

## EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Explanation
Regulation 24 .....	Control of Volatile Organic Compound Emissions			
Section 2 .....	Definitions .....	January 11, 2002 .....	November 14, 2003, [Federal Register page citation].	
Section 26 .....	Gasoline Dispensing Facility Stage I Vapor Recovery.	January 11, 2002 .....	November 14, 2003, [Federal Register page citation].	
Section 36 .....	Stage II Vapor Recovery ..	January 11, 2002 .....	November 14, 2003, [Federal Register page citation].	

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

[TX-154-1-7590; FRL-7585-8]

**Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule, Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action 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 Permits by Rule (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; October 25, 1999; January 3, 2000; September 11, 2000; 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).

**EFFECTIVE DATE:** This rule is effective on December 15, 2003.

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should schedule an appointment with the appropriate office, if possible, two working days in advance of the visit.

Environmental Protection Agency, Region 6, Air Permits Section (6PD-R), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Stanley M. Spruiell of the Air Permits Section at (214) 665-7212, or [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. What Is Being Addressed in This Document?**

In today’s action we are approving 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 a Notice of Deficiency (NOD) for Texas’ Title V Operating Permit Program. The EPA issued the NOD on January 7, 2002 (67 FR 732), 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 potential to emit (PTE) requirements identified in the January 7, 2002, NOD. Texas submitted parts of these and other rule changes as revisions to its SIP on December 9, 2002, including 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. We will address these and other regulations which revise Texas’ Operating Permits Program, in a separate **Federal Register** action.

The December 9, 2002, SIP submittal includes revisions to Texas’ regulations for PBR and Texas’ regulations for Standard Permits. The EPA is also approving earlier SIP submittals which include the adoption of Texas’ programs for PBR and Standard Permits 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 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,

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 (Standards of Performance for New Stationary Sources or New Source Performance Standards (NSPS)) and section 112 of the Act (National Emission Standards for Hazardous Air Pollutants (NESHAP)) (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 requirements of 40 CFR part 51, subpart I—Review of New Sources and Modifications (subpart I).<sup>1</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 (NSPS) and section 112 of the Act (NESHAP), and must comply with all rules of TCEQ. This satisfies the requirements of 40 CFR 51.160(d) which require that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

- Subchapter A includes all the administrative requirements which support the issuance and enforcement of PBR. This includes registration of emissions which limit a source's PTE (section 106.6), and Recordkeeping, which requires each source subject to a PBR to maintain records sufficient to demonstrate compliance with all conditions of the applicable PBR (section 106.8). These provisions satisfy the requirements in 40 CFR 51.163, which require 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 State's analysis of the effect of construction or modification on ambient air quality.

The TSD contains further information on how Subchapter A of Chapter 106 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>2</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 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 Taking 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 removing section 116.6 from the SIP.

### **IV. Final Action Concerning Revisions to Chapter 116—Control of Air Pollution by Permits for New Construction or Modification**

#### *A. Subchapter A—Definitions*

##### *1. What Are We Approving?*

We are approving section 116.14—Standard Permit Definitions. Section 116.14 includes definitions of the following terms as they are used in Chapter 116, 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 approving these definitions. These definitions support 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 Approving?*

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

<sup>1</sup> Subpart I contains 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.

<sup>2</sup> Subchapters B through X of Chapter 106 were not submitted to EPA approval as SIP revisions.

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

a. Section 116.110—Applicability. We are approving revisions to section 116.110<sup>3</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 approving elsewhere in this action. We are approving 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 approving revisions to section 116.115<sup>4</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<sup>5</sup>, 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 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 demonstrating compliance for at least five years.

<sup>3</sup> On September 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>4</sup> On September 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).

<sup>5</sup> 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 approving in this action. We will address section 116.115(b)(2)(C)(iii) in a separate action.

- 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 approving 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 section 116.111(a)(2)(C).

### C. Subchapter F—Standard Permits

#### 1. What Are We Approving?

We are approving 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 to Use 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.

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

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

<sup>7</sup> We are approving only the changes to section 116.116, submitted October 25, 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 25, 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.

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 in 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 (NSPS) and section 112 of the Act (NESHAP). Furthermore, a facility which qualifies for a Standard Permit must comply with all rules and regulations of TCEQ.

#### 3. Are Texas' Provisions for Standard Permits Approvable?

Texas' Standard Permits are approvable as meeting the requirements of subpart I. Subchapter F under Chapter 116 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 or 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 (NSPS) and section 112 of the Act (NESHAP), and must comply with all rules of TCEQ. This satisfies the requirements of 40 CFR 51.160(d) which requires 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 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 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). These provisions also meet the requirements of 40 CFR 51.211 which require 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 F of Chapter 116 meets the requirements of subpart I.

#### 4. What Sections in Subchapter F Are We Not Approving in This Action?

We are not approving 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 approving 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 approving 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 final action does not include action on Sections 116.617, 116.620, and 116.621. We are also taking no action today on section 116.601(a)(1) which contains cross-references to Sections 116.617, 116.620, and 116.621. We will review and take appropriate action on Sections 116.617, 116.620, and 116.621, as well as section 116.601(a)(1), separately.

In addition, we are taking no action on section 116.610(d). Subsection (d) of section 116.610 addresses projects subject to Subchapter C of Chapter 116 (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, § 112(g)). We have not completed our review of the provisions of Subchapter C. We will address Subchapter C and other provisions referring to Subchapter C (including section 116.610(d)) in a separate action.

#### V. Final Action Concerning Chapter 122—Federal Operating Permits

##### A. What Are We Approving?

We are approving section 122.122—Potential to Emit, 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 of 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 II of this preamble.

#### VI. Summary of Today's Final Action

We are approving 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 of a major source 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.

We are also approving 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; October 25, 1999; January 3, 2000; September 11, 2000; July 25, 2001; and December 9, 2002.

#### VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (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. 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 (Pub. L. 104–4).

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 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 approves 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 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 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: November 5, 2003.

**Richard E. Greene,**  
*Regional Administrator, Region 6.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended as follows:

■ (a) Under Chapter 101, Subchapter H, immediately following section 101.363, by adding a new centered heading "Chapter 106—Permits by Rule" followed by a centered heading "Subchapter A—General Requirements," followed by new entries for Sections 106.1, 106.2, 106.4, 106.5, 106.6, 106.8, and 106.13;

■ (b) Under Chapter 116 (Reg 6), by removing the existing entry for section 116.6, Exemptions;

■ (c) Under Chapter 116 (Reg 6), Subchapter A, immediately following section 116.12, by adding a new entry for section 116.14;

■ (d) Under Chapter 116 (Reg 6), Subchapter B, Division 1, by revising the existing entries for Sections 116.110, 116.115, and 116.116;

■ (e) Under Chapter 116 (Reg 6), Subchapter B, Division 7, immediately following section 116.170, by adding a new centered heading "Subchapter F—Standard Permits" followed by new entries for Sections 116.601, 116.602, 116.603, 116.604, 116.605, 116.606, 116.610, 116.611, 116.614, and 116.615; and

■ (f) Under Chapter 118 (Reg 8), immediately following section 118.6, by adding a new centered heading entitled "Chapter 122—Federal Operating Permits Program" followed by a new centered heading entitled "Subchapter B—Permit Requirements" followed by a new centered heading "Division 2—Applicability," followed by a new entry for section 122.122.

The additions and revisions read as follows:

#### § 52.2270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title / Subject	State approval / submittal date	EPA approval date	Explanation
* * * * *				
Section 101.363 .....	Program Audits and Reports ..	09/26/01	11/04/01, 66 FR 57260 .....	

#### Chapter 106—Permits by Rule

##### Subchapter A—General Requirements

Section 106.1 .....	Purpose .....	08/09/00	11/14/03 [and page number] ..
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## EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title / Subject	State approval / submittal date	EPA approval date	Explanation
Section 106.2 .....	Applicability .....	08/09/00	11/14/03 [and page number] ..	
Section 106.4 .....	Requirements for Permitting by Rule.	03/07/01	11/14/03 [and page number] ..	
Section 106.5 .....	Public Notice .....	09/02/99	11/14/03 [and page number] ..	
Section 106.6 .....	Registration of Emissions .....	11/20/02	11/14/03 [and page number] ..	
Section 106.8 .....	Recordkeeping .....	10/10/01	11/14/03 [and page number] ..	
Section 106.13 .....	References to Standard Exemptions and Exemptions from Permitting.	08/09/00	11/14/03 [and page number] ..	

\* \* \* \* \*

**Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification****Subchapter A—Definitions**

*	*	*	*	*	*	*
Section 116.12 .....	Nonattainment Review Definitions.	02/24/99	07/17/00, 65 FR 43994 .....			
Section 116.14 .....	Standard Permit Definitions ...	06/17/98	11/14/03 [and page number] ..			

**Subchapter B—New Source Review Permits****Division 1—Permit Application**

Section 116.110 .....	Applicability .....	08/09/00	11/14/03 [and page number] ..	The SIP does not include sections 116.110(a)(3), (a)(5), and (c).
*	*	*	*	*
Section 116.115 .....	General and Special Conditions.	11/20/02	11/14/03 [and page number] ..	The SIP does not include sections 116.115(b)(2)(C)(iii) and (c)(2)(B)(ii)(I).
Section 116.116 .....	Changes to Facilities .....	08/09/00	11/14/03 [and page number] ..	The SIP does not include sections 116.116(b)(3), (b)(4), (e), and (f).
*	*	*	*	*
Section 116.170 .....	Applicability of Reduction Credits.	06/17/98	09/18/02, 67 FR 58709 .....	The SIP does not include section 116.170(2).

**Subchapter F—Standard Permits**

Section 116.601 .....	Types of Standard Permits ....	12/16/99	11/14/03 [and page number] ..	The SIP does not include section 116.170(a)(1).
Section 116.602 .....	Issuance of Standard Permits	12/16/99	11/14/03 [and page number] ..	
Section 116.603 .....	Public Participation in Issuance of Standard Permits.	08/09/00	11/14/03 [and page number] ..	
Section 116.604 .....	Duration and Renewal of Registrations to Use Standard Permits.	12/16/99	11/14/03 [and page number] ..	
Section 116.605 .....	Standard Permit Amendment and Revocation.	12/16/99	11/14/03 [and page number] ..	
Section 116.606 .....	Delegation .....	12/16/99	11/14/03 [and page number] ..	
Section 116.610 .....	Applicability .....	12/16/99	11/14/03 [and page number] ..	The SIP does not include section 116.610(d).
Section 116.611 .....	Registration to Use a Standard Permit.	11/20/02	11/14/03 [and page number] ..	
Section 116.614 .....	Standard Permit Fees .....	12/16/99	11/14/03 [and page number] ..	
Section 116.615 .....	General Conditions .....	06/17/98	11/14/03 [and page number] ..	
*	*	*	*	*
Section 118.6 .....	Texas Air Pollution Episode Contingency Plan and Emergency Management Center.	03/05/00	07/26/00 .....	

**Chapter 122—Federal Operating Permits Program****Subchapter B—Permit Requirements****Division 2—Applicability**

Section 122.122 .....	Potential to Emit .....	11/20/02	11/14/03 and page number ....
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[FR Doc. 03-28416 Filed 11-13-03; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7586-9]

#### Colorado: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Immediate final rule.

**SUMMARY:** Colorado has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization and is authorizing the State's changes through this immediate final action. We are publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Colorado's changes to their hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This Final authorization will become effective on January 13, 2004 unless EPA receives adverse written comment by December 15, 2003. If EPA receives such comment, it will publish a timely withdrawal of this Immediate Final Rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Copies of the Colorado program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region 8, from 7 AM to 3 PM, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, contact: Kris Shurr, phone number: (303) 312-6139, e-mail: [shurr.kris@epa.gov](mailto:shurr.kris@epa.gov) or CDPHE, from 8 AM to 4 PM, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530, contact: Randy Perila, phone number (303) 692-3364. Send written comments to Kris Shurr, 8P-HW, U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone number:

(303) 312-6139 or electronically to [shurr.kris@epa.gov](mailto:shurr.kris@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Kris Shurr, 8P-HW, U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone number: (303) 312-6139 or [shurr.kris@epa.gov](mailto:shurr.kris@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

##### B. What Decisions Have We Made in This Rule?

We conclude that Colorado's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Colorado Final authorization to operate its hazardous waste program with the changes described in the authorization applications. Colorado has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Colorado, including issuing permits, until Colorado is authorized to do so.

##### C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Colorado subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in

order to comply with RCRA. Colorado has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend or revoke permits; and,
- Take enforcement actions regardless of whether Colorado has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Colorado is being authorized by today's action are already effective and are not changed by today's action.

##### D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change. We are providing an opportunity for the public to comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

##### E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment, therefore, if you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the Colorado hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

##### F. What Has Colorado Previously Been Authorized for?

Colorado initially received Final authorization on October 19, 1984,