

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 removing section 116.6 from the SIP.

On July 9, 2003 (68 FR 40865), we proposed to approve into the Texas SIP the revisions to Chapter 106, Chapter 116, and Chapter 122, as described above. In response to our proposal, we received no comments.

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

## II. Final Action Concerning the Notice of Deficiency Issues

### A. What Was the PTE Registration Deficiency Which Required a SIP Revision?

Many stationary source requirements of the Act apply only to major sources, whose emissions of air pollutants exceed a threshold emissions level specified in the Act. However, such sources may legally avoid program requirements by taking Federally-enforceable permit conditions which limit their 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 that 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 the 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, appropriate monitoring and recordkeeping which demonstrate compliance with the operation and production limits which the source is certifying to meet.

In the NOD, we informed Texas that section 122.122 was not practically 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 This Deficiency?

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 Executive Director of TCEQ, the appropriate regional office, and all local air pollution control agencies having jurisdiction over the site. 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)).

### C. Do the Changes Correct the PTE Registration Deficiency?

The TCEQ has revised Chapter 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 at the facility. The rule therefore satisfies the legal requirement for practical enforceability which was cited in the NOD. Accordingly, we are approving section 122.122 as a revision to the Texas SIP and to find that the revision to section 122.122 satisfies Texas' requirement to correct the PTE registration deficiency identified in the January 7, 2002, NOD.

## III. Final Action Concerning Chapter 106—Permits by Rule

### A. What Are We Approving?

We are approving provisions of Subchapter A (General Requirements) under Chapter 106 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 and Exemptions from Permitting.

### 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 carbon monoxide (CO) or nitrogen oxides (NO<sub>x</sub>); or 25 tpy of volatile organic compounds (VOC), sulfur dioxide (SO<sub>2</sub>), or inhalable particulate matter (PM<sub>10</sub>); 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,