

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[TX-154-1-7590; FRL-7525-5]

**Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule (PBR), Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions of the Texas State Implementation Plan (SIP). The plan revisions include changes that Texas adopted to address deficiencies that were identified on January 7, 2002, and other changes adopted by Texas to regulations that include provisions for PBR and standard permits. This includes revisions that the Texas Commission on Environmental Quality (TCEQ) 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. This action is being taken under section 110 of the Federal Clean Air Act (the Act, or CAA).

**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 this 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-154-1-7590. 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 contact listed in the **FOR FURTHER INFORMATION CONTACT** section 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 (TSD) 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 Regulation.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 materials 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-154-1-7590" 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 [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov). Please include the text "Public comment on proposed rulemaking TX-154-1-7590" in the subject line. 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 Web site, 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 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; "Public comment on proposed rulemaking TX-154-1-7590" 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. What Is a SIP?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the Federal national ambient air quality standards. These ambient standards are established by EPA pursuant to sections 108 and 109 of the Act, and there are currently standards for six criteria pollutants: carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), ozone, lead, particulate matter (PM<sub>10</sub>), and sulfur dioxide (SO<sub>2</sub>).

Each State must submit these regulations and control strategies to us for approval and incorporation into the State's Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air

pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### III. What Is the Federal Approval Process for a SIP?

In order to be incorporated into the Federally-enforceable SIP, States must formally adopt regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and formal adoption by a State-authorized rulemaking body.

Once a State regulation or control strategy is adopted, the State submits it to us for approval and for inclusion into its SIP. We must then provide for public notice and comment regarding our proposed action on the State submission. If we receive adverse comments, we must address them prior to taking final Federal action.

All State regulations and supporting information we approve under section 110 of the Act are incorporated into the Federally-approved SIP. Records for such SIP actions are maintained in the CFR at title 40, part 52, entitled "Approval and Promulgations of State Implementation Plans." The actual State regulations which are approved are not reproduced in their entirety in the CFR, but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

### IV. What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a State responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the Act.

### V. What Is Being Addressed in This Document?

In today's action we are proposing to approve into the Texas SIP revisions to Chapter 106—Permits by Rule, Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, and Chapter 122—Federal Operating Permits. Some of these revisions were made to correct certain deficiencies identified by EPA in an NOD for Texas' title V Operating Permit Program. The EPA issued the NOD on January 7, 2002, (67 FR 723) under its

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 116.115<sup>1</sup> 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.

<sup>1</sup> 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.

### *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<sub>x</sub>; or 25 tpy of volatile organic compounds (VOC), SO<sub>2</sub>, or inhalable 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, 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).<sup>2</sup> 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<sub>x</sub>; or 25 tpy of VOCs, SO<sub>2</sub>, or inhalable PM<sub>10</sub>; 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

<sup>2</sup> 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.

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.<sup>3</sup> 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

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

requirements of subpart I. Furthermore, new and amended PBR are adopted in accordance with the general requirements in Subchapter A, which meet the applicable requirements of subpart I as discussed above. Accordingly, our approval of Subchapter A of Chapter 106 is sufficient to assure that the PBR meet the requirements in subpart I.

#### *F. What Other Actions Are We Proposing in Relation to PBR?*

The provisions for PBR in Chapter 106 replace the former provisions for exemptions from permitting which we had approved in Section 116.6—Exemptions. Because Chapter 106 replaced the exemptions previously authorized under Section 116.6, we are proposing to remove Section 116.6 from the SIP.

### **VIII. Proposal To Approve Chapter 116—Control of Air Pollution by Permits for New Construction or Modification**

#### *A. Subchapter A—Definitions*

##### 1. What Are We Proposing To Approve?

We propose to approve Section 116.14—Standard Permit Definitions. Section 116.14 includes definitions of the following terms as they are used in Subchapter F—Standard Permits: off-plant receptor, oil and gas facility, and sulfur recovery unit.

##### 2. Are These Definitions Approvable?

These definitions are approvable based upon their being comparable to corresponding terms defined elsewhere in EPA regulations. Specifically, the definition of “off-plant receptor” is consistent with the definition of “ambient air” in 40 CFR 50.1(e). The definitions of “oil and gas facility” and “sulfur recovery unit” are consistent with the terms “natural gas processing plant” and “sulfur recovery plant” as defined in 40 CFR 60.630 and 60.641 respectively. The TSD contains further information on our basis for proposing to approve these definitions. We are proposing approval of these definitions as support for the provisions of Subchapter F (Standard Permits) which we are also approving.

#### *B. Subchapter B—New Source Review Permits (for minor sources)*

##### 1. What Are We Proposing To Approve?

We are proposing to approve revisions to the following: Section 116.110—Applicability; Section 116.115—General and Special Conditions, and Section 116.116—Changes to Facilities.

##### 2. What Is Our Basis for Approving These Changes?

*a. Section 116.110—Applicability.* We propose to approve revisions to Section 116.110,<sup>4</sup> which Texas submitted April 29, 1994; July 22, 1998; and September 11, 2000. These changes revise Section 116.110 to add or revise references to provisions which relate to PBR and Standard Permits, which we are proposing to approve elsewhere in this action. We propose the following:

- Approval of Paragraph (2) of Section 116.110(a) which incorporates references to conditions of Standard Permits. 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.

- Approval of nonsubstantive revision to Section 116.110(a)(4), to change the reference from “exemptions from permitting” to “permits by rule.”

- Approve a nonsubstantive change to Section 116.110(b) to remove a reference to flexible permits.

*b. Section 116.115—General and Special Conditions.*

We are proposing to approve revisions to Section 116.115,<sup>5</sup> which Texas submitted April 29, 1994; August 17, 1994; July 22, 1998; and December 9, 2002; as follows:

- Approval of Subsection (b) to Section 116.115, as submitted July 22, 1998; and December 9, 2002; which incorporates the General Provisions that holders of permits, special permits, standard permits, and special exemptions must meet. Subsection (b) includes provisions relating to notification to the State concerning the progress of construction and start-up, requirements for sampling, and recordkeeping, requirements to meet emissions limits specified in the permit, requirements concerning maintenance of emission control, and compliance with rules.

- Approval of a Paragraph (b)(2)(F)(vi) (submitted December 9, 2002) which requires that a person who certifies and registers a Federally enforceable emission limitation under Section 116.611 must retain all records

<sup>4</sup> On October 18, 2002 (67 FR 58709), EPA approved Section 116.110, as adopted June 17, 1998. We did not approve Sections 116.110(a)(2), (a)(3), and (c).

<sup>5</sup> On October 18, 2002 (67 FR 58709), EPA approved Section 116.115, as adopted June 17, 1998. We did not approve Sections 116.115(b), (c)(2)(A)(i), and (c)(2)(A)(ii)(I). In this action, we are not approving Section 116.115(b)(2)(C)(iii). This provision relates to Mass Emissions Cap and Trade Program and was not adopted in the submittals that we are proposing to approve in this action. We will address Section 116.115(b)(2)(C)(iii) in a separate action.

demonstrating compliance for at least five years.

- The above provisions meet the requirements of 40 CFR 51.163, 51.211, 51.212, and 51.230. See the TSD for more information concerning how these requirements are met.

*c. Section 116.116—Changes to Facilities.*

We are proposing to approve revisions to Section 116.116,<sup>6</sup> which Texas submitted October 25, 1999;<sup>7</sup> and September 11, 2000; as follows:

- Approve nonsubstantive changes to Section 116.116(d) and (d)(1)–(2) to change the existing reference from “exemptions from permitting” to “permits by rule.”

- Approve nonsubstantive changes to Section 116.116(c)(4)–(5) to correct a cross reference from Section 116.111(3) to 116.111(a)(2)(C).

#### *C. Subchapter F—Standard Permits*

##### 1. What Are We Proposing To Approve?

We are proposing to approve the following Sections in Subchapter F of Chapter 116: Section 116.601—Types of Standard Permits, Section 116.602—Issuance of Standard Permits, Section 116.603—Public Participation in Issuance of Standard Permits, Section 116.604—Duration and Renewal of Registrations of Standard Permits, Section 116.605—Standard Permit Amendment and Revocation, Section 116.606—Delegation, Section 116.610—Applicability, Section 116.611—Registration to Use a Standard Permit, Section 116.614—Standard Permit Fees, and Section 116.615—General Conditions.

##### 2. What Is a Standard Permit?

A Standard Permit is a permit which is adopted under

Chapter 116, Subchapter F. Subchapter F provides an alternative process for approving the construction of certain categories of new and modified sources for which TCEQ has adopted a Standard Permit. These provisions provide for a streamlined mechanism for approving the construction of certain sources within categories which contain numerous similar sources.

<sup>6</sup> On October 18, 2002 (67 FR 58709), EPA approved Section 116.116, as adopted June 17, 1998. We did not approve Sections 116.116(b)(3) and (e)–(f).

<sup>7</sup> We are proposing to approve only the changes to Section 116.116, submitted October 24, 1999, which relate to PBR. This includes changes to Section 116.116(d) and (d)(1)–(2). We are taking no action on changes to Section 116.116(b)(3)–(4), submitted October 24, 1999, because these provisions do not relate to PBR or to standard permits. We will address Section 116.116(b)(3)–(4) in a separate action.

A Standard Permit is available to sources which belong in categories for which TCEQ has adopted a Standard Permit under Subchapter F of Chapter 116. A Standard Permit 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). 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 title I, part C or part D of the Act. A facility which qualifies for a Standard Permit 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). Furthermore, a facility which qualifies for a Standard Permit must comply with all rules and regulations of TCEQ.

### 3. Are the Provisions for Standard Permits Approvable?

Texas' Standard Permits are approvable as meeting the provisions of 40 CFR Subpart I—Review of New Sources and Modifications (Subpart I). Subchapter F provides the requirements that a facility must meet to qualify for a Standard Permit. Such requirements include:

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

- Sources qualifying for a Standard Permit 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 requires that approval or any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

- Subchapter F includes all the administrative requirements which support the issuance and enforcement of a Standard Permit. This includes Registration of Emissions which limit a source's PTE (Section 116.611) and Recordkeeping, which requires each

source subject to a Standard Permit to maintain records sufficient to demonstrate compliance with all conditions of the applicable Standard Permit. 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 Standard Permits are adopted or revised through the process described in Sections 116.601–116.605. Such new or revised Standard Permits 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 Standard Permit. 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.

### 4. What Sections in Subchapter F Are We Not Proposing To Approve in This Action?

We are not proposing to approve the following Sections in Subchapter F: Section 116.617—Standard Permits for Pollution Control Projects, Section 116.620—Installation and/or Modification of Oil and Gas Facilities, and Section 116.621—Municipal Solid Waste Landfills. Approval of these sections is not necessary for our approval of Texas' PBR and Standard Permits regulations submitted to EPA on December 9, 2002. Sections 116.617, 116.620, and 116.621 will be addressed in a separate action.

As stated previously, we are proposing to approve changes which Texas submitted December 9, 2002, some of which address the deficiencies that we identified in our January 7, 2002, NOD. In that submittal, Texas submitted revisions to Section 116.611—Registration to Use a Standard Permit. Section 116.611 is part of Subchapter F -Standard Permits. To date, we have not approved the provisions relating to Standard Permits, including the earlier submittals of Section 116.611. Section 116.611 is part of, and dependent upon, other

provisions of Subchapter F, and consequently Section 116.611 cannot stand alone. Therefore, we must approve other provisions of Subchapter F, including the earlier submittals of Section 116.611, which contain the process by which Texas issues and modifies Standard Permits when we approve the revisions to Section 116.611 which Texas submitted December 9, 2002.

In order to approve Section 116.611, we are addressing the provisions of Subchapter F which include the process for issuing and modifying Standard Permits. We are today proposing to approve the provisions for issuing and modifying Standard Permits which are found in Sections 116.601–116.606, 116.610–116.611, and 116.614–116.615.

Sections 116.617, 116.620, and 116.621 are specific permits that Texas has issued. These Sections do not include any provisions relating to the process by which they (or any Standard Permit) must be issued or modified. The Sections, which address the process for issuing and modifying Standard Permits (as identified above), are not dependent on the provisions of Sections 116.617, 116.620, and 116.621, and can be implemented without the approval of Sections 116.617, 116.620, and 116.621. Thus, today's proposal does not include action on Sections 116.617, 116.620, and 116.621. We will review and take appropriate action on Sections 116.617, 116.620, and 116.621, separately.

## IX. Proposal To Approve Chapter 122—Federal Operating Permits

### A. What Are We Proposing To Approve?

We are proposing to approve Section 122.122—PTE, as submitted December 9, 2002.

### B. Is Section 122.122 Approvable?

Section 122.122 contains provisions by which a source may register and certify limitations on its production and operation which would limit its PTE below the level which would make it a "major source" as defined under 40 CFR 70.2. Texas revised the rule to address a deficiency identified in the NOD. The changes that were made and our evaluation of why the changes are approvable are discussed in section VI of this preamble.

## X. What Is Our Proposed Action?

We are proposing the approval of revisions of the Texas SIP to address Texas' SIP submittal dated December 9, 2002. This includes Sections 106.6, revisions to Section 116.115, and Sections 116.611 and 122.122. These SIP revisions relate to Texas' programs

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]

BILLING CODE 6560-50-P

## **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