

authority at 40 CFR 70.10(b). The NOD was based upon EPA's finding that several State requirements for the title V operating permits program did not meet the minimum Federal requirements of 40 CFR part 70 and the Act. Texas adopted rule revisions to address the deficiencies identified in the January 7, 2002, NOD. Texas submitted parts of these rule changes as revisions to its SIP on December 9, 2002. This includes revisions to Section 106.6—Registration of Emissions, Section 116.115—General and Special Conditions, Section 116.611—Registration to Use a Standard Permit, and Section 122.122—Potential to Emit.

The December 9, 2002, submittal also includes revisions to Texas' title V Operating Permits Program. Elsewhere in today's **Federal Register**, we are proposing to approve these and other regulations which revise Texas' Operating Permits Program.

The December 9, 2002, SIP submittal included revisions to Texas' regulations for PBR and Texas' regulations for Standard Permits. In order to approve the revised regulations which affect the PBR and Standard Permits, EPA must approve earlier SIP submittals which include the adoption of Texas' programs for PBR and Standard Permits. Accordingly, we are also proposing to approve rules submitted by Texas under Chapter 106—Permits by Rule; Chapter 116, Subchapter F—Standard Permits; Section 116.14—Standard Permit Definitions in Chapter 116, Subchapter A—Definitions, and Sections 116.110 and 116.116 in Subchapter B—New Source Review Permits. Furthermore, the approval of the submitted provisions of Chapter 106 would replace the current SIP-approved Section 116.6—Exemptions. Accordingly, we are proposing to approve removal of Section 116.6 from the SIP.

In today's action, consistent with the following discussion, we are proposing to approve these revisions to Chapters 106, 116, and 122 as part of the Texas SIP.

VI. Proposed Action Concerning the Notice of Deficiency (NOD) Issues

A. What Were the Deficiencies Which Require a SIP Revision?

Many stationary source requirements of the Act apply only to major sources, which are those sources with the potential to emit (PTE) an air pollutant exceeds a threshold emissions level specified in the Act. However, such sources may legally avoid program requirements by taking Federally-enforceable permit conditions which limit its PTE to a level below the

applicable major source threshold. Those permit conditions, if violated, are subject to enforcement by EPA, the State or local agency, or by citizens. Federal enforceability ensures the conditions placed on emissions to limit a source's PTE are enforceable as both a legal and practical matter.

Texas has adopted regulations which enable a source to register and certify that its PTE is below that applicable major source threshold. These certified registrations contain a description of how the source will limit its PTE below the major source threshold and include appropriate operation and production limitations (106 and 116 do not require this), appropriate monitoring and recordkeeping which demonstrates compliance with the operation and production limits which the source is certifying to meet. Texas provides for such registration in Sections 106.6—Registration of Emissions, 116.611—Registration to Use a Standard Permit, and 122.122—PTE.

In the NOD, we informed Texas that Section 122.122 was not practicably enforceable because the regulation allowed a facility to keep all documentation of its PTE limitation on site without providing any notification to the State or EPA. Therefore, neither the public, TCEQ, nor EPA could determine the PTE limitation without going to the site. A facility could change its PTE limit several times without the public or TCEQ knowing about the change. Therefore, these limitations were not practically enforceable, and TCEQ has revised this regulation to make it practically enforceable. The NOD required that the revised regulation be approved into the SIP before it and the registrations are Federally enforceable. See 67 FR 735.

B. How Did Texas Address These Deficiencies?

To address this deficiency, TCEQ amended Section 122.122 to require certified registrations of emissions establishing a Federally-enforceable emission limit to be submitted to the Commission. In addition, the Commission submitted the amended Section 122.122 to EPA as a revision to the Texas SIP. Section 122.122 states that all representations with regard to emissions, production or operational limits, monitoring, and reporting shall become conditions upon which the stationary source shall operate and shall include documentation of the basis of emission rates (Section 122.122(b)-(c)).

The Commission also amended Chapter 106 (Section 106.6) and Chapter

116 (Sections 116.115¹ and 116.611) because they also contain language relating to documentation requirements for establishing Federally-enforceable PTE limits for PBR and for standard permits. These changes were also submitted to EPA as a SIP revision. These rules state that all representations with regard to construction plans, operating procedures, and maximum emissions rates in any certified registration under this section become conditions upon which the facility permitted by rule or a standard permit shall be constructed and operated and that registrations must include documentation of the basis of emission rates listed on the registration. Registrations must be submitted on the required form. See Sections 106.6(c)-(d) and 116.611(a) and (c).

C. Do the Changes Correct the Deficiencies?

The TCEQ has revised Chapters 106, 116, and 122 to require registrations to be submitted to the Executive Director, to the appropriate Commission regional office, and all local air pollution control agencies, and a copy to be maintained on-site of the facility. The rule therefore satisfies the legal requirement for practical enforceability which was cited in the NOD. Accordingly, we are proposing to approve the Sections 106.6, 116.611, and 122.122 and the amendments to Section 116.115 as revisions to the Texas SIP and to find that the revisions to Section 122.122 satisfy Texas' requirement to correct the identified program deficiency identified in the January 7, 2001, NOD.

VII. Proposal To Approve Chapter 106—Permits by Rule

A. What Are We Proposing To Approve?

We propose to approve provisions of Subchapter A (General Requirements) under Chapter 106 (PBR) which Texas submitted July 25, 2002, and revisions submitted December 9, 2002. This includes the following Sections: Section 106.1—Purpose, Section 106.2—Applicability, Section 106.4—Requirements for Permitting by Rule, Section 106.5—Public Notice, Section 106.6—Registration of Emissions, Section 106.8—Recordkeeping, and Section 106.13—References to Standard Exemptions.

¹ Texas revised Section 116.115 and paragraph (b)(2)(F)(vi) which provides that persons certifying and registering a Federally enforceable emission limitation under Section 116.611 must retain records demonstrating compliance with the registrations for at least five years. We discuss this change to Section 116.115 in section VIII.B.2 of this preamble.