

## Texas Commission on Environmental Quality

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

#### SUBCHAPTER G: FLEXIBLE PERMITS

**SIP effective November 13, 2020 (TXd227).**

As approved by EPA October 14, 2020 (85 FR 64966), Regulations.gov docket EPA-R06-OAR-2020-0159 [TX218].

#### List of Sections:

The date after each section title is the TCEQ adoption date.

§116.710 Applicability 7/15/2020, 6-91, TXd227

§116.711 Flexible Permit Application 7/2/2014, 6-87, TXd172

SIP includes only 116.711(1), (2)(A), (B) and (C)(i) and (ii),  
(D)- (J), and (L) - (N).

§116.714 Application Review Schedule 6/17/1998, 6-48, TXd155

§116.715 General and Special Conditions 7/2/2014, 6-87, TXd172

SIP includes only 116.715(a) - (e) and (f)(1) and (2)(B).

§116.716 Emission Caps and Individual Emission Limitations 7/2/2014, 6-87, TXd172

§116.717 Implementation Schedule for Additional Controls 7/2/2014, 6-87, TXd172

§116.718 Significant Emission Increase 7/2/2014, 6-87, TXd172

§116.720 Limitation on Physical and Operational Changes 12/14/2010, 6-80, TXd172

§116.721 Amendments and Alterations 7/15/2020, 6-91, TXd227

§116.722 Distance Limitations 8/9/2000, 6-54, TXd155

§116.740 Public Notice and Comment 12/14/2010, 6-80, TXd172

SIP includes only 116.740(a).

§116.750 Flexible Permit Fee 12/14/2010, 6-80, TXd172

§116.760 Flexible Permit Renewal 10/11/1994, 6-34, TXd155

§116.765 Compliance Schedule 7/2/2014, 6-87, TXd172

**\*\*end TX Chap 116 Subchapter G List of Sections\*\*SIP eff November 13, 2020\*\*ay3\*\***

## **SUBCHAPTER G: FLEXIBLE PERMITS**

**As approved by EPA October 14, 2020 (85 FR 64966) SIP effective November 13, 2020 (TXd227), Regulations.gov docket EPA-R06-OAR-2020-0159 [TX218].**

### **EPA Approval Documentation:**

**Dates in brackets are dates in the “State approval/submittal date” column in the Federal Register amendatory language and codified in the U.S. Code of Federal Regulations (CFR) in table 40 CFR Part 52.2270(c).**

#### **6-34: Section 116.760.**

**It is unclear if new Subchapter G, Flexible Permits, including Section 116.760, was adopted by TNRCC October 19, 1994, as indicated in the November 29, 1994 cover letter or adopted by TNRCC [November 16, 1994], as indicated in the current TCEQ Chapter 116 history and filed with the Texas Secretary of State [November 16, 1994], effective December 8, 1994 (6-34) and submitted to EPA November 29, 1994.**

**This compilation of Subchapter G, Flexible Permits, assumes that Section 116.760 was adopted by TNRCC [November 16, 1994] effective December 8, 1994. Section 116.760 was approved by EPA July 14, 2014 (79 FR 40666) effective August 13, 2014 (TXd155). This submittal is in Regulations.gov document EPA-R06-OAR-2013-0542-0006 [TX153.06].**

**NOTE: The EPA-R06-OAR-2013-0542-0006 [TX153.06] document title is wrong. The title should be “TX153.06 Texas November 29, 1994 Submittal (T9505, 6-34): Revisions to 30 TAC Chapter 116, RE: Flexible Permits. 184 pages 6.6 MB m8c”. The file attached to document EPA-R06-OAR-2013-0542-0006 is the correct file. The document title is corrected in document EPA-R06-OAR-2013-0542-0034 [also TX153.06]. This submittal is also in Regulations.gov document EPA-R06-OAR-2005-TX-0032-0002 [TX038.02].**

#### **6-48: Section 116.714.**

**As adopted by TNRCC [June 17, 1998] effective July 8, 1998 (6-48).**

**Submitted to EPA July 22, 1998 (TX-104).**

**Approved by EPA July 14, 2014 (79 FR 40666) effective August 13, 2014 (TXd155), Regulations.gov document EPA-R06-OAR-2013-0542-0008 [TX153.08]**

**This submittal also in Regulations.gov documents EPA-R06-OAR-2005-TX-0025-0003 [TX031.003] and EPA-R06-OAR-2005-TX-0032-0004 [TX038.004].**

**EPA Approval Documentation continue next page**

## **EPA Approval Documentation (Continue)**

### **6-54: Section 116.722.**

**As adopted by TNRCC [August 9, 2000] effective September 4, 2000 (6-54).**

**Submitted to EPA September 11, 2000 (TX-131).**

**Approved by EPA July 14, 2014 (79 FR 40666) effective August 13, 2014 (TXd155).**

**Regulations.gov document EPA-R06-OAR-2013-0542-0010 [TX153.10]**

**This submittal is also in Regulations.gov documents EPA-R06-OAR-2005-TX-0012-0009 [TX018.07]; EPA-R06-OAR-2005-TX-0025-0004 [TX031.004]; EPA-R06-OAR-2005-TX-0032-0006 [TX038.006]; and EPA-R06-OAR-2011-0528-0005 [TX123.05].**

### **6-80: Sections 116.720, 116.740(a), 116.750.**

**As adopted by TCEQ December 14, 2010 effective January 6, 2011 (6-80).**

**Initially submitted to EPA October 21, 2013 (TX-306)**

**Regulations.gov document EPA-R06-OAR-2013-0542-0003 [TX153.03].**

**Resubmitted to EPA in cover letter for 6-87 dated [July 31, 2014],**

**Regulations.gov document EPA-R06-OAR-2013-0542-0045 [TX153.44]**

**Approved by EPA July 20, 2015 (80 FR 42727) effective August 19, 2015 (TXd172).**

**NOTE: the text of the rules adopted by TCEQ December 14, 2010 and approved by EPA July 20, 2014 are in Regulations.gov document EPA-R06-OAR-2013-0542-0003 [TX153.03].**

**EPA Approval Documentation continue next page**

## **EPA Approval Documentation (Continue)**

**6-87 Sections 116.13; 116.711(1), (2)(A), (B) and (C)(i) and (ii), (D)-(J), and (L) - (N); 116.715(a)- (e) and (f)(1) and (2)(B); 116.716; 116.717; 116.718; and 116.765. As adopted by TCEQ July 2, 2014 effective July 31, 2014 (6-87) and submitted to EPA [July 31, 2014] (TX-365),**

**Regulations.gov document EPA-R06-OAR-2013-0542-0045 [TX153.44].**

**Approved by EPA July 20, 2015 (80 FR 42727) effective August 19, 2015 (TXd172).**

**ERROR IN FEDERAL REGISTER AMENDATORY LANGUAGE ON PAGE 80 FR 42730:**

**The entry for Section 116.765 should NOT include “SIP includes 30 TAC Section 116.765(b) and (c)” in the Explanation column. EPA approved the entire Section 116.765 as adopted by TCEQ July 2, 2014 (6-87) and submitted to EPA [July 31, 2014]. In the revision, paragraph (a) was deleted [shown in brackets], paragraph (b) was revised and redesignated paragraph (a) and paragraph (c) was redesignated paragraph (b). There is no paragraph (c) in Section 116.765 as adopted by TCEQ July 2, 2014. See Regulations.gov document EPA-R06-OAR-2013-0542-0045 [TX153.44].**

**6-91 Sections 116.710 and 116.721.**

**As adopted by TCEQ [July 15, 2020] effective August 6, 2020 (6-91),**

**Submitted to EPA August 21, 2020 (TX-423),**

**Regulations.gov document EPA-R06-OAR-2020-0159-0010 [TX218.10].**

**Approved by EPA October 14, 2020 (85 FR 64966) SIP effective November 13, 2020 (TXd227), Regulations.gov docket EPA-R06-OAR-2020-0159 [TX218].**

**Explanation: None for either section.**

**\*\*end Texas Chapter 116 Subchapter G Documentation\*\*TXd227\*\*axx\*\***

**Struck-out text not in SIP**

Texas Commission on Environmental Quality  
Chapter 116 - Control of Air Pollution by Permits for New Construction or Modification

SUBCHAPTER G: FLEXIBLE PERMITS

**§116.710. Applicability**, SIP effective November 13, 2020

As adopted by TCEQ July 15, 2020 effective August 6, 2020 (6-91),

Submitted to EPA August 21, 2020 (TX-423),

Regulations.gov document EPA-R06-OAR-2020-0159-0010 [TX218.10], adobe page 92.

Approved by EPA October 14, 2020 (85 FR 64966), SIP effective November 13, 2020 (TXd227),

Regulations.gov docket EPA-R06-OAR-2020-0159 [TX218].

Explanation: none.

(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 Changes to Facilities). 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, except as provided in §116.118 of this title (relating to Construction While Permit Amendment Application Pending), 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 an existing flexible permit; and
- (4) a flexible permit may not cover facilities at more than one account.

(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.

**\*\*end §116.710\*\*SIP effective 11-13-2020\*\*TXd227\*\*axt\*\***

~~is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (b) of this section.~~

~~Adopted July 2, 2014~~

~~Effective July 31, 2014~~

**§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 Texas Clean Air Act, 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 Commission on Environmental Quality 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 United States Environmental Protection Agency under authority granted under the Federal Clean Air Act, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAPS). The emissions from each facility subject to 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 Part 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 compliance 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.

(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.

(J) Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling 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; and

(vi) 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.

Adopted July 2, 2014

Effective July 31, 2014

**§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).

Adopted June 17, 1998

Effective July 8, 1998

**§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; and

(iii) Production records and operating hours.

(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 two 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.

(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.

(d) Each permit with emission caps must include special conditions that satisfy the following requirements for facilities subject to those caps. 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. These requirements do not apply to facilities that are not subject to an 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).

Adopted July 2, 2014

Effective July 31, 2014

**§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. 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 decreasing 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. 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.

(3) An emission cap will be decreased 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.

Adopted July 2, 2014

Effective July 31, 2014

**§116.717. Implementation Schedule for Additional Controls.**

If a facility requires the installation of additional control or 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.

Adopted July 2, 2014

Effective July 31, 2014

**§116.718. Significant Emission Increase.**

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 or to the emission of an air contaminant not previously emitted by an existing facility.

Adopted July 2, 2014

Effective July 31, 2014

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

Operational or physical changes authorized under this subchapter may not result in an increase in actual emissions at facilities not authorized by the flexible permit unless those affected facilities are authorized pursuant to §116.110 of this title (relating to Applicability).

Adopted December 14, 2010

Effective January 6, 2011

~~**§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 or flexible permit amendment, as well as any general and special conditions, 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~~



**§116.721. Amendments and Alterations.** SIP effective November 13, 2020

As adopted by TCEQ July 15, 2020 effective August 6, 2020 (6-91),

Submitted to EPA August 21, 2020 (TX-423),

Regulations.gov document EPA-R06-OAR-2020-0159-0010 [TX218.10], adobe page 94.

Approved by EPA October 14, 2020 (85 FR 64966), SIP effective November 13, 2020 (TXd227),

Regulations.gov docket EPA-R06-OAR-2020-0159 [TX218].

Explanation: none.

(a) Flexible permit amendments. All representations with regard to construction plans and operation procedures in an application for a flexible permit or flexible permit amendment, as well as any general and special conditions, become conditions upon which the subsequent flexible permit is issued. Except as provided in §116.118 of this title (relating to Construction While Permit Amendment Application Pending), 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 or the character of the emissions, will relax emission controls, 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(2) 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 or the character of the emissions, will relax emission controls, will result in a significant increase in emissions as determined under §116.718 of this title (relating to Significant Emission Increase), or conflicts with an existing permit condition:

(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) Regardless of subsection (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.

\*\*end §110.721\*\*SIP effective 11-13-2020\*\*TXd227\*\*axt\*\*

~~(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,

116.750, 116.760, and 116.765 of this title (relating to Flexible Permit Definitions; Applicability; Flexible Permit Application; Application Review Schedule; 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; Distance Limitations; Public Notice and Comment; Flexible Permit Fee; Flexible Permit Renewal; and Compliance Schedule) submitted to the EPA as revisions to the Texas State Implementation Plan.

(b) Until the compliance date specified by subsection (a) 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.

Adopted July 2, 2014

Effective July 31, 2014