emission limits than the newly proposed limits of ten tpy of any single HAP or 25 tpy of any combination of HAPs. However, as a result of the lower HAP emission limits, it is possible that a limited number of businesses, estimated to be fewer than 50 per year, would need to apply for a permit before adding new or modified facilities, which would include a minimum fee of \$450, public notice, and opportunity for hearing. The minimum cost of a contested case hearing is approximated at \$5,000, but can be substantially higher for the more complex and controversial hearings. Texas Natural Resource Conservation Commission (TNRCC) air permit application data for 1996 indicates that less than 1.0% of permit applications result in a hearing.

Similarly, as a result of the lower emission limits of NO_x and CO, other sites with new or modified internal combustion engines or gas turbines with 100 tpy or more of emissions of NO_x and CO from

exempted facilities will be affected. If one of these facilities is at a site that has not previously undergone public notice, estimated to be fewer than 100 per year, it must either obtain a permit at the site, which would include public notice, or utilize any applicable standard permits, both of which currently require at least a \$450 fee. The commission does not expect that there are many sites that large which have not already obtained a permit for at least one facility at the site. The commission also expects the impacts of the new NO_x and CO limits to be insignificant, since it is unusual for a single properly controlled internal combustion engine or gas turbine to emit 100 tpy or more of NO_x or CO. In addition, the proposed changes, if adopted, will not be applied retroactively. Facilities previously authorized under the existing requirements of Chapter 106, Subchapter A, concerning General Requirements, can continue to operate under those requirements as long as the facility meets those requirements.

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 will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety.

The proposal does not meet any of the four applicability requirements listed in §2001.0225(a).

This proposal does not exceed a standard set by federal law and is not specifically required by state law.

The proposed rule changes do not exceed a standard set by federal law. The FCAA does not establish conditions for exempting facilities from permitting. Exemptions are authorized by TCAA,

§382.057(a). Although exemptions are authorized by §382.057(a), the commission is not obligated to adopt exemptions. Therefore, the proposed changes are not specifically required by state law.

However, if the commission chooses to adopt exemptions, §382.057(a) specifically prohibits the commission from exempting major sources as defined by the FCAA.

This proposal does not exceed an express requirement of state law and is not specifically required by federal law. The proposed rule changes will make the conditions of §106.4 consistent with the provisions of TCAA, §382.057(a). The FCAA does not establish conditions for exempting facilities from permitting; thus, the rule changes are not specifically required by federal law.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government as there is no agreement or contract between the commission and the federal government concerning exemptions from permitting.

The rules are not proposed solely under the general powers of the commission instead of under a specific state law. The proposed changes to §106.4 are not being made under the general powers of the commission. Rather, the changes are being made under the requirements of TCAA, §382.057(a), a specific state law that prohibits the commission from exempting facilities that are major as defined in the FCAA.

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 make the emission limitations allowed under Chapter 106 consistent with Texas Health and Safety Code, §382.057(a), which prohibits an exemption from permitting for a facility defined as “major” under the FCAA or regulations adopted under it. Many changes throughout the rules are intended to implement the commission’s guidelines on regulatory reform, as well as provide clarifications to existing rule language. The rules revise the upper emission limits that will apply to the total of all exempted facilities at a site which has not been to public notice and obtained a permit when new authorization is being sought. The proposed changes will allow the executive director to provide a more thorough review of facilities or groups of facilities constituting a project and comprehensively evaluate the significance of the site. The proposed changes provide a greater opportunity for public participation. The proposed §106.3(4) prohibits exemptions from permitting for facilities which would be considered construction or reconstruction that requires preconstruction approval under 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories (Part 63). This prohibition is added because Part 63 requires major sources of HAPs which are constructed or reconstructed to get preconstruction approval. The proposed rulemaking will achieve its stated purpose by making Chapter 106 exemptions consistent with the statutory requirement in §382.057(a). The proposed rules will not make existing rules less stringent. Adoption and enforcement of the rule amendments and repeals will not create a burden on private real property.

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 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, concerning 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, specifically §501.12(1), which is to protect, restore, and enhance the diversity, quality, functions, and values of coastal natural resource areas and §501.14(q), regarding compliance with 40 CFR, Protection of Environment.

The specific purpose of the rule amendments and repeals is to make the emission limitations allowed under §106.4 consistent with Texas Health and Safety Code, §382.057(a), which prohibits an exemption from permitting for a facility defined as "major" under the FCAA or regulations adopted under it. The upper emission limits in §106.4 are proposed to be lowered. This change may result in a reduction in emissions from new facilities authorized under exemptions.

Many changes throughout the rules are intended to implement the commission's guidelines on regulatory reform, as well as provide clarifications to existing rule language. The rules revise the upper emission limits that will apply to the total of all exempted facilities at a site which has never been

to public notice and obtained a permit when new authorization is being sought. The proposed changes will allow the executive director to provide a more thorough review of facilities or groups of facilities constituting a project and comprehensively evaluate the significance of the site. The proposed changes provide a greater opportunity for public participation.

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 this proposal will be held October 8, 1998, at 2:00 p.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 will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98020-106-AI. Comments must be received by 5:00 p.m., October 12, 1998. For further information, please contact Dale Beebe-Farrow, New Source Review Permits

Division, (512) 239-1310, Kerry Drake, New Source Review Permits Division, (512) 239-1112, or Jim Dodds, Air Policy and Regulations Division, (512) 239-0970.

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

STATUTORY AUTHORITY

The repeals are proposed under the Texas Health and Safety Code, the TCAA, §§382.012, 382.017, 382.056, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. Section 382.056 contains the requirement for public notice. Section 382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere and prohibits exemptions to facilities that meet federal definitions of "major source."

The proposed repeals implement Texas Health and Safety Code, §382.057.

SUBCHAPTER A : GENERAL REQUIREMENTS

§§106.1, 106.2, 106.4 - 106.6

§106.1. Purpose.

§106.2. Applicability.

§106.4. Requirements for Exemption from Permitting.

§106.5. Public Notice.

§106.6. Registration of Emissions.

SUBCHAPTER A : GENERAL REQUIREMENTS

§§106.1 - 106.8

STATUTORY AUTHORITY

The new sections are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, 382.056, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. Section 382.056 contains the requirements for public notice. Section 382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere and prohibits exemptions to facilities that meet federal definitions of "major source."

The proposed new sections implement Texas Health and Safety Code, §382.057.

§106.1. Terminology.

For the purpose of this chapter, "site" shall have the same meaning as is defined in §122.10 of this title (relating to General Definitions).

§106.2. Purpose.

This chapter authorizes the construction of, or changes to, a facility or group of facilities constituting a project without obtaining a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). A facility or group of facilities constituting a project in compliance with this chapter will not make a significant contribution of air contaminants to the atmosphere and is exempt from the permit requirements of the Texas Health and Safety Code, the Texas Clean Air Act, §382.0518.

§106.3. Facilities Ineligible for Exemptions from Permitting.

An exemption from permitting may not be claimed where the facility or group of facilities constituting a project or change is:

(1) prohibited by permit. If a permit condition (or provision) at the same site prohibits or restricts the use of an exemption from permitting or standard exemption, no facility or change to a facility at that site may be exempted, except as allowed by that permit condition;

(2) considered a new major source. Major source is defined in §122.10(8) of this title (relating to General Definitions);

(3) considered a major modification as defined in:

(A) 40 Code of Federal Regulations (CFR) §52.21; or

(B) §116.12 of this title (relating to Nonattainment Review Definitions);

(4) considered to be a construction or reconstruction which requires preconstruction approval under 40 CFR Part 63.

§106.4. Emission Limits.

(a) If no facility or group of facilities constituting a project at a site has been subject to public notice and comment requirements and permitted under Chapter 116, Subchapter B, Subchapter C, or Subchapter G of this title (relating to New Source Review Permits; Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63); or Flexible Permits), the following emission limitations apply to the total emissions of all exempted facilities at that site, unless a lower limit is otherwise specified in the applicable exemption(s) from permitting:

(1) no emission limit on carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(2) less than 100 tons per year (tpy) of carbon monoxide or nitrogen oxides;

(3) less than 25 tpy of volatile organic compounds, sulfur dioxide, or inhalable particulate matter (PM₁₀);

(4) less than ten tpy of any individual hazardous air pollutant (HAP); or 25 tpy of total HAPs;

(5) less than 25 tpy of any other air contaminant; and

(6) any other applicable limit in this chapter.

(b) If at least one facility at a site has been subject to public notice and comment requirements and permitted under Chapter 116, Subchapter B, Subchapter C, or Subchapter G of this title, the emission limitations in subsection (a)(1) - (6) of this section apply to the facility or group of facilities constituting a project being authorized at that site, unless a lower limit is otherwise specified in the applicable exemption(s) from permitting.

§106.5. Applicable Regulations and Requirements.

(a) All facilities authorized by this chapter must be constructed and operated in compliance with:

(1) the intent of the TCAA, including protection of health and property of the public;

(2) all applicable rules and regulations of the commission, including:

(A) all applicable netting requirements of §116.150 and §116.151 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas; and New Major Source or Major Modification in Nonattainment Areas Other than Ozone);

(B) all applicable netting requirements of §116.160 of this title (relating to Prevention of Significant Deterioration Requirements);

(3) 40 Code of Federal Regulations (CFR) Part 60 (concerning New Source Performance Standards);

(4) 40 CFR Part 61 (concerning National Emission Standards for Hazardous Air Pollutants (NESHAPS)); and

(5) NESHAPS for source categories as listed under 40 CFR Part 63 (concerning NESHAPS for Source Categories) or as listed under Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(b) Construction or modification of a facility or group of facilities constituting a project commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific exemption in this chapter must meet the revised requirements to qualify for an exemption.

(c) A facility exempted by this chapter must meet any applicable permit or registration requirements of local air pollution control agencies.

§106.6. Other Requirements.

(a) Emission control equipment. All emission control equipment used for compliance with any exemption from permitting must be maintained in good condition and operated properly.

(b) Circumvention. A person claiming an exemption may not circumvent by artificial limitations the requirements of §116.110 of this title (relating to Applicability).

(c) Demonstration of compliance. A person claiming an exemption may be required to supply records or other information adequate to demonstrate that the person meets the requirements of the exemption(s) or other applicable requirements listed in this chapter.

§106.7. Public Notice.

Facilities constructed under this chapter that consist of permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, or specialty wet batch, concrete, mortar, grout mixing, or pre-cast concrete products, shall conduct public notice of the proposed construction unless exempted from public notice requirements by TCAA, §382.058(b). In all cases, public notice shall include the information specified in paragraph (1)(A) and (B) of this section.

(1) Public notification procedures.

(A) Publication in public notices section of a newspaper. At the applicant's expense, notice of intent to construct 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:

(i) application number;

(ii) company name;

(iii) type of facility;

(iv) description of the location of facility or proposed location of the facility;

(v) contaminants to be emitted;

(vi) location and availability of copies of the completed application;

(vii) public comment period;

(viii) procedure for submission of public comments concerning the proposed construction;

(ix) notification that a person residing within 1/4-mile of the proposed plant is an affected person who is entitled to request a hearing in accordance with commission rules;
and

(x) name, address, and phone number of the regional commission 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 issues of the

newspaper and shall contain the information specified in subparagraph (A)(i)-(iv) of this paragraph and note that additional information is contained in the notice published under subparagraph (A) of this paragraph in the public notice section of the same issue.

(2) Comment procedures.

(A) Comment period. Interested persons may submit written comments to the executive director, including requests for public hearings under TCAA, §382.056, on the executive director's preliminary decision to issue or not to issue the standard exemption. All such comments and hearing requests must be received in writing within 15 days of the last publication date of the notices specified in paragraph (1)(A) and (B) of this section. Any requests for a contested case hearing shall include a brief, but specific, written statement of interest and basis for challenging the application. Such statement shall convey in plain language the requestor's location relative to the proposed facility, why the requestor believes he or she will be affected by emissions from the proposed facility, what the requestor's concerns are about the emissions from the proposed facility, and how the requestor believes emissions from the facility will affect him or her if permitted. This statement shall not be used as the basis for denial of party status in any contested case hearing. Party status determinations will be made based on evidence developed at the initial prehearing conferences.

(B) Consideration of comments. All written comments received by the executive director during the period specified in subparagraph (A) of this paragraph shall be considered in determining whether to issue or not to issue the standard exemption. The executive director shall

make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin office of the commission and appropriate regional office.

§106.8. Certification of Enforceable Emission Limits.

(a) An owner or operator may certify, using a Form PI-8, Certification of Enforceable Emission Limits, and register the maximum emission rates from facilities exempted under this chapter in order to establish enforceable allowable emission rates which are below the emission limitations in §106.4 of this title (relating to Emission Limits).

(b) All representations with regard to construction plans, operating procedures, and maximum emission rates in any certification under this section become conditions upon which the exempt facility shall be constructed and operated.

(c) It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless the certification is first revised.

(d) The certification must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility.

(e) The certification shall be maintained on-site and be provided immediately upon request by representatives of the commission or any air pollution control agency having jurisdiction. If the site is unmanned, the regional manager for the region in which the site is located may authorize an alternative site to maintain this documentation. Copies of the certification shall be included in applications for permits subject to review under the divisions in Chapter 116, Subchapter B of this title (relating to New Source Review Permits).

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §116.620, concerning Installation and/or Modification of Oil and Gas Facilities.

EXPLANATION OF PROPOSED RULE

The amendment is needed as a direct result of proposing lower emission rates in 30 TAC §106.4. The repeal and readoption of §106.4, concerning Emission Limits, is concurrently proposed in this issue of the *Texas Register*. The standard permit change is limited to replacing the cross-reference to §106.4(a) with the actual emission limits designated for each pollutant that is contained in the current rule. This change will maintain the status quo for facilities authorized under the standard permit.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section is in effect, the anticipated public benefit will be to maintain the status quo for oil and gas facilities seeking authorization under the standard permit. There will be no effect on small businesses, since the status quo is being maintained. There is no increased economic cost to persons who are required to comply with the proposed section as compared with the current standard permit.

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 will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety. The proposal does not meet any of the four applicability requirements listed in §2001.0225(a).

This proposal does not exceed a standard set by federal law and is not specifically required by state law. The proposed rule change does not exceed a standard set by federal law. The proposed rule replaces a cross-reference with the actual text of the rule that was previously referenced.

This proposal does not exceed an express requirement of state law and is not specifically required by federal law. The FCAA does not establish conditions for standard permits; thus, it is not specifically required by federal law.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government as there is no agreement or contract between the commission and the federal government concerning standard permits.

This proposal does not adopt a rule solely under the general powers of the commission instead of under a specific state law. The proposed rule simply replaces a cross-reference with the actual text of the rule that was previously referenced.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the rule under Texas Government Code, §2007.043. The following is a summary of that assessment: the proposed change to §116.620(a)(4), concerning the Standard Permit for Installation and/or Modification of Oil and Gas Facilities, is needed as a direct result of proposing lower emission rates in §106.4 and will maintain the status quo for facilities authorized under the standard permit. The proposed rulemaking will achieve its stated purpose by replacing a cross-reference with the actual text of the rule that was previously referenced. The proposed rule will not make existing rules less stringent. Adoption and enforcement of the rule amendment will not create a burden on private real property.

COASTAL MANAGEMENT PLAN

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 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, concerning 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.

The specific purpose of the rule amendment is to replace a cross-reference with the actual text of the rule that was previously referenced. The change to §116.620(a)(4), concerning Standard Permit for Installation and/or Modification of Oil and Gas Facilities, replaces the cross-reference to §106.4(a) with the actual emission limits designated for each pollutant that is contained in the current rule. This change will maintain the status quo for facilities authorized under the standard permit and does not authorize an increase in air emissions.

Interested persons may submit comments on the consistency of the proposed rule with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held October 8, 1998, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission 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 will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98020-106-AI. Comments must be received by 5:00 p.m.,

October 12, 1998. For further information, please contact Dale Beebe-Farrow, New Source Review Permits Division, (512) 239-1310, Kerry Drake, New Source Review Permits Division, (512) 239-1112, or Jim Dodds, Air Policy and Regulations Division, (512) 239-0970.

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

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. Section 382.057 authorizes the commission to develop standard permits for the installation of emission control equipment that constitutes a modification or a new facility.

The proposed amendment implements Texas Health and Safety Code, §382.057.

CHAPTER 116

SUBCHAPTER F : STANDARD PERMITS

§116.620

§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 must [shall] satisfy all of the requirements of §106.512 of this title (relating to Stationary Engines and Turbines (Previously SE 6)), except that registration using the Form PI-7 or PI-8 shall not be required. Total actual emissions [Emissions] from engines or turbines must [shall] be limited to: [the amounts found in §106.4(a)(1) of this title (relating to Requirements for Exemption from Permitting).]

(A) no emission limit on carbon dioxide, water, nitrogen, methane, ethane, hydrogen, or oxygen;

(B) 250 tpy of carbon monoxide or nitrogen oxide;

(C) 25 tpy of VOCs, SO₂ or inhalable particulate matter; or

(D) 25 tpy of any other air contaminant.

(5) - (18) (No change.)

(b) - (e) (No change.)