

B. What Is the History of PBR and Chapter 106?

Prior to 1993, Standard Exemptions were addressed in Section 116.6 which we approved August 13, 1982 (47 FR 35193). In a SIP submittal dated August 31, 1993, Texas recodified the provisions for Standard Exemptions into Subchapter C of Chapter 116. In 1996, Texas subsequently recodified its provisions for Standard Exemptions into Chapter 106. In 2000, Texas redesignated the Standard Exemptions to PBR.

On July 25, 2002, Texas submitted Subchapter A which includes Sections 106.1, 106.2, 106.4, 106.5, 106.6, 106.8, and 106.13. On December 9, 2002, Texas submitted revisions to Section 106.6 which address procedures by which registrations of emissions effectively limit a source's PTE. Because these Sections replace Subchapter C of Section 116, as submitted August 31, 1993, there is no need for EPA to act on Subchapter C of Section 116.

C. What Is a PBR?

A PBR is a permit which is adopted under Chapter 106. Chapter 106 provides an alternative process for approving the construction of new and modified facilities or changes within facilities which TCEQ has determined will not make a significant contribution of air contaminants to the atmosphere. These provisions provide a streamlined mechanism for approving the construction of certain small sources which would otherwise be required to apply for and receive a permit before commencing construction or modification.

A PBR is available only to sources which belong in categories for which TCEQ has adopted a PBR in Chapter 106. A PBR is available only to a facility that is authorized to emit no more than 250 tons per year (tpy) of CO or NO_x; or 25 tpy of volatile organic compounds (VOC), SO₂, or inhalable PM₁₀; or 25 tpy of any other air contaminant, except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen (Section 106.4(a)(1)). A PBR is not available to a facility or group of facilities which undergo a change which constitutes a new major source or major modification under title I of the Act, Part C (Prevention of Significant Deterioration of Air Quality) or part D (Nonattainment review) (Section 106.(a)(2)-(3)). Such major source or major modification must comply with the applicable permitting requirements under Chapter 116, Subchapter B, which meet the new source review requirements of title I, part C or part D

of the Act. A facility which qualifies for a PBR must also comply with all applicable provisions of section 111 of the Act (new source performance standards) and section 112 of the Act (Hazardous Air Pollutants) (Section 106.4(a)(6)). Furthermore, a facility which qualifies for a PBR must comply with all rules and regulations of TCEQ (Section 106.4(c)).

D. Are Texas' PBR Approvable?

The PBR are approvable as meeting the provisions of 40 CFR Subpart I—Review of New Sources and Modifications (Subpart I).² Section 106.1 provides that only certain types of facilities or changes within facilities which do not make a significant contribution of air contaminants to the atmosphere are eligible for a PBR. This satisfies the requirements of 40 CFR 51.160(a) which provides that the SIP must include procedures that enable the permitting authority to determine whether the construction or modification will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a national ambient air quality standard.

Section 106.4 further provides additional requirements that a facility must meet to qualify for a PBR. Such requirements include:

- Limiting PBR only to facilities which are authorized to emit no more than 250 tpy of CO or NO_x; or 25 tpy of VOCs, SO₂, or inhalable PM₁₀; or 25 tpy of any other air contaminant, except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen. This meets 40 CFR 51.160(e), which provides that the SIP must identify the types and sizes of facilities which will be subject to review.

- Any facility or group of facilities which constitutes a new major source of major modification under Part C or D of title I of the Act must be permitted under regulations for Nonattainment Review or Prevention of Significant Deterioration of Air Quality. Such sources are not eligible for a PBR. This meets 40 CFR 51.165 (Permit requirements) and 51.166 (Prevention of significant deterioration of air quality).

- Sources qualifying for a PBR must meet all applicable requirements under section 111 of the Act (new source performance standards) and section 112 of the Act (hazardous air pollutants), and must comply with all rules of TCEQ. This satisfies the requirements of

40 CFR 51.160(d) which require that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

- Subchapter A includes all the administrative requirements which support the issuance and enforcement of PBR. This includes Registration of Emissions which limit a source's PTE (Section 106.6), and Recordkeeping, which requires each source subject to a PBR to maintain records sufficient to demonstrate compliance with all conditions of the applicable PBR. These provisions satisfy the requirements in 40 CFR 51.163, which requires the plan to contain the administrative procedures that will be followed in making the determination under 40 CFR 51.160(a). It also meets the requirements of 40 CFR 51.211 which requires the owner or operator to maintain records and to periodically report to the State the nature and amounts of emissions and information necessary to determine whether a source is in compliance.

- All PBR must be adopted or revised through rulemaking to incorporate the PBR into the applicable Subchapters under Chapter 106. Such new or revised PBR must undergo public notice and a 30-day comment period, and TCEQ must address all comments received from the public before finalizing its action to issue or revise a PBR. This meets the requirements of 40 CFR 51.161, which requires the permitting authority to provide for opportunity for public comment on the information submitted and the State's analysis of the effect on construction or modification on ambient air quality.

The TSD contains further information on how Subchapter A meets the requirements of Subpart I.

E. Why Are We Only Approving Subchapter A of Chapter 106?

Texas submitted Subchapter A because that Subchapter contains the process by which TCEQ will issue or modify PBR. Subpart A contains the provisions which apply to all PBR and which ensure that individual PBR meet the requirements of subpart I. The individual PBR are adopted in Subchapters B through X, of Chapter 106.³ In 1996, Texas codified its existing Standard Exemptions into Subchapters B through X and redesignated them to PBR in 2000. Because these existing Standard Exemptions were adopted under Section 116.6, which is currently SIP-approved, they meet the

² Subpart I includes the provisions that a SIP must include to address the construction of new sources and the modification of existing sources. Subpart I includes Sections 51.160–51.166.

³ Subchapters B through X of Chapter 106 were not submitted to EPA approval as SIP revisions.