

for PBR, Standard Permits, and Operating Permits.

The regulations allow a source to limit its PTE of a pollutant below the level which would make it a major source as defined in the Act. This includes regulations which Texas revised to allow an owner or operator of a source to register and certify restrictions and limitations that the owner or operator will meet to maintain its PTE below the major source threshold. The changes require the owner or operator to submit the certified registrations to the Executive Director of TCEQ, the appropriate TCEQ regional office, and to all local air pollution control agencies having jurisdiction over the site. The changes to Section 122.122 satisfactorily address the NOD by making the PTE limits in the certified registrations practically and Federally enforceable.

The revisions submitted December 9, 2002, are parts of Texas' regulations for PBR and Standard Permits, which EPA has not approved to date. Because the revisions concerning the certification and registration or PTE limits affect the regulations for PBR and Standard Permits, we also propose to approve other provisions of Chapters 106 and 116 which incorporate Texas' regulations for PBR and Standard Permits that Texas submitted to EPA on April 29, 1994; August 17, 1994; September 20, 1995; April 19, 1996; May 21, 1997; July 22, 1998; January 3, 2000; September 11, 2000; October 4, 2001; July 25, 2001; and December 9, 2002.

#### **XI. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law,

it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2003.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 03-17339 Filed 7-8-03; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 70**

[TX-154-2-7609; FRL-7525-4]

### **Proposed Approval of Revisions and Notice of Resolution of Deficiency for Clean Air Act Operating Permits Program in Texas**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the Texas title V Operating Permit Program submitted by the Texas Commission on Environmental Quality (TCEQ) on December 9, 2002. In a Notice of Deficiency (NOD) published on January 7, 2002, EPA notified Texas of EPA's finding that the State's periodic monitoring regulations, compliance assurance monitoring (CAM) regulations, periodic monitoring and CAM general operating permits (GOP), statement of basis requirement, applicable requirement definition and potential to emit (PTE) registration regulations did not meet the minimum Federal requirements of the Clean Air Act and the regulations for State operating permit programs. This action proposes approval of revisions TCEQ submitted to correct the identified deficiencies. Today's action also proposes approval of other revisions to the Texas title V Operating Permit Program submitted on December 9, 2002, which relate to concurrent review and credible evidence. The December 9, 2002, submittal also included revisions to the Texas State Implementation Plan (SIP). Elsewhere in today's **Federal Register**, we are proposing to approve those SIP revisions which were submitted on December 9, 2002.

**DATES:** The EPA must receive your written comments on this proposal no later than August 8, 2003.

**ADDRESSES:** Comments may be submitted to Guy Donaldson, Acting Section Chief, Air Permits Section, Environmental Protection Agency, Region 6, Air Permits Section (6PD-R), 1445 Ross Avenue, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier. Please follow the detailed

instructions described in Part (I)(B)(1)(i) through (iii) of the Supplementary Information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley M. Spruiell of the Air Permits Section at (214) 665-7212, or at [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout the document “we,” “us,” or “our” means EPA.

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**I. General Information**

*A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. The EPA has established an official public rulemaking file for this action under TX-154-2-7609. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Permits Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. The EPA requests that, if at all possible, you contact the rulemaking contact listed as the **FOR FURTHER INFORMATION CONTACT** section above to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 am to 4:30 pm, excluding Federal Holidays.

2. Copies of the State submittal and EPA’s Technical Support Document are also available for public inspection during normal business hours, by appointment at the State Air Agency, TCEQ, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government’s legal newspaper, and that are open for comment.

For public commenters, it is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection. The EPA will process material marked as CBI as described in section C.

*B. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text “Public comment on proposed rulemaking TX-154-2-7609” in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA’s policy is that EPA will not edit your comment, and any identifying or contact information

provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *Electronic Mail (E-mail).* Comments may be sent by e-mail to Mr. Stanley M. Spruiell ([spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov)). Please include the text “Public comment on proposed rulemaking TX-154-2-7609” in the subject line. The EPA’s e-mail system is not an “anonymous access” system. If you send an e-mail comment directly without going through the Regulations.gov website, EPA’s e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA’s e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

ii. *Regulations.gov.* Your use of the Regulations.gov Web site is an alternative method of submitting electronic comments to EPA. Go directly to [Regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The web-based system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD-R), 1445 Ross Avenue, Dallas, Texas 75202-2733. Please include the text “Public comment on proposed rulemaking TX-154-2-7609” in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD-R), 1445 Ross Avenue, Dallas, Texas 75202-2733. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through

Friday, 8:30 am to 4:30 pm excluding Federal Holidays.

### C. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section above.

### D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## II. Background

The Clean Air Act (the Act) Amendments of 1990 required all States to develop Operating Permits Programs that meet title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Texas' Operating Permits Program was submitted in response to this directive on November 15, 1993. We promulgated interim approval of the Texas title V program on June 25, 1996 (61 FR 32693) and the program became effective on July 25, 1996. Subsequently, we promulgated full approval of the Texas title V program effective November 30, 2001 (66 FR 63318, December 6, 2001). As explained in the proposed and final full approval, we granted full approval based on our finding that Texas had corrected the deficiencies identified at the time of the interim approval (66 FR at 51897 (October 11, 2001); 66 FR 63319).

Since the interim approval, other deficiencies in the Texas title V program were identified. Section 502(i) of the Act and 40 CFR 70.10(b)(1) provide that whenever EPA makes a determination that a State is not adequately administering and enforcing its program in accordance with the requirements of title V, EPA shall issue a NOD.

The EPA published an NOD for Texas' title V Operating Permit Program on January 7, 2002 (67 FR 732). The NOD was based upon our finding that several State requirements did not meet the minimum Federal requirements of 40 CFR part 70 and the Act. The TCEQ adopted rule revisions to resolve the deficiencies identified in the January 7, 2002, NOD. These rule revisions became effective, as a matter of State law, on December 11, 2002. The TCEQ submitted these rule changes to EPA as a revision to its title V Operating Permit Program on December 9, 2002. The TCEQ also included, in the December 9, 2002, submittal, other regulatory revisions that strengthen Texas' program. We are proposing to approve the Texas rule revisions included in the December 9, 2002, submittal in today's action. The December 9, 2002, submittal also included provisions which TCEQ requested that we approve as revisions to its SIP. Elsewhere in today's **Federal Register**, we are proposing to approve those SIP revisions submitted on December 9, 2002. We have prepared a Technical Support Document (TSD) which contains a detailed analysis of our evaluation of this action. The TSD is available at the addresses listed above.

## III. What Is Being Addressed in This Action?

In today's action, we are proposing to approve revisions as identified below which TCEQ adopted November 20, 2002 (submitted to EPA December 9, 2002) and to find that upon final SIP approval of two of the changes those revisions resolve the deficiencies identified in the January 7, 2002, NOD.

### A. Periodic Monitoring Regulations

The requirement for periodic monitoring set forth in 40 CFR 70.6(a)(3)(i)(B) states that each title V permit must include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring.

The TCEQ previously implemented periodic monitoring requirements through a phased approach which used either a periodic monitoring GOP or on a case-by-case determination. As a result, all permits did not have periodic monitoring when they were issued. To address the NOD, TCEQ has revised 30 Texas Administrative Code (TAC) 122.132 and 122.142, and repealed 30 TAC 122.600, 122.604, 122.606, 122.608, 122.610, and 122.612 to ensure that all title V permits, including all GOPs, contain periodic monitoring requirements that meet the requirements of 40 CFR 70.6(a)(3)(i)(B) when issued. The TCEQ has repealed the periodic monitoring and CAM GOPs identified in the NOD and adopted Section 122.132(e)(13) to require permit applications to include periodic monitoring requirements consistent with part 70. The TCEQ has amended Section 122.142(c) and Section 122.602 to require periodic monitoring which is consistent with part 70 to be included in all title V permits, including GOPs, when the permit is issued. The revisions require that periodic monitoring be included in title V permits at initial issuance under Section 122.201, permit renewals under Section 122.243, permit reopenings under Section 122.231(a) and (b), significant revisions under Section 122.221, and at minor permit revisions under Section 122.217. We are today proposing to approve the revised rules and the State's repeals as a revision to Texas' title V program and to find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

### B. CAM Regulations

CAM is implemented through 40 CFR part 64 and 40 CFR 70.6(a)(3)(i)(A) and requires title V permits to include “all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including [40 CFR part] 64 \* \* \*” 40 CFR 64.5 provides that CAM applies at permit renewal unless the permit holder has not filed a title V permit application by April 20, 1998, or the title V permit application has not been determined to be administratively complete by April 20, 1998. CAM also applies to a title V permit holder who filed a significant permit revision under title V after April 20, 1998.

The TCEQ previously implemented CAM through either a CAM GOP or a case-by-case CAM determination. The TCEQ’s use of a phased approach did not ensure that all permits would include CAM required by 40 CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5, because a facility did not have to apply for a CAM GOP until two years after the CAM GOP had been issued. To address the NOD, TCEQ has revised the Sections of Chapter 122 relating to application content and permit content, to ensure that all permits, including GOPs, include CAM requirements according to the schedule in 40 CFR 64.5. The TCEQ amended Section 122.132(e)(12) to specify that applications for units subject to CAM must be submitted according to the schedule specified in 40 CFR 64.5. The TCEQ amended Section 122.142(h) to require that permits contain CAM in accordance with the schedule in 40 CFR 64.5. The TCEQ adopted new Section 122.221(b)(4) to specify that the Executive Director may issue a significant permit revision if CAM is included for large pollutant-specific emission units, consistent with 40 CFR 64.5(a)(2). The TCEQ also adopted Section 122.147, which specifies the terms and conditions that apply to units subject to CAM requirements, and Section 122.604 which address CAM applicability. These new and revised rules require that all permits issued after the effective date of the rule include CAM according to the schedule in 40 CFR part 64. We are today proposing to approve the revised, amended, and new rules as a revision to Texas’ title V program and to find that the revisions satisfy Texas’ requirement to correct the program deficiency identified in the January 7, 2002, NOD.

### C. Periodic Monitoring and CAM General Operating Permits

The content requirements for part 70 permits are set forth in 40 CFR 70.6 and include periodic monitoring and CAM as permit conditions of all title V permits. Also, 40 CFR 70.6(d)(1) provides that “any general permit shall comply with all requirements applicable to other part 70 permits.” The TCEQ previously implemented CAM and periodic monitoring requirements through CAM and periodic monitoring GOPs which did not meet title V’s definition of, or requirements for, general permits. The terms and conditions of Texas’ periodic monitoring GOPs and CAM GOPs contained only monitoring requirements, monitoring options, and related monitoring requirements for certain applicable requirements and therefore were missing a number of the requirements of 40 CFR 70.6.

To address the NOD, TCEQ amended Chapter 122 to require that all GOPs include periodic monitoring and CAM, and to eliminate the monitoring GOP process. To ensure that all permits are issued containing periodic monitoring and CAM, the TCEQ adopted amendments requiring periodic monitoring and CAM to be addressed in permit applications and to be included in issued permits. As discussed above, revised Section 122.132(e)(12) specifies that applications for units subject to CAM must contain elements specified in 40 CFR 64.3, Monitoring Design Criteria, and 40 CFR 64.4, Submittal Requirements. Revised Section 122.132(e)(13) requires that applications for all initial permit issuances, renewals, reopenings, and significant and minor permit revisions include periodic monitoring requirements. The TCEQ amended Section 122.142(c), which previously specified that periodic monitoring is only included as required by the Executive Director, and Section 122.142(h), which previously specified that permits include CAM as specified in Subchapter H. The amendments state that permits must contain periodic monitoring and CAM in accordance with the schedule in 40 CFR 64.5. These amendments will require permits to contain all requirements specified in 40 CFR 70.6. The TCEQ eliminated the monitoring GOP process by adopting the repeal of all Sections from Subchapters G and H that implemented monitoring through the GOP process. In addition to the previously mentioned periodic monitoring sections that were repealed, TCEQ repealed all of the CAM requirements contained in Subchapter H. The CAM applicability section and

the section pertaining to quality improvement plans are adopted under Subchapter G, renamed Periodic Monitoring and Compliance Assurance Monitoring. The TCEQ also adopted several amendments to Chapter 122 to clarify periodic monitoring and CAM implementation and to delete any reference to the monitoring GOP process.

The TCEQ also amended the GOP definition at Section 122.10(11) to specify that multiple similar sources may be authorized to operate under a GOP, consistent with the requirement at 40 CFR 70.6(d) that general permits are limited to numerous similar sources. Section 122.501(a)(1) requires the Executive Director to issue GOPs with conditions that provide for compliance with all requirements of Chapter 122. The TCEQ also revised Section 122.161 to make related miscellaneous changes.

We are today proposing to approve the new and revised rules and the repeals as a revision to Texas’ title V program and to find that the revisions satisfy Texas’ requirement to correct the program deficiency identified in the January 7, 2002, NOD.

### D. Statement of Basis Requirement

40 CFR 70.7(a)(5) requires that “[t]he permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.” The TCEQ regulations previously had no State regulation directly corresponding to 40 CFR 70.7(a)(5). To address the NOD, TCEQ adopted new Section 122.201(a)(4), which requires that all permits issued by the Executive Director must include a statement that sets forth the legal and factual basis for the conditions of the permit, including references to the applicable statutory or regulatory provisions. The Executive Director will send this statement to EPA and any person who requests it. The statement of basis is required for all initial issuances, revisions, renewals and reopenings of permits. We are today proposing to approve the new rule as a revision to Texas’ title V program and to find that the revisions satisfy Texas’ requirement to correct the program deficiency identified in the January 7, 2002, NOD.

### E. Definition of Applicable Requirement

Texas’ definition of “applicable requirement” in 30 TAC 122.10(2) previously did not include all the applicable provisions of its SIP that

implemented relevant requirements of the Act as required by 40 CFR 70.2. To address the NOD, TCEQ has amended its definition of "applicable requirement" in Section 122.10(2) to include citations to the relevant requirements of the Act which were identified in the NOD and others identified after issuance of that notice. The applicable requirement definition now includes Section 101.1, which relates to definitions; Section 101.3, which relates to circumvention; Sections 101.201, 101.211, 101.221, 101.222, and 101.223, which relate to emissions events and maintenance, startup, and shutdown ("MSS") reporting requirements; Section 101.8 and Section 101.9, which relate to sampling and sampling ports, and Section 101.10, which relates to emissions inventory requirements.<sup>1</sup> We are today proposing to approve the revised rule as a revision to Texas' title V program and to find that upon final SIP approval the revisions will satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2001, NOD.

#### F. PTE Registration Requirements

Many stationary source requirements of the Act apply only to major sources, which are those sources whose emissions of air pollutants exceed threshold emissions levels specified in the Act. However, such sources may legally avoid program requirements by taking federally-enforceable permit conditions which limit emissions to levels 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' regulations previously allowed a facility to keep all documentation of its PTE limitation registrations on site without providing those documents to the State or to EPA; therefore, the PTE limitations were not practically enforceable. Also, the limitations were not federally enforceable because the Texas regulations at issue were not part of the Texas SIP. The TCEQ has revised

Sections 106.6, 116.115, 116.611, and 122.122. These changes 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 shall be maintained on-site of the facility. The TCEQ is also required to make the records available to the public upon request. The TCEQ also submitted these changes for approval as a SIP revision. We are proposing to approve the amended Sections 106.6, 116.115, 116.611, and 122.122 as revisions to the Texas SIP in a separate **Federal Register** notice. Upon final SIP approval, these changes will make the PTE limits in the certified registrations practically enforceable and federally enforceable. We are also today proposing to approve the revised rules in Section 122.122 as a revision to Texas' title V program and to find that upon final SIP approval the revisions will satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

#### IV. What Other Program Changes Are We Proposing To Approve?

The TCEQ also included in the December 9, 2002, submittal other regulatory revisions that strengthen Texas' program. Today's action also proposes approval of these revisions to the Texas title V Operating Permit Program submitted on December 9, 2002, which relate to credible evidence and concurrent review.

##### A. Credible Evidence

The TCEQ has revised its definition of "deviation" at 30 TAC 122.10(5) and 122.132(e)(4)(B) to require sources to consider "any credible evidence or information" to certify compliance. We are today proposing to approve this revision as consistent with part 70 and EPA's credible evidence rule, 62 FR 8314 (February 24, 1997).

##### B. Concurrent Review

The TCEQ has revised its regulations concerning EPA review of title V permits at Section 122.350(B)(1) to provide that EPA's review period may not run concurrently with the State public review period if any comments are submitted or if a public hearing is requested. We are today proposing to approve this revision as consistent with Section 505(b) of the Act and 40 CFR 70.8.

#### V. What Is Our Proposed Action?

We are proposing to approve revisions to Texas' regulations for periodic monitoring regulations, CAM regulations, periodic monitoring and CAM GOPs, statement of basis

requirement, applicable requirement definition and PTE registration regulations as revisions to Texas' title V air Operating Permits Program. Elsewhere in today's **Federal Register**, we are proposing to approve related SIP revisions submitted to EPA on December 9, 2002. We are also proposing to approve revisions to the Texas title V Operating Permit Program submitted on December 9, 2002, which relate to credible evidence and concurrent review. The rule revisions submitted by Texas, as stated above, are in response to the NOD.

This proposed approval does not extend to "Indian Country", as defined in 18 U.S.C. 1151. In its Operating Permits Program submittal, Texas does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in Texas has authority to administer an independent title V program in the State. On February 12, 1998, EPA promulgated regulations under which Indian tribes could apply and be approved by EPA to implement a title V Operating Permits Program (40 CFR part 49).

For those Indian tribes that do not seek to conduct a title V Operating Permits Program, EPA has promulgated regulations (40 CFR part 71) governing the issuance of Federal operating permits in Indian country. 64 FR 8247, February 19, 1999.

#### VI. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget (OMB). Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond those required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

<sup>1</sup> The NOD identified the emissions event and MSS reporting requirements at 30 TAC Sections 101.6, 101.7, and 101.11 as SIP provisions that must be included in the definition of "applicable requirements." Since then, TCEQ has revised those rules and recodified them at Sections 101.201, 101.211, 101.221, 101.222, and 101.223 and submitted the rules to EPA for approval as a SIP revision. The EPA is reviewing those rules and will address the SIP submission in a separate rulemaking prior to EPA's final approval of Texas' definition of applicable requirement.

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This proposed rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The action merely proposes to approve existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060-0243. For additional information concerning these requirements, *see* 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 *note*, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing State Operating Permit Programs submitted pursuant to title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove such regulations for

failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the NTTAA do not apply.

#### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: June 30, 2003.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 03-17338 Filed 7-8-03; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket No. 03-128; FCC 03-125]

#### Nationwide Programmatic Agreement

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission ("FCC" or "Commission") seeks comment regarding a draft nationwide programmatic agreement that would tailor and streamline procedures for review of certain undertakings for communications facilities under the National Historic Preservation Act of 1966 ("NHPA"). In addition, the Commission seeks comment on certain transitional issues regarding the treatment of NHPA proceedings pending at the time the draft nationwide programmatic agreement is adopted.

**DATES:** Submit comments on or before August 8, 2003. Submit reply comments on or before September 8, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

#### FOR FURTHER INFORMATION CONTACT:

Frank Stilwell, Wireless Telecommunications Bureau, (202) 418-1892.

**SUPPLEMENTARY INFORMATION:** This is a summary of a *Notice of Proposed Rulemaking (NPRM)* in WT Dkt. No. 03-128, FCC 03-125, adopted May 27, 2003, and released June 9, 2003. The

Nationwide Agreement, upon amendment and final agreement, will tailor and streamline procedures for review of certain Undertakings for communications facilities under section 106 of the National Historic Preservation Act of 1966 ("NHPA"), 16 U.S.C. 470 *et seq.* The *NPRM* also proposes to revise a related provision of the Commission's rules and initiate the use of two new FCC forms for Commission applicants, licensees and tower owners. The full text of the *NPRM* is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

#### Paperwork Reduction Act

This *NPRM* contains a new information collection as described in Section B of the Initial Regulatory Flexibility Analysis below. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, Office of Management and Budget (OMB), and other federal agencies to comment on the information collection(s) contained in the *NPRM* as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. It will be submitted to the OMB for review under Section 3507(d) of the PRA. Public, OMB, and other agency comments are due September 8, 2003. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information of the respondents, including the use of automated collection techniques or other forms of information technology.

A copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1C-804, 445 12th Street, SW., Washington, DC 20554, or via the Internet at [Judith-bherman@fcc.gov](mailto:Judith-bherman@fcc.gov), and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW.,