

**SUBCHAPTER C: INITIAL PERMIT ISSUANCES, REVISIONS,
REOPENINGS, AND RENEWALS**
DIVISION 1: INITIAL PERMIT ISSUANCES
§122.201, §122.204
Effective December 11, 2002

§122.201. Initial Permit Issuance.

- (a) A permit may be issued by the executive director provided the following:
- (1) the executive director has received a complete permit application under §122.134 of this title (relating to Complete Application);
 - (2) the conditions of the permit provide for compliance with the requirements of this chapter;
 - (3) the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied; and
 - (4) the executive director has provided a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The executive director will send this statement to the EPA and any person who requests it. A statement of basis is required for all initial issuances, revisions, renewals, and reopenings.
- (b) The permit will not be final until the public petition requirements of this chapter have been satisfied.
- (c) The executive director shall make a copy of the permit application, the permit, and any required notices accessible to the EPA.
- (d) All permits shall have terms not to exceed five years from initial issuance or renewal.
- (e) At the discretion of the executive director, more than one permit may be issued for a site.
- (f) Neither the issuance of a general operating permit by the executive director nor the granting of an authorization to operate under a general operating permit shall be required to meet the requirements of this section. General operating permits are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).
- (g) If the permit application does not meet the criteria of this chapter, the executive director may deny the permit application.

Adopted November 20, 2002

Effective December 11, 2002

§122.204. Temporary Sources.

(a) A temporary source is a stationary source which changes location to another site at least once during any five-year period.

(b) An owner or operator of any temporary source subject to the requirements of this chapter, shall apply to the executive director for a permit consistent with this chapter.

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

(d) Permit holders shall maintain records of the duration of the stay at a site of any temporary source.

(e) A single permit may be issued authorizing similar operations by the same temporary source at multiple temporary locations.

(f) The temporary source permit holder shall notify the executive director at least ten days in advance of each change in location, unless the executive director allows for a shorter notice due to an emergency.

(g) No affected unit subject to the acid rain program shall be permitted as a temporary source.

Adopted October 15, 1997

Effective November 10, 1997

DIVISION 2: PERMIT REVISIONS
§§122.210 - 122.213, 122.215 - 122.222
Effective December 11, 2002

§122.210. General Requirements for Revisions.

(a) The permit holder shall submit an application to the executive director for a revision to a permit for those activities at a site which change, add, or remove one or more permit terms or conditions.

(b) The executive director shall make a copy of the permit application, the permit, and any required notices accessible to the EPA.

(c) Provisional terms and conditions are not eligible for a permit shield.

(d) The permit holder may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision submitted.

(e) Changes qualifying as administrative permit revisions may be processed as minor or significant permit revisions at the permit holder's discretion.

(f) Changes qualifying as minor permit revisions may be processed as significant permit revisions at the permit holder's discretion.

(g) General operating permits and authorizations to operate under general operating permits are not subject to the permit revision requirements of this subchapter, but instead are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

Adopted May 9, 2001

Effective June 3, 2001

§122.211. Administrative Permit Revisions.

A change to a permit may qualify as an administrative permit revision if the change satisfies one or more of the following:

(1) corrects typographical errors;

(2) identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar administrative change at the site;

(3) increases the frequency of monitoring or reporting requirements without changing any existing emission limitations or standards;

(4) changes the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit;

(5) incorporates the requirements from preconstruction authorizations under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to those of Subchapters C and D of this chapter that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in §§122.143, 122.145, and 122.146 of this title (relating to General Terms and Conditions, Reporting Terms and Conditions, and Compliance Certification Terms and Conditions, respectively);

(6) affects or adds a state-only requirement; or

(7) is similar to those in paragraphs (1) - (6) of this section and approved by EPA.

Adopted May 9, 2001

Effective June 3, 2001

§122.212. Applications for Administrative Permit Revisions.

And application must include a record of any changes that took place over the previous 12 months that have not already been incorporated into the permit. An application for administrative permit revision must include, at a minimum, the following:

(1) a description of each change;

(2) a description of the emission units affected;

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

(4) a statement that each change qualifies for an administrative permit revision; and

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

Adopted May 9, 2001

Effective June 3, 2001

§122.213. Procedures for Administrative Permit Revisions.

(a) If the following requirements are met, changes at a site listed in §122.211 of this title (relating to Administrative Permit Revisions) requiring an administrative permit revision may be operated before issuance of the revision:

(1) the permit holder records the information required in §122.212 of this title (relating to Applications for Administrative Permit Revisions) before the change is operated; and

(2) the permit holder maintains the information required by §122.212 of this title with the permit until the permit is revised.

(b) In every case, the applicable requirements and state-only requirements are always enforceable.

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

(d) The permit holder shall submit an application for an administrative permit revision to the executive director no later than 30 days after each permit anniversary.

(e) An administrative permit revision may be issued by the executive director provided the following:

(1) the change meets the criteria for an administrative permit revision;

(2) the executive director has received an application; and

(3) the conditions of the permit provide for compliance with the requirements of this chapter.

(f) The executive director shall take final action on an administrative permit revision no later than 60 days after receipt of the application.

Adopted May 9, 2001

Effective June 3, 2001

§122.215. Minor Permit Revisions.

Minor permit revisions include any change that satisfies the following:

(1) does not violate any applicable requirement;

(2) does not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(3) does not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(4) does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(A) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of the FCAA, Title I; and

(B) an alternative emissions limit approved pursuant to regulations promulgated under the FCAA, §112(i)(5); and

(5) is not a modification under any provision of FCAA, Title I.

Adopted May 9, 2001

Effective June 3, 2001

§122.216. Applications for Minor Permit Revisions.

An application for a minor permit revision must include, at a minimum, the following:

- (1) a description of each change;
- (2) a description of the emission units affected;
- (3) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions) that codify the new applicable requirements;
- (4) a statement that the change qualifies for a minor permit revision;
- (5) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official); and
- (6) the emissions resulting from the change.

Adopted May 9, 2001

Effective June 3, 2001

§122.217. Procedures for Minor Permit Revisions.

(a) If the following requirements are met, changes at a site requiring a minor permit revision may be operated before issuance of the revision:

- (1) the permit holder complies with the following:

- (A) all applicable requirements governing the change;
 - (B) all state-only requirements governing the change; and
 - (C) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions) governing the change;
- (2) the permit holder submits to the executive director an application containing the information required in §122.216 of this title (relating to Applications for Minor Permit Revisions) before the change is operated; and
- (3) the permit holder maintains the information required by §122.216 of this title with the permit until the permit is revised.
- (b) In every case, the applicable requirements are always enforceable.
- (c) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal.
- (d) The executive director shall notify the EPA administrator and affected state(s) of the requested permit modification within five working days of receipt of a complete minor revision permit application.
- (e) A minor permit revision may be issued by the executive director provided the following:
- (1) the changes meet the criteria for a minor permit revision;
 - (2) the executive director has received a complete application;
 - (3) the conditions of the permit provide for compliance with the requirements of this chapter; and
 - (4) the requirements of this chapter for public announcement, affected state review, and EPA review have been satisfied.
- (f) The executive director shall take final action on the permit revision application no later than 90 days after receipt of an application, or 15 days after the end of the EPA review period, whichever is later.

§122.218. Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits, and Emissions Trading.

Notwithstanding §122.215 of this title (relating to Minor Permit Revisions), minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit revision procedures are explicitly provided for in the Texas state implementation plan or in applicable requirements promulgated by the EPA.

Adopted May 9, 2001

Effective June 3, 2001

§122.219. Significant Permit Revisions.

(a) Significant revision procedures shall be used for changes to the permit at a site that do not qualify as administrative or minor revisions.

(b) At a minimum, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered a significant permit revision.

(c) A change to a permit shield or a new permit shield is a significant revision.

Adopted May 9, 2001

Effective June 3, 2001

§122.220. Applications for Significant Permit Revisions.

An application must include, at a minimum, the following:

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

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

Adopted October 15, 1997

Effective November 10, 1997

§122.221. Procedures for Significant Permit Revisions.

(a) Changes requiring a significant permit revision shall not be operated before the permit is revised. For those changes, the permit holder shall do the following:

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

(2) submit to the executive director a request for a permit revision including the information required in §122.220 of this title (relating to Applications for Significant Permit Revisions).

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

(1) the permit holder has submitted a complete application;

(2) the conditions of the permit provide for compliance with the requirements of this chapter;

(3) the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied; and

(4) the permit contains compliance assurance monitoring for large pollutant-specific emission units, as defined in §122.10 of this title (relating to General Definitions), submitted in the revision application.

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

Adopted November 20, 2002

Effective December 11, 2002

§122.222. Operational Flexibility and Off-Permit Changes.

(a) An owner or operator may make changes at a permitted site without applying for or obtaining a permit revision provided that the following conditions are met:

(1) the changes are not modifications under FCAA, Title I;

(2) the changes are allowed under FCAA, §502(b)(10);

(3) the changes do not exceed the emissions limitation under the permit; and

(4) the owner or operator has obtained any applicable preconstruction authorization. Such preconstruction authorization cannot be a modification under FCAA, Title I.

(b) When an owner or operator removes a unit from the site, the unit and its applicable requirements and any other associated permit terms and conditions may be removed from the permit

when this removal does not result in changes to applicable requirements or permit terms and conditions for remaining units.

(c) The owner or operator shall provide the EPA and the executive director written notification for changes to the permit which qualify under this section. The written notification shall be submitted to the executive director and the EPA administrator at least seven days in advance of the proposed changes, except for an emergency. Notice may be provided within two working days of implementation of operational flexibility changes due to an emergency. Such notice shall also include an explanation of the emergency.

(d) For those cases where the permit does not already provide for emissions trading, an owner or operator may trade increases and decreases in emissions without applying for or obtaining a permit revision and based on the seven-day notice prescribed in subsection (c) of this section.

(e) Upon request, the executive director shall issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements.

(f) Written notification shall include the following information:

(1) for changes specified in subsections (a) and (b) of this section, a description of the change, the date on which the change is proposed to occur, the emissions resulting from the change, and any permit term or condition that is no longer applicable as a result of the change; or

(2) for changes specified in subsection (d) of this section, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the SIP, the pollutants emitted subject to the emissions trade, and reference to the provisions in the SIP with which the source will comply and that provide for the emissions trade; or

(3) for changes specified in subsection (e) of this section, when the proposed change will occur, a description of the changes in emissions that will result, and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and

(4) certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), that the proposed change meets the criteria for the use of operational flexibility under this section and a request that such procedures be used.

(g) The owner or operator, the executive director, and the EPA shall attach each such notice to their copy of the relevant permit.

(h) Changes that qualify under this section are not subject to the public notice, affected state review, notice and comment hearing, EPA review, and public petition requirements for permit revisions.

(i) Upon satisfying the requirements of this section, the owner or operator may begin operating the change at the expiration of the time period provided for in subsection (c) of this section.

(j) Except as provided in subsection (e) of this section, the permit shield described in §122.148 of this title (relating to Permit Shield) shall not apply to any change made pursuant to this section.

(k) An off-permit change may be made at a site, when the following conditions are met:

(1) The change shall meet all applicable requirements and shall not violate any existing permit term or condition;

(2) The permittee shall provide written notice to the executive director and the EPA administrator concurrent with each such change, except for changes that qualify as insignificant activities. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change;

(3) The change shall not qualify for the permit shield under §122.148; and

(4) The permittee shall keep a record of any off-permit changes with the permit.

DIVISION 3: PERMIT REOPENINGS

§122.231

Effective June 3, 2001

§122.231. Permit Reopenings.

(a) The executive director shall reopen a permit for cause. Cause shall be limited to one or more of the following:

(1) the promulgation or adoption of a new applicable requirement affecting emission units at the site, unless one of the following applies:

(A) the new requirement is incorporated into a permit which addresses the emission unit subject to the new requirement;

(B) the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to §§122.133 of this title (relating to Timely Application) or §122.134 of this title (relating to Complete Application); or

(C) the remaining permit term is less than three years;

(2) the executive director or the EPA administrator determines that the permit contains a material mistake;

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

(4) the executive director or the EPA administrator determines that the permit must be revised or terminated to assure compliance with the applicable requirements;

(5) a phased application schedule in the permit requires a reopening; or

(6) additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the EPA administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(b) The following procedures shall apply if EPA initiates a reopening by notifying the executive director in writing that cause, as defined in this section, exists to terminate or revise a permit.

(1) The executive director shall submit a proposed determination regarding the reopening to the EPA no later than 90 days after receipt of the notification. If the EPA extends the

period for response by the executive director, the executive director shall submit the proposed determination no later than 180 days after receipt of the notification.

(2) Upon receipt of the proposed determination, the EPA shall have 90 days to object, in writing, to the proposed determination.

(3) The executive director shall have 90 days from receipt of an EPA objection to resolve the objection and take action on the reopening.

(c) The executive director shall institute proceedings to reopen permits or authorizations to operate to incorporate requirements under Chapter 106, Subchapter A of this title (relating to General Requirements) or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or any term or condition of any preconstruction permit.

(1) Before December 1, 2001, the executive director will institute proceedings to reopen permits no later than renewal of the permit. Such reopenings need not follow full permit issuance procedures nor the notice requirement of subsection (e) of this section but may instead follow the permit revision procedure in effect under the State's approved Part 70 program for incorporation of minor NSR permits.

(2) Before December 1, 2001, the executive director will institute proceedings to reopen authorizations to operate.

(3) Requirements under Chapter 106, Subchapter A, or Chapter 116 of this title or any term or condition of any preconstruction permit will be incorporated no later than permit renewal for applications for which the executive director has authorized initiation of public notice by the effective date of this section.

(d) Except as provided in subsection (c) of this section, reopenings shall be made as soon as possible. Reopenings shall be completed and the permit issued by the executive director not later than 18 months after promulgation or adoption of the applicable requirement.

(e) The executive director shall provide a 30-day notice of intent to reopen, unless a shorter notice is authorized by the executive director due to an emergency.

(f) Reopenings shall be subject to the requirements of §122.201 of this title (relating to Initial Permit Issuance). These procedures shall affect only those parts of the permit for which cause to reopen exists.

(g) The permit holder shall provide any information requested by the executive director to complete the reopening.

DIVISION 4: PERMIT RENEWALS

§122.241, §122.243

Effective November 10, 1997

§122.241. Permit Renewals.

- (a) The permit shall expire no later than five years from initial issuance or renewal.
- (b) The permit holder shall submit a timely and complete application under §122.133 and §122.134 of this title (relating to Timely Application and Complete Application) for renewal.
- (c) The executive director shall provide written notice to the permit holder that the permit is scheduled for review.
 - (1) The notice will be provided by mail no later than 12 months before the expiration of the permit.
 - (2) The notice shall specify the procedure for submitting an application.
 - (3) Failure to receive notice does not affect the expiration date of the permit or the requirement to submit a timely and complete application.
- (d) Any information under the phased application process, that is not included in the permit by the first permit renewal, shall be submitted to the executive director with the renewal application.
- (e) The permit, when renewed, shall contain specific terms and conditions for each emission unit consistent with §122.142 of this title (relating to Permit Content Requirements).
- (f) After the renewal application is submitted and before the permit is renewed, the permit holder may operate the changes at a site in accordance with this subchapter provided that the renewal application is updated to include any provisional terms and conditions. These changes shall be codified in the permit through the renewal process.
- (g) Permit expiration terminates the owner's or operator's right to operate, unless a timely and complete renewal application has been submitted. After a timely and complete application submittal, the permit holder may continue to operate under the terms and conditions of the previously issued permit until final action is taken on the permit renewal application.

Adopted October 15, 1997

Effective November 10, 1997

§122.243. Permit Renewal Procedures.

- (a) A permit may be renewed by the executive director only if all of the following conditions have been satisfied:

(1) the executive director has received a complete permit application under §122.134 of this title (relating to Complete Application);

(2) the conditions of the permit will provide for compliance with all requirements of this chapter;

(3) the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied.

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

(c) The executive director shall make a copy of the renewal application, draft permit, and any required notices accessible to the EPA.

(d) In determining whether and under what conditions a permit should be renewed, the executive director shall consider the following:

(1) whether the draft permit provides for compliance with all applicable requirements;
and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(e) At the discretion of the executive director, during permit renewal, any permits at a site may be combined into a single permit which satisfies the requirements of this section.

(f) The executive director may not impose requirements less stringent than those of the existing permit unless a determination is made that the proposed changes will meet the requirements of this chapter.

Adopted October 15, 1997

Effective November 10, 1997