

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §116.12, concerning Nonattainment Review Definitions, and §116.150, concerning New Major Source or Major Modification in Ozone Nonattainment Areas.

EXPLANATION OF THE PROPOSED RULES

The purpose of the proposed amendments to Chapter 116 and to the State Implementation Plan (SIP) is to reinstate nonattainment new source review (NNSR) for nitrogen oxides (NO_x) in the Dallas/Fort Worth ozone nonattainment area (DFW), an area defined by Collin, Dallas, Denton, and Tarrant Counties. NNSR is a federal air quality permit requirement consisting of four elements: alternative site analysis, compliance certification, lowest achievable emission rate, and offsets.

The 1990 Federal Clean Air Act (FCAA) requires NO_x NNSR. The FCAA, §182(f) specifies that required measures for volatile organic compounds (VOC) must also be applied for NO_x in ozone nonattainment areas, unless a demonstration is made that NO_x reductions would not contribute to attainment of the ozone standard. The United States Environmental Protection Agency's (EPA) interpretation of §182(f) allows the following federal NO_x measures to be waived if the state demonstrates that NO_x reductions do not contribute to ozone attainment: reasonably available control technology, NNSR, vehicle inspection/maintenance, and general and transportation conformity. On November 28, 1994, the EPA granted conditional approval of a §182(f) exemption from these NO_x measures for DFW. EPA approval was based on the commission's petition, which demonstrated with photochemical dispersion modeling, that NO_x reductions in DFW would be in excess of the reductions

necessary for attainment of the ozone standard. The modeling predicted that VOC reductions alone would be sufficient for attainment. A condition of EPA's approval was that the §182(f) exemption would be rescinded if the area did not attain the ozone standard by November 15, 1996, and modeling later showed that NO_x reductions would contribute to attainment. In response to the exemption, the commission adopted revisions to §116.150, effective November 2, 1995, which waived NO_x NNSR requirements for the DFW area.

On March 20, 1998, EPA reclassified ("bumped up") the DFW area from the "moderate" to the "serious" ozone nonattainment classification, because of monitored violations of the ozone standard. The EPA action called for the state to perform photochemical grid modeling and submit a new SIP by March 1999 that demonstrates attainment of the one-hour ozone standard by November 15, 1999. The FCAA, §110, requires states to submit SIPs which contain enforceable measures to achieve the National Ambient Air Quality Standards. In 1996, the agency began to develop new modeling for the DFW area and now is using newer air quality models with improved meteorological and emission inputs. The new modeling, which is being provided for public hearing and comment concurrent with this rulemaking, shows that NO_x reductions contribute to attainment of the ozone standard in the DFW area. The modeling further indicates that NO_x reductions are a necessary step toward the area's attaining the ozone standard (for both the existing one-hour and the new eight-hour standard). The failure to attain the standard by 1996 and the results of the new modeling mean the rationale for the NO_x exemption for DFW is no longer valid. In addition, the proposed rules will be submitted to the EPA upon adoption, as one of several measures of the new ozone attainment demonstration required by the FCAA, §110.

Based upon its conditional approval of the §182(f) exemption (NO_x waiver), EPA will rescind the NO_x waiver and reinstate the requirements for these rules upon submittal of modeling indicating that NO_x reductions will contribute to attainment in the DFW area.

The proposed amendment to §116.12(11), the definition “Major modification,” Table I, footnote 3, would modify the description of which ozone nonattainment areas are exempt from NO_x NNSR by specifying that El Paso County is not subject to NO_x NNSR. The reference to “permanent” §182(f) NO_x exemptions would be deleted because, since the expiration in 1997 of the §182(f) NO_x “temporary” exemptions for Houston and Beaumont, there is no need to distinguish between permanent and temporary exemptions. The other proposed amendment to the definition subdivides it, to allow Table I to be located properly, consistent with *Texas Register* rules. The table will now be located in the new paragraph (11)(A), where it is referenced, rather than under subparagraph (G), at the end of the definition.

The proposed amendment to §116.150(b) would remove the NO_x NNSR exemption for the DFW area. The requirements would apply to air quality permit applications for new or modified sources which are major for NO_x in DFW and determined to be administratively complete after the effective date of this revision. The estimated effective date is March 21, 1999.

FISCAL NOTE

Jeff Grymkoski, 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 NO_x NNSR in DFW. As discussed in the cost note, these rules do not impose requirements on owners or operators of existing sources of NO_x in the DFW area and therefore will not require significant additional administration or enforcement on the part of state or local governments.

PUBLIC BENEFIT/COST NOTE

Mr. Grymkoski also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be to ensure that new point source NO_x emissions will not interfere with the ozone attainment demonstration strategy contained in the SIP. This rulemaking does not impose any requirements or costs on owners or operators of existing sources of NO_x in the DFW area. The proposed rules would only apply to major new or modified sources of NO_x in the DFW area. Analysis of the 1996 emissions inventory for the area shows that only 12 entities reported emissions above 50 tons per year of NO_x, the “major” threshold for serious ozone nonattainment areas, and since 1980, none of them sought a Prevention of Significant Deterioration (PSD) permit modification. In 1980, the EPA established federal rules requiring PSD permits for all major new or modified sources of NO_x emissions in nitrogen dioxide attainment areas, which includes the DFW area. Since 1980, there have been no PSD permits issued for NO_x in DFW. The absence of PSD permits for NO_x in the DFW area indicates that there has not been a need to increase NO_x emissions equal to or above the PSD levels of 40 tons per

year for modifications to existing 100/250 tons per year major sources, or equal to or above 100 or 250 tons per year for new major sources. The absence of PSD NO_x permits for new emissions, and the few existing NO_x sources equal to or above 50 tons per year, suggest that there will be no facilities in the foreseeable future affected by the proposed reimplementation of NO_x NNSR permit rules in DFW.

SMALL BUSINESS ANALYSIS

As identified in the public benefit/cost note, these rules are not anticipated to impose any costs on persons in the foreseeable future, including small businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The staff 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 the rule is not a “major environmental rule” as defined in the Code. As discussed in the cost note of this preamble, few or no facilities will be affected by the proposed reimplementation of NO_x NNSR in DFW. Therefore, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Furthermore, this proposal will not adversely affect in a material way, the environment, or the public health and safety of the state or a sector of the state. The proposed rules, required by the FCAA, §§110, 172(c)(5), 173, and 182(f), will prevent new point source NO_x emissions from interfering with the ozone attainment demonstration strategy contained in the SIP.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these sections under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these amendments is to reinstate NO_x NNSR in DFW. If adopted, sources located in the DFW ozone nonattainment area of the state will be subject to a review of significant new NO_x emissions and possibly emission offsets and additional control measures. These requirements could conceivably place a burden on private real property. However, under Texas Government Code, §2007.003(b)(4) and (13), Chapter 2007 does not apply to this action. Under §2007.003(b)(4), Chapter 2007 does not apply to an action that is reasonably taken to fulfill an obligation mandated by federal law. The proposed amendments will implement requirements of the FCAA, §§110, 172(c)(5), 173, and 182(f). Also, §2007.003(b)(13) states that Chapter 2007 does not apply to an action that: (1) is taken in response to a real and substantial threat to public health and safety; (2) is designed to significantly advance the health and safety purpose; and (3) does not impose a greater burden than is necessary to achieve the health and safety purpose. This action is taken in response to the DFW area exceeding the federal ambient air quality standard for ground-level ozone, which adversely affects public health, primarily through irritation of the lungs. The action significantly advances the health and safety purpose by ensuring that new point source NO_x emissions do not interfere with the ozone attainment demonstration strategy contained in the SIP. Any NO_x reductions resulting from the current rulemaking are no greater than what the best scientific research indicates is necessary to achieve the desired ozone levels. However, this rulemaking is only one step among many necessary for attaining the ozone standard. In addition, the rules contain multiple compliance methods to minimize costs of compliance.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal or policy applicable to the proposed rules is the policy that commission rules comply with regulations at Code of Federal Regulations, Title 40, to protect and enhance air quality in the coastal area. The rules, which ensure that new point source emissions in DFW will not interfere with the ozone attainment demonstration strategy, are consistent with the applicable CMP policy because they are consistent with Title 40. Title 40, Part 51, sets out requirements for states to prepare, adopt, and submit implementation plans for the attainment of the NAAQS. The adopted rules would be submitted to EPA under these requirements. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held in Irving on December 1, 1998, at 7:00 p.m. at the City of Irving Central Library Auditorium, 801 West Irving Boulevard. 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 98029-116-AI. Comments must be received by 5:00 p.m., December 7, 1998. For further information or questions concerning this proposal, please contact Randy Hamilton, Office of Policy and Regulatory Development, (512) 239-1512.

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 382.051. 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, while §382.051 authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Health and Safety Code, Chapter 382.

The proposed amendment implements Health and Safety Code, §382.012.

SUBCHAPTER A : DEFINITIONS

§116.12

§116.12. Nonattainment Review Definitions.

Unless specifically defined in the Texas Clean Air Act (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. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. 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 §116.150 and §116.151 of this title (relating to Nonattainment Review), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (10) (No change.)

(11) **Major modification** - As follows.

(A) Any physical change in, or change in the method of operation of a facility/stationary source that causes a significant net emissions increase for any air contaminant for which an NAAQS has been issued. At a facility/stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified in the MAJOR SOURCE column of Table I of

this section. At an existing major facility/stationary source, the increase must equal or exceed that specified in the MAJOR MODIFICATION column of Table I.

Figure: 30 TAC §116.12(11)(A)

(B) A physical change or change in the method of operation shall not include:

(i) [(A)] routine maintenance, repair, and replacement;

(ii) [(B)] use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan under [pursuant to] the Federal Power Act;

(iii) [(C)] use of an alternative fuel by reason of an order or rule of the FCAA [Federal Clean Air Act], §125;

(iv) [(D)] use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) [(E)] use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976 (unless such change would

be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved under [pursuant to] this chapter;

(vi) [(F)] an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition which was established after December 21, 1976); or

(vii) [(G)] any change in ownership at a stationary source.

[Figure: 30 TAC §116.12(11)(G)]

TABLE I
MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT	MAJOR SOURCE	MAJOR MODIFICATION²	OFFSET RATIO
<u>designation¹</u>	<u>tons/year</u>	<u>tons/year</u>	<u>minimum</u>
OZONE³			
I marginal	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1 ⁴
II serious	50	50	1.00 to 1 ⁴
SO ₂	100	40	1.00 to 1 ⁴
PM₁₀			
I moderate	100	15	1.00 to 1 ⁴
II serious	70	15	1.00 to 1 ⁴
NO _x	100	40	1.00 to 1 ⁴
Lead	100	0.6	1.00 to 1 ⁴

¹ Texas nonattainment area designations are specified in Title 40, Code of Federal Regulations, §81.344.

² The major modification threshold is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area) and for other pollutants are equal to the major modification level listed in Table I.

³ VOC and NO_x are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. For El Paso County [those counties which are designated nonattainment for ozone, but have been granted a permanent exemption for NO_x under the FCAA, §182(f)], as specified in §116.150(b) of this title, the NNSR rules apply to sources of VOC, but not to sources of NO_x.

⁴ The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds
NO_x = oxides of nitrogen
CO = carbon monoxide
SO₂ = sulfur dioxide
PM₁₀ = particulate matter of less than ten microns in diameter

(12) - (18) (No change.)

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

DIVISION 5 : NONATTAINMENT REVIEW

§116.150

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.051. 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, while §382.051 authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Health and Safety Code, Chapter 382.

The proposed amendment implements Health and Safety Code, §382.012.

§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas.

(a) (No change.)

(b) For sources located [in the Dallas/Fort Worth ozone nonattainment area (Collin, Dallas, Denton, and Tarrant Counties) or] in the El Paso ozone nonattainment area (El Paso County), the requirements of this section do not apply to NO_x emissions.

(c) (No change.)