

Texas Commission on Environmental Quality

Chapter 116 - Control of Air Pollution by Permits for New Construction or Modification

**6G SUBCHAPTER G : FLEXIBLE PERMITS**

Approved by EPA July 14, 2014 (79 FR 40666) effective August 13, 2014 (TXd155).  
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6-34: Sections 116.717, 116.718, 116.720, 116.760.

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NOTE 1: The "11/16/1994" date in the "State approval/submittal date" column of the Federal Register amendatory language for Sections 717, 718, 720, and 760 (see 79 FR 40672 - 40673, July 14, 2014) is the date filed with the Secretary of State. The adopted date for these sections is October 11, 1994 as shown above.

NOTE 2: The EPA-R06-OAR-2013-0542-0006 document title is wrong. The title should be "TX153. TX038.002 Texas November 29, 1994 Submittal (T9505, 6-34): Revisions to 30 TAC Chapter 116, RE: Flexible Permits. 184 pages 6.6 MB m8c". The title is corrected in document EPA-R06-OAR-2013-0542-0034. The attached file in document EPA-R06-OAR-2013-0542-0006 is correct

6-48: Section 116.714.

As adopted by TNRCC June 17, 1998 effective July 8, 1998 (6-48).  
Regulations.gov document EPA-R06-OAR-2013-0542-0008 [TX153.08]

6-54: Sections 116.710, 116.721, 116.722.

As adopted by TNRCC August 9, 2000 effective September 4, 2000 (6-54).  
Regulations.gov document EPA-R06-OAR-2013-0542-0010 [TX153.10]

6-80: Sections 116.711, 116.715, 116.716, 116.740, 116.750, 116.765.

As adopted by TCEQ December 14, 2010 effective January 6, 2011 (6-80).  
Regulations.gov document EPA-R06-OAR-2013-0542-0003 [TX153.03]

NOTE: The "9/24/2013" date in the "State approval/submittal date" column of the Federal Register amendatory language for Sections 711, 715, 716, 750, and 765 (see 79 FR 40672 - 40673, July 14, 2014) is the date the TCEQ adopted the Texas Flexible Permit Program (which included these amended rules) to fulfill EPA's condition for EPA approval of the program. These sections were actually adopted/amended by TCEQ December 14, 2010.

Struck-out text not in SIP

Outline:

§116.710 Applicability 8/9/2000, 6-54

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§116.714 Application Review Schedule 6/17/1998, 6-48

§116.715 General and Special Conditions 9/24/2013, 6-80

§116.716 Emission Caps and Individual Emission Limitations 9/24/2013, 6-80

§116.717 Implementation Schedule for Additional Controls 11/16/1994, 6-34

§116.718 Significant Emission Increase 11/16/1994, 6-34

§116.720 Limitation on Physical and Operational Changes 11/16/1994, 6-34

§116.721 Amendments and Alterations 8/9/2000, 6-54

§116.722 Distance Limitations 8/9/2000, 6-54

§116.740 Public Notice and Comment 9/24/2013, 6-80

SIP includes 30 TAC Section 116.740(a)

§116.750 Flexible Permit Fee 9/24/2013, 6-80

§116.760 Flexible Permit Renewal 11/16/1994, 6-34

§116.765 Compliance Schedule 9/24/2013, 6-80

SIP includes 30 TAC Section 116.765(b) and (c).

\*\*end Chap 116 Subchapter G Outline\*\*EPA-R06-OAR-2013-0542\*\*TX153\*\*TXd155\*\*v1i\*\*

**SUBCHAPTER G : FLEXIBLE PERMITS**

**§§116.710, 116.715, 116.721, 116.722, 116.750**

**§116.710. Applicability.**

(a) Flexible permit. A person may obtain a flexible permit which allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Amendments and Alterations). A person may obtain a flexible permit under §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account before any actual work is begun, provided however:

(1) only one flexible permit may be issued at an account site;

(2) modifications to existing facilities covered by a flexible permit may be handled through the amendment of an existing flexible permit;

(3) permitting of a new facility may be handled through the amendment of a flexible permit; and

(4) a flexible permit may not cover sources at more than one account site.

(b) Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(d) of this title, provided however, that all facilities covered by a flexible permit

must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the emission caps or individual emission limitation prior to the transfer of the permit by the commission. After the sale of a facility, or facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing flexible permit and all rules and regulations of the commission.

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

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

~~§116.715. General and Special Conditions.~~

~~(a) Flexible permits may contain general and special conditions. The holders of flexible permits shall comply with any and all such conditions. Upon a specific finding by the executive director that an increase of a particular air contaminant could result in a significant impact on the air environment, or could cause the facility, group of facilities, or account to become subject to review under §116.150 and §116.151 and §§116.160 - 116.163 of this title (relating to Nonattainment Review or Prevention of Significant Deterioration Review) or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources~~

~~30 TAC §§116.710, 116.711, 116.715, 116.718, 116.720, 116.721, 116.730, 116.740, 116.750, 116.765~~

~~STATUTORY AUTHORITY~~

~~The amendments and new rule are adopted under Texas Water Code, §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; §5.103, concerning Rules, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and §7.101, concerning Violation, which provides that a person may not violate a statute or rule under the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.003, concerning Definitions; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §381.0511, concerning Permit Consolidation and Amendment; §382.0512, concerning Modification of Existing Facility, which restricts what the commission may consider in determining a facility modification; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0514, concerning Sampling, Monitoring, and Certification; §382.0515, concerning Application for Permit; §382.0517, concerning Determination of Administrative Completion of Application; §382.0518, concerning Preconstruction Permit, which authorizes the commission to require a permit before a facility is constructed or modified; §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing; and §382.062, concerning Application, Permit, and Inspection Fees.~~

~~This rulemaking implements THSC, §§382.002, 382.003, 382.011, 382.012, 382.051, 381.0511, 382.0512; 382.0513, 382.0514, 382.0515, 382.0517, 382.0518, 382.056 and 382.062.~~

~~§116.710. Applicability.~~

~~(a) Flexible permit. A person may obtain a flexible permit which allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Amendments and Alterations). A person may obtain a flexible permit under §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account before any actual work is begun, provided however:~~

- ~~(1) only one flexible permit may be issued for an account;~~
- ~~(2) modifications to existing facilities included in a flexible permit may be authorized by the amendment of an existing flexible permit;~~
- ~~(3) a new facility may be authorized by the amendment of a flexible permit;~~

~~(4) a flexible permit may not cover facilities at more than one account; and~~

~~(5) a flexible permit application, review, and issued permit used to authorize any facility, group of facilities, or any change to existing facilities at an account that constitutes a new major stationary source or major modification as defined by §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions), shall be completed in accordance with Subchapter B, Division 5 or 6 of this chapter (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review, respectively), including retention of established limits where there has been no subsequent modification. No person shall use this subchapter to circumvent applicable requirements of Subchapter B, Division 5 or 6 of this chapter.~~

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

~~(c) Submittal under seal of Texas licensed professional engineer. All applications for a flexible permit or flexible permit amendment shall comply with §116.110(f) of this title.~~

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

~~§116.711. Flexible Permit Application.~~

~~In order to be granted a flexible permit or flexible permit amendment, the owner or operator of the proposed facility shall submit a permit application which must include:~~

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

~~(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following:~~

~~(A) Protection of public health and welfare.~~

~~(i) The emissions from the proposed facility, group of facilities, or account as determined under §116.716 of this title (relating to Emission Caps and Individual Emission Limitations), will comply with all applicable rules of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.~~

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

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

(C) Best available control technology (BACT).

(i) All facilities authorized by the flexible permit shall utilize BACT consistent with the following:

(I) All new facilities must utilize BACT.

(II) Existing facilities must utilize BACT with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions. Control technology that is more stringent than BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of existing facilities, provided however, that the existing level of control may not be lessened for any facility from its current authorization.

(ii) For pollutants from new or modified facilities that constitute a new major stationary source or major modification as defined by §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions), control technology shall be demonstrated as required by §§116.150, 116.151, or 116.160 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas; New Major Source or Major Modification in Nonattainment Area Other Than Ozone; and Prevention of Significant Deterioration Requirements, respectively), as applicable, for each new or modified facility.

(iii) For new facilities and proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), the use of BACT shall be demonstrated for the individual facility or affected source.

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

(E) National Emission Standards for Hazardous Air Pollutants (NESHAPS). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under the FCAA, §112, as amended.

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

(G) Performance demonstration. The proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit application. The applicant may be required to submit additional engineering data after a flexible permit has been issued in order to demonstrate further that the proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit. In addition, initial compliance testing with ongoing compli-

ance determined through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing shall be required as specified in each flexible permit.

(H) Nonattainment review. If the proposed facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements concerning nonattainment review in this chapter. Prior to the application of this subchapter to a proposed facility, group of facilities, or account; or any change at an existing facility, group of facilities, or account; an analysis shall be made for the project to determine the applicability or nonapplicability of federal Nonattainment New Source Review requirements.

(I) Prevention of Significant Deterioration (PSD) review. If the proposed facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements in this chapter concerning PSD review. Prior to the application of this subchapter to a proposed facility, group of facilities, or account; or any change at an existing facility, group of facilities, or account; an analysis shall be made for the project to determine the applicability or nonapplicability of federal PSD review.

(J) Air dispersion modeling or ambient monitoring. Any permit application for a new flexible permit, or permit amendment to increase a flexible permit emission cap or individual emission limitation, shall include an air quality analysis to demonstrate that the proposed action will not interfere with attainment and maintenance of the National Ambient Air Quality Standards. Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's Air Permits Division to determine the air quality impacts from the facility, group of facilities, or account. In conducting a review of a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the proposed source is an affected source (as defined in §116.15(1) of this title), it shall comply with all applicable requirements under Subchapter E of this chapter.

(L) Mass cap and trade allocations. If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the proposed facility, group of facilities, or account must obtain allocations to operate.

(M) Application content. In addition to other requirements of this chapter, the applicant shall:

(i) identify each air contaminant for which an emission cap is desired;

(ii) identify each facility to be included in the flexible permit;

(iii) identify each source of emissions to be included in the flexible permit and for each source of emissions identify the Emission Point Number (EPN) and the air contaminants emitted;

(iv) for each emission cap, identify all associated EPNs and facilities (including description, common name, and facility identification number) and provide emission rate calculations based on the expected maximum capacity and the proposed control technology;

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

(vi) include calculations used to determine the controlled emission rates from each facility performed in accordance with TCEQ Air Permits Division guidance; and

(vii) if the flexible permit application includes facilities currently authorized by a permit issued under Subchapter B of this chapter (relating to New Source Review Permits), the applicant shall identify any terms, conditions, and representations in the Subchapter B permit or permits which will be superseded by or incorporated into the flexible permit. The applicant shall include an analysis of how the conditions and control requirements of Subchapter B permits will be carried forward in the proposed flexible permit.

(N) Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each facility and demonstrate compliance with all emission caps at expected maximum production capacity.

~~§116.715. General and Special Conditions.~~

~~(a) Flexible permits may contain general and special conditions. The holders of flexible permits shall comply with any and all such conditions.~~

~~(b) A pollutant specific emission cap or individual emission limitations shall be established for each air contaminant for all facilities authorized by the flexible permit. A flexible permit may contain more than one emission cap for a specific air contaminant. The holder of a flexible permit shall comply with all flexible permit emission cap(s) and individual emission limitations. An exceedance of the flexible permit emission cap(s) or individual emission limitations is a violation of the permit.~~

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

~~(1) Applicability. This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).~~

~~(2) Construction progress. The permit holder shall report the start of construction, construction interruptions exceeding 45 days, and completion of construction to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.~~

~~(3) Start-up notification.~~

~~(A) The permit holder shall notify the appropriate regional office of the commission and any local program having jurisdiction prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the commission may be present.~~

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

~~(C) Prior to beginning operations of the facilities authorized by the permit, the permit holder shall identify to the Air Permits Division the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).~~

~~(4) Sampling requirements.~~

~~(A) If sampling is required, the flexible permit holder shall contact the commission's appropriate regional office prior to sampling to obtain the proper data forms and procedures.~~

~~(B) All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission.~~

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

~~(5) Monitoring, Calculations, and Equivalency of Methods.~~

~~(A) Each flexible permit shall specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit.~~

~~(B) Each flexible permit shall specify methods for calculating annual and short term emissions for each pollutant for a given type of facility.~~

~~(C) The flexible permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring or calculation methods proposed as alternatives to methods indicated in the conditions of the flexible permit. Requests for alternative emission control, sampling, monitoring, or calculation methods must be submitted in writing for review and approval by the executive director prior to their use in fulfilling any requirements of the permit.~~

~~(6) Recordkeeping. The permit holder shall:~~

~~(A) maintain a copy of the flexible permit (and any permit applications associated with the flexible permit) along with information and data sufficient to demonstrate continuous compliance with the emission caps and individual emission limitations contained in the flexible permit. This information and data shall include, but is not limited to:~~

~~(i) emission cap and individual emission limitation calculations based on a 12-month rolling basis;~~

~~(ii) emission cap and individual emission limitation calculations corresponding to any short term emission limitation;~~

~~(iii) Production records and operating hours; and~~

~~(iv) Records of any air quality analysis required under §116.718(c) of this title (relating to Significant Emission Increase). These records shall be maintained for at least five years following the date that the analysis was performed.~~

~~(B) keep all required records in a file at the plant site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;~~

~~(C) make the records available at the request of personnel from the commission or any local air pollution control agency having jurisdiction over the site, which, upon request, the commission shall make any such records of compliance available to the public in a timely manner;~~

~~(D) comply with any additional recordkeeping requirements specified in special conditions in the permit; and~~

~~(E) retain information in the file for at least five years following the date the information or data is obtained.~~

~~(7) Maximum allowable emission rates. A flexible permit covers only those sources of emissions and those air contaminants~~

~~(A) identify each air contaminant for which an emission cap is desired;~~

~~(B) identify each facility to be included in the flexible permit;~~

~~(C) identify each source of emissions to be included in the flexible permit and for each source of emissions identify the Emission Point Number (EPN) and the air contaminants emitted;~~

~~(D) for each emission cap, identify all associated EPNs and provide emission rate calculations based on the expected maximum capacity and the proposed control technology;~~

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

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

#### **§116.714. Application Review Schedule.**

The flexible permit application will be reviewed by the commission in accordance with §116.114 of this title (relating to Application Review Schedule).

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

~~(vi) include calculations used to determine the controlled emission rates from each facility performed in accordance with TCEQ Air Permits Division guidance; and~~

~~(vii) if the flexible permit application includes facilities currently authorized by a permit issued under Subchapter B of this chapter (relating to New Source Review Permits), the applicant shall identify any terms, conditions, and representations in the Subchapter B permit or permits which will be superseded by or incorporated into the flexible permit. The applicant shall include an analysis of how the conditions and control requirements of Subchapter B permits will be carried forward in the proposed flexible permit.~~

~~(N) Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each facility and demonstrate compliance with all emission caps at expected maximum production capacity.~~

§116.715. *General and Special Conditions.*

(a) Flexible permits may contain general and special conditions. The holders of flexible permits shall comply with any and all such conditions.

(b) A pollutant specific emission cap or individual emission limitations shall be established for each air contaminant for all facilities authorized by the flexible permit. A flexible permit may contain more than one emission cap for a specific air contaminant. The holder of a flexible permit shall comply with all flexible permit emission cap(s) and individual emission limitations. An exceedance of the flexible permit emission cap(s) or individual emission limitations is a violation of the permit.

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

(1) Applicability. This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).

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

(3) Start-up notification.

(A) The permit holder shall notify the appropriate regional office of the commission and any local program having jurisdiction prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the commission may be present.

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

(C) Prior to beginning operations of the facilities authorized by the permit, the permit holder shall identify to the Air Permits Division the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(4) Sampling requirements.

(A) If sampling is required, the flexible permit holder shall contact the commission's appropriate regional office prior to sampling to obtain the proper data forms and procedures.

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

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

(5) Monitoring, Calculations, and Equivalency of Methods.

(A) Each flexible permit shall specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit.

(B) Each flexible permit shall specify methods for calculating annual and short term emissions for each pollutant for a given type of facility.

(C) The flexible permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring or calculation methods proposed as alternatives to methods indicated in the conditions of the flexible permit. Requests for alternative emission control, sampling, monitoring, or calculation methods must be submitted in writing for review and approval by the executive director prior to their use in fulfilling any requirements of the permit.

(6) Recordkeeping. The permit holder shall:

(A) maintain a copy of the flexible permit (and any permit applications associated with the flexible permit) along with information and data sufficient to demonstrate continuous compliance with the emission caps and individual emission limitations contained in the flexible permit. This information and data shall include, but is not limited to:

(i) emission cap and individual emission limitation calculations based on a 12-month rolling basis;

(ii) emission cap and individual emission limitation calculations corresponding to any short term emission limitation;

(iii) Production records and operating hours; and

(iv) Records of any air quality analysis required under §116.718(c) of this title (relating to Significant Emission Increase). These records shall be maintained for at least five years following the date that the analysis was performed.

(B) keep all required records in a file at the plant site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;

(C) make the records available at the request of personnel from the commission or any local air pollution control agency having jurisdiction over the site, which, upon request, the commission shall make any such records of compliance available to the public in a timely manner;

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

(E) retain information in the file for at least five years following the date the information or data is obtained.

(7) Maximum allowable emission rates. A flexible permit covers only those sources of emissions and those air contaminants



listed in the table entitled "Emission Sources, Emissions Caps and Individual Emission Limitations" in the flexible permit. Each flexible permitted facility, group of facilities, or account is limited to the emission limits and other conditions specified in the table in the flexible permit.

(8) Representations. The representations with regard to construction plans and operation procedures in an application for a permit or permit amendment are the conditions upon which a flexible permit or permit amendment is issued. Noncompliance with these representations constitutes noncompliance with the permit.

(9) Emission cap readjustment. If a schedule to install additional controls is included in the flexible permit and a facility subject to such a schedule is taken out of service, the emission cap contained in the flexible permit will be readjusted for the period the facility is out of service to a level as if no schedule had been established. Unless a special condition specifies the method of readjustment of the emission cap, a permit alteration shall be obtained.

(10) Maintenance of emission control. Each facility, group of facilities, or account authorized by the flexible permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201 and §101.211 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

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

(12) Emissions Caps. The following requirements apply to facilities with emissions subject to emission caps.

(A) Recordkeeping and reporting.

(i) A semiannual report shall be submitted to the appropriate regional office within 30 days of the end of each reporting period that contains:

(I) the identification of the owner and operator and the permit number;

(II) total annual emissions (in tons per year) based on a 12-month rolling total for each month in the reporting period;

(III) the identification of any exceedances of a short-term emission cap during the reporting period;

(IV) any data relied upon, including, but not limited to, quality assurance or quality control data, in calculating the monthly and annual emission cap pollutant emissions, and short-term emission cap pollutant emissions, to the extent necessary to demonstrate compliance;

(V) a list of any facility modified as defined in §116.12 of this title (relating to Nonattainment and Prevention of Sig-

nificant Deterioration Review Definitions) during the preceding six-month period and the documentation required by §116.718(b) of this title;

(VI) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken. For facilities that are subject to the federal operating permits program in Chapter 122 of this title (relating to Federal Operating Permits Program) this may be satisfied by referencing the flexible permit number in the semiannual report for the site submitted under §122.145 of this title (relating to Reporting Terms and Conditions);

(VII) a notification of a shutdown of any monitoring system used in determining compliance with the emission cap or any individual emission limit of the permit, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, whether the facility monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the emissions determined by method included in the permit;

(VIII) the readjusted emission cap for each pollutant if a facility subject to an emission cap is shut down for a period longer than six months as required by §116.716(f)(1) of this title (relating to Emission Caps and Individual Emission Limitations); and

(IX) a signed statement by the owner or operator certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) The reporting period for the semiannual report required under this section shall begin on the earliest date any facilities in an emission cap commence operation under the cap.

(iii) The owner or operator shall submit the results of any revalidation test or method to the executive director within three months after completion of such test or method.

(B) Absence of monitoring data. A facility owner or operator shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for a facility during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the flexible permit special conditions.

(C) Revalidation. Any site generated test data used to determine the emission rates for facilities under the cap must be revalidated through performance testing or other scientifically valid means approved by the executive director. Such testing must occur at least once every five years after the facility has been added to an emission cap. Emission rate factors shall be adjusted through a permit alteration or amendment if the revalidation test results determine that the emission rate factor has increased.

(d) Each permit with emission caps must include special conditions that satisfy the following requirements for facilities subject to those caps. The permit shall specify which of the monitoring options under paragraph (2)(A) - (E) of this subsection, shall be used to determine compliance for facilities subject to monitoring under this subsection. These requirements do not apply to facilities that are not subject to an emission cap.

(1) The monitoring system must accurately determine all emissions of the pollutants in terms of mass per unit of time. Any monitoring system authorized for use in the permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation.

(2) The monitoring system must employ one or more of the general monitoring approaches meeting the minimum requirements as described in subparagraphs (A) - (D) of this paragraph.

(A) An owner or operator using mass balance calculations to monitor pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) provide a demonstrated means of validating the published content of the pollutant that is contained in, or created by, all materials used in or at the facility;

(ii) assume that the facility emits all of the pollutant that is contained in, or created by, any raw material or fuel used in or at the facility, if it cannot otherwise be accounted for in the process; and

(iii) where the vendor of a material or fuel that is used in or at the facility publishes a range of pollutant content from such material, the owner or operator shall use the highest value of the range to calculate the pollutant emissions unless the executive director determines that there is site-specific data or a site-specific monitoring program to support another content within the range.

(B) An owner or operator using a continuous emission monitoring system (CEMS) to monitor pollutant emissions shall meet the following requirements.

(i) The CEMS must comply with applicable performance specifications found in 40 Code of Federal Regulations Part 60, Appendix B.

(ii) The CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(C) An owner or operator using a continuous parameter monitoring system (CPMS) or a predictive emission monitoring system (PEMS) to monitor pollutant emissions shall meet the following requirements:

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the pollutant emissions across the range of operation of the facility; and

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes or at another less frequent interval approved by the executive director, while the facility is operating.

(D) An owner or operator using emission factors to monitor pollutant emissions shall meet the following requirements:

(i) All emission factors must be adjusted as specified by the permit, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(ii) The facility must operate within the designated range of use for the emission factor, if applicable; and

(iii) The owner or operator of a facility which emits or has the potential to emit the pollutant in an amount equal to or greater than the prevention of significant deterioration or nonattainment as applicable, significant level for that pollutant, provided in Table I of §116.12(18)(A) of this title for nonattainment pollutants and in 40 Code of Federal Regulations §51.166(b)(23) for those subject to prevention of significant deterioration review, and which relies on an emission factor to calculate pollutant emissions, shall conduct validation testing to determine a site-specific emission factor within six months of permit issuance or start of operation of the facility, whichever is later, unless the executive director determines that testing is not required.

(E) An alternative monitoring system must meet the requirements in paragraph (1) of this subsection and be approved by the executive director.

(3) Where an owner or operator of a facility cannot demonstrate a correlation between monitored parameter(s) and the pollutant emissions rate at all operating points of the facility, the executive director shall:

(A) establish default value(s) for determining compliance with the emission cap based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) determine that operation of the facility during operating conditions when there is no correlation between monitored parameter(s) and the pollutant emissions is a violation of the emission cap.

(e) There may be additional special conditions included in a flexible permit upon issuance or amendment of the permit. Such conditions in a flexible permit may be more restrictive than the requirements of this title.

(f) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under a standard permit under Subchapter F of this chapter (relating to Standard Permits) or a permit by rule under Chapter 106 of this title. Such written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(1) result in a significant impact on the air environment, or

(2) cause the facility, group of facilities, or account to become subject to review under:

(A) Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)); or

(B) the provisions in Subchapter B, Divisions 5 and 6 of this chapter (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review, respectively).

§116.716. *Emission Caps and Individual Emission Limitations.*

(a) Emission caps. To establish a cap for a pollutant, the executive director will develop an emission cap for:

(1) all facilities at an account; or

(2) a designated group of facilities at an account.

(b) Notwithstanding subsection (a) of this section, the executive director reserves the right to exclude any facility from an emissions cap if necessary to ensure compliance with the permit or to ensure the protection of human health and the environment.

(c) Emissions will be calculated for each facility within an emission cap as follows:

(1) Determination of control technology:

(A) if the permit is used to authorize any facility, group of facilities, or account, or any change to existing facilities, that constitutes a new major stationary source or major modification for the pollutant as defined by §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions), emissions shall be based on control technology determined in accordance with Subchapter B, Division 5 or 6 of this chapter (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review, respectively) as applicable, at expected maximum capacity; or

(B) based on application of best available control technology as defined in §116.10 of this title (relating to General Definitions), at expected maximum capacity.

(2) pollutants emitted from facilities subject to lowest achievable emission rate review in accordance with Subchapter B, Division 5 of this chapter must be included in a separate emissions cap or listed as individual emission limitations.

(3) the calculated emissions for all facilities within an emission cap will be summed.

(4) a lower emission cap than that determined by paragraph (3) of this subsection may be proposed by the permit applicant if technical information is provided to demonstrate that it is feasible to operate in compliance with the proposed emission cap.

(d) Individual emission limitations. An individual emission limitation will be established in the same permit for each pollutant not included in an emission cap for facilities authorized by the flexible permit. In addition, an individual emission limitation may be established for a pollutant included in an emission cap when the expected capacity of a facility is less than the expected maximum capacity to prevent a facility from exceeding emission levels appropriate for the proposed controls.

(e) The permit shall clearly identify, by a table or other appropriate means, the facilities that are subject to an emission cap, and the facilities that are subject to individual emission limitations. A facility may be subject to both an emission cap and an individual emission limitation.

(f) Adjustment of emission cap. To ensure caps are practically enforceable, the executive director will use the following criteria and procedures for adjustment of a cap.

(1) If a facility subject to an emission cap is shut down for a period longer than six months, the emission cap shall be adjusted by lowering the emission cap by an amount that the shut down facility contributed to the original calculation of the emission cap. If a shut down facility is returned to operation, the emission cap shall be adjusted by increasing the emission cap by the amount that the facility contributed to the original calculation of the emission cap; however, the emission cap cannot be increased beyond the original emission cap amount.

(2) If a facility is to be added to the flexible permit, a permit amendment is required to establish a revised emission cap.

(3) If an existing emission cap is to be increased as a result of adding a new facility or the modification of a facility within the emission cap, an amendment application is required. In considering the application, the commission shall:

(A) Determine whether an increase in the emission cap constitutes a major modification for the pollutant as defined by §116.12 of this title. For purposes of this determination, all facilities under that cap shall be included in the evaluation; and

(B) for facilities that are not major modifications as determined by the analysis in paragraph (3)(A) of this subsection, increase the emission cap by the sum of the emissions from each of the new or modified facilities determined in accordance with subsection (c) of this section and decrease the emission cap by the sum of the previous emission cap contributions from the facilities to be modified.

(4) An emission cap will be adjusted downward for any facility, group of facilities, or account authorized by a flexible permit if that facility becomes subject to any new state or federal rule or regulation which would lower emissions or require an emission reduction. The adjustment will be made the next time the flexible permit

is amended or altered. If an amendment to a flexible permit is not required to meet the new requirement, then within 60 days of making the change, the permittee must submit a request to alter the permit and include information describing how compliance with the new requirement will be demonstrated.

(g) Each emission cap or individual emission limitation shall specify an annual emission limitation in tons per year, based on a rolling 12-month period. Each emission cap or individual emission limitation shall also specify a practically enforceable short term emission limitation.

(h) When a cap is established or adjusted, major new source review requirements as referenced in §116.711(2)(H) or (I) of this title (relating to Flexible Permit Application) must be met for the new or modified sources prior to issuance, amendment, or alteration of the permit.

~~§116.718: Significant Emission Increase.~~

~~(a) An increase in emissions from operational or physical changes at an existing facility authorized by a flexible permit is insignificant, for the purposes of minor new source review under this subchapter, if the increase does not exceed either the emission cap or individual emission limitation. This section does not apply to an increase in emissions from a new facility nor to the emission of an air contaminant not previously emitted by an existing facility.~~

~~(b) For purposes of major new source review, determination of a significant increase in emissions that does not result in an increase to the emission cap includes evaluation of the following:~~

~~(1) An increase in emissions from operational or physical changes or series of related changes that would constitute a major modification as defined by §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) must comply with Subchapter B, Division 5 or 6 of this chapter (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review, respectively).~~

~~(2) Unless a plant-wide applicability limit has been established for the pollutant under Subchapter C of this chapter (relating to Plant-wide Applicability Limits), the permit holder shall document that the change is not a major modification as defined in §116.12 of this title, and maintain the documentation required by Subchapter B, Division 1 of this chapter (relating to New Source Review Permits) concerning actual to projected actual emission increases.~~

~~(3) When determining whether a change is a major modification as defined in §116.12 of this title, the project emissions increase and the project net shall be determined as specified as defined in §116.12 of this title, regardless of how the existing facilities are authorized.~~

~~(4) For new facilities, or modified facilities under an emission cap for the pollutant where the permit holder elects to use potential to emit rather than projected actual emissions from the facility to determine the project emissions increase, the potential to emit shall be considered as the proposed emissions cap unless an alternate method is demonstrated.~~

~~(5) A separate permit limit or physical constraint may be established to limit the facility's potential to emit for facilities that are under a cap or have individual emission limits.~~

~~(6) If the project emission increase is such that a *de minimis* threshold test (netting) is required for a pollutant, the analysis shall be submitted to the commission for review and approval prior to making the change. If netting is not required, the information shall be submitted with the next permit amendment or renewal application.~~

~~section may include an Insignificant Emissions Factor which does not exceed 9.0% of the total emission cap or individual emission limitation.~~

~~(e) An emission cap will be readjusted downward for any facility covered by a flexible permit if that facility becomes subject to any new state or federal regulation which would lower emissions or require an emission reduction. The adjustment will be made at the time the flexible permit is amended or altered. If an amendment to a flexible permit is not required to meet the new regulation, then within 60 days of making the change, the permittee must submit a request to alter the permit and include information describing how compliance with the new requirement will be demonstrated.~~

**§116.717. Implementation Schedule for Additional Controls.** If a facility requires the installation of additional controls to meet an emission cap for a pollutant, the flexible permit shall specify an implementation schedule for such additional controls. The permit may also specify how the emission cap will be adjusted if such a facility is taken out of service or fails to install the additional control equipment as provided by the implementation schedule.

**§116.718. Significant Emission Increase.** An increase in emissions from operational or physical changes at an existing facility covered by a flexible permit is insignificant, for the purposes of state new source review under this subchapter, if the increase does not exceed either the emission cap or individual emission limitation. This section does not apply to an increase in emissions from a new facility nor to the emission of an air contaminant not previously emitted by an existing facility.

**§116.720. Limitation on Physical and Operational Changes.**

Neither operational nor physical changes authorized under this subchapter may result in an increase in actual emissions at facilities not covered by the flexible permit unless those affected facilities are authorized pursuant to §116.110 of this title (relating to Applicability).

~~**§116.721. Amendments and Alterations.**~~

~~(a) Flexible permit amendments. All representations with regard to construction plans and operation procedures in an application for a flexible permit, as well as any general and~~

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

~~(d) There may be additional special conditions attached to a flexible permit upon issuance or amendment of the permit. Such conditions in a flexible permit may be more restrictive than the requirements of this title.~~

#### **§116.721. Amendments and Alterations.**

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

**(b) Flexible permit alterations.**

(1) A flexible permit alteration is for any variation from a representation in a flexible permit application or a general or special provision of a flexible permit that does not require a flexible permit amendment.

(2) All flexible permit alterations which may involve a change in a general or special condition contained in the flexible permit, or affect control equipment performance must receive prior approval by the executive director. The executive director shall be notified in writing of all other flexible permit alterations within ten days of implementing the change, unless the permit provides for a different method of notification. Any flexible permit alteration request or notification shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.711 of this title, including the protection of public health and welfare. The appropriate commission regional office and any local air pollution program having jurisdiction shall be provided copies of all flexible permit alteration documents.

(3) Flexible permit alterations shall not be subject to the requirements of Best Available Control Technology identified in §116.711(3) of this title.

(c) Changes not requiring an amendment or alteration. The following changes do not require an amendment or alteration, except that an amendment is required if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions:

(1) a change in throughput; or

(2) a change in feedstock.

(d) Permit by rule under Chapter 106 of this title (relating to Permits by Rule) in lieu of permit amendment or alteration.

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

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

**§116.722. Distance Limitations.**

No flexible permit may be issued unless the distance and location restrictions found in §116.112 of this title (relating to Distance Limitations) are met.



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

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

~~Adopted July 2, 2014~~

~~Effective July 31, 2014~~

~~**§116.722. Distance Limitations.**~~

~~No flexible permit may be issued unless the distance and location restrictions found in §116.112 of this title (relating to Distance Limitations) are met.~~

~~Adopted August 9, 2000~~

~~Effective September 4, 2000~~

~~**§116.730. Compliance History.**~~

~~As part of a flexible permit review, or the review of an amendment of a flexible permit, or renewal of an existing flexible permit, the requirements of Chapter 60 of this title (relating to Compliance History) shall be applicable to the facility, group of facilities, or account being permitted, amended, or renewed.~~

~~Adopted December 14, 2010~~

~~Effective January 6, 2011~~

~~**§116.740. Public Notice and Comment.**~~

(a) Any person who applies for a flexible permit or an amendment to a flexible permit shall comply with the requirements in Chapter 39 of this title (relating to Public Notice).

~~(b) Any person who applies for an amendment to a flexible permit regarding an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the requirements in Chapter 39 of this title.~~

Adopted December 14, 2010

Effective January 6, 2011

**§116.750. Flexible Permit Fee.**

(a) Fees required. Any person who applies for a flexible permit or for an amendment to an existing flexible permit shall remit, at the time of application for such permit, a fee as set forth in subsection (b) of this section. Fees will not be charged for flexible permit alterations, changes of ownership, or changes of location of permitted facilities.

(b) Fee amounts. The fee to be remitted with a flexible permit application shall be determined as set forth in §116.141 of this title (relating to Determination of Fees).

(c) Payment of fees. All permit fees for a flexible permit shall be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality and delivered with the application for flexible permit or flexible permit amendment to the commission's Air Permits Division. Required fees must be received before the agency will begin examination of the application.

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

Adopted December 14, 2010

Effective January 6, 2011

~~**§116.760. Flexible Permit Renewal.**~~

~~Flexible permits will be renewed in accordance with Subchapter D of this chapter (relating to Permit Renewals).~~

~~Adopted November 16, 1994~~

~~Effective December 8, 1994~~

~~**§116.765. Compliance Schedule.**~~

~~(a) The compliance date is 60 days after publication in the Federal Register of the final approval by the United States Environmental Protection Agency (EPA) of all or portions of §§116.13, 116.710, 116.711, 116.714, 116.718, 116.720, 116.722, 116.740,~~

~~submitted. If the applicant withdraws the application prior to issuance of the flexible permit or flexible permit amendment, one-half of the fee will be refunded, except that the entire fee will be refunded for any such application for which a standard exemption is allowed. No fees will be refunded after a deficient application has been voided, denied, or after a flexible permit or flexible permit amendment has been issued by the agency.~~

§116.760. Flexible Permit Renewal. Flexible permits will be renewed in accordance with Subchapter D of this chapter (relating to Permit Renewals).

~~The agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.~~

~~Issued in Austin, Texas, on November 16, 1994.~~

~~(c) The permit holder shall complete an air quality analysis to demonstrate that the proposed action will not interfere with attainment and maintenance of the National Ambient Air Quality Standards if there may be an increase in emissions from operational or physical changes at any existing facility, group of facilities, or account authorized by a flexible permit and the area is not designated as nonattainment for the pollutant. If the emission increase may result in ambient concentrations greater than *de minimis* for that pollutant, the air quality analysis shall be submitted to the executive director for review and approval prior to making the change.~~

~~§116.765. Compliance Schedule.~~

~~(a) Any application for a permit or permit amendment under this subchapter submitted on or after the compliance date specified by subsection (b) of this section shall comply with the amendments to §§116.710, 116.711, 116.715 - 116.718, 116.720, 116.721, 116.730, 116.740 and 116.750 of this title (relating to Applicability, Flexible Permit Application, General and Special Conditions, Emission Caps and Individual Emission Limitations, Implementation Schedule for Additional Controls, Significant Emission Increase, Limitation on Physical and Operational Changes, Amendments and Alterations, Compliance History, Public Notice and Comment, and Flexible Permit Fee; respectively) adopted by the commission on December 14, 2010.~~

~~(b) The compliance date is 60 days after publication in the *Federal Register* of the final approval by the United States Environmental Protection Agency of these sections as revisions to the Texas State Implementation Plan.~~

~~(c) Until the compliance date specified by subsection (b) of this section, applications for flexible permits are governed by §§116.710, 116.711, 116.715 - 116.718, 116.720, 116.721, 116.730, 116.740 and 116.750 of this title, as they existed immediately before January 5, 2011, and those rules are continued in effect for that purpose. All other sections in this subchapter remain applicable to applications for flexible permits.~~

~~This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.~~

~~Filed with the Office of the Secretary of State on December 17, 2010.~~

~~TRD-201007206~~

~~Robert Martinez~~

~~Director, Environmental Law Division~~

~~Texas Commission on Environmental Quality~~

~~Effective date: January 6, 2011~~

~~Proposal publication date: July 2, 2010~~

~~For further information, please call: (512) 239-2548~~



~~CHAPTER 291. UTILITY REGULATIONS  
SUBCHAPTER H. UTILITY SUBMETERING  
AND ALLOCATION~~

~~30 TAC §291.126~~

~~The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §291.126 without changes as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8299).~~

~~BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE~~

~~In September 1987, the submetering program was transferred by the legislature from the Public Utility Commission (PUC) to the Texas Water Commission, a predecessor agency of the TCEQ. While at the PUC, the submetering program adopted rules to allow an owner to disconnect a tenant's water utility service for non-payment to conform to other PUC rules. When the submetering program was transferred, the Texas Water Commission adopted rules similar to the PUC's, including the provision allowing an owner to disconnect a tenant's water utility service for non-payment. The TCEQ's current rules still contain this provision in Chapter 291, Subchapter H, Utility Submetering and Allocation, §291.126, Discontinuation of Service.~~

~~In 1995, the 74th Legislature amended Texas Property Code, §92.008, by passing House Bill (HB) 2803. In 2009, Texas Property Code, §92.008 was amended again when the 81st Legislature passed HB 882. Currently, Texas Property Code, §92.008(b) states that a landlord may not interrupt or cause interruption of water, wastewater, gas, or electric service furnished to a tenant by the landlord as an incident of tenancy or by other agreement unless the interruption results from bona fide repairs, construction, or an emergency. Non-payment is not a reason for interruption of service under Texas Property Code, §92.008. Therefore, the commission proposes this rulemaking to ensure that the commission's rules conform with the Texas Property Code.~~

~~SECTION DISCUSSION~~

~~The commission adopts the repeal to §291.126. Section 291.126 provided that a tenant's water utility service may be disconnected if payment was not received by the due date, and the owner issues a disconnection notice after the due date at least ten days prior to a stated date of disconnection. Texas Property Code, §92.008(b), does not allow a landlord to interrupt water services furnished to a tenant by the landlord as an incident of tenancy or by other agreement unless the interruption results from bona fide repairs, construction, or emergency. Until now, the commission held that its rule did not conflict with the Texas Property Code. However, recent legal analysis by the commission has resulted in the determination that the rule is not consistent with the statute. Specifically, since Texas Property Code, §92.008, only allows for the disconnection of water services that are provided to a tenant by the landlord as an incident of tenancy or by other agreement for the three previous reasons listed, the commission's rule that allows for disconnection due to non-payment was in conflict with this section. To ensure that the commission's rules and the Texas Property Code conform, the commission adopts this repeal.~~

~~FINAL REGULATORY IMPACT ANALYSIS DETERMINATION~~

~~The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended 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.~~

~~This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule repeal to protect the environment or reduce risks to hu-~~