

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§122.10, General Definitions; 122.110, Delegation of Authority to Executive Director; 122.130, Initial Application Due Dates; 122.131, Phased Application Process for Initial Applications; 122.132, Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits; 122.134, Complete Application; 122.139, Application Review Schedule; 122.140, Representations in Application; 122.142, Permit Content Requirements; 122.143, General Terms and Conditions; 122.161, Miscellaneous; 122.210, General Requirements for Revisions; 122.213, Procedures for Administrative Permit Revisions; 122.217, Procedures for Minor Permit Revisions; 122.322, Bilingual Public Notice; 122.350, EPA Review; 122.410, Operating Permit Interface; 122.412, Acid Rain Permit Application Due Dates; 122.414, Acid Rain Permit Revisions; 122.501, General Operating Permits; 122.502, Authorization to Operate; 122.503, Application Revisions for Changes at a Site; 122.504, Application Revisions When a General Operating Permit is Revised or Rescinded; 122.505, Renewal of the Authorization to Operate Under a General Operating Permit; and 122.506, Public Notice for General Operating Permits. The commission also proposes new §§122.600, Implementation of Periodic Monitoring; 122.602, Periodic Monitoring Applicability; 122.604, Periodic Monitoring Application Due Dates; 122.606, Applications for Periodic Monitoring; 122.608, Procedures for Incorporating Periodic Monitoring Requirements; 122.610, Periodic Monitoring General Operating Permits Content; 122.612, Periodic Monitoring Requirements In Permits and Enforceable General Operating Permit Applications; 122.700, Implementation of Compliance Assurance Monitoring; 122.702, Compliance Assurance Monitoring Applicability; 122.704, Compliance Assurance Monitoring Application Due Dates; 122.706, Applications for

Compliance Assurance Monitoring General Operating Permits; 122.708, Procedures for Incorporating Compliance Assurance Monitoring Requirements; 122.710, Compliance Assurance Monitoring General Operating Permit Content; 122.712, General Terms and Conditions for Compliance Assurance Monitoring; 122.714, Compliance Assurance Monitoring General Operating Permit Requirements in Permits and Enforceable General Operating Permit Applications; and 122.716, Quality Improvement Plans.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Title V of the 1990 Amendments to the Federal Clean Air Act (FCAA), enacted on November 15, 1990, directed the United States Environmental Protection Agency (EPA) to establish the minimum requirements for a state operating permit program. The EPA promulgated 40 Code of Federal Regulations Part 70 (40 CFR Part 70) to comply with this directive. The commission adopted Chapter 122, Federal Operating Permits, to implement the federal operating permits program required by 40 CFR Part 70.

The proposed rulemaking revises Chapter 122 to address two federally mandated monitoring programs: compliance assurance monitoring and periodic monitoring. On October 22, 1997, EPA established the Compliance Assurance Monitoring (CAM) Program with the promulgation of 40 CFR Part 64 to respond to FCAA, §114(a)(3), concerning enhanced monitoring and compliance certifications and FCAA, §504(b), concerning monitoring and analysis (62 FR 54901). 40 CFR 64 was originally proposed in 1991 as the enhanced monitoring rule. However, due to the controversy surrounding it

and subsequent proposals, EPA decided to shift the focus of 40 CFR Part 64, and the enhanced monitoring rule was withdrawn and replaced with CAM. The EPA states that “the general purpose of the monitoring required by Part 64 is to assure compliance with emission standards through requiring monitoring of the operation and maintenance of the control equipment and, if applicable, operating conditions of the pollutant-specific emissions unit” (62 FR 54918). The commission proposes this rulemaking to provide the regulatory structure for implementing CAM through the federal operating permits program and to provide a streamlined implementation approach. The CAM requirements will reside in proposed new Subchapter H, concerning Compliance Assurance Monitoring.

The other federal monitoring program addressed by this proposed rulemaking is “periodic monitoring.” Although EPA promulgated an entire rule to specifically define the requirements for implementing CAM, the regulatory authority for periodic monitoring resides solely in 40 CFR §70.6(a)(3)(i)(B). This requirement specifies that where an applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of an emission unit’s compliance with the permit. The commission already has the authority under Chapter 122 to incorporate periodic monitoring requirements into federal operating permits. This rulemaking provides an alternative streamlined approach, similar to that proposed for CAM, to implement periodic monitoring requirements. The proposed requirements for the implementation of periodic monitoring reside in proposed new Subchapter G, concerning Periodic Monitoring. Finally, the commission also proposes

to amend existing sections of Chapter 122 to provide clarity to portions of the rules, to correct outdated statutory references, to address an administrative error in a previous rulemaking, to address recent changes in federal rules, and to address requirements in the Texas Clean Air Act (TCAA).

SECTION BY SECTION DISCUSSION

The explanation of the rules is divided into three parts. The first part contains a general overview of CAM and the proposed streamlined CAM implementation approach, as well as a discussion of the specific CAM requirements of proposed Subchapter H, §§122.700-122.716. The second part contains a general overview of periodic monitoring and the proposed periodic monitoring implementation approach, as well as a discussion of the relationship between CAM and periodic monitoring (§§122.600-122.612). The second part also contains a discussion of the specific periodic monitoring requirements of the proposed Subchapter G. The third part is a discussion of other proposed changes to Chapter 122, including changes to acid rain requirements (§§122.110-122.506). This proposal requires that new definitions be added to §122.10 or that existing definitions be amended. The specific definition changes are discussed in the applicable part of the preamble discussion.

In accordance with §122.10(2), CAM is an applicable requirement of the federal operating permits program because EPA states that CAM was promulgated under the authority of FCAA, §114(a)(3) and §504(b). The commission proposes this rulemaking to provide the regulatory structure for implementing CAM through the federal operating permits program in Texas and to provide a streamlined implementation approach. Unlike many other applicable requirements that specifically

define emission limitations or standards and associated monitoring, recordkeeping, reporting, and testing requirements, 40 CFR 64 is a general monitoring rule that defines broad principles and performance criteria for establishing CAM requirements in the federal operating permit, but does not specifically define the monitoring requirements that apply to a specific emission unit. As a result, the proposed Subchapter H is necessary to provide procedures for establishing the CAM requirements that will apply to permit holders.

40 CFR 64 applies to emission units with control devices at major sources that have the pre-control potential to emit greater than the major source threshold levels and are subject to an emission limitation or standard in an applicable requirement. It only applies to emission units meeting all these criteria, evaluated on a pollutant-by-pollutant basis. 40 CFR 64 also contains exemptions for certain emission limitations and standards and specific types of emission units. It requires monitoring that provides a reasonable assurance of compliance with the applicable requirements and reflects proper operation and maintenance of the control device.

Three options for the implementation of CAM were considered: a strictly “case-by-case” approach, a rulemaking approach, and a general operating permit (GOP) approach. 40 CFR 64 focuses on a “case-by-case” approach. This approach would require each owner or operator to design a monitoring plan for each emission unit subject to CAM and to submit it, along with a detailed justification for each element of the plan, to the permitting authority for approval. However, due to the complex nature of the 40 CFR 64 requirements and the number of emission units in Texas that may be subject to 40 CFR

64, the design and review of “case-by-case” CAM plans would be resource-intensive for both permit holders and the commission’s executive director. Under a strictly “case-by-case” approach, maintaining consistency in the application of CAM requirements across the state may be difficult. In addition, a strictly “case-by-case” approach would require separate executive director review, public review, and EPA review for each individual CAM plan. The commission does not believe that implementing CAM on a strictly “case-by-case” basis is the best use of the regulated community’s, the public’s, EPA’s, or the executive director’s resources. Consequently, the commission is not proposing to implement CAM on a strictly “case-by-case” basis.

In addition to the strictly “case-by-case” approach, an implementation approach using rulemaking to establish CAM requirements was considered. This approach would require the commission to use rulemaking to establish monitoring requirements for applicable requirements that would satisfy CAM for emission units across the state. However, as with a strictly “case-by-case” approach, the rulemaking process is resource-intensive and, due to the procedural requirements involved, is often very time-consuming. In addition, because applicable requirements change frequently, keeping CAM requirements that are established through rulemaking current would be difficult. If an applicable requirement changed, revisions to the affected rule would be required before the CAM requirements could be updated to account for the change in the applicable requirement. The minimum time for the commission to complete rulemaking is approximately five months. The commission does not believe that a rulemaking approach for the implementation of CAM is a suitable or practical option.

Therefore, the commission is not proposing a rulemaking approach for the implementation of CAM.

Finally, GOPs were considered as a means for implementing CAM. This approach would allow the executive director to use GOPs to establish the monitoring requirements that would satisfy CAM for emission units across the state. The commission believes that the compliance assurance monitoring general operating permit (CAM GOP) approach would minimize resource expenditures for the permit holder, the executive director, the public, affected states, and EPA. This approach would allow the permit holder to choose a CAM monitoring option determined by the executive director to satisfy CAM rather than design a “case-by-case” CAM plan. These monitoring options could be used by multiple emission units across the state. Use of these CAM GOPs would allow EPA, the public, and affected states to consolidate the majority of their review of these requirements and, thus, allow the executive director to resolve any comments more efficiently. As a result of the consolidated review and predetermined options in the CAM GOP, this approach would help ensure that implementation of these requirements is consistent across the state. In contrast to the rulemaking approach, CAM GOPs could be revised through the general operating permit revision process. This would allow the executive director to more easily revise CAM GOPs to reflect rule changes.

Although 40 CFR 64 focuses on a “case-by-case” approach, it allows permitting authorities the flexibility to use a programmatic approach, such as the CAM GOP approach, for the implementation of CAM. The commission submitted several comments to EPA during the development of 40 CFR 64, recommending that permitting authorities be allowed to establish CAM requirements on a programmatic basis. This programmatic approach would allow permitting authorities to design CAM monitoring requirements for a class of emission units that can be used across the state. The preamble

to the promulgated 40 CFR 64 rule states that “[t]he EPA encourages States to consider adding monitoring requirements to existing and new rules that are consistent with 40 CFR 64 requirements. In this manner, the burdens associated with source-specific monitoring development could be reduced. To provide an incentive for this type of rule, the final rule includes a provision (see §64.4(b)) that allows the owner or operator to rely upon this type of programmatic rule as the primary documentation of the appropriateness of its monitoring. This approach would reduce the number of case-by-case reviews necessary to implement 40 CFR 64" (62 FR 54903). Although the 40 CFR 64 preamble discusses the programmatic approach in the context of rulemaking, the commission believes that the CAM GOP approach is consistent with the goals of the programmatic approach and achieves the same results. As discussed previously, the CAM GOP approach would more easily accommodate changes in applicable requirements than would a rulemaking approach. The ability to quickly address revised applicable requirements is particularly important to ensure that federal operating permits reflect a site’s most current compliance obligations. Thus, the proposed CAM GOP streamlined approach is designed to address 40 CFR 64 requirements in a programmatic manner.

To obtain preliminary feedback on the CAM GOP approach, the concept was presented to stakeholders in Austin, Beaumont, Corpus Christi, Dallas, and Houston and at various air permitting seminars. The overall response was very supportive of the CAM GOP approach. Therefore, the commission is proposing to implement CAM using CAM GOPs.

This proposed rulemaking establishes procedures for the use of CAM GOPs to provide monitoring options for emission units subject to 40 CFR 64. Establishing CAM requirements through a GOP will provide for a streamlined implementation of 40 CFR 64. Traditionally, GOPs have been used to codify applicable requirements for specific types of sites; however, a CAM GOP will address only CAM requirements. A CAM GOP will contain emission limitations or standards and corresponding monitoring options determined by the executive director to satisfy 40 CFR 64. For each emission limitation or standard, permit holders may choose an appropriate monitoring option depending on the characteristics of the emission unit or control device. To provide the permit holder the flexibility to use monitoring for one emission limitation or standard to satisfy CAM requirements for another, the executive director will incorporate monitoring options from applicable requirements that satisfy CAM into the CAM GOP, as appropriate. As permit holders apply to use a CAM GOP, the executive director will review the appropriateness of any monitoring option selected, as well as any additional, site-specific requirements that may be necessary to satisfy 40 CFR 64. Once approved, the monitoring option will be codified in the federal operating permit or enforceable GOP application (discussed in the following paragraphs). Each CAM GOP, and the CAM monitoring options it contains, will be subject to public notice, affected state review, notice and comment hearing, EPA review, and public petition, consistent with the procedures in Subchapter F, concerning General Operating Permits. The first of the CAM GOPs will be offered for public comment during the public comment period for this proposed rulemaking.

Because the commission recognizes that the CAM GOP approach may not be appropriate in all cases, the proposed rules allow permit holders the flexibility to submit a “case-by-case” CAM plan for review and approval by the executive director. Therefore, use of the CAM GOP approach will be optional. However, the information required to be in a “case-by-case” CAM plan application may be more than that required to be in a CAM GOP application for the primary reason that the executive director will be evaluating its contents for the first time. For example, while a CAM GOP will be evaluated by the executive director, EPA, affected states, and the public before a permit holder submits an application with a CAM GOP monitoring option from the CAM GOP, the monitoring plan submitted in a CAM “case-by-case” application is not subject to similar review before being submitted to the executive director for approval. Furthermore, much of the information required in a CAM “case-by-case” application will already be contained in the CAM GOPs. A detailed discussion of proposed Subchapter H containing the requirements for a CAM GOP and a “case-by-case” CAM plan follows.

PROPOSED SUBCHAPTER H: COMPLIANCE ASSURANCE MONITORING

The proposed sections implementing CAM are contained in a new Subchapter H, concerning Compliance Assurance Monitoring. The commission also proposes to amend §122.10 to define terms applicable to CAM and periodic monitoring. These terms are discussed as they appear in proposed Subchapter H and in the context in which they are used. Terms from 40 CFR 64 are proposed to be added to §122.10 where needed to explain proposed Subchapter H, unless already addressed in Chapter 122.

The commission proposes §122.700, concerning Implementation of CAM. The proposed implementation approach creates two methods for addressing CAM requirements in permits or authorizations to operate: (1) CAM GOP; and (2) the CAM case-by-case determination. Either method may be used to establish CAM requirements and both methods are designed to satisfy 40 CFR 64. The commission proposes to define the terms “Compliance assurance monitoring general operating permit (CAM GOP)” and “Compliance assurance monitoring (CAM) case-by-case determination” in §122.10.

The term “Compliance assurance monitoring general operating permit (CAM GOP)” is defined in proposed §122.10(4) as a GOP issued under Subchapter F, concerning General Operating Permits, which provides monitoring options established by the executive director to satisfy Subchapter H, concerning Compliance Assurance Monitoring. This definition is added to distinguish GOPs that are designed to satisfy CAM requirements from traditional general operating permits, which are used to codify all applicable requirements for specific types of sites. 40 CFR 64 does not contain procedures for developing CAM GOPs; therefore, the commission proposes Subchapter H to address these procedures. A CAM GOP will contain a list of emission limitations or standards that are subject to proposed Subchapter H. Associated with each emission limitation or standard will be monitoring options established by the executive director to satisfy CAM. A CAM GOP will be subject to public notice, affected state review, notice and comment hearing, EPA review, and public petition as are all GOPs when initially issued under Subchapter F. The executive director plans to develop multiple CAM GOPs, each CAM GOP addressing different groups of applicable requirements. Permit holders

may select an appropriate monitoring option from a CAM GOP and submit an application to the executive director for approval to use the option to satisfy CAM requirements. If approved, the monitoring option will be incorporated into the permit holder's federal operating permit or enforceable GOP application. The commission is also providing flexibility in proposed Subchapter H to allow permit holders to request a CAM case-by-case determination. In some cases, due to unique site-specific circumstances, the monitoring options contained in a CAM GOP may not be appropriate for a specific emission unit or control device. In other cases, the permit holder may just prefer to develop a site-specific monitoring approach. In addition, some applicable requirements may apply to a limited number of emission units across the state and developing monitoring options for these applicable requirements for inclusion in a CAM GOP may not be resource-efficient for the executive director.

Proposed §122.10(3) defines the term "Compliance assurance monitoring (CAM) case-by-case determination" as a monitoring plan designed by the permit holder and approved by the executive director to satisfy 40 CFR 64. This definition was added to distinguish between a CAM GOP and a "case-by-case" determination. Once approved, the "case-by-case" monitoring plan will be incorporated into the federal operating permit or enforceable GOP application. The proposed §122.700(a)(2) requires a permit holder submitting an application for a CAM case-by-case determination to comply with the identified sections of proposed Subchapter H and 40 CFR 64. Because 40 CFR 64 focuses on a "case-by-case" approach, the commission chose not to propose Chapter 122 rule language to define this approach. Instead, the commission proposes to rely on specified sections of 40 CFR 64 for implementing the "case-by-case" approach. In the interest of

providing consistency with the existing Federal Operating Permit Program under Chapter 122, all permit holders, regardless of the implementation approach, will determine applicability using proposed §122.702, concerning Compliance Assurance Monitoring Applicability, will submit applications in accordance with the schedules in proposed §122.704, concerning Compliance Assurance Monitoring Application Due Dates, and must comply with proposed §122.708, concerning Procedures for Incorporating Compliance Assurance Monitoring Requirements. The proposed §122.712, concerning General Terms and Conditions for Compliance Assurance Monitoring, applies to all permit holders because it contains general terms and conditions applicable to both case-by-case determinations and CAM GOPs. The proposed §122.716, concerning Quality Improvement Plans, applies to all permit holders in order to provide consistency in implementation.

The commission recognizes that, in some cases, 40 CFR 64 and Chapter 122 use different terms to describe the same concept. This difference in terminology exists because Texas developed its federal operating permit program before the promulgation of 40 CFR 64. To address these differences and maintain consistency with Chapter 122, the commission proposes §122.700(b), which states that references in 40 CFR 64 to 40 CFR 70 shall be satisfied by the requirements of Chapter 122. For example, the commission proposes the Chapter 122 term “deviation” instead of the 40 CFR 64 terms “excursion” and “exceedance.” The commission believes that the Chapter 122 definition of deviation alleviates the necessity of incorporating into Chapter 122 the 40 CFR 64 definitions for exceedance and excursion. According to 40 CFR 64, exceedance means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or

opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring. Excursion means a departure from an indicator range established for monitoring under 40 CFR 64, consistent with any averaging period specified for averaging the results of the monitoring. Deviation, as defined in Chapter 122, is any indication of noncompliance with a term or condition of a permit, as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit. All three terms define instances when an emission unit may not be in compliance with an applicable emission limitation or standard. The commission believes that the definition of deviation is sufficiently broad to encompass the terms exceedance and excursion. Furthermore, although 40 CFR 64 defined these two separate terms, the response to each condition is the same and the two terms are always used together. For example, under 40 CFR §64.7(d), a permit holder would respond to excursions and exceedences in the same manner. Therefore, the commission believes that making a distinction between situations which indicate that emissions are exceeding an emission limitation or standard and situations where an indicator of performance is outside the bounds of proper operation is unnecessary. Also, consistent with the Chapter 122 use of the term deviation, the commission proposes the term “deviation limit,” instead of adopting the 40 CFR 64 term “indicator range.”

The commission proposes §122.702 to address CAM applicability. CAM is applicable to emission units that satisfy each of the following criteria. First, the emission unit must be located at a major source subject to Chapter 122 and not be an exempted utility unit under proposed §122.702(d).

Second, the emission unit must be subject to an emission limitation or standard for an air pollutant (or surrogate thereof) in an applicable requirement, except as noted in proposed §122.702(c). Third, the emission unit must use a control device to achieve compliance with the emission limitation or standard in the applicable requirement. Finally, the emission unit must have a pre-control device potential to emit greater than or equal to the amount in tons per year required for a site to be classified as a major source. The applicability criteria for each emission unit must be considered separately with respect to each air pollutant (i.e., on a pollutant-by-pollutant basis).

Because use of a control device is important in determining applicability under proposed §122.702, the commission proposes to define the term “Control device” in §122.10(6). 30 TAC §101.1, concerning Definitions, also contains a definition in §101.1(18) for control system or control device; however, the definition in proposed §122.10(6) only applies to proposed Subchapter H. The definition proposed for §122.10(6) is necessary because EPA specifically excluded inherent process equipment from the 40 CFR 64 definition of control device and §101.1(18) does not. The control device definition proposed for §122.10(6) is consistent with 40 CFR 64; however, for simplicity, the proposed §122.10(6) definition combines the 40 CFR 64 definitions of control device and inherent process equipment.

Another important concept in proposed §122.702 is the determination of CAM applicability on a pollutant-by-pollutant basis. In 40 CFR §64.1, EPA states that CAM applies to “pollutant-specific emission units” and defines the term as an emissions unit considered separately with respect to each regulated air pollutant. Rather than define in Chapter 122 the term “pollutant-specific emission unit,”

the commission believes that the adoption of proposed §122.702(b) will accomplish the same result. Proposed §122.702(a) states that for purposes of CAM applicability, each emission unit shall be considered separately with respect to each air pollutant. The following example illustrates how the proposed Subchapter H applies on a “pollutant-by-pollutant” basis.

Example: A permit holder in Harris County has an emission unit located at a site which is a major source. The emission unit emits particulate matter (PM), sulfur dioxide (SO₂), nitrogen oxides (NO_x), and carbon monoxide (CO). The emission unit is subject to applicable requirements that contain emission limitations or standards for PM, SO₂, and NO_x emissions. The emission unit is equipped with a control device to comply with the emission limitations or standards regulating PM and NO_x. The emission unit has a pre-control device potential to emit 50 tons per year of PM and 30 tons per year of NO_x. The major source threshold in Harris County for PM and NO_x is 100 tons per year and 25 tons per year, respectively. The major source threshold is 25 tons per year, because Harris County is a severe ozone nonattainment county and NO_x is a precursor to ozone.

The emission unit is not subject to CAM for PM because the emission unit’s pre-control device potential to emit PM is less than the Harris County major source threshold for PM. The emission unit is not subject to CAM for SO₂ because the emission unit is not equipped with a control device which is used to comply with the applicable emission limitations or standards for SO₂. The emission unit is not subject to CAM for CO because the emission unit is not subject to any applicable requirements that

contain emission limitations or standards for CO. However, the emission unit is subject to CAM with respect to NO_x because it satisfies all of the CAM applicability criteria in proposed §122.702(b).

Consistent with 40 CFR §64.2(a), proposed §122.702(b)(1) applies whether the emission unit is subject to an emission limitation or standard for an air pollutant, or surrogate thereof. The inclusion of the clause “or surrogate thereof” is to address situations in which an emission limitation or standard is expressed in terms of a pollutant (or other surrogate) that is different from the air pollutant that is being controlled (62 FR 54912). An example of a surrogate for an emission limitation is an emission limit expressed in terms of opacity rather than PM.

40 CFR §64.2(b) provides exemptions for several emission limitations and standards, and backup utility power emission units. The proposed §122.702(c) and (d) exempt these same emission limitations or standards from proposed Subchapter H, with the following additions for clarity. The proposed §122.702(c)(7) exempts emission limitations or standards, in addition to those identified in 40 CFR 64, that EPA identifies in guidance as exempt from CAM. This exemption will allow the regulated community to take advantage of exemptions that EPA identifies in guidance for 40 CFR 64. For example, EPA states in its Compliance Assurance Monitoring Technical Guidance Document issued August 1998 that the amendments to 40 CFR 61, Subpart L are exempt from CAM although the original emission limitations or standards were proposed before November 15, 1990. The proposed §122.702(c)(8) also exempts emission limitations or standards regulating fugitive emissions to be

consistent with EPA's 40 CFR 64 preamble which states that "fugitive emissions are not subject to any specific part 64 monitoring requirements" (62 FR 54909).

The commission proposes §122.704 to address CAM application due dates. Proposed §122.704 contains application due dates for permit holders applying to use a monitoring option selected from a CAM GOP or applying to use a CAM case-by-case determination. The implementation mechanism selected does not affect the due date of an application. An application due date is dependent upon three events: the date an emission unit becomes subject to proposed Subchapter H, the date the permit is issued or authorization to operate granted for the site, and the date the executive director issues a CAM GOP containing an emission limitation or standard applicable to the emission unit. A permit holder with an emission unit subject to CAM before the issuance date of a CAM GOP containing an applicable emission limitation or standard must submit an application no later than 30 days after the second permit anniversary (of the permit for the site) following the issuance of the CAM GOP. A permit holder with an emission unit that becomes subject to CAM after the issuance date of an applicable CAM GOP must submit an application no later than 30 days after the second permit anniversary (of the permit for the site) following the date that the emission unit became subject to CAM. This proposed application submittal schedule should provide permit holders the necessary time for budgeting, capital expenditures, installation of equipment, and testing.

The commission defines "Permit anniversary" in proposed §122.10(19) as the date that occurs every 12 months after the initial permit issuance or the initial granting of the authorization to operate. For

example, a permit issued on January 1, 1999 has a permit anniversary every January 1. This concept already exists in Chapter 122; however, the commission proposes to define the term to simplify proposed §122.704. Since “Permit anniversary” will be a defined term, the commission proposes to amend other sections of Chapter 122 to substitute “permit anniversary” for the phrase “12-month period after initial permit issuance” or “12-month period after permit issuance or renewal.” The affected sections are §122.131(d), concerning Phased Application Process for Initial Applications; §122.213(d), concerning Procedures for Administrative Permit Revisions; and §122.217(e), concerning Procedures for Minor Permit Revisions. The proposed amendments do not change the time frame for submitting information under these sections.

The commission considered several factors when developing the proposed schedule for application due dates. Due to the technical requirements in 40 CFR Part 64, compliance with CAM may require permit holders to purchase and install new equipment or conduct performance testing. The proposed application submittal schedule should allow permit holders a reasonable amount of time to budget for, purchase, install, and test equipment necessary to comply with CAM requirements. Furthermore, the proposed schedule allows the executive director time to develop comprehensive monitoring options for inclusion in various CAM GOPs issued over time. Finally, under the proposed schedule, permit holders will submit applications to the executive director in manageable numbers throughout each calendar year. The executive director will be able to review these applications in a more timely fashion than if all applications were due at the same time.

The following hypothetical examples are provided to help the reader understand the application submittal schedule. The dates assigned to the events in the following examples are provided for explanatory purposes only and do not reflect the actual or anticipated dates of such events.

Example 1: On January 1, 1999, the executive director issues a federal operating permit for Emission Unit One (EU 1), an emission unit which satisfies all of the CAM applicability criteria in proposed §122.702. The renewal date for the permit is January 1, 2004. On December 1, 2000, the executive director issues a CAM GOP containing the emission limitation or standard to which EU 1 is subject.

Example 1 Discussion: The proposed §122.704(1) states that an application is due no later than 30 days after the second permit anniversary following issuance of an applicable CAM GOP if an emission unit becomes subject to CAM before issuance of the CAM GOP. Since the CAM GOP was issued on December 1, 2000, the permit holder must identify the second permit anniversary date (of the permit under which EU 1 operates) after December 1, 2000 to determine when the application is due. The permit was issued on January 1. Thus, the first permit anniversary date after issuance of the CAM GOP is January 1, 2001 and the second permit anniversary date after issuance of the CAM GOP is January 1, 2002. In this example, an application must be submitted no later than 30 days after January 1, 2002--in other words, January 31, 2002.

Example 2: On June 1, 1999, the executive director issues a federal operating permit for Emission Unit Two (EU 2). The renewal date for the permit is June 1, 2004. On December 1, 2000, the

executive director issues a CAM GOP containing an emission limitation or standard to which EU 2 is subject; however, EU 2 doesn't meet all of the applicability criteria as of December 1, 2000. On March 1, 2001, EU 2 becomes subject to CAM because it now satisfies all of the applicability criteria in proposed §122.702 as the result of a decrease in the major source threshold in the county in which EU 2 operates.

Example 2 Discussion: The proposed §122.704(2) states that an application is due no later than 30 days after the second permit anniversary following the date that the emission unit becomes subject to CAM. Since EU 2 became subject to the rule on March 1, 2001 (i.e., the date of the decrease in the major source threshold for the county), the permit holder must identify the second permit anniversary date (of the permit under which EU 1 operates) after March 1, 2001 to determine when an application is due. The permit was issued on June 1. Thus, the first permit anniversary date after March 1, 2001 is June 1, 2001, and the second permit anniversary date after March 1, 2001 is June 1, 2002. In this example, an application must be submitted no later than 30 days after June 1, 2002--in other words, July 1, 2002.

Example 3: On March 1, 2000, the executive director issues a single federal operating permit for Emission Unit Three (EU 3) and Emission Unit Four (EU 4) which are subject to CAM per proposed §122.702. The renewal date for the permit is March 1, 2005. EU 3 and EU 4 share a control device to comply with different emission limitations and standards. On December 1, 2000, the executive director issues a CAM GOP containing the emission limitation or standard to which EU 3 is subject.

On June 1, 2001, the executive director issues a CAM GOP containing the emission limitation or standard to which EU 4 is subject.

Example 3 Discussion: The permit holder must submit an application for EU 3 by March 31, 2002 and an application for EU 4 by March 31, 2003, respectively (see Examples 1 and 2). The purpose of this example is to demonstrate the applicability of proposed §122.704(3) and to illustrate that each emission limitation is to be evaluated separately when determining the application due date for an emission unit. As this example shows, emission units operating under the same federal operating permit and sharing the same control device may have different application submittal dates.

The commission proposes §122.706(a) and (b), which identify the minimum information that must be contained in an application for a CAM GOP. This information includes the monitoring option, the deviation limit (discussed in the following paragraphs), and the justification for the deviation limit. The executive director requires this information in order to review and approve the CAM requirements for an emission unit using a CAM GOP. As required by 40 CFR 64, the monitoring option will include, among other things, the monitoring of one or more indicators of performance (such as emissions, control device parameters, process parameters, or inspection and maintenance activities). Thus, the monitoring option will involve monitoring direct emissions or some type of parameter, such as temperature or pressure drop and/or performing inspection and maintenance activities. Unless defined by the monitoring option selected, the permit holder will submit a deviation limit that will be

used to identify the point at which the monitored parameter indicates a potential problem with the operation of the control device or emission unit.

The term “Deviation limit” is defined in proposed §122.10(8) as a designated value(s) or conditions(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the indicator of performance shall be considered a deviation, as defined in §122.10(3). Examples of deviation limits are a minimum pressure drop, an open valve, or the results of an inspection maintenance program. The following example further explains the term “Deviation limit.”

Example 1: An emission unit uses a scrubber to comply with an applicable emission limitation or standard. A performance test indicates that when the pressure drop across the scrubber is at or above 25 inches of water, the emission unit is in compliance with the emission limitation or standard. In this example, the indicator of performance is pressure drop and the deviation limit is a pressure drop of 25 inches of water. Operation of the scrubber with a pressure drop across the scrubber of 25 inches of water or above is indicative that the emission unit is in compliance with the applicable emission limitation or standard. However, if monitoring of the pressure drop indicated a value, for example, of 20 inches of water, the scrubber would be operating outside the boundary established for the indicator of performance and this event would be considered a deviation.

Some monitoring options contained in a CAM GOP may have a deviation limit established in the CAM GOP. If this is not the case, the permit holder will submit a proposed deviation limit and supporting

justification for approval by the executive director in accordance with proposed §122.706(a)(5). The deviation limit will be based on information about the specific operation of the control device and emission unit. As specified in proposed §122.706(c), the permit holder will typically use performance testing, engineering calculations, historical data, and manufacturer's recommendations to justify the proposed deviation limit. However, the CAM GOP may more specifically define the approach for justifying the deviation limit or provide alternatives to those specified in proposed Subchapter H.

As required by 40 CFR §64.3(d)(1), the proposed §122.706(d) specifies that owners or operators of emission units subject to applicable requirements that require continuous emission monitoring systems (CEMS), continuous opacity monitoring systems (COMS), or predictive emission monitoring systems (PEMS) must submit a CAM GOP monitoring option that includes the use of the CEMS, COMS, or PEMS to satisfy CAM requirements for the other emission limitations or standards that are subject to CAM for that particular emission unit. Since proposed Subchapter H applies on a pollutant-by-pollutant basis, this requirement also applies on a pollutant-by-pollutant basis. For example, a NO_x CEMS would be used for NO_x emission limits that apply to the emission unit but would not be used for SO₂ emission limits. Consistent with 40 CFR 64, the commission proposes to define the term "Predictive emission monitoring system (PEMS)" in §122.10(25) as a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard. The term will only apply to proposed Subchapter H. The commission proposes to define PEMS because this is generally a less understood form of monitoring than that of CEMS or COMS.

The proposed §122.708 contains the procedures for incorporating CAM requirements into federal operating permits and enforceable GOP applications. The proposed §122.10(11) defines “Enforceable general operating permit application” to include applicability determinations and the bases for the determinations as well as any applicable monitoring requirements for CAM or periodic monitoring. This concept already exists under §122.140(2), which states that upon the granting of an authorization to operate under a GOP, applicability determinations and the bases for the determinations in a GOP application become conditions under which a permit holder shall operate. The commission believes that, particularly with respect to CAM, defining this term will make it easier to describe procedures associated with, and requirements for, this portion of an application to operate under a traditional GOP. For sites that operate under permits other than traditional GOPs, CAM and periodic monitoring requirements will reside in those permits. With respect to sites operating under traditional GOPs, these requirements will reside in the enforceable GOP application. Therefore, the definition of enforceable GOP application includes CAM and periodic monitoring requirements established under proposed Subchapters H and G. In addition, the commission proposes to amend the following sections of Chapter 122 to accommodate the term “Enforceable general operating permit application”: §122.10(3), General Definitions; §122.134(b)(5), Complete Application; §122.140(2), Representations in Application; §122.143(15) and (17), General Terms and Conditions; §122.502(b) and (f), Authorization to Operate; §122.503(a)(1) and (g), Application Revisions for Changes at a Site; §122.504(b)(1), (e), and (g) Application Revisions When a General Operating Permit is Revised or Rescinded; and §122.505(f)(1), Renewal of the Authorization to Operate Under a General Operating Permit. The references to “updated application” in §122.503 and §122.504 are proposed to be deleted

because the distinction between an “application” and an “updated application” to operate under a GOP will no longer be necessary once the definition of “Enforceable general operating permit application” is adopted.

The specific procedures for incorporating CAM requirements into federal operating permits and enforceable GOP applications depend on whether the permit holder is applying for a CAM case-by-case determination or a CAM GOP and whether the site is permitted under a GOP or a federal operating permit other than a GOP. The proposed §122.708(a) specifies that permit holders applying for a CAM case-by-case determination must comply with §122.201, concerning Initial Permit Issuance, or §122.221(b) and (c), concerning Procedures for Significant Permit Revisions. The procedural requirements associated with initial issuance and significant revisions are the same. Owners or operators of emission units operating under a traditional GOP who choose to submit a CAM case-by-case determination will comply with the procedures for initial issuance of a federal operating permit other than a GOP because traditional GOPs, by their nature, apply to a broad class of emission units and cannot be used to accommodate “case-by-case” determinations. Once a CAM case-by-case determination is approved by the executive director, the site will be issued a federal operating permit other than a GOP. Owners and operators of emission units operating under all other federal operating permits who submit a CAM case-by-case determination will be subject to the significant permit revision procedures in §122.221(b) and (c). By requiring compliance with the initial issuance procedures in §122.201 or the significant permit revision procedures in §122.221(b) and (c), the commission ensures that all CAM case-by-case determinations satisfy the Chapter 122 procedural requirements of public

notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition. In addition, under §122.219, concerning Significant Permit Revisions, the incorporation of CAM requirements into a federal operating permit through a CAM case-by-case determination will constitute a significant change to monitoring because permit holders applying for a CAM case-by-case determination have significant discretion over their monitoring requirements. The EPA states in the preamble to the proposed Consolidated Air Rule that an instance where a permit holder has significant discretion over the monitoring to be contained in a federal operating permit constitutes a significant permit revision (63 FR 57787).

The proposed §122.708(b)(1) applies to permit holders operating under a traditional GOP and applying for a CAM GOP. Consistent with the procedures of Subchapter F, provided the permit holder submits an application under proposed §122.706 and the enforceable GOP application provides for compliance with the requirements of proposed Subchapter H, the executive director will grant an authorization to operate.

The proposed §122.708(b)(2) specifies that permit holders operating under a permit other than a GOP and applying for a CAM GOP must comply with §122.217(f) and (g), concerning Procedures for Minor Permit Revisions. This type of change will not qualify as a significant permit revision nor as an administrative permit revision and therefore qualifies as a minor permit revision under §122.215, concerning Minor Permit Revisions. These changes are not significant permit revisions because, as previously discussed, significant permit revisions to monitoring requirements are those over which the

permit holder has significant discretion. Because the permit holder is selecting a monitoring option already determined by the executive director to satisfy CAM, the permit holder does not have significant discretion over those requirements. In addition, each CAM GOP is subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition; therefore, it is unnecessary to repeat these procedural requirements using the significant permit revision process.

The proposed §122.708(c) is provided to address situations where CAM requirements are incorporated into permits at the time of permit renewal. In these cases, the procedural requirements of permit renewal, which are equivalent to the initial permit issuance and significant permit revision procedures, will be used to incorporate CAM requirements into a permit.

The proposed §122.708(a), (b), and (c) apply only to the initial incorporation of CAM requirements into federal operating permits or enforceable GOP applications. The proposed §122.708(d) clarifies that revisions to CAM requirements contained in a federal operating permit for a specific emission unit will be governed by Chapter 122, Subchapter C, concerning Permit Revisions, or Subchapter F, concerning General Operating Permits, as appropriate. To allow the executive director to evaluate the technical merits of proposed changes to a deviation limit, in most cases, permit holders will not be allowed to operate under the proposed change until the permit or authorization to operate under a GOP is revised. A permit holder will be allowed to operate under a proposed change prior to revision if the change is necessary to address a change in an emission limitation or standard due to the promulgation

or adoption of a rule or a change at a site. Deviation limits established prior to a change in an emission limitation or standard may be inconsistent with the emission limitation or standard after the change. In this latter case, permit holders will be allowed to operate prior to revision because of the need to comply with the changed emission limitation or standard.

As a result of the proposed §122.708, some sections of Chapter 122 must be amended. First, because the proposed Subchapter H addresses procedures for revising federal operating permits and enforceable GOP applications to incorporate CAM requirements, the commission proposes to delete the reference to Subchapter C contained in §122.10(13), definition of “permit revision.” Second, the commission proposes to amend §122.217(b), concerning Procedures for Minor Permit Revisions, by adding the phrase “or the revision of a compliance assurance monitoring general operating permit or Periodic Monitoring general operating permit.” Changes to a permit resulting from the revision of a CAM GOP or periodic monitoring GOP are not significant because the permit holder does not have significant discretion over the monitoring options contained in a compliance assurance monitoring or periodic monitoring general operating permit. Finally, the commission proposes to amend §122.210, concerning General Requirements for Revisions, by adding subsection (b)(5), which will state “the revision of a compliance assurance monitoring or periodic monitoring general operating permit.” This change is necessary to make §122.210 consistent with the proposed change to §122.217(b).

The proposed §122.710 contains the content requirements for each CAM GOP. Consistent with 40 CFR §64.3(a), the proposed §122.710(a)(1) requires that each CAM GOP contain indicators of

performance, which may include, but are not limited to, direct or predicted emissions, process and control device parameters that affect control device efficiency or emission rates, and recorded findings of inspection and maintenance activities conducted by the permit holder. The proposed §122.710(a)(2) specifies that each CAM GOP will contain a deviation limit or procedures for establishing a deviation limit for each indicator of performance. Typically, because the deviation limit will be based on emission unit or control device specific characteristics, a CAM GOP will contain procedures for the permit holder to establish a deviation limit. In certain instances, a CAM GOP may define a deviation limit. For example, a minimum temperature may be specified as the deviation limit for an incinerator burning a class of volatile organic compounds (VOC).

The proposed §122.710(a)(3) and proposed §122.712(a)(1) are intended to satisfy the requirements of 40 CFR §64.3(b)(1), (2), and (3), which state that monitoring must include specifications that provide for obtaining data that are representative of the emissions or parameters being monitored, verification procedures to confirm the operational status of new or modified monitoring equipment, and quality assurance and control practices that are adequate to ensure the continuing validity of data, respectively. In 40 CFR 64, EPA emphasizes the use of manufacturer's recommendations for establishing CAM requirements. For example, 40 CFR §64.3(b)(3) states that an owner or operator shall consider manufacturer's recommendations in developing quality assurance and control practices and 40 CFR §64.4(b) states that an owner or operator must provide justification for differences from manufacturer's recommendations if the permit holder provides alternatives.

Consistent with 40 CFR §64.3(b)(4), the proposed §122.710(a)(4) requires that each CAM GOP monitoring option specify an averaging period for the purpose of determining whether a deviation has occurred, if appropriate.

Consistent with 40 CFR §64.3(b)(4), the proposed §122.710(a)(5) requires that each monitoring option contain specifications for the minimum monitoring frequency. As required by 40 CFR 64, the proposed §122.710(a)(5) requires the collection of four or more data values equally spaced over each hour for each emission unit with a post-control potential to emit greater than or equal to the amount for the emission unit to be classified as a major source. The executive director may approve a reduced data collection frequency for these large emission units in certain circumstances, as provided in proposed §122.710(a)(5). However, the monitoring must include some data collection at least once per 24-hour period. As required by 40 CFR 64, all other emission units subject to 40 CFR 64 must be monitored at least once per 24-hour period.

The proposed §122.710(b) specifies that CAM requirements contained in a CAM GOP shall be designed to provide a reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device, which is consistent with 40 CFR 64.

The proposed §122.710(c) states that a CAM GOP may require the submission of an application for a CAM case-by-case determination for a particular emission limitation or standard because developing

CAM GOPs to address those emission limitations or standards may not be resource-efficient. For example, some emission limitations or standards may apply to very few emission units in the state.

The proposed §122.712(a) specifies the general terms and conditions that must be contained in a CAM GOP. Permit holders choosing to use the CAM GOP implementation option must comply with these general terms and conditions in addition to the specific monitoring options and deviation limits in the federal operating permit or enforceable GOP application. As previously discussed, proposed §122.712(a)(1) in conjunction with proposed §122.710(a)(3) will be used to implement the requirements of 40 CFR §64.3(b)(1), (2), and (3).

The proposed §122.712(a)(2) is consistent with 40 CFR §64.7(b), which requires an owner or operator to properly maintain the monitoring systems and to maintain, if necessary, parts for routine repairs of the monitoring equipment. As stated in EPA's CAM Technical Reference Guidance Document, issued August 1998, spare parts may be maintained by local vendors if there is no significant impact on immediate availability.

The proposed §122.712(a)(3) is consistent with 40 CFR §64.7(c) and requires that monitoring be conducted according to the prescribed frequency for all emission unit operating periods, unless the monitoring cannot be conducted because of monitoring malfunctions as defined in proposed §122.712(a)(3)(D), associated repairs, or required quality assurance or control activities. Data collected during such periods is not to be used for purposes of proposed Subchapter H, including data

averages and calculations, or fulfilling a data availability requirement. However, based on 40 CFR §64.9(a), the permit holder must maintain records of summary information on the number, beginning date and time, ending date and time, and cause for monitoring downtime incidents. This record requirement ensures that gaps in valid monitoring data are explained. For this same reason, proposed §122.712(a)(3) also requires permit holders to maintain a record of any intervals during which data was not collected.

The proposed §122.712(a)(4) states that all incidents of monitoring downtime recorded under proposed §122.712(a)(3)(B) shall be reported in accordance with §122.145, concerning Reporting Terms and Conditions.

The proposed §122.712(a)(5) is consistent with 40 CFR §64.7(d), which specifies the requirements for responding to deviations by requiring the owner or operator to take corrective action to restore normal operation, minimize emissions, and prevent the recurrence of a deviation.

The proposed §122.712(a)(6) states that a permit holder must apply for a permit revision, or a new permit if appropriate, if the CAM requirements in the permit fail to indicate a deviation while providing valid data or compliance test results indicate a need to modify the existing CAM requirements. This proposed paragraph is consistent with 40 CFR §64.7(e). Nothing in this proposed section is intended to limit the commission's options for taking other enforcement action.

The proposed §122.712(a)(7) clarifies that CAM requirements are subject to §122.144, concerning Recordkeeping Terms and Conditions, §122.145, concerning Reporting Terms and Conditions, and §122.146, concerning Compliance Certification Terms and Conditions. Section 122.144 satisfies the requirements of 40 CFR §64.9(b) and §122.145 satisfies the requirements of 40 CFR §64.9(a).

As provided for in 40 CFR §64.8(a), the proposed §122.712(a)(8) requires a permit holder to comply with the requirements of a quality improvement plan (QIP) as specified in proposed §122.716.

The proposed §122.712(b) states that where CAM is implemented through a CAM case-by-case determination, the permit will specify which of the general terms and conditions will apply. The commission believes that because the general terms and conditions are based on 40 CFR 64 requirements that must be codified in the permit. A CAM case-by-case determination developed under 40 CFR 64 will typically include some of the same general terms and conditions as a CAM GOP.

The proposed §122.714 contains the CAM information that must be included in a federal operating permit or enforceable GOP application and is consistent with 40 CFR §64.6(c). The justification for the deviation limit will not be placed in the permit or enforceable GOP application because it is not a condition with which a permit holder must comply, but is rather supporting information for the deviation limit. Therefore, once the deviation limit is approved, inclusion of the justification in the permit is unnecessary. However, if after permit issuance, the deviation limit appears to have been based on erroneous information in the justification and the deviation limit is incorrect, a permit holder

may be subject to an enforcement action. This proposed section also requires that the general terms and conditions for CAM GOPs be incorporated into the federal operating permit or enforceable GOP application. Therefore, these terms and conditions will become terms and conditions under which the permit holder shall operate.

The proposed §122.716 provides the executive director the authority to require permit holders to implement QIPs. 40 CFR §64.8 establishes that QIPs are optional, at the permitting authorities' discretion. The commission has chosen to establish QIPs on a "case-by-case" basis, as appropriate. A QIP may be required based on the frequency of deviations, the cause of deviations, the magnitude of deviations, the permit holder's response to deviations, or other information that indicates that the emission unit or control device is not being maintained and operated consistent with good air pollution control practices. The data to evaluate these criteria will be collected from deviation reports, compliance certifications, site inspections, and any other appropriate sources. Nothing in this proposed section is intended to limit the commission's options for taking other enforcement action.

Finally, with respect to the implementation of CAM, EPA defines savings provisions in 40 CFR §64.10. The commission believes that §122.161, concerning Miscellaneous, already contains the majority of these requirements. However, the commission proposes to amend §122.161 to clarify that CAM and periodic monitoring requirements may not be used to justify the imposition of less stringent monitoring requirements under other programs. The amendment also clarifies that nothing in proposed

Subchapters G and H is intended to limit the commission's authority to impose additional or more restrictive monitoring, recordkeeping, testing, or reporting requirements under other programs.

PERIODIC MONITORING

40 CFR §70.6(a)(3)(i)(B) requires that where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of an emission unit's compliance with the permit. The commission has the authority under §122.142(c) to incorporate periodic monitoring into federal operating permits; however, the commission proposes this rulemaking to amend §122.142(c) so that it tracks the language in 40 CFR §70.6(a)(3)(i)(B).

This rulemaking also establishes procedures to allow for a streamlined implementation of periodic monitoring through the use of periodic monitoring GOPs. Traditionally, GOPs have been used to codify all applicable requirements for specific types of sites; a periodic monitoring GOP will contain emission limitations or standards subject to periodic monitoring requirements and corresponding monitoring options determined by the executive director to satisfy §122.142(c). For each emission limitation or standard, permit holders may choose an appropriate monitoring option depending on the characteristics of the emission unit or control device. To provide the permit holder the flexibility to use monitoring for one emission limitation or standard to satisfy periodic monitoring requirements for another, the executive director will incorporate monitoring options from applicable requirements that

satisfy periodic monitoring into the periodic monitoring GOP, as appropriate. The executive director will review the appropriateness of any monitoring option selected, as well as any additional, site-specific requirements that may be necessary to fulfill the periodic monitoring requirements. Once approved, the monitoring option will be codified in the federal operating permit or enforceable GOP application. Each periodic monitoring GOP, and the periodic monitoring options it contains, will be subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition. The first of the periodic monitoring GOPs will be offered for public comment during the public comment period for this proposed rulemaking. The use of monitoring GOPs will be particularly valuable for the implementation of periodic monitoring due to the number of different applicable requirements that will require periodic monitoring. However, use of the periodic monitoring GOPs will be optional. The commission recognizes that the periodic monitoring GOP approach may not be appropriate in all cases. Therefore, permit holders have the flexibility to develop a site-specific periodic monitoring plan and submit it to the executive director for approval rather than using a periodic monitoring GOP. A detailed discussion of proposed Subchapter G containing the requirements for the periodic monitoring GOP and periodic monitoring case-by-case determination follows.

PROPOSED SUBCHAPTER G: PERIODIC MONITORING

The sections that are proposed to be added to Chapter 122 to address periodic monitoring are discussed in the following paragraphs. The commission also proposes to amend §122.10 to define terms

applicable to periodic monitoring and CAM. These terms will be discussed as they appear in proposed Subchapter G and in the context in which they are used.

The commission proposes §122.600, concerning Implementation of Periodic Monitoring, which addresses two approaches for implementing periodic monitoring. Proposed §122.600(a) discusses the streamlined approach of using periodic monitoring GOPs and periodic monitoring case-by-case determinations. This approach is conceptually similar to the method established under proposed Subchapter H for implementing CAM requirements and is designed to satisfy §122.142(c).

The term “Periodic monitoring GOP” is defined in proposed §122.10(17) as a GOP issued under Subchapter F, concerning General Operating Permits, which provides monitoring options established by the executive director to satisfy Subchapter G, concerning Periodic Monitoring. This definition is added to distinguish between GOPs established to satisfy periodic monitoring requirements and traditional GOPs which have been used to codify all applicable requirements for specific types of sites. The periodic monitoring GOP is modeled after the CAM GOP and is generally based on the same principles, subject to the same procedures, and structured in the same way. Therefore, please refer to the discussion of proposed §122.700(a) for an explanation of this approach.

Under proposed §122.600(a), §122.142(c) may also be implemented using a periodic monitoring case-by-case determination. The term “Periodic monitoring case-by-case determination” is defined in proposed §122.10(16) as a monitoring plan designed by the permit holder and approved by the

executive director to satisfy §122.142(c). This definition is added to distinguish between a periodic monitoring GOP and a “case-by-case” determination. Once approved, the monitoring plan will be incorporated into the federal operating permit or enforceable GOP application. For the same reasons discussed in proposed §122.700, the commission has provided the flexibility for the use of “case-by-case” determinations to satisfy periodic monitoring requirements.

In addition to the streamlined periodic monitoring implementation approach proposed by the commission, the commission has a second approach for incorporating periodic monitoring requirements into federal operating permits. This second approach is codified in proposed §122.600(b). It uses initial permit issuance, permit revision, or permit renewal procedures to incorporate into a permit periodic monitoring requirements for specific emission limitations or standards. However, the commission believes that the proposed streamlined implementation approach will allow for a more efficient use of the executive director’s resources, especially given the number of emission limitations and standards subject to periodic monitoring. Thus, proposed §122.600(b) is not included in this rulemaking to provide the executive director with the authority to incorporate periodic monitoring through this second approach, which is already provided for under Chapter 122 and which will continue to be used, but to clarify that there is a second approach for addressing periodic monitoring.

Based on EPA guidance, the proposed §122.600(c) provides that if an emission unit is subject to both CAM and periodic monitoring, the CAM requirements established under proposed Subchapter H can be used to satisfy periodic monitoring. The EPA’s Periodic Monitoring Guidance document, released

September 18, 1998, states that “emission units with an approved CAM plan will have sufficient monitoring to satisfy the periodic monitoring requirements under title V and part 70.” Furthermore, EPA elaborated that “although units subject to part 64 are also subject to part 70's periodic monitoring requirement, an adequate CAM plan will also satisfy the periodic monitoring requirements of part 70 for those emission units covered by the CAM plan.”

The proposed §122.602 addresses periodic monitoring applicability. Periodic monitoring potentially applies to any emission unit in an operating permit subject to an applicable requirement; however, proposed Subchapter G will not apply to emission limitations or standards which the executive director has determined contain sufficient periodic monitoring (which may consist of recordkeeping).

Consistent with EPA's Periodic Monitoring Guidance document, these include emission limitations or standards proposed by EPA after November 15, 1990 under the FCAA, §111 or §112; emission limitations or standards promulgated under the FCAA, Title IV; and emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, as defined in proposed §122.10(5), unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device. Periodic monitoring is not required for emission limitations or standards in this paragraph because the existing monitoring in the underlying rule provides data that is representative of an emission unit's compliance with the emission limitation or standard. Proposed §122.602 also provides that the requirements of proposed Subchapter G do not apply to emission limitations or

standards specified as exempt from periodic monitoring by EPA. This exemption is proposed to allow the regulated community to take advantage of any other exemptions that EPA identifies in guidance.

The proposed §122.604 addresses application due dates. Proposed §122.604(a) applies only to permit holders applying for a periodic monitoring GOP or a periodic monitoring case-by-case determination. Because the application due date schedule for periodic monitoring GOPs and periodic monitoring case-by-case determinations is identical to that for CAM GOPs and CAM case-by-case determinations, the reader is directed to the discussion of proposed §122.704 for an explanation of the application due date schedule.

The proposed §122.604(b) applies to situations in which the executive director incorporates periodic monitoring into federal operating permits without using a periodic monitoring GOP or a periodic monitoring case-by-case determination, consistent with proposed §122.600(b). Applications submitted under proposed §122.604(b) will typically be required at initial issuance where the executive director identifies emission limitations or standards with no monitoring, recordkeeping, reporting, or testing requirements. They may also be required at permit revision or permit renewal for other types of emission limitations or standards for which additional monitoring is required to satisfy periodic monitoring.

The commission proposes §122.606(a), which identifies the minimum information that must be contained in an application for periodic monitoring. Applications for periodic monitoring must contain

proposed periodic monitoring requirements which may include one or more indicators of performance, a minimum monitoring frequency, a deviation limit, and any other information necessary to satisfy §122.606(b). Consistent with 40 CFR §70.6(a)(3)(i)(B), the proposed §122.606(b) requires that the periodic monitoring requirements submitted in the application be designed to produce data that is representative of the emission unit's compliance with the applicable requirement. In addition, the application will also include any information required by the executive director to evaluate the proposed monitoring requirements as provided for in proposed §122.606(a)(3). The monitoring requirements submitted in an application may be based on monitoring options provided by the executive director. They may also be developed by the applicant for the specific emission unit.

The proposed §122.608 identifies the procedures for incorporating periodic monitoring requirements into permits and enforceable general operating permit applications. The procedures differ depending on the implementation option and the type of federal operating permit under which the emission unit is operating. The procedures for incorporating periodic monitoring using a periodic monitoring GOP or a periodic monitoring case-by-case determination are the same as those used for a CAM GOP and a CAM case-by-case determination, respectively. Therefore, the reader is directed to the discussion of proposed §122.708 for an explanation of the procedures for incorporating periodic monitoring requirements into permits and enforceable GOP applications.

The proposed §122.608(c) addresses one difference in the procedures for CAM and periodic monitoring. This proposed subsection specifies that periodic monitoring requirements that are

established under proposed §122.600(b) will be addressed through the initial issuance procedures in §122.201, the procedures in Subchapter F, or the procedures for minor permit revision in §122.217(f) and (g). The use of initial issuance procedures for addressing periodic monitoring requirements established under this approach is consistent with the current approach for incorporating periodic monitoring requirements into permits. In the future, these periodic monitoring requirements may be addressed through the minor permit revision procedures or they may be codified in traditional GOPs under the procedures in Subchapter F.

The proposed §122.610 requires that monitoring options in periodic monitoring GOPs be designed to produce data that is representative of compliance with the applicable requirement, which is consistent with 40 CFR §70.6(a)(3)(i)(B). Proposed §122.610 also specifies that a periodic monitoring GOP may require the submission of an application for a periodic monitoring case-by-case determination for a particular emission limitation or standard. As discussed in this preamble with respect to proposed §122.710, these “case-by-case” determinations may be appropriate where emission limitations or standards apply to very few emission units in the state.

The proposed §122.612 identifies the periodic monitoring requirements that must be incorporated in a federal operating permit or enforceable GOP application. The same elements in the application will be contained in a federal operating permit or enforceable GOP application, except the information required by the executive director to evaluate the proposed periodic monitoring requirements. This information is the justification for the proposed periodic monitoring requirements. The justification

will not be placed in the permit or enforceable GOP application because it is not a condition with which a permit holder must comply, but is rather supporting information. Therefore, once the periodic monitoring requirements are approved, inclusion of the justification in the permit is unnecessary. However, if after permit issuance, the periodic monitoring requirements appear to have been based on erroneous information in the justification, a permit holder may be subject to an enforcement action.

OTHER PROPOSED CHANGES TO CHAPTER 122

In addition to the proposed changes to Chapter 122 regarding CAM and periodic monitoring, the commission also proposes to amend existing sections of Chapter 122 to provide clarity to portions of the rules, to correct outdated statutory references, to address an administrative error in a previous rulemaking, to address recent changes in federal rules, and to address requirements in the TCAA.

The commission proposes to delete the divisions in Subchapter D of Chapter 122. Many of the divisions in Subchapter D contain a single section. Also, many of the divisional headings are the same as the sectional headings. This proposal is to eliminate the redundant nomenclature.

In the definition of “Applicable requirement,” under §122.10, the commission is proposing to clarify that the asbestos demolition and renovation requirements of 40 CFR 61, Subpart M (National Emissions Standards for Asbestos) and the requirements of 40 CFR 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters) are not applicable requirements. The change is consistent with 40 CFR §70.3(b)(4) as well as the preamble to 40 CFR 64 (62 FR 54917).

In addition, the commission proposes to amend the definition of “emission unit” contained in §122.10 since the definition of “emission unit” was modeled after the definition of “facility” in the TCAA and the definition of “emissions unit” in 40 CFR 70. First, the commission proposes to delete the word “smallest” from the definition. Second, the amendment clarifies that an appurtenance may be an emission unit.

Also under §122.10, in the definition of “Provisional terms and conditions,” the commission is proposing revised language to clarify that provisional terms and conditions may include requirements that no longer apply. The current language refers to repealed requirements, which may imply that the requirements have been repealed through rulemaking; whereas, provisional terms and conditions may be used to address requirements that no longer apply for other reasons, including changes at a site. Subchapters C and F were deleted from the definitions of provisional terms and conditions because provisional terms and conditions can be used for CAM and periodic monitoring under Subchapters G and H.

The definition of “Site” in §122.10(20) is proposed to be revised to clarify that if a research and development operation does not produce products for commercial sale, it may be treated as a separate site from any manufacturing facility with which it is collocated. The current language states that in this case, the research and development operation shall be treated as a separate site. This may imply that the owner or operator would not have the option of including the research and development operation in the same permit as the collocated manufacturing facility, if the research and development operation

were a major source and subject to Chapter 122. Therefore, the commission is clarifying that the research and development operation may be, but is not required to be, treated as a separate site.

Under the same section, in the definition of “Stationary source,” the commission proposes to clarify that nonroad engines, as defined in 40 CFR 89, are not stationary sources under Chapter 122. This clarification is consistent with the definition of “stationary source” in FCAA, §302 (concerning Definitions).

The commission proposes to amend §122.110 by deleting subsection (b). This amendment is to address recent organizational changes at the agency.

In §122.130(a)(1) and (b)(1) (concerning Initial Application Due Dates), the commission is proposing to replace the “and” between “owners and operators” with an “or” to clarify that both the owner and the operator of a site do not have to submit separate applications under this section. Either the owner or the operator of the site may submit an application to satisfy this requirement.

In §122.130(c)(2), the commission is proposing to clarify that the application required to be submitted after a site becomes subject to the program as the result of an action by the executive director or the EPA, is an abbreviated application. When abbreviated applications are submitted initially, the owner or operator submits the remaining application information upon request by the executive director. This minimizes the number of times the applications must be updated by allowing the executive director to

receive the remaining information once staff is prepared to review the application. This proposed clarification is consistent with existing language in §122.132(c).

The commission is proposing to change the title of §122.131 from “Phased Application Process for Initial Applications” to “Phased Permit Detail” and, accordingly, to amend the rule text by replacing the phrase “phased application process” with the phrase “phased permit detail process.” This change is proposed to avoid confusion between the process in §122.131 for phasing detailed applicability determinations into a permit and the process under §122.201(e), which allows the executive director to issue multiple permits for a site. The title “Phased Permit Detail” more accurately reflects the process in §122.131, which, in certain circumstances, allows detailed applicability determinations to be phased into a permit over a period of time. References to this section, as well as references to “phased application process,” in §122.132 and §122.142 are also proposed to be updated to reflect the title “Phased Permit Detail.”

Section 122.139 currently refers to FCAA, §112(i)(5) as relating to “Schedule for Compliance.” The commission is proposing to correct this reference “Early Reduction.” Also, the commission proposes to amend §122.350 to correct the reference to Title V, which relates to “Permits,” rather than “Permit.”

The commission proposes to amend §122.161, concerning Miscellaneous, to clarify that the executive director has the authority to administratively void a federal operating permit, or the authorization to

operate under a general operating permit, upon demonstration by a permit holder that a site no longer meets the applicability criteria in §122.120. For example, after issuance of a federal operating permit, a site may limit its potential emissions below major source thresholds. However, the amendment also makes clear that a site meeting the applicability criteria in §122.120 must have a federal operating permit, regardless of whether a federal operating permit for the site was administratively voided in the past.

The commission is also proposing to correct several outdated statutory references in §122.322. References to the Education Code, §21.109 are proposed to be replaced with Education Code, Chapter 29, Subchapter B; references to 19 TAC §89.2(a) are proposed to be replaced with 19 TAC §89.1205(a); references to 19 TAC §89.2(g) are proposed to be replaced with 19 TAC §89.1205(g); and references to 19 TAC §89.2(d) are proposed to be replaced with 19 TAC §89.1205(d). These proposed revisions will update the statutory references in §122.322, but will not change any existing requirements.

Under the existing regulation, the EPA review period and public notice comment period are performed sequentially for the issuance or revision of a GOP. In §122.350(b)(3), the commission is proposing to complete the EPA review period and public notice comment period concurrently for the issuance or revision of a GOP. By completing the requirements concurrently, the commission will be able to establish a GOP more quickly to fulfill the 40 CFR 70 requirements. Additionally, applicable requirements codified in a GOP may periodically be revised, repealed, or updated. If an applicable

requirement contained in a GOP is revised, the permit holder is responsible for complying with the revised requirement by writing provisional terms and conditions, even though the revised applicable requirements have not been codified into the GOP. This situation can cause confusion for the regulated community, the public, and commission enforcement personnel, since the applicable requirements codified in the GOP would necessarily lag behind any recent revisions to the applicable requirements codified in the GOP. By allowing the EPA review period and public notice comment period or public announcement period to run concurrently, a GOP may be updated more quickly, thereby eliminating a significant time delay in incorporating revisions to the codified applicable requirements. This will assist the regulated community, since permit holders will not have to maintain provisional terms and conditions for lengthy periods of time. The commission emphasizes that this proposal will not eliminate opportunity for an EPA review period, a public notice comment period, or public announcement period on GOP initial issuances or revisions.

The new §122.501(d)(5) concerns rescissions of GOPs and follows the procedures for initial issuance of a GOP, as modified to fit the circumstances of a rescission. For example, since the public notice would concern the rescission of an existing GOP, there would be no draft GOP on which to provide comments. The issue for comment would concern whether it is appropriate or not to rescind a particular GOP.

The commission also proposes new §122.501(g), which allows the executive director to combine GOPs. Thus, the executive director can ensure that the number of GOPs is maintained at a manageable level.

The commission proposes to amend §122.504 by deleting the phrase “revision or repeal” and replacing it with “promulgation or adoption.” The commission proposes this change because the terms “promulgation” and “adoption” are inclusive of the terms “revision” and “repeal.” However, the terms “revision” and “repeal” are not inclusive of the terms “promulgation” and “adoption” and this section was intended to address both new rules and regulations, as well as changes to rules and regulations.

In addition, on September 4, 1998, the commission published a proposal in the *Texas Register* (23 TexReg 8987) to amend Chapter 122, Subchapter F authorizing the executive director to issue, revise, and rescind GOPs. Due to an administrative error in the *Texas Register*, a portion of the proposed amendments to §122.506(a) was not designated as new rule language. Government Code, §2001.024(2) requires that rule text be prepared in a manner to indicate any words to be added or deleted from existing rule text. Because the new rule language was not completely underlined (underlining is the editorial indication for proposed new language), the commission could not adopt that portion of §122.506(a). The commission did adopt those portions of §122.506 that were correctly designated.

The language that was not underlined in the *Texas Register* in §122.506(a) required the executive director to publish the draft of a new GOP as follows: “The executive director shall publish notice of a draft general operating permit in the *Texas Register*, the commission’s publicly accessible electronic media, and in a newspaper of general circulation within each of the following metropolitan areas: Beaumont, Houston, and Fort Worth. Additional notice may be provided, as determined by the executive director, in a newspaper of largest general circulation in the metropolitan area appropriate for the draft general operating permit.”

The commission proposes to amend §122.506(a) to address the administrative error made on September 8, 1998. Before the issuance, significant permit revision, or rescission of any GOP, the executive director will be required to publish notice of the opportunity for public comment and/or hearing in the *Texas Register* and on the commission’s publicly accessible electronic media. In addition, if the GOP has only regional application, the executive director must publish notice in a newspaper of general circulation in the area affected by the GOP; if the GOP has statewide application, the executive director must publish notice in the daily newspapers of largest general circulation within each of the following metropolitan areas: Austin, Dallas, and Houston. The commission believes that publication in the *Texas Register*, on the commission’s publicly accessible electronic media, and through newspaper notices will provide ample notice to the regulated community and general public concerning the issuance, revision, or rescission of GOPs. The commission proposes publication in Austin, Dallas, and Houston because the commission believes that newspapers in these communities provide greater statewide coverage than do the Beaumont, Fort Worth, and Houston newspapers

originally proposed September 8, 1998. However, in accordance with its statement in the February 26, 1999 edition of the *Texas Register*, the commission is directing the executive director to publish notice of the opportunity for public comment on the GOPs offered in conjunction with this rulemaking in a single newspaper of general circulation in each of the following metropolitan areas: Beaumont, Houston, and Fort Worth.

The commission is also proposing to delete the statements in §§122.502(g), 122.503(i), 122.504(h), and 122.505(h) specifying that the following shall not be final action by the executive director, and therefore, are not subject to judicial review: the granting of authorizations to operate under GOPs, revisions to applications for GOPs, and the renewal of authorization to operate under GOPs. The commission is proposing to repeal the specified subsections because they conflict with Texas Health and Safety Code, §382.032, which states, “A person affected by a ruling, order, decision, or other act of the commission or of the executive director, if an appeal to the commission is not provided, may appeal the action by filing a petition in a district court of Travis County.”

ACID RAIN PERMITS

The acid rain requirements of 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76 were incorporated by reference into Subchapter E of Chapter 122 on November 10, 1997. Since then, EPA has revised 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76. The commission proposes to amend §122.410(a), concerning Operating Permit Interface, to incorporate the most recently promulgated revisions to 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76.

EPA offered some options to the states in the revision of 40 CFR 72 (Part 72) regarding acid rain permit issuance procedures. The revised 40 CFR §72.72(b)(1)(v) provides an option for “direct proposed” procedures which may be used at the discretion of the executive director. In the preamble to the promulgated revised 40 CFR Part 72, EPA clarifies the “direct proposed” procedures as follows: “Under the procedure, a State permitting authority issues simultaneously a draft permit and proposed permit. If no adverse comments are received, the proposed permit is deemed to be issued and, after the period for review by EPA, the executive director issues the final permit.” (62 FR 55467). The EPA Part 72 preamble also clarifies that the “Direct Proposed” procedures which are available for initial issuance of acid rain permits are also available for significant acid rain permit revisions and acid rain permit reopenings. This option is only available for acid rain permits. Although Subchapter E does not have specific rule language for initial issuance, this option is available since it is being incorporated by reference into this subchapter. The commission also proposes to provide this option for significant revisions and reopenings. However, because Subchapter E specifies the procedures for significant revisions and reopenings rather than relying on Part 72 requirements incorporated by reference, specific language has been added to §122.414(a)(3) and (4) to allow public notice and EPA review to run concurrently. The proposed revisions to §122.414(a)(3) and (4), plus the new procedural option for initial issuance will allow the public notice and EPA review to run concurrently, resulting in a streamlined process. These procedures will be used at the discretion of the executive director to reduce the time required for and simplify the procedures for initial acid rain permit issuance, significant permit revisions, and reopenings for acid rain permits.

Another option offered by EPA is for alternate public notice procedures in the revised section of 40 CFR §72.72(b)(1)(iii) where the “State may, in its discretion, provide notice by serving notice on persons entitled to receive a written notice and may omit notice by newspaper or State publication.” The commission recognizes that this is an option that, if properly implemented and defined, could provide adequate public notice. The recent revisions to §382.056(b) by House Bill 801 during the 1999 Legislative Session include a new requirement for newspaper notices to provide instructions for how to get on a mailing list to receive information about an application. These requirements were recently incorporated into §122.320, concerning Public Notice. The commission believes that these new notice provisions will provide better public notice and access to information about specific applications, since the newspaper notice is widely available and persons who are genuinely interested can ask to be included on a mailing list. The commission believes that it is appropriate to continue to use the existing procedures for public notice in Chapter 122 that require newspaper notice for initial issuance. Consistent with this approach for initial issuance, the commission will retain the current procedures in §122.414(a)(3) and (4) for providing newspaper notice. The continued use of newspaper notice for initial issuance, significant revisions, and reopenings ensures a consistent form of notice for these acid rain procedures.

The commission proposes to amend §122.412(1)(B)-(D) concerning acid rain permit application due dates by removing the comma after the term “January 1, 2000.” The purpose of the proposed amendment is to provide consistency with the language in 40 CFR Part 72 and to improve clarity. For example, under §122.412(1)(B), the existing comma may incorrectly imply that the Phase II acid rain

permit application submittal date for new units is the latter of “at least 24 months before January 1, 2000” or “before the date when the unit commences operation.” By removing the comma, the commission clarifies that the submittal date is the latter of “at least 24 months before January 1, 2000” or “at least 24 months before commencing operation.”

The commission also proposes to revise the following subsections and paragraphs of §122.414, concerning Acid Rain Permit Revisions, as the result of revisions to the referenced paragraphs of 40 CFR Part 72. In §122.414(a)(1), the reference to 40 CFR §72.83(b) is proposed to be changed to 40 CFR §72.83(b)(1) to be consistent with the revised procedural requirements for acid rain permit administrative amendments. Because §72.83(b)(2) and §72.83(c) are incorporated by reference and are not being replaced by procedures in Chapter 122, under the acid rain requirements, the executive director may make administrative revisions to acid rain permits on its own motion, provided the designated representative is notified 30 days before any change is made and is given a copy of the revision after it is made. This revision process allows the executive director, at his discretion, to make administrative revisions to the acid rain permit without receiving an administrative amendment application from the applicant to correct small changes (such as typographical errors) in the acid rain permit. In addition, §122.414(a)(1) maintains the requirement for the executive director to submit the administrative revision to EPA; however, the commission proposes to amend §122.414(a)(1) to remove the restriction of “no later than ten days after the final date of final action on the revision” to be consistent with the revised 40 CFR §72.83 for acid rain administrative permit amendments.

In order to be consistent with the provisions of 40 CFR 72 concerning notice for fast-track modifications, the commission proposes to revise §122.414(a)(2) to follow the provisions of §72.82 for fast-track modification and to delete the references to minor permit revisions under §122.216 and §122.217. Although the cross-references to minor permit revisions are being deleted, the revised §122.414(2)(A) will require the application content for a fast-track modification to be consistent with what is required for minor permit revisions, except that the modification cannot be operated before the permit is revised; and therefore, provisional terms and conditions do not apply. Further, the proposed §122.414(a)(2)(B) sets out the criteria that must be met before the executive director can issue a fast-track modification. This criteria is consistent with the criteria to issue a minor permit revision. It is repeated in §122.414 in order to reduce the number of cross-references in the rule.

Section 72.82 requires designated representatives to send copies of fast-track modifications to the EPA, the permitting authority, and any person entitled to receive written notice under an approved operating permit program. The current rule requires the designated representative to provide copies of the fast-track modification to the executive director, the EPA, and any person entitled to written notice under §72.65(b)(1)(ii), (iii), and (iv). The revisions to Part 72 deleted the reference to §72.65(b)(1) and now require the designated representative to provide notice of fast-track modifications to the EPA, the permitting authority, and to any person entitled to written notice under an approved operating permit program. The proposed rules would require the designated representative to provide a copy of the complete application for a fast-track modification to the executive director, the EPA, affected states, and local air pollution control agencies with jurisdiction in the county in which the site is located,

which are the entities entitled to receive written notice under the Texas approved interim program. In addition, the proposed rules would require the designated representative to provide a notification of the complete application for a fast-track modification to persons on a mailing list maintained by the chief clerk. The notification provided to persons on a mailing list is consistent with current public notice requirements contained in §122.320 and would identify the public location of and opportunity to review and copy the complete application for a fast-track modification. The commission's chief clerk maintains mailing lists of persons who have indicated an interest in receiving information about specific sites, permitting, or other actions of the commission or about commission actions for sites located in a given county. If a person asks to be added to this mailing list, information on any proposed action to be taken on the particular commission action or on the particular county of interest will be mailed to that person. Upon request, the designated representative will be provided with this list, if any, so that interested persons will be notified of any proposed fast-track modifications.

For fast-track modifications, the commission proposes to delete the provisions requiring the use of public announcement which are currently used for minor permit revisions under Subchapter C of Chapter 122. Section 72.82(a) requires the designated representative to provide notice in a newspaper of general circulation in the area where the source is located within five days of the submission of the application for the fast-track modification. This requirement to use newspaper notice will make the provisions of the proposed Chapter 122 for fast-track modifications consistent with Part 72 notice provisions. The proposal sets out the specific sections in §122.320, concerning Public Notice and §122.322, concerning Bilingual Public Notice that must be used for fast-track modifications. Since

§72.82 does not require hearings or public meetings for fast-track modifications, the references to those requirements in §122.320 and §122.322 have been excluded from the proposal. This is consistent with TCAA, §382.056(a) which requires public notice for federal operating permits to be consistent with the requirements of that section and with federal requirements. Since §72.82 does not require hearings or public meetings, the commission does not believe it is appropriate or necessary to add those requirements for fast-track modifications. However, fast-track modifications must comply with the sign posting requirements, and if applicable, with the requirements for bilingual notice. The intent of a fast-track modification is to allow for expeditious changes to acid rain permits for changes that do not have a significant environmental impact. The commission believes that the proposed notice provisions, which include an opportunity for public comment as well as EPA, affected state, and local program review, provide sufficient notice for the public to be able to comment on the proposed fast-track modifications. Section 72.82(b) requires comments to be submitted to the commission as well as to the designated representative. That requirement is included in proposed §122.414(a)(2)(E), except that comments must be submitted to the executive director.

The commission proposes to amend §122.414(a)(2)(E) to change the length of time from 30 to 90 days after the close of the public announcement period that the executive director has to approve or disapprove a minor revision for acid rain permits according to the revised requirements of 40 CFR §72.82(d).

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed sections are in effect there will be no significant fiscal implications for the commission and most units of state and local government as a result of administration or enforcement of the proposed sections. The proposed CAM and periodic monitoring requirements will be implemented through the FOPP to meet federal requirements. Units of state and local government that operate emission units subject to the FOPP may incur fiscal implications that are addressed in the Public Benefit portion of this preamble.

The proposed sections would provide additional implementation options for the existing federally required periodic monitoring program, would implement the federally required CAM Program, and would also incorporate recent changes in federal regulations regarding acid rain. The proposed sections also amend existing sections of Chapter 122 to provide clarity to portions of the rules, correct outdated statutory references, address an administrative error in a previous rulemaking, and address recent changes in federal rules.

Periodic monitoring requirements apply to emission units that are determined by the commission or EPA to be without adequate monitoring, recordkeeping, reporting, or testing requirements sufficient to indicate compliance with the applicable requirement in the federal operating permit.

CAM requirements apply to emission units at major sources subject to the FOPP. Unlike many other applicable requirements that specifically define emission limitations and standards, the federal CAM

regulations define broad principles and performance criteria for establishing CAM requirements in the federal operating permit, but do not define the specific monitoring requirements that apply to an emission unit. CAM requirements are generally considered to be more stringent than periodic monitoring and require continuous or daily monitoring, depending on the size of the emission unit. The monitoring procedures and monitoring data must provide a reasonable assurance of compliance with the requirements contained in the federal operating permit.

The proposed rules are necessary to provide procedures for establishing the CAM requirements that will apply to owners and operators of specific emission units in Texas. Through use of GOPs, the proposed process allows affected owners or operators to apply for monitoring options that have been previously determined to satisfy periodic monitoring or CAM requirements. It is anticipated that owners and operators who choose to use these monitoring options may significantly decrease the resources required to develop site-specific monitoring plans for individual emission units. The proposed sections also contain provisions allowing a case-by-case emission unit-specific review process (i.e., case-by-case determination).

Recent revisions in federal regulations for acid rain have also been incorporated in the proposed sections. The commission proposes to incorporate the authority to use "Direct Proposed" procedures, which allow permitting authorities to issue simultaneously a draft and proposed acid rain permit for review. When these procedures are applied to an acid rain permit, the 30-day public comment period and the 45-day review by EPA are conducted simultaneously. If no adverse comments are received,

after the public comment period and EPA review, the executive director may issue the final permit.

These procedures are proposed to be available for initial issuance of acid rain permits, acid rain permit significant revisions, and acid rain permit reopenings. The proposed amendments will also clarify that the Phase II acid rain permit application submittal date for new units is at least 24 months before January 1, 2000 or at least 24 months before commencing operation. The federal procedures that allow the executive director to make minor administrative revisions to acid rain permits (such as typographical errors) are incorporated by the proposed amendments by reference. The proposed amendments also eliminate the procedures for obtaining a minor permit revision for an acid rain permit by proposing procedures to meet the requirements for a fast-track modification under 40 CFR Part 72. The proposed amendments will also increase the time that the executive director has to approve or disapprove a minor revision for acid rain permits from 30 days to 90 days.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated from enforcement of and compliance with the proposed sections will be increased assurance of compliance with emission standards through increased monitoring of emissions, implementation of revised federal regulations regarding acid rain, improved clarity in regulatory requirements, and improved flexibility in the regulatory process. The proposed monitoring options in the GOPs will also allow the EPA, the public, and affected facilities to consolidate their review of both periodic monitoring and CAM requirements and allow the commission to resolve comments more efficiently.

The proposed sections would provide additional implementation options for the existing federally required periodic monitoring program, would implement the federally required CAM program, and would also incorporate recent changes in federal regulations regarding acid rain. The proposed sections also amend existing sections of Chapter 122 to provide clarity to portions of the rules, correct outdated statutory references, address an administrative error in a previous rulemaking, and address recent changes in federal rules.

There are no anticipated additional costs associated with the proposed sections to the periodic monitoring program. The proposed sections provide the additional implementation alternative of using GOP options previously determined to satisfy periodic monitoring requirements and do not add regulatory requirements beyond those that exist in current rules. This alternative may reduce costs associated with an emission unit-specific analysis and could result in positive fiscal implications for owners of certain emission units.

The CAM program's goals are to provide a reasonable assurance that emission units are in compliance with their permit requirements. CAM requirements apply to emission units at major sources subject to the FOPP. Specifically, the emission unit must be subject to an applicable federal operating permit requirement, use control devices to control emissions, and have potential pre-control emissions equal to or greater than the major source threshold levels. Based on available information, it is estimated that approximately 2,700 emission units subject to the FOPP in Texas will be affected by the proposed CAM amendments.

The number of emission units subject to periodic monitoring are currently unknown, but are generally considered to be numerous. If it is determined that existing monitoring, recordkeeping, reporting, and testing are sufficient to indicate compliance with the requirements contained in the federal operating permit, no additional periodic monitoring and CAM requirements will be required. However, owners or operators subject to periodic monitoring and/or CAM may be required to include in the federal operating permit, periodic monitoring or CAM requirements if it is determined that additional monitoring is needed to meet the requirements of the federal monitoring program.

The proposed sections will facilitate the process by allowing new or existing permit applicants to select from periodic monitoring GOPs or CAM GOPs, predetermined options that address their emission unit characteristics. Since CAM applies on a pollutant-by-pollutant basis, and an emission unit may be subject to multiple applicable requirements, an emission unit may need multiple CAM plans or monitoring options.

Cost estimates for this fiscal note were obtained from the EPA (*Regulatory Impact Analysis For Part 64 Compliance Assurance Monitoring Regulation*), September 1997. The following assumptions are quoted from the EPA Regulatory Impact Analysis: "EPA assumes as the baseline for its CAM (Compliance Assurance Monitoring) analysis that affected emission sources are currently in compliance with their underlying emission standards 100 percent of the time. Thus, there are no emission reductions costs for additional control equipment technology, operation or maintenance, associated with CAM. EPA believes that some sources, in response to monitoring data gathered under CAM, may

indeed have to make investments in control equipment technology, operation and maintenance to reduce emissions to comply with their underlying emissions standards; however, EPA believes these emissions reduction costs are not attributable to CAM - but to the underlying emissions standards. As such EPA has not estimated the costs that may result from such actions to reduce emissions.”

Therefore, costs associated with the purchase and installation of additional control equipment will not be considered in this fiscal note.

The EPA regulatory impact analysis used a scenario of a CEMS that monitors one pollutant without time sharing of a single monitoring system by a number of emission points or the monitoring of more than one pollutant type with a single system. It is recognized that these two worst case assumptions may produce estimates which may overstate the actual costs of complying with the proposed sections.

The EPA analysis estimated costs associated with developing a monitoring system design; recordkeeping, reporting, and certification activities; upgrading existing work practice procedures; installing parameter monitors; installing continuous emission monitors/continuous opacity monitors; visible emission monitoring; initiating work practice procedures; and recurring costs for revisions and renewals. All of these activities would not be required in every situation and most would likely be associated with the development and implementation of a site-specific monitoring plan for an individual emission unit. Capital costs for the purchase and installation of parameter monitors varies with pollutant types from \$1,255 per installation for VOCs to \$10,940 per installation for CO and NO_x compounds. Parameter monitors are assumed to have a service life of 20 years. Capital costs for the purchase and installation of continuous emission/opacity monitoring equipment was \$26,150 for total

suspended particulates, and \$101,150 for SO₂ equipment for each installation with a service life of 20 years. Capital costs for the purchase of monitoring equipment for VOCs work practice efforts was \$5,000 per installation with a service life of ten years. For this fiscal note, various cases with associated high and low costs were calculated to determine the ranges of costs most likely to be encountered by various affected emission units. Cases calculated included installing parameter monitors; installing parameter monitors and initiating work practice procedures; parameter monitors and upgrading existing work practice procedures; using visible emission monitoring and parameter monitoring; installing continuous emission monitoring/continuous opacity monitors; and others. When capital costs were annualized over the service life, and other costs added, the costs associated with CAM were in the range of approximately \$11,000 to \$43,000 per year, per pollutant type, and per installation. These costs included monitor design costs; recordkeeping, reporting, and certification costs; and recurring costs for revisions and renewals for every case. Individual emission unit costs would depend on site-specific characteristics, types of emissions, current monitoring equipment and procedures, and the degree of current compliance with emission standards.

It is anticipated that the proposed options approach for selecting monitoring options will significantly reduce the costs associated with the case-by-case, emission unit-specific review process and engineering analysis costs associated with monitoring system design; certification activities; upgrading work practice procedures; initiating work practice procedures; and recurring costs for revisions and renewals. It is also anticipated that some emission units may already be in compliance with the new federal CAM requirements. If so, it is estimated that annual costs would be in the range of

approximately \$1,660 to \$4,300 if only monitoring design costs, recordkeeping costs, and recurring costs for revisions and renewals are considered.

Units of local government that operate emission units under the FOPP will be required to comply with periodic monitoring and the CAM Program. Emission sources could include electric generating stations, landfills, or other municipal facilities that require a federal operating permit. It is anticipated that costs for units of local government that operate emission units subject to CAM and periodic monitoring will be similar to costs for businesses with similar emission units. It is anticipated that the proposed GOP option approach for selecting monitoring options will significantly reduce the costs associated with source-specific analysis and engineering analysis.

There are no anticipated adverse economic implications for units of state and local government associated with the proposed sections regarding acid rain permit procedures. The “Direct Proposed” procedures are optional at the discretion of the executive director and are anticipated to have positive economic implications by reducing the time required to issue an acid rain permit and by simplifying the procedures for permit issuance. The proposed amendments would require designated representatives to send notice of a fast-track modification to affected persons and publish one newspaper notice in the public notice section of a newspaper of general circulation in the municipality in which the site is located, or the nearest municipality. The applicant must also comply with the requirements for sign posting and, if applicable, bilingual public notice. The costs for one legal notice, one alternative language notice, and sign posting is estimated to be \$1,300 in a metropolitan area and \$340 in small

towns and rural areas. Allowing the executive director to make minor administrative revisions to acid rain permits will reduce the time and effort required for permit issuance. Other acid rain provisions in the proposed sections are administrative or procedural in nature and do not include additional regulatory requirements regarding acid rain beyond those that currently exist.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

It is anticipated that numerous persons, businesses, small and micro-businesses with federal operating permits will be adversely affected by the proposed sections. CAM requirements apply to emission units at major sources subject to the FOPP. The emission unit must be subject to an applicable federal operating permit requirement, use control devices to control emissions, and have potential pre-control emissions equal to or greater than the major source threshold levels. An emission unit subject to periodic monitoring may be any emission unit subject to the FOPP which requires additional monitoring to indicate compliance with federal requirements. Small or micro-businesses subject to periodic monitoring and/or CAM may be required to revise existing federal operating permits to include periodic monitoring or CAM.

The section of the Government Code titled, "Adoption of Rules With Adverse Economic Effects" provides that a state agency considering adoption of a rule that would have an adverse economic effect on small or micro-businesses shall reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted. The commission has reviewed the proposed amendments and associated federal law and determined that it cannot exempt small or micro-

businesses from the proposed rules. However, the commission believes that the use of the general operating permits will reduce the adverse economic effect of the monitoring requirements for all businesses subject to these rules.

Costs for small and micro-businesses associated with complying with the proposed sections are anticipated to be similar to costs for other businesses and will likely be determined by the amount of emissions, the type(s) of emissions, current monitoring equipment and procedures, and the degree of current compliance with emission standards. The costs associated with CAM are in the range of approximately \$11,000 to \$43,000 per year, per pollutant type, and per installation. This range of costs would likely be associated with the development and implementation of a site-specific monitoring plan for an individual emission unit. It is anticipated that the proposed options approach for selecting monitoring options will significantly reduce the costs associated with the case-by-case emission unit-specific analysis and engineering analysis for small and micro-businesses. It is also anticipated that some emission units may already be in compliance with CAM requirements. If so, it is estimated that annual costs of complying with the proposed sections would be in the range of approximately \$1,660 to \$4,300 if only necessary monitoring design costs, recordkeeping costs, and recurring costs for revisions and renewals are considered.

There are no anticipated adverse economic implications for small businesses or micro-businesses associated with the proposed sections regarding acid rain permit procedures. The “Direct Proposed” procedures are optional at the discretion of the executive director and are anticipated to have positive

economic implications by reducing the time required to issue an acid rain permit and by simplifying the procedures for permit issuance. The proposed amendments would require designated representatives to send notice of a fast-track modification to affected persons and publish one newspaper notice in the public notice section of a newspaper of general circulation in the municipality in which the site is located, or the nearest municipality. The applicant must also comply with the requirements for sign posting and, if applicable, bilingual public notice. The costs for one legal notice, one alternative language notice, and sign posting is estimated to be \$1,300 in a metropolitan area and \$340 in small towns and rural areas. Allowing the executive director to make minor administrative revisions to acid rain permits will reduce the time and effort required for permit issuance. Other acid rain provisions in the proposed amendments are administrative or procedural in nature and do not include additional regulatory requirements regarding acid rain beyond those that currently exist.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking meets the definition of a “major environmental rule” as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed sections are intended to protect the environment or reduce risks to human health from environmental exposure and may have adverse economic effects on affected

emission units. Some of the affected emission units could constitute a sector or sectors of the economy. This rulemaking is not subject to any of the regulatory provisions of §2001.0225(c) because the proposed sections do not meet any of the four applicability requirements of §2001.0225(a). The proposed sections do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement, nor are these rules proposed solely under the general powers of the agency. The sections are proposed specifically to comply with federal periodic monitoring requirements, the federal CAM Program, federal acid rain rules, and numerous sections of the TCAA. See the STATUTORY AUTHORITY portion of this preamble.

TAKINGS IMPACT STATEMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The proposed rulemaking revises Chapter 122 to address two federally mandated monitoring programs: compliance assurance monitoring under 40 CFR Part 64 and periodic monitoring under 40 CFR §70.6(a)(3)(i)(B). The EPA states that “the general purpose of the monitoring required by 40 CFR 64 is to assure compliance with emission standards through requiring monitoring of the operation and maintenance of the control equipment and, if applicable, operating conditions of the pollutant-specific emissions unit” (62 FR 54918). The commission proposes this rulemaking to provide the regulatory structure for implementing CAM through the federal operating permits program and to provide a streamlined implementation approach. The CAM requirements will reside in proposed new Subchapter H.

The other federal monitoring program addressed by this proposed rulemaking is “periodic monitoring” in 40 CFR §70.6(a)(3)(i)(B). This requirement specifies that where an applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of an emission unit’s compliance with the permit. The commission already has the authority under Chapter 122 to incorporate periodic monitoring requirements into federal operating permits. This rulemaking provides an alternative streamlined approach, similar to that proposed for CAM, to implement periodic monitoring requirements. The proposed requirements for the implementation of periodic monitoring reside in proposed new Subchapter G.

The commission also proposes to amend existing sections of Chapter 122 to provide clarity to portions of the rules, to correct outdated statutory references, and to address an administrative error in a previous rulemaking. The commission is also proposing to delete sections in Subchapter F, specifying that the granting of authorizations to operate under GOPs, revisions to applications for GOPs, and the renewal of authorization to operate under GOPs are not final actions by the executive director, and therefore, are not subject to judicial review: The commission is proposing to repeal the specified subsections because they conflict with Texas Health and Safety Code, §382.032, Appeal of Commission Action.

The acid rain requirements of 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76 were incorporated by reference into Subchapter E of Chapter 122 on November 10, 1997. Since then, EPA has revised 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76. The commission proposes to amend §122.410(a), concerning Operating Permit Interface, to incorporate the most recently promulgated revisions to 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76. The revised 40 CFR Part 72 authorizes new public notice procedures that will be used at the discretion of the executive director to reduce the time required for and simplify the procedures for initial acid rain permit issuance, significant permit revisions, and reopenings for acid rain permits. Amendments are proposed that will revise the minor permit revision process for acid rain permits by requiring newspaper notice instead of public announcement.

Texas Government Code, §2007.003(b)(4) applies to these proposed amendments, since the action is reasonably taken to fulfill an obligation mandated by federal and state law. These amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, these amendments do not meet the definition of a takings under Texas Government Code, §2007.002(5).

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et seq.), and the TNRCC'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 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 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 CMP goal applicable to the proposed rules is 31 TAC §501.12(1). This goal requires the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the proposed rules is 31 TAC §501.14(q), concerning policies for specific activities and coastal natural resource areas. Title 31 TAC §501.14(q) requires commission rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, to comply with the regulations in 40 CFR, adopted pursuant to the Clean Air Act, 42 United States Code, §§7401 et seq., to protect and enhance air quality in the coastal areas so as to protect coastal natural resource areas and promote public health, safety, and welfare. The proposed rules will provide a regulatory structure for implementing CAM and will also further clarify the commission's current authority to require periodic monitoring. CAM and periodic monitoring are federal monitoring programs established under 40 CFR Part 64 and 40 CFR §70.6(a)(3)(B)(i), respectively. The implementation of the two monitoring programs is consistent with the previously stated goals and policies of the CMP. CAM and periodic monitoring requirements will not authorize the increase in air emissions, nor will they authorize new air emissions. The proposed

rules also incorporate the most recently promulgated revisions to 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76, regarding acid rain requirements. Other revisions are necessary to conform to provisions of the TCAA. Interested persons may submit comments during the public comment period on the consistency of the proposed rules with the CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on the proposal in Austin on April 13, 2000 at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. The hearings are structured for the receipt of oral or written comments by interested persons. Open discussion will not be permitted during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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.

SUBMITTAL OF COMMENTS

Comments may be mailed to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments

should reference Rule Log Number 1999-014-122-AI. Comments must be received by 5:00 p.m., April 13, 2000. For further information, please contact Beecher Cameron of the Policy and Regulations Division at (512) 239-1495.

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings;

notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed amendment implements the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

SUBCHAPTER A : DEFINITIONS

§122.10

§122.10. General Definitions.

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

(1) (No change.)

(2) **Applicable requirement** -

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

(J) The following are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph:

(i) any state or federal ambient air quality standard;

_____ (ii) any net ground level concentration limit;

_____ (iii) any ambient atmospheric concentration limit;

_____ (iv) any requirement for mobile sources;

_____ (v) any asbestos demolition or renovation requirement under 40 Code of Federal Regulations (CFR) Part 61, Subpart M (National Emissions Standards for Asbestos);

_____ (vi) any requirement under 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters); and

_____ (vii) any state only requirement (including §111.131 of this title (relating to Definitions), §111.133 of this title (relating to Testing Requirements), §111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead), §111.137 of this title (relating to Control Requirements for Surface Coatings containing less than 1.0% Lead), and §111.139 of this title (relating to Exemptions)).

[(J) State and federal ambient air quality standards, net ground level concentration limits, ambient atmospheric concentration limits, requirements for mobile sources, and state-only requirements (including §§111.131 of this title (relating to Definitions), 111.133 of this title

(relating to Testing Requirements), 111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead), 111.137 of this title (relating to Control Requirements for Surface Coatings containing less than 1.0% Lead), and 111.139 of this title (relating to Exemptions)) are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph.]

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

(3) Compliance assurance monitoring (CAM) case-by-case determination - A
monitoring plan designed by the permit holder and approved by the executive director to satisfy 40
CFR Part 64 (Compliance Assurance Monitoring).

(4) Compliance assurance monitoring general operating permit (CAM GOP) - A
GOP issued under Subchapter F of this chapter (relating to General Operating Permits) which provides
monitoring options established by the executive director to satisfy Subchapter H of this chapter
(relating to Compliance Assurance Monitoring).

(5) Continuous compliance determination method - For purposes of Subchapter H
of this chapter and Subchapter G of this chapter (relating to Periodic Monitoring), a method, specified
by an applicable requirement, which satisfies the following criteria:

(A) the method is used to determine compliance with an emission limitation or standard on a continuous basis consistent with the averaging period established for the emission limitation or standard; and

(B) the method provides data either in units of the emission limitation or standard or correlated directly with the emission limitation or standard.

(6) **Control device** - For the purposes of Subchapter H of this chapter, equipment that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere.

(A) A control device does not include the following:

(i) passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics; or

(ii) inherent process equipment, which is equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that is installed and operated primarily for purposes other than compliance with applicable requirements. Equipment that

must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment.

(B) If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular emissions unit, then that definition shall apply for purposes of Subchapter H of this chapter.

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

(8) **Deviation limit** - A designated value(s) or condition(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the indicator of performance shall be considered a deviation.

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

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

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

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

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

(11) **Enforceable GOP application** - The applicability determinations and the bases for the determinations in the GOP application that become conditions under which the permit holder shall operate upon granting of an authorization to operate under a GOP. For owners or operators complying with the requirements of Subchapter G or H of this chapter, any CAM or periodic monitoring requirements, excluding the justification for those requirements, shall also be included in the enforceable GOP application.

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

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

(14) [(8)] **Major source** -

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

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

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

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

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

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

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

(ii) kraft pulp mills;

(iii) portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

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

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

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

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

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

(xxiii) taconite ore processing plants;

(xiv) glass fiber processing plants;

(xxv) charcoal production plants;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources under subparagraph (A) of this paragraph.

(15) [(9)] Notice and comment hearing - Any hearing held under this chapter.

Hearings held under this chapter are for the purpose of receiving oral and written comments regarding draft permits.

(16) Periodic monitoring case-by-case determination- A monitoring plan designed by the permit holder and approved by the executive director to satisfy §122.142(c) of this title (relating to Permit Content Requirements).

(17) Periodic monitoring GOP - A GOP issued under Subchapter F of this chapter which provides monitoring options established by the executive director to satisfy Subchapter G of this chapter.

(18) [(10)] **Permit or federal operating permit** -

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

(B) any GOP [general operating permit], or group of GOPs [general operating permits], issued, renewed, or revised by the executive director under this chapter.

(19) **Permit anniversary** - The date that occurs every 12 months after the initial permit issuance, the initial granting of the authorization to operate, or renewal.

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

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

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

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

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

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

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

[(C) where appropriate, any preconstruction authorization under Chapter 120 of this title (relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management

Facilities) (as effective until December 1996) or Chapter 121 of this title (relating to Control of Air Pollution from Municipal Solid Waste Management Facilities).]

(25) **Predictive emission monitoring system (PEMS)** - For purposes of Subchapter H of this chapter, a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

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

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

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

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

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

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

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

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

(iii) where applicable, the specific regulatory citations identifying any [repealed] requirements that no longer apply.

~~(28)~~ [(18)] **Renewal** - The process by which a permit or an authorization to operate under a GOP [general operating permit] is renewed at the end of its term under §§122.241, 122.501,

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

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

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

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

(32) [(22)] **Stationary source** - Any building, structure, facility, or installation that emits or may emit any air pollutant. Nonroad engines, as defined in 40 CFR Part 89 (Control of Emissions from New and In-use Nonroad Engines), shall not be considered stationary sources for the purposes of this chapter.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 1: GENERAL REQUIREMENTS

§122.110

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings;

notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed amendment implements the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the Texas Water Code (TWC), including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.110. Delegation of Authority to Executive Director.

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

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

DIVISION 3: PERMIT APPLICATION

§§122.130, 122.131, 122.132, 122.134, 122.139, 122.140

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the

administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed amendments implement the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.130. Initial Application Due Dates.

- (a) Interim operating permit program.

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

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

(2) - (3) (No change.)

(b) Full operating permit program.

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

(2) - (3) (No change.)

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

(1) (No change.)

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

(d) (No change.)

§122.131. Phased Permit Detail [Application Process for Initial Applications].

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

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

(c) (No change.)

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

(e) - (f) (No change.)

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

(a) - (c) (No change.)

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

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

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

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

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

(f) (No change.)

§122.134. Complete Application.

(a) (No change.)

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

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

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

(c) (No change.)

§122.139. Application Review Schedule.

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

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

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

(4) (No change.)

§122.140. Representations in Application.

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

(1) (No change.)

(2) representations in an enforceable [upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a] general operating permit application; and

(3) (No change.)

DIVISION 4: PERMIT CONTENT

§122.142, §122.143

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the

administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed amendments implement the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.142. Permit Content Requirements.

(a) (No change.)

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

(1) (No change.)

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

(A) (No change.)

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

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

(c) Each permit shall contain [specific terms and conditions for each emission unit fulfilling] periodic monitoring requirements, as required by the executive director, that are designed to produce data that is representative of the emission unit's compliance with the applicable requirements [sufficient to assure compliance with the applicable requirements].

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

(e) - (g) (No change.)

§122.143. General Terms and Conditions.

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

(1) - (14) (No change.)

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

(16) (No change.)

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

(18) - (19) (No change.)

DIVISION 5: MISCELLANEOUS

§122.161

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the

administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed amendment implements the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.161. Miscellaneous.

(a) - (c) (No change.)

(d) The requirements of Subchapter G or Subchapter H of this chapter (relating to Periodic Monitoring; and Compliance Assurance Monitoring) shall not be used to justify the approval of monitoring less stringent than the monitoring which is required under separate legal authority and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under separate authority.

(e) If after permit issuance or the granting of an authorization to operate under a general operating permit, a site no longer meets the applicability criteria in §122.120 of this title (relating to Applicability), the executive director may administratively void the permit or the authorization to operate under a general operating permit.

(1) The permit holder shall demonstrate in writing that a site no longer meets the applicability criteria in §122.120 of this title and request that the permit or authorization to operate under a general operating permit be administratively voided by the executive director.

(2) If it is determined that the site meets the applicability criteria in §122.120 of this title after a permit or authorization to operate is administratively voided by the executive director, the owner or operator may be subject to enforcement action.

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

DIVISION 2: PERMIT REVISIONS

§§122.210, 122.213, 122.217

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal

operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed amendments implement the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.210. General Requirements for Revisions.

(a) (No change.)

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

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

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

(4) a change in a state-only designation; or [.]

(5) the revision of a compliance assurance monitoring or periodic monitoring general operating permit.

(c) - (h) (No change.)

§122.213. Procedures for Administrative Permit Revisions.

(a) - (c) (No change.)

(d) The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after each permit anniversary [the end of each 12-month period after permit issuance or renewal].

(e) - (f) (No change.)

§122.217. Procedures for Minor Permit Revisions.

(a) (No change.)

(b) For changes to a permit required as the result of the promulgation or adoption of an applicable requirement or the revision of a compliance assurance monitoring general operating permit or periodic monitoring general operating permit, the following requirements apply.

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

(c) - (d) (No change.)

(e) The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after each permit anniversary [the end of each 12-month period after permit issuance or renewal].

(f) - (g) (No change.)

**SUBCHAPTER D: PUBLIC ANNOUNCEMENT, PUBLIC NOTICE,
AFFECTED STATE REVIEW, NOTICE AND COMMENT HEARING,
NOTICE OF PROPOSED FINAL ACTION, EPA REVIEW, AND PUBLIC PETITION
[DIVISION 2: PUBLIC NOTICE]
§122.322, §122.350**

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings;

notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed amendments implement the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.322. Bilingual Public Notice.

(a) The requirements of this subsection are applicable when either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program

as required by Education Code, Chapter 29, Subchapter B [§21.109], and 19 Texas Administrative Code (TAC) §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) [§89.2(a) (relating to Professional Development)], or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.1205(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 section. Each affected facility shall meet the following requirements.

(1) At the applicant's expense, an additional notice shall be published at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.1205(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) - (7) (No change.)

(8) At the applicant's expense, an additional sign shall be posted in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.1205(a) [§89.2(a)] under 19 TAC §89.1205(g) [§89.2(g)], the alternate language signs shall be posted in the alternate languages in which

the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(9) - (10) (No change)

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

(c) (No change.)

§122.350. EPA Review.

(a) (No change.)

(b) The executive director shall submit the proposed permit to the EPA.

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

(3) For general operating permit initial issuances and significant revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public comment

period. For general operating permit minor permit revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public announcement period.

(c) - (d) (No change.)

(e) If the executive director fails, within 90 days of receipt of an objection, to revise the proposed permit and submit a revised permit, if necessary, in response to the objection, the EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under FCAA, Title V (relating to Permits [Permit]).

SUBCHAPTER E: ACID RAIN PERMITS

§§122.410, 122.412, 122.414

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the

administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed amendments implement the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.410. Operating Permit Interface.

(a) The commission hereby adopts and incorporates by reference, except as specified in this section, the provisions of 40 Code of Federal Regulations (CFR) Part 72 (with an effective date of June 25, 1999 [July 17, 1995]), Part 74 (with an effective date of May 18, 1998 [May 4, 1995]), and Part 76

(with an effective date of May 1, 1998 [February 17, 1997] for purposes of implementing an acid rain program that meets the requirements of FCAA, Title IV.

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

§122.412. Acid Rain Permit Application Due Dates.

The designated representative shall submit acid rain permit applications for affected units subject to 40 Code of Federal Regulations (40 CFR) [40 CFR] 72, 74, or 76 to the executive director by the following dates.

(1) Sulfur dioxide.

(A) (No change.)

(B) Applications for Phase II acid rain permits for new units shall be submitted at least 24 months before the later of January 1, 2000[,], or the date on which the unit commences operation.

(C) Applications for Phase II acid rain permits for units under 40 CFR §72.6(a)(3)(ii) shall be submitted at least 24 months before the later of January 1, 2000[,], or the date

on which the unit begins to serve a generator with a nameplate capacity greater than 25 megawatts of electricity.

(D) Applications for Phase II acid rain permits for units under 40 CFR §72.6(a)(3)(iii) shall be submitted at least 24 months before the later of January 1, 2000[,] or the date on which the auxiliary firing commences operation.

(E) - (F) (No change.)

(2) - (3) (No change.)

§122.414. Acid Rain Permit Revisions.

(a) (No change.)

(1) The provisions of §122.212 and §122.213 of this title (relating to Applications for Administrative Permit Revisions and Procedures for Administrative Permit Revisions) shall be used to satisfy the procedural requirements of 40 §CFR 72.83(b)(1) and §72.80(d) for acid rain permit administrative amendments, except that the executive director shall submit the revised portion of the acid rain permit to EPA [no later than ten working days after the date of final action on the revision].

(2) The following provisions [of §122.216(b) and §122.217(f) of this title (relating to Minor Permit Revisions and Procedures for Minor Revisions)] shall be used to satisfy the procedural requirements of 40 CFR §72.82 for acid rain fast-track modifications with the following restrictions.

(A) An application for an acid rain fast-track modification must include, at a minimum, the following:

_____ (i) a description of each change;

_____ (ii) a description of the emission units affected;

_____ (iii) a statement that the change qualifies for a fast-track modification;

and

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

_____ (B) An acid rain permit revision for a fast-track modification may be issued by the executive director provided the following:

_____ (i) the changes meet the criteria for a fast-track modification;

(ii) the executive director has received an application;

(iii) the conditions of the acid rain permit provide for compliance with the requirements of this chapter; and

(iv) the requirements of the chapter for public notice as specified in subparagraph (E) of this paragraph, local program notification, affected state review, and EPA review have been satisfied.

(C) [(A)] The designated representative shall:

(i) provide a copy of the complete application requesting a fast-track modification [minor permit revision] to the executive director, the EPA, [and any person entitled to a written notice (as defined in 40 CFR §72.65(b)(1)(ii), (iii), and (iv)] affected states, and local air pollution control agencies with jurisdiction in the county in which the site is located; and [.]

(ii) send a notification, consistent with subparagraph (E) of this paragraph, of the fast-track modification permit application to persons on a mailing list maintained by the chief clerk.

(D) [(B)] Changes for a fast-track modification shall not be operated before the permit is revised.

[(C) Provisional terms and conditions do not apply.]

(E) [(D)] Within five days of submission of the application for a fast-track modification to the executive director, the designated representative shall comply with the public notice requirements in §122.320(b)-(m) of this title (relating to Public Notice) and §122.322 of this title (relating to Bilingual Public Notice), except for the provisions regarding a request for or notice of a hearing or a public meeting. [The executive director shall initiate procedures for public announcement within five days of receipt of the application request.] However, the application rather than the draft permit shall be the subject of public notice [announcement]. In addition, each newspaper notice shall direct the public to submit comments to both the executive director and to the designated representative.

(F) [(E)] The executive director shall consider the [permit] application for a fast-track modification and comments received and provide approval, in whole or in part with changes or conditions as appropriate, or disapproval of the acid rain permit revision within 90 [30] days of the close of the public notice comment [announcement] period.

(3) The provisions of §122.220 and §122.221 of this title (relating to Applications for Significant Permit Revisions and Procedures for Significant Permit Revisions) shall be used to satisfy the procedural requirements of 40 CFR §72.81(c) for acid rain permit modifications. However, at the discretion of the executive director, the procedural requirements for §§122.320, 122.322, and 122.350 of this title (relating to Public Notice; Bilingual Notice; and EPA Review) may run concurrently.

(4) The provisions of §122.231 of this title (relating to Permit Reopenings) shall be used to satisfy the procedural requirements of 40 CFR §72.85 for acid rain permit reopenings. However, at the discretion of the executive director, the procedural requirements for §§122.320, 122.322, and 122.350 of this title may run concurrently.

(b) The following provisions shall apply to the procedural requirements for acid rain permit revisions or modifications.

(1) Changes qualifying as administrative permit revisions may be processed as fast-track modifications [minor] or significant permit revisions at the option of the designated representative.

(2) Changes qualifying as fast-track modifications [minor permit revisions] may be processed as significant permit revisions at the option of the designated representative.

(3) The designated representative may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision or modification submitted.

(4) (No change.)

SUBCHAPTER F: GENERAL OPERATING PERMITS

DIVISION 1: PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

§§122.501 - 122.506

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the

commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed amendments implement the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.501. General Operating Permits.

(a) - (c) (No change.)

(d) The executive director may revise or rescind any general operating permit issued by the executive director.

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

(5) The executive director may rescind a general operating permit provided a notice of the proposed rescission is provided under §122.506 of this title (relating to Public Notice for General Operating Permits).

(e) - (f) (No change.)

(g) After issuance of a general operating permit, the executive director may combine the general operating permit with a previously issued general operating permit.

§122.502. Authorization to Operate.

(a) (No change.)

(b) The representations in the enforceable general operating permit application are [Upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application become] conditions under which the permit holder shall operate.

(c) - (e) (No change.)

(f) A copy of the permit, the enforceable general operating permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

[(g) The granting of an authorization to operate under a general operating permit shall not be a final action by the executive director, and therefore, is not subject to judicial review.]

(g) [(h)] General operating permits shall not be authorized for affected units under the acid rain program.

(h) [(i)] The executive director shall make a copy of the authorization to operate accessible to the EPA.

**§122.503. [Application] Revisions to Enforceable General Operating Permit Applications for
Changes at a Site.**

(a) The permit holder shall submit an [updated] application for a new authorization to operate
to the executive director for the following activities at a site:

(1) a change in the enforceable general operating permit application [any applicability
determination or the basis of any determination in the general operating permit application]; or

(2) (No change.)

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

(1) - (7) (No change.)

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

(1) (No change.)

(2) the permit holder submits to the executive director the [updated] application before the change is operated;

(3) the permit holder maintains, with the authorization to operate under the general operating permit the [updated] application until the executive director grants a revised authorization to operate; and

(4) the permit holder operates under the representations in the [updated] application.

(d) - (f) (No change.)

(g) If the emission units addressed in the enforceable general operating permit application no longer meet the requirements for a general operating permit, the permit holder must submit a complete application for another operating permit.

(h) (No change.)

[(i) Revisions to applications under this section, and the granting of authorizations to operate under a general operating permit, shall not be a final action by the executive director, and therefore, are not subject to judicial review.]

§122.504. [Application] Revisions to Enforceable General Operating Permit Applications When a General Operating Permit is Revised or Rescinded.

(a) If the applicability determinations or the bases for the determinations at a site change due to the promulgation or adoption [revision or repeal] of an applicable requirement or state-only requirement or the revision or rescission of a general operating permit issued by the executive director, the following requirements apply.

_____ (1) The permit holder shall submit an [updated] application for a new authorization to operate [the general operating permit] containing at a minimum the following information:

(A) - (F) (No change.)

(2) (No change.)

(3) If the [updated] application is required as the result of the promulgation or adoption [revision or repeal] of an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) (No change.)

(B) submit an [updated] application [for the general operating permit] no later than 45 days after the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement; and

(C) (No change.)

(4) If the [updated] application is required as the result of the revision of a general operating permit that is not based on a change in an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) submit the [updated] application no later than 45 days after the issuance of the general operating permit; and

(B) maintain the [updated] application with the authorization to operate until the general operating permit is revised.

(b) The permit holder need not reapply for a revised general operating permit, provided the following:

(1) the emission units addressed in the enforceable general operating permit application qualify for the revised general operating permit;

(2) - (3) (No change.)

(c) - (d) (No change.)

(e) Those representations in the enforceable general operating permit application not affected by the revision of a general operating permit remain conditions under which the permit holder shall operate.

(f) (No change.)

(g) The permit holder need not comply with the representations in the enforceable general operating permit application or the terms and conditions codified in the general operating permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

§122.505. Renewal of the Authorization to Operate Under a General Operating Permit.

(a) - (e) (No change.)

(f) In determining whether and under what conditions an authorization to operate under a general operating permit should be renewed, the executive director shall consider the following:

(1) whether the general operating permit, in conjunction with the enforceable general operating permit application, provides for compliance with all applicable requirements and an accurate listing of state-only requirements; and

(2) (No change.)

(g) (No change.)

[(h) The renewal of an authorization to operate under a general operating permit shall not be a final action by the executive director, and therefore, is not subject to judicial review.]

§122.506. Public Notice for General Operating Permits.

(a) Before the issuance, significant permit revision, or rescission of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the draft general operating permit consistent with the requirements of this section. The executive director shall publish notice of a draft general operating permit in the *Texas Register*, the commission's publicly accessible electronic media, and in a newspaper of general circulation in the area affected by the general operating permit. If the general operating permit has statewide applicability, the notice shall be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: Austin, Dallas, and Houston. The notice shall contain the following information:

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

(b) - (h) (No change.)

SUBCHAPTER G: PERIODIC MONITORING

§§122.600, 122.602, 122.604, 122.606, 122.608, 122.610, 122.612

STATUTORY AUTHORITY

The new sections are proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the

administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed new sections implement the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.600. Implementation of Periodic Monitoring.

(a) Except as provided in subsection (b) of this section, §122.142(c) of this title (relating to Permit Content Requirements) shall be implemented through one of the following mechanisms:

(1) a periodic monitoring general operating permit, which provides monitoring options established by the executive director, in accordance with the requirements of this subchapter; or

(2) a periodic monitoring case-by-case determination, in which the permit holder designs a monitoring approach for approval by the executive director, in accordance with the requirements of this subchapter.

(b) The executive director may establish periodic monitoring requirements through the permitting process for specific emission limitations or standards to satisfy §122.142(c) of this title.

(c) Any requirements for an emission unit established under Subchapter H of this chapter (relating to Compliance Assurance Monitoring) shall satisfy the requirements of this subchapter.

§122.602. Periodic Monitoring Applicability.

(a) The requirements of this subchapter apply to an emission unit at a site that is subject to this chapter provided the emission unit is subject to an emission limitation or standard in an applicable requirement except as noted in subsection (b) of this section.

(b) The requirements of this subchapter shall not apply to emission limitations or standards for which the executive director has determined that the applicable requirement has sufficient periodic monitoring (which may consist of recordkeeping). These emission limitation or standards include, but are not limited to, the following:

(1) emission limitations or standards proposed by the EPA after November 15, 1990 under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 (Hazardous Air Pollutants);

(2) emission limitations or standards under FCAA, Title IV (the Acid Rain Program);

(3) emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which

continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test); and

(4) other emission limitations or standards specified as exempt by the EPA.

§122.604. Periodic Monitoring Application Due Dates.

(a) Unless otherwise approved by the executive director, the permit holder shall submit an application for a periodic monitoring general operating permit (GOP) or a periodic monitoring case-by-case determination in accordance with the following schedule.

(1) For an emission unit that is subject to an emission limitation or standard on or before the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the periodic monitoring GOP.

(2) For an emission unit that becomes subject to an emission limitation or standard after the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard.

(b) An application for periodic monitoring requirements established under §122.600(b) of this title (relating to Implementation of Periodic Monitoring), shall be submitted upon request by the executive director.

§122.606. Applications for Periodic Monitoring.

(a) An application for periodic monitoring shall include at a minimum the following:

(1) the identification of the emission unit;

(2) the emission limitation or standard subject to periodic monitoring;

(3) proposed periodic monitoring requirements from the periodic monitoring general operating permit or developed by the permit holder, and any information required by the executive director to evaluate those requirements; and

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

(b) The proposed periodic monitoring requirements submitted in the application shall be designed to produce data that is representative of the emission unit's compliance with the applicable requirement.

§122.608. Procedures for Incorporating Periodic Monitoring Requirements.

(a) For permit holders applying for a periodic monitoring case-by-case determination, periodic monitoring requirements shall be initially incorporated into the permit in accordance with paragraph (1) or (2) of this subsection, except as in subsection (d) of this section.

(1) If the permit holder is authorized to operate under a general operating permit (GOP), the following requirements apply:

(A) the permit holder shall submit an application for a permit other than a GOP including the information specified in §122.606 of this title (relating to Applications for Periodic Monitoring); and

(B) the requirements of §122.201 of this title (relating to Initial Permit Issuance) shall be satisfied.

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for significant permit revisions apply:

(A) the permit holder shall submit an application including the information specified in §122.606 of this title; and

(B) the requirements of §122.221(b) and (c) of this title (relating to Procedures for Significant Permit Revisions) shall be satisfied.

(b) For permit holders applying for a periodic monitoring GOP, periodic monitoring requirements shall be initially incorporated into a permit or enforceable GOP application in accordance with paragraph (1) or (2) of this subsection, except as in subsection (d) of this section.

(1) If the permit holder is authorized to operate under a GOP, the following requirements apply:

(A) the permit holder shall submit an application including the information in §122.606 of this title;

(B) the conditions of the enforceable GOP application shall provide for compliance with the requirements of this subchapter; and

(C) the executive director shall grant an authorization to operate provided the requirements of this paragraph are satisfied.

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for minor permit revision apply:

(A) the permit holder shall submit an application including the information specified in §122.606 of this title; and

(B) the requirements of §122.217(f) and (g) of this title (relating to Procedures for Minor Permit Revision) shall be satisfied.

(c) Except as in subsection (d) of this section, periodic monitoring requirements implemented under §122.600(b) of this title shall be initially incorporated into a permit or enforceable GOP application through the procedures in §122.201 of this title (relating to Initial Permit Issuance), the procedures in Subchapter F of this chapter (relating to General Operating Permits), or the following procedures for minor permit revision:

(1) the permit holder shall submit an application including the information specified in §122.606 of this title; and

(2) the requirements of § 122.217(f) and (g) of this title (relating to Procedures for Minor Permit Revision) shall be satisfied.

(d) If the periodic monitoring requirements are incorporated at the time of renewal, the requirements of §122.243 of this title (relating to Permit Renewal Procedures), or §122.505 of this title (relating to Renewal of the Authorization to Operate Under a General Operating Permit) apply.

(e) Revisions to periodic monitoring requirements incorporated into the permit or enforceable GOP application shall be governed by the requirements of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) or Subchapter F of this chapter, as appropriate. However, changes in deviation limits, other than changes required as the result of a change in an associated emission limitation or standard shall not be operated before the permit or authorization to operate under a general operating permit is revised.

§ 122.610. Periodic Monitoring General Operating Permits Content.

(a) Except as in subsection (b) of this section, each periodic monitoring general operating permit (GOP) shall include periodic monitoring requirements designed to produce data that is representative of compliance with the applicable requirement.

(b) The periodic monitoring GOP may require the submission of an application for a periodic monitoring case-by-case determination for a particular emission limitation or standard.

§122.612. Periodic Monitoring Requirements in Permits and Enforceable General Operating Permit Applications.

The permit or enforceable general operating permit application shall include, at a minimum, the following periodic monitoring requirements:

(1) the identification of the emission unit;

(2) the emission limitation or standard subject to periodic monitoring;

(3) periodic monitoring requirements that are designed to produce data that is representative of the emission unit's compliance with the applicable requirement.

SUBCHAPTER H: COMPLIANCE ASSURANCE MONITORING

§§122.700, 122.702, 122.704, 122.706, 122.708, 122.710, 122.712, 122.714, 122.716

STATUTORY AUTHORITY

The new sections are proposed under Texas Health and Safety Code, the TCAA, including §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054-382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561-382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the

administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement.

The proposed new sections implement the Texas Health and Safety Code, the TCAA, including §§382.015-382.017; 382.021, 382.022, 382.0205, 382.032, 382.040, 382.041, 382.051, 382.0513-382.0515, 382.0517, 382.054-382.0543, 382.056, 382.0561-382.0564, 382.061, 382.051-382.0563 382.059, 382.0563, and 382.056; and under the TWC, including §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001-7.358.

§122.700. Implementation of Compliance Assurance Monitoring.

(a) The requirements of 40 Code of Federal Regulations (40 CFR) Part 64 (Compliance Assurance Monitoring) shall be implemented through one of the following mechanisms:

(1) a compliance assurance monitoring general operating permit (CAM GOP), which provides monitoring options established by the executive director, in accordance with the requirements of this subchapter; or

(2) a CAM case-by-case determination, in which the permit holder designs a monitoring approach for approval by the executive director, in accordance with the following:

(A) §122.702 of this title (relating to Compliance Assurance Monitoring Applicability);

(B) §122.704 of this title (relating to Compliance Assurance Monitoring Application Due Dates);

(C) 40 CFR §64.3 (Monitoring Design Criteria);

(D) 40 CFR §64.4 (Submittal Requirements);

(E) §122.708 of this title (relating to Procedures for Incorporating Compliance Assurance Monitoring Requirements);

(F) §122.712 of this title (relating to General Terms and Conditions for Compliance Assurance Monitoring);

(G) 40 CFR §64.6 (Approval of Monitoring);

(H) 40 CFR §64.7 (Operation of Approved Monitoring); and

(I) if appropriate, §122.716 of this title (relating to Quality Improvement Plans).

(b) References in 40 CFR 64 to 40 CFR 70 (Operating Permit Program) shall be satisfied by the requirements of this chapter for the purpose of implementing 40 CFR 64.

§122.702. Compliance Assurance Monitoring Applicability.

(a) Each emission unit shall be considered separately with respect to each air pollutant.

(b) Except for emission units that are exempt under subsection (d) of this section, the requirements of this subchapter apply to an emission unit at a major source subject to this chapter provided the following:

(1) the emission unit is subject to an emission limitation or standard for an air pollutant (or surrogate thereof) in an applicable requirement, except as noted in subsection (c) of this section;

(2) the emission unit uses a control device to achieve compliance with the emission limitation or standard in paragraph (1) of this subsection; and

(3) the emission unit has the pre-control device potential to emit greater than or equal to the amount in tons per year required for a site to be classified as a major source, as defined in this chapter.

(c) The requirements of this subchapter shall not apply to any of the following:

(1) emission limitations or standards proposed by the EPA after November 15, 1990 under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 (Hazardous Air Pollutants);

_____ (2) emission limitations or standards under FCAA, Title VI (Stratospheric Ozone Protection);

_____ (3) emission limitations or standards under FCAA, Title IV (the Acid Rain Program);

_____ (4) emission limitations or standards that apply solely under an emissions trading program approved or promulgated by the EPA under the FCAA that allows for trading emissions;

_____ (5) emissions caps that meet the requirements specified in 40 Code of Federal Regulations (40 CFR) §70.4(b)(12) (State Program Submittals and Transition);

_____ (6) emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test);

_____ (7) other emission limitations or standards specified as exempt by the EPA; or

_____ (8) emission limitations or standards regulating fugitive emissions.

(d) The requirements of this subchapter shall not apply to a utility unit, as defined in 40 CFR §72.2 (Definitions), that is municipally-owned if the permit holder documents in a permit application the following:

(1) the utility unit is exempt from all monitoring requirements in 40 CFR 75 (Continuous Emission Monitoring) (including the appendices);

(2) the utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations, as demonstrated by historical operating data and relevant contractual obligation, and will be operated consistent with that purpose throughout the permit term; and

(3) the actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or the total time the unit has been in operation for a unit in operation less than three years), are less than 50% of the amount in tons per year required for a site to be classified as a major source and are expected to remain so.

§122.704. Compliance Assurance Monitoring Application Due Dates.

Unless otherwise approved by the executive director, the permit holder shall submit an application for a compliance assurance monitoring general operating permit (CAM GOP) or a CAM case-by-case determination in accordance with the following schedule.

(1) For an emission unit that is subject to this subchapter on or before the issuance date of a CAM GOP containing an emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following issuance of the CAM GOP.

(2) For an emission unit that becomes subject to this subchapter after the issuance date of a CAM GOP containing an emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter.

(3) If a control device is common to more than one emission unit, the permit holder shall submit an application for each emission unit based on the date the CAM GOP that contains the emission limitation or standard that applies to the emission unit is issued, in accordance with paragraphs (1) or (2) of this section.

§122.706. Applications for Compliance Assurance Monitoring General Operating Permits.

(a) An application for a compliance assurance monitoring general operating permit (CAM
GOP) shall include at a minimum the following:

(1) the identification of the emission unit;

(2) the emission limitation or standard subject to CAM;

(3) an appropriate monitoring option provided in a CAM GOP;

(4) if not defined by the monitoring option selected, a deviation limit;

(5) a justification for any deviation limit proposed under paragraph (4) of this
subsection in accordance with subsection (c) of this section; and

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

(b) The proposed CAM requirements submitted in the application shall be designed to provide
reasonable assurance of compliance with the applicable requirements and reflect proper operation and
maintenance of the control device.

(c) Unless otherwise specified in the CAM GOP, the permit holder shall provide justification for any deviation limit according to one of following.

(1) The permit holder shall submit the following performance test data:

(A) control device operating parameter data from an applicable performance test conducted under conditions specified by the applicable rule;

(B) if the applicable rule does not specify testing conditions or only partially specifies test conditions, control device operating parameter data from an applicable performance test conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the emission unit; and

(C) a statement that no changes to the emission unit, including control device, have taken place that could result in a significant change in the control system performance, indicators (such as emissions, control device parameters, process parameters, or inspection and maintenance activities) to be monitored, or deviation limits since the performance test was conducted.

(2) The permit holder shall submit manufacturer's recommendations, engineering calculations, and/or historical data.

(d) Unless otherwise approved by the executive director, if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required by an applicable requirement, the permit holder shall submit a monitoring option from the CAM GOP that includes the use of the CEMS, COMS, or PEMS to satisfy the requirements of this subchapter.

§122.708. Procedures for Incorporating Compliance Assurance Monitoring Requirements.

(a) For permit holders applying for a compliance assurance monitoring (CAM) case-by-case determination, CAM requirements shall be initially incorporated into the permit in accordance with paragraph (1) or (2) of this subsection, except as in subsection (c) of this section.

(1) If the permit holder is authorized to operate under a general operating permit (GOP), the following apply:

(A) the permit holder shall submit an application for a permit other than a general operating permit including the information specified in 40 Code of Federal Regulations (40 CFR) §64.4 (Submittal Requirements); and

(B) the requirements of §122.201 of this title (relating to Initial Permit Issuance) shall be satisfied.

(2) If the permit holder is authorized to operate under a permit other than a GOP, the following requirements for significant permit revisions apply:

(A) the permit holder shall submit an application including information specified in 40 CFR §64.4 and a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official); and

(B) the requirements of §122.221(b) and (c) of this title (relating to Procedures for Significant Permit Revisions) shall be satisfied.

(b) For permit holders applying for a CAM GOP, CAM requirements shall be initially incorporated into a permit or enforceable GOP application in accordance with paragraph (1) or (2) of this subsection, except as in subsection (c) of this section.

(1) If the permit holder is authorized to operate under a GOP, the following apply:

(A) the permit holder shall submit an application including the information in §122.706 of this title (relating to Applications for CAM General Operating Permits);

(B) the conditions of the enforceable GOP application shall provide for compliance with the requirements of this subchapter; and

(C) the executive director shall grant an authorization to operate, provided the requirements of this paragraph are satisfied.

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for minor permit revision apply:

(A) the permit holder shall submit an application including the information specified in §122.706 of this title; and

(B) the requirements of §122.217(f) and (g) of this title (relating to Procedures for Minor Permit Revision) shall be satisfied.

(c) If CAM requirements are initially incorporated into the permit or enforceable GOP application at the time of renewal, the requirements of §122.243 of this title (relating to Permit Renewal Procedures) or §122.505 of this title (relating to Renewal of the Authorization to Operate Under a General Operating Permit) of this title shall apply.

(d) Revisions to CAM requirements incorporated into the permit or enforceable GOP application shall be governed by the requirements of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) or Subchapter F of this chapter (relating to General Operating Permits), as appropriate. However, changes in deviation limits, other than changes required as the result of a change in an associated emission limitation or standard shall not be operated before the permit or authorization to operate under a GOP is revised.

§122.710. Compliance Assurance Monitoring General Operating Permit Content.

(a) Each monitoring option for an emission limitation or standard in a compliance assurance monitoring general operating permit (CAM GOP) shall contain, at a minimum, the following:

(1) one or more indicators of performance (such as emissions, control device parameters, process parameters, or inspection and maintenance activities);

(2) for each indicator of performance, a deviation limit or procedures for establishing a deviation limit;

(3) monitoring specifications and procedures that provide a reasonable assurance that the data generated by the monitoring present valid information;

(4) if appropriate, the averaging period for the purpose of determining whether a deviation has occurred; and

(5) specifications for the minimum monitoring frequency.

(A) For emission units with the post-control device potential to emit, greater than or equal to the amount in tons per year required for a site to be classified as a major source, as

defined in this chapter, the CAM GOP shall contain the requirement for the permit holder to collect data as follows:

(i) four or more data values equally spaced over each hour; or

(ii) at a reduced data collection frequency, if appropriate, based on the indicators of performance (such as emissions, control device parameters, process parameters, or inspection and maintenance activities), emission unit, control device, or data collection mechanism.

However, the monitoring shall include some data collection at least once per 24-hour period.

(B) For all other emission units, the CAM GOP shall contain the requirement for the permit holder to collect data at least once per 24-hour period.

(b) The CAM requirements in the CAM GOP shall be designed to provide a reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(c) The CAM GOP may require the submission of an application for a CAM case-by-case determination for a particular emission limitation or standard.

§122.712. General Terms and Conditions for Compliance Assurance Monitoring.

(a) Unless otherwise specified in the compliance assurance monitoring general operating permit (CAM GOP), the following general terms and conditions shall become terms and conditions of each CAM GOP.

(1) The permit holder shall install, calibrate, maintain, and operate a monitoring system according to the manufacturer's specifications or other written procedures that provide adequate assurance that the system would reasonably be expected to monitor accurately.

(2) At all times, the permit holder shall properly maintain the monitoring system, including, but not limited to, maintaining parts if necessary, for routine repairs of the monitoring system.

(3) The permit holder shall collect data at all required intervals during emission unit operation, except for, as applicable, monitoring malfunctions, repairs associated with monitoring malfunctions, and required quality assurance or control activities.

(A) Data recorded during monitoring malfunctions, repairs associated with malfunctions, and required quality assurance or control activities shall not be used for purposes of this subchapter.

(B) The permit holder shall maintain records of summary information on the number, beginning date and time, ending date and time, and cause (including unknown cause, if applicable) for monitoring downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable).

(C) The permit holder shall use all the data collected during all periods other than those identified in subparagraph (A) of this paragraph in assessing the operation of the control device and associated control system.

(D) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions and shall be considered deviations.

(4) All incidents of monitoring downtime recorded under paragraph (3)(B) of this subsection shall be reported in accordance with §122.145 of this title (relating to Reporting Terms and Conditions).

(5) The permit holder shall respond to deviations in the following manner.

(A) The permit holder shall restore operation to its normal manner as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

(B) The permit holder shall minimize the period of any startup, shutdown, or malfunction and take any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of a deviation (other than those caused by excused startup or shutdown conditions).

(6) The permit holder shall apply for a revision to the CAM requirements, or a new permit if appropriate, consistent with the procedures of Subchapter C or F of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals; and General Operating Permits) if either of the following occurs:

(A) the permit holder identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not indicate a deviation while providing valid data; or

(B) the results of compliance or performance testing document a need to modify the existing CAM requirements.

(7) CAM requirements established under this subchapter are subject to §§122.144-122.146 of this title (relating to Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(8) The permit holder shall comply with the requirements of a quality improvement plan according to §122.716 of this title (relating to Quality Improvement Plans), if required by the executive director.

(b) If CAM is implemented through a CAM case-by-case determination, the permit will specify which of the general terms and conditions apply.

§122.714. Compliance Assurance Monitoring General Operating Permit Requirements in Permits and Enforceable General Operating Permit Applications.

(a) The compliance assurance monitoring (CAM) requirements shall be incorporated into the permit or enforceable general operating permit (GOP) application and shall include at a minimum the following:

(1) the identification of the emission unit;

(2) the emission limitation or standard subject to CAM;

(3) an appropriate monitoring option provided in a CAM GOP;

(4) if not defined by the monitoring option selected, a deviation limit that provides a reasonable assurance of compliance; and

(5) unless otherwise approved by the executive director, the requirements of §122.712 of this title (relating to General Terms and Conditions for CAM General Operating Permits).

(b) The CAM requirements incorporated into the permit or enforceable GOP application shall provide a reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(c) Unless otherwise approved by the executive director, if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required by an applicable requirement, the permit or enforceable GOP application shall require the use of the CEMS, COMS, or PEMS to satisfy the requirements of this subchapter.

§122.716. Compliance Assurance Monitoring Quality Improvement Plans.

(a) Based on the frequency of deviations, the cause of deviations, the magnitude of deviations, the permit holder's response to deviations, or other information that indicates that the emission unit or

control device is not being maintained and operated consistent with good air pollution control practices,
the executive director may require implementation of a quality improvement plan (QIP).

_____ (b) A QIP shall include, as appropriate, steps to evaluate and correct control performance,
process operation changes, preventative maintenance practices, and more frequent or improved
monitoring.

_____ (c) The permit holder shall maintain the written QIP with the permit or enforceable general
operating permit application.