

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

[EPA-R06-OAR-2005-TX-0026; FRL-8780-5]

**Approval and Promulgation of
Implementation Plans; Texas;
Revisions to Permits by Rule and
Regulations for Control of Air Pollution
by Permits for New Construction or
Modification**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on July 22, 1998, October 4, 2002, and September 25, 2003; these revisions amend existing sections and create new sections in Title 30 of the Texas Administrative Code (TAC), Chapter 106—Permits by Rule and Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. The July 22, 1998, revision repeals and replaces the Renewal Application Fees section with a new section. The October 4, 2002, revision increases the determination of fees for NSR permits, corrects addresses, and makes other administrative changes. The September 25, 2003, revision clarifies that an emission reduction credit must be certified and banked to be creditable as an offset in the NSR permitting program, repeals and replaces the section that addresses the use of emission reductions as offsets for NSR permitting and the definition of “offset ratio,” and makes administrative changes. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

DATES: This direct final rule is effective on May 19, 2009 without further notice, unless EPA receives relevant adverse comment by April 20, 2009. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2005-TX-0026, by one of the following methods:

(1) <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

(2) *E-mail:* Mr. Jeff Robinson at robinson.jeffrey@epa.gov. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6 “Contact Us” Web site:* <http://epa.gov/region6/r6comment.htm>. Please click on “6PD” (Multimedia) and select “Air” before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), at fax number 214-665-6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2005-TX-0026. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. 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. Electronic files should avoid the use of special

characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

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

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today’s direct final action, please contact Ms. Melanie Magee (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-7161. Ms. Magee can also be reached via electronic mail at magee.melanie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever any reference to “we,” “us,” or “our” is used, we mean EPA.

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I. What Action Is EPA Taking?

We are taking direct final action to approve portions of three revisions to the Texas SIP submitted on July 22, 1998, October 4, 2002, and September 25, 2003. The July 22, 1998 SIP submittal repeals the existing SIP-approved rule addressing fees for permit renewal applications and replaces it with a new rule establishing a fee schedule for permit renewals under 30 TAC Chapter 116 based on the total annual allowable emissions from the permitted facility. The October 4, 2002, SIP submittal establishes the registration fee requirements for Permits by Rule under 30 TAC Chapter 106, and revises the air emission fee requirements found in 30 TAC Chapter 116 by increasing fees based on estimated capital costs for new and renewal permits and updating remittance information for the Texas Commission on Environmental Quality (TCEQ). The September 25, 2003, SIP revision updates the requirements for emission reductions to be used as NSR offsets, removes an expired provision for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas, and corrects errors in the TCEQ's mailing address used for air permit fee remittance. We are approving the repeal and replacement of section 116.313 submitted on July 22, 1998. We are approving new section 106.50 submitted on October 4, 2002, as well as revisions to sections 116.141(b) and (e), 116.143 Introductory Paragraph, 116.163(a) and (b), 116.313(a) and (b), and 116.614. We are approving revisions to sections 116.12, 116.143, 116.150, and 116.313, and the repeal and replacement of section 116.170 and new section 116.172 submitted on September 25, 2003.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 19, 2009 without further notice unless we receive relevant adverse comment by April 20, 2009. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address

all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What Did Texas Submit?

We are approving provisions from three SIP revisions that the TCEQ submitted to EPA on July 22, 1998, October 4, 2002, and September 25, 2003. Copies of the revised rules as well as the Technical Support Documents (TSDs) can be obtained from the Docket, as discussed in the "Docket" section above. A discussion of the specific Texas rule changes that we are approving is included in the TSDs and summarized below. The TSDs also contain a discussion as to why EPA is not taking action on certain provisions of each Texas SIP submittal and documents why these provisions are separable from the provisions that we are approving. We are unable to act upon revisions to 30 TAC Chapter 101, sections 101.24 and 101.27 for air emission and inspection fees submitted on October 4, 2002, because previous revisions are still pending for review by EPA. We are also unable to act upon the flexible permit fee requirements at 30 TAC Chapter 116, section 116.750 submitted on October 4, 2002, because EPA has not yet approved the flexible permit program. Additionally, we are unable to act upon revisions to 30 TAC Chapter 116, sections 116.114, 116.115, 116.120, 116.315, and 116.715, submitted on September 25, 2003, because these sections reference or rely upon non-SIP approved State regulations. EPA will address these provisions, as appropriate, in separate actions.

A. July 22, 1998 Submittal

Section 116.313—Renewal Application Fees

The existing SIP-approved version of section 116.313 was adopted by the State on August 16, 1993, and approved by EPA on March 10, 2006 (see 71 FR 12285). The State repealed and replaced the 1993 version of section 116.313 with a similar program for assessing permit renewal application fees on July 22, 1998. The 1998 version of new section 116.313 establishes a fee schedule for permit renewals under 30 TAC Chapter

116 based on the total annual allowable emissions from the permitted facility.

B. October 4, 2002 Submittal

1. Section 106.50—Registration Fees for Permits by Rule

The TCEQ adopted new section 106.50 to establish the registration fees for permits by rule (PBR) issued under 30 TAC Chapter 106. These registration fees cover the review and processing costs for the PBR program. New section 106.50 specifies that PBR registration will be \$100 for small businesses and municipalities, counties, and independent school districts; all other entities submitting PBR registration will pay \$450.

2. Section 116.141—Determination of Fees

The previous State version of section 116.141(a) through (e), which is the existing SIP-approved version (see 67 FR 58697, September 18, 2002), established a fee schedule for NSR permits based on the estimated capital cost of the project. The revisions to section 116.141(b) and (e) adopted by the TCEQ on September 25, 2002, increased the fee from \$450 to \$900 for projects where the estimated capital cost is less than \$300,000 or the project consists of new facilities controlled and operated directly by the federal government and federal Prevention of Significant Deterioration (PSD) regulations do not apply. For projects where the estimated capital cost is greater than \$300,000 and PSD regulations do not apply, the fee was increased from 0.15% to 0.30% of the estimated capital cost. Additionally, the September 25, 2002 adoption increased the fee from \$450 to \$900 for a permit or permit amendment not involving any capital expenditure.

3. Section 116.143—Payment of Fees

The previous State version of section 116.143, Introductory Paragraph (1) and (2), which is the existing SIP-approved version (see 67 FR 58697, September 18, 2002), established the methods by which the permit fees were to be submitted to the Texas Natural Resource Conservation Commission (TNRCC).¹ The revisions to section 116.143, Introductory Paragraph, adopted by the TCEQ on September 25, 2002 replaced the references to the TNRCC with updated references to the TCEQ, corrected the address for fee remittance, and provided additional payment

¹ The TNRCC was changed to the TCEQ, effective September 1, 2002.

options through certified check and electronic funds transfer.

4. Section 116.163—Prevention of Significant Deterioration Permit Fees

The previous State version of section 116.163, which is the existing SIP-approved version (see 62 FR 44083, August 19, 1997), established a fee schedule for PSD permits based on the estimated capital cost of the project. The revisions to section 116.163(a) and (b) adopted by the TCEQ on September 25, 2002, increased the fee from \$1,500 to \$3,000 for projects where the estimated capital cost is less than \$300,000 or the project consists of new facilities controlled and operated directly by the federal government for which an application is submitted after January 1, 1987, and Federal PSD regulations do apply. For projects where the estimated capital cost is greater than \$300,000 and PSD regulations do apply, the fee was increased from 0.5% to 1.0% of the estimated capital cost.

5. Section 116.313—Renewal Application Fees

The revisions to section 116.313(a) and (b) adopted by the TCEQ on September 25, 2002, increased the base and incremental fees in the permit renewal fee calculation and increased the minimum permit renewal fee from \$300 to \$600. The revision to section (a) Renewal Fee Table increases the base fee from \$965 to \$1,265 and \$28 per ton for allowable tons per year greater than 24 but less than or equal to 99. Further, the revision to section (a) decreases the total allowable tons per year from 994 to 651. It also increases the base fee from \$2,840 to \$3,365 and increases the incremental fee from \$8 per ton to \$12 per ton. Additionally, the September 25, 2002 revisions replaced the references to the TNRCC with updated references to the TCEQ, corrected the address for fee remittance, and provided additional payment options through certified check and electronic funds transfer.

6. Section 116.614—Standard Permit Fees

The previous State version of section 116.614, which is the existing SIP-approved version (see 68 FR 64543, November 14, 2003), established the methods by which the permit fees for standard permits were to be submitted to the TNRCC. The revisions to section 116.614 adopted by the TCEQ on September 25, 2002 replaced the references to the TNRCC with updated references to the TCEQ, corrected the address for fee remittance, and provided additional payment options through

certified check and electronic funds transfer.

C. September 25, 2003 Submittal

1. Section 116.12—Nonattainment Review Definitions

The previous State version of this section, which is the existing SIP-approved version (see 69 FR 43572, July 22, 2004), established the definitions to be used in the NSR permitting program. The revisions to the introductory paragraph, and paragraphs (7)–(11), (13), and (18) of section 116.12 adopted by the TCEQ on August 20, 2003, include minor corrections to abbreviations, rule citations, and acronyms. In 116.12(14) the definition of “offset ratio” is amended to clarify that a reduction creditable as an offset in the NSR permitting program must be certified and banked as either an emission reduction credit under 30 TAC Chapter 101, Subchapter H, Division 1 (approved at 71 FR 52698, September 6, 2006) or as a discrete emission reduction credit under 30 TAC Chapter 101, Subchapter H, Division 4 (approved at 71 FR 52703, September 6, 2006).

2. Section 116.143—Payment of Fees

The revisions to section 116.143, Introductory Paragraph and (2), adopted by the TCEQ on August 20, 2003, further revise the revisions adopted by the TCEQ on September 25, 2002. The 2003 revision to the introductory paragraph updates the mailing address for the TCEQ. The revisions to (2) update the existing language by explaining when the fee is due and stating the review of the permit application will not begin until the fee is received.

3. Section 116.150—New Major Source or Major Modification in Ozone Nonattainment Areas

The previous State version of section 116.150, which is the existing SIP-approved version (see 65 FR 43986, July 17, 2000), established requirements for new major sources and major modifications in ozone nonattainment areas, including the nitrogen oxide (NO_x) waiver provisions at 116.150(c) for the Houston/Galveston² and Beaumont/Port Arthur ozone nonattainment areas. The revisions to section 116.150 adopted by the TCEQ on August 20, 2003, remove the NO_x waiver provisions at 116.150(c). These provisions were removed because the

² Note that in 1999 when the NO_x waiver was put in place, the Houston/Galveston/Brazoria ozone nonattainment area was designated the Houston/Galveston ozone nonattainment area.

time period specified for the NO_x waiver has expired.

4. Section 116.170—Applicability of Emission Reductions as Offsets

The previous State version of section 116.170, which is the existing SIP-approved version (see 67 FR 58697), was repealed and replaced by the TCEQ on August 20, 2003. The new section 116.170 establishes the requirements for the use of emission reductions as offsets for NSR permitting; consistent with the revisions to the definition of “offset ratio” reductions to be used as NSR offsets must be certified and banked under 30 TAC Chapter 101, Subchapter H, Divisions 1 or 4. The previous requirements for emissions offsets from rocket engine firing and cleaning have been moved to new section 116.172.

5. Section 116.172—Emissions Offsets From Rocket Engine Firing and Cleaning

The TCEQ adopted new section 116.172 on August 20, 2003. This new section contains the conditions under which emissions from rocket engine firing or cleaning may be offset by alternative means. The requirements for rocket engine firing and cleaning were moved without changes from section 116.170 as a result of the repeal and replacement of section 116.170, to new section 116.172.

6. Section 116.313—Renewal Application Fees

The revisions to section 116.313(b) adopted by the TCEQ on August 20, 2003, further revise the revisions adopted by the TCEQ on September 25, 2002. The 2003 revision to subsection (b) updates the mailing address for the TCEQ.

III. What Is EPA's Evaluation of These SIP Revisions?

A. July 22, 1998 Submittal

The July 22, 1998 submittal (adopted June 17, 1998), which repealed the SIP-approved section 116.313 and replaced it with a new section 116.313 is approvable. The new section 116.313 is necessary to adequately implement the Chapter 116 permitting program for new construction and modifications. The provisions found at section 116.313 are consistent with the fee assessment provisions of 110(a)(2)(L) of the CAA. The new section 116.313 did not increase the fee assessment established in the previously SIP-approved version of section 116.313. New section 116.313 rearranged previous requirements and updated mailing and billing information

from the Texas Air Control Board³ to the Texas Natural Resource Conservation Commission.

B. October 4, 2002 Submittal

1. Section 106.50—Registration Fees for New Permits by Rule

New section 106.50 adopted by the TCEQ on September 25, 2002, is approvable. The fees assessed by the TCEQ under section 106.50 are necessary to adequately implement the Chapter 106 PBR program. These requirements are consistent with 110(a)(2)(L) of the CAA. TCEQ made a sufficient demonstration that these fees are necessary to cover the cost of review and processing of PBRs.

2. Section 116.141—Determination of Fees

EPA approved section 116.141(a) and (c) through (e), on August 19, 1997 (62 FR 44083) into the Texas SIP. EPA approved section 116.141(b) into the Texas SIP on September 18, 2002 (67 FR 58709). The revisions to 116.141(b) and (e) adopted by the TCEQ on September 25, 2002, are approvable. The fees assessed by the TCEQ under section 116.141 are necessary to adequately implement the Chapter 116 permitting program for new construction and modifications. These revisions are consistent with 110(a)(2)(L) of the CAA. TCEQ made a sufficient demonstration that these fee increases are necessary to cover the cost of review and processing of NSR permits.

3. Section 116.143—Payment of Fees

On September 18, 2002, EPA approved section 116.143, Introductory Paragraph and (1) and (2) into the Texas SIP (67 FR 58709). The revisions to section 116.143, Introductory Paragraph, adopted by the TCEQ on September 25, 2002, are approvable. The revisions to section 116.143 are non-substantive changes; updating the name and address of the TCEQ (formerly the TNRCC) and allowing for additional payment methods. These revisions do not impact the functionality of the air permits for new construction or modification program.

4. Section 116.163—Prevention of Significant Deterioration Permit Fees

EPA approved section 116.163(a) through (e) into the Texas SIP on August 19, 1997 (62 FR 44083). The revisions to 116.163(a) and (b) adopted by the TCEQ on September 25, 2002, are approvable.

The fees assessed by the TCEQ under section 116.163 are necessary to adequately implement the Chapter 116 permitting program for new construction and modifications. These revisions are consistent with 110(a)(2)(L) of the CAA. TCEQ made a sufficient demonstration that these fee increases are necessary to cover the cost of review and processing of PSD permits.

5. Section 116.313—Permit Renewal Fees

On March 10, 2006, EPA approved section 116.313 into the Texas SIP as adopted by the TCEQ on August 16, 1993 (71 FR 12285). TCEQ repealed and replaced section 116.313 on June 17, 1998 with a new section 116.313. Section 116.313(a) and (b) was further revised on September 25, 2002. The new section 116.313 adopted by the TCEQ on June 17, 1998, and further revised on September 25, 2002, is approvable. Section 116.313 and the subsequent revisions are necessary to adequately implement the Chapter 116 permitting program for new construction and modifications. These revisions are consistent with the fee assessment provisions of 110(a)(2)(L) of the CAA. TCEQ made a sufficient demonstration that these fee increases are necessary to cover the cost of review and processing of PSD permits. Additionally, the non-substantive changes; updating the name and address of the TCEQ and allowing for additional payment methods, do not impact the functionality of the air permits for new construction or modification program.

6. Section 116.614—Standard Permit Fees

EPA previously approved section 116.614 into the Texas SIP on November 14, 2003 (68 FR 64548). The revisions to section 116.614 adopted by the TCEQ on September 25, 2002, are approvable. The revisions to section 116.614 are non-substantive changes; updating the name and address of the TCEQ and allowing for additional payment methods. These revisions do not impact the functionality of the air permits for new construction or modification program.

C. September 25, 2003 Submittal

1. Section 116.12—Nonattainment Review Definitions

EPA approved section 116.12 into the Texas SIP on July 22, 2004 (69 FR 43752). The revisions to section 116.12 adopted by the TCEQ on August 20, 2003, are approvable. The revisions to introductory paragraph and (7)–(11), 13

and 18 of section 116.12 include several minor changes to abbreviations, rule citations, and acronyms to conform to Texas Register formatting. These revisions do not impact the functionality of the air permits for new construction or modification program.

Additionally, in section 116.12(14) TCEQ revised the definition of “offset ratio” to state that an emission reduction must be certified under 30 TAC Chapter 101, Subchapter H, Divisions 1 or 4, to be creditable as an offset under the NSR permitting program. The revisions to the definition of “offset ratio” do not change EPA’s initial determination that the definition is consistent with the requirements of section 173 of the CAA. The revisions only serve to reference TCEQ’s established emissions banking and trading programs. EPA proposed approval of the Chapter 101, Subchapter H, Division 1 Emission Credit Banking and Trading program, and conditional approval of the Division 4 Discrete Emission Credit Banking and Trading program on October 5, 2005, and finalized our approvals on September 6, 2006. Our proposed rulemakings discuss our rationale that the credits generated under the programs can be used as NSR offsets. The administrative record for these rulemakings is available in the rulemaking dockets, EPA–R06–OAR–2005–TX–0006 and EPA–R06–OAR–2005–TX–0029, respectively. These revisions are consistent with 110(l) of the CAA.

2. Section 116.143—Payment of Fees

EPA approved section 116.143 into the Texas SIP on September 16, 2002 (67 FR 58697). The August 20, 2003, revisions to section 116.143 introductory paragraph do not substantively change the requirements of section 116.143 adopted by the State on June 17, 1998 and further revised on September 25, 2002. The revisions to 116.143 adopted by the State on September 25, 2002, and further revised on August 20, 2003 are approvable. These revisions do not impact the functionality of the air permits for new construction or modification program. The revisions to section (2) of 116.143 reorder existing language and further explain the permit application review process. These revisions are consistent with 110(l) of the CAA.

3. Section 116.150—New Major Source of Major Modification in Ozone Nonattainment Areas

EPA approved section 116.150 into the Texas SIP on July 17, 2000 (65 FR 43986). The revisions to section 116.150, adopted August 20, 2003, are

³ In 1993, the Texas Air Control Board merged with the Texas Water Commission and the combined agency was renamed the Texas Natural Resource Conservation Commission.

approvable. These revisions remove the NO_x waiver provisions for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas because the time period for the waiver has expired. This revision is consistent with 110(l) of the CAA.

4. Section 116.170—Applicability of Emission Reductions as Offsets

The former § 116.170 was approved by EPA into the Texas SIP on September 18, 2002 (67 FR 58697). Subsection 116.170(2) is not in the SIP. On August 20, 2003 § 116.170 was repealed and replaced with a new § 116.170. The August 20, 2003, repeal and adoption of new section 116.170 are approvable. The requirements for the use of emission reductions as offsets for NSR permitting are consistent with the revised definition of “offset ratio” and the TCEQ’s established emissions banking and trading programs. EPA proposed approval of the Chapter 101, Subchapter H, Division 1 Emission Credit Banking and Trading program, and conditional approval of the Division 4 Discrete Emission Credit Banking and Trading program on October 5, 2005, and finalized our approvals on September 6, 2006. Our proposed rulemakings discuss our rationale that the credits generated under the programs can be used as NSR offsets. The administrative record for these rulemakings is available in the rulemaking dockets, EPA–R06–OAR–2005–TX–0006 and EPA–R06–OAR–2005–TX–0029, respectively. This revision is consistent with 110(l) of the CAA.

5. Section 116.172—Emissions Offsets From Rocket Engine Firing and Cleaning

The August 20, 2003 adoption of new section 116.172 is approvable. These provisions have been moved unchanged from the repealed section 116.170, which was SIP-approved September 18, 2002 as consistent with the CAA. This revision is consistent with 110(l) of the CAA.

6. Section 116.313—Renewal Application Fees

EPA approved section 116.313 into the Texas SIP March 10, 2006 (71 FR 12285). The revisions to section 116.313, adopted August 20, 2003, do not substantively change the requirements of section 116.313, as adopted by TCEQ on June 17, 1998, and further revised on September 25, 2002. The revisions to update the mailing address of the TCEQ are non-substantive and will not impact the NSR permit renewal process. New section 116.313 as adopted by the State on June 17, 1998

and further revised on September 25, 2002 and August 20, 2003 is approvable.

D. Does Approval of Texas’s Rule Revisions Interfere With Attainment, Reasonable Further Progress, or Any Other Applicable Requirement of the Act?

Section 110(l) of the CAA states that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. Our review of the Texas SIP submittals indicate that the revisions will not interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act.

IV. Final Action

EPA is taking direct final action to approve revisions to the Texas SIP submitted on July 22, 1998, October 4, 2002, and September 25, 2003. Specifically, EPA is approving the repeal and replacement of section 116.313 submitted on July 22, 1998 to assess fee requirements for permit renewals. EPA is also approving new fee provisions for permits by rule at 30 TAC Chapter 106, Subchapter B, section 106.50 submitted October 4, 2002. We are also approving the following revisions to the Texas SIP submitted on October 4, 2002: Revisions to section 116.141(b) and (e) to increase permit fee determinations, revisions to section 116.143 Introductory Paragraph to update the fee payment information, revisions to section 116.163(a) and (b) to increase permit fees for PSD permits, revisions to section 116.313(a) and (b) to increase permit renewal fees and update fee remittance information for the TCEQ, and revisions to section 116.614 to update the fee remittance information for standard permits. We are also approving the following revisions to the Texas SIP submitted on September 25, 2003: Revisions to section 116.12 to update the nonattainment review definitions, revisions to section 116.143 to update the TCEQ’s mailing address, revisions to section 116.150 to remove the expired NO_x waiver in the HGB nonattainment area, and revisions to section 116.313 to update the TCEQ’s mailing address. We are also approving the September 25, 2003, repeal and replacement of section 116.170 with a new section 116.170 that establishes the requirements of emission reductions used as NSR offsets consistent with the

revised nonattainment review definitions under section 116.12 and the current SIP approved trading programs under 30 TAC Chapter 101, Divisions 1 and 4. Finally, we are approving new section 116.172 submitted on September 25, 2003, which establishes the requirements for emission offsets from rocket engine firing and cleaning.

EPA is not taking action on the revisions to sections 101.24, 101.27, and 116.750 submitted on October 4, 2002 or revisions to sections 116.114, 116.115, 116.120, 116.315, and 116.715, submitted on September 25, 2003. These revisions remain under review by EPA and will be addressed in separate actions.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 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. EPA will submit a report containing this action 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 May 19, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 26, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, EPA Region 6.

■ 40 CFR part 52 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. Section 52.2270 is amended as follows:

■ a. In paragraph (c) the table entitled "EPA Approved Regulations in the Texas SIP" is amended the under Chapter 106—Permits by Rule, by adding the following immediately after the existing entry section 106.13: A new centered heading entitled "Subchapter B—Registration Fees for New Permits by Rule" followed by a new entry for section 106.50;

■ b. In paragraph (c) the table entitled "EPA Approved Regulations in the Texas SIP" is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter A—Definitions, by revising the entry for section 116.12;

■ c. In paragraph (c) the table entitled "EPA Approved Regulations in the Texas SIP" is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter B—New

Source Review Permits, Division 4—Permit Fees, by revising the entries for sections 116.141 and 116.143;

■ d. In paragraph (c) the table entitled "EPA Approved Regulations in the Texas SIP" is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter B—New Source Review Permits, Division 5—Nonattainment Review, by revising the entry for section 116.150;

■ e. In paragraph (c) the table entitled "EPA Approved Regulations in the Texas SIP" is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter B—New Source Review Permits, Division 6—Prevention of Significant Deterioration, by revising the entry for section 116.163;

■ f. In paragraph (c) the table entitled "EPA Approved Regulations in the Texas SIP" is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter B—New Source Review Permits, Division 7—Emission Reductions: Offsets, by revising the entry for section 116.170 and adding a new entry in numerical order for section 116.172;

■ g. In paragraph (c) the table entitled "EPA Approved Regulations in the Texas SIP" is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter D—Permit Renewals, by revising the entry for section 116.313;

■ h. In paragraph (c) the table entitled "EPA Approved Regulations in the Texas SIP" is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter F—Standard Permits, by revising the entry for section 116.614.

§ 52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 106—Permits by Rule				

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter B—Registration Fees for New Permits by Rule				
Section 106.50	Registration Fees for Permits by Rule	9/25/2002	3/20/2009 [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
Subchapter A—Definitions				
*	*	*	*	*
Section 116.12	Nonattainment Review Definitions	8/20/2003	3/20/2009 [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*
Subchapter B—New Source Review Permits				
*	*	*	*	*
Division 4—Permit Fees				
*	*	*	*	*
Section 116.141 ..	Determination of Fees	9/25/2002	3/20/2009 [Insert <i>FR</i> page number where document begins].	
Section 116.143 ..	Payment of Fees	8/20/2003	3/20/2009 [Insert <i>FR</i> page number where document begins].	
Division 5—Nonattainment Review				
Section 116.150 ..	New Major Source or Major Modification in Ozone Non-attainment Area.	8/20/2003	3/20/2009 [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*
Division 6—Prevention of Significant Deterioration Review				
*	*	*	*	*
Section 116.163 ..	Prevention of Significant Deterioration Permit Fees	9/25/2002	3/20/2009 [Insert <i>FR</i> page number where document begins].	
Division 7—Emission Reductions: Offsets				
Section 116.170 ..	Applicability of Emission Reductions as Offsets	8/20/2003	3/20/2009 [Insert <i>FR</i> page number where document begins].	
Section 116.172 ..	Emissions Offsets from Rocket Engine Firing and Cleaning	8/20/2003	3/20/2009 [Insert <i>FR</i> page number where document begins].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submission date	EPA approval date	Explanation
*	*	*	*	*
Subchapter D—Permit Renewals				
*	*	*	*	*
Section 116.313 ..	Renewal Application Fees	8/20/2003	3/20/2009 [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*
Subchapter F—Standard Permits				
*	*	*	*	*
Section 116.614 ..	Standard Permit Fees	9/25/2002	3/20/2009 [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*

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[FR Doc. E9-5835 Filed 3-19-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2004-0490; FRL-8784-4]

RIN 2060-AO23

Standards of Performance for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the sulfur dioxide air emission standards for stationary combustion turbines that burn biogas (landfill gas, digester gas, etc.). Without these amendments, owners/operators of new stationary combustion turbines burning biogas containing relatively low amounts of sulfur-containing compounds will be required to install pretreatment facilities to remove the sulfur compounds prior to combustion or to install post combustion controls to lower sulfur dioxide emissions. It was not EPA's intent to require the use of either of these approaches, and the costs associated with either approach are substantially greater than the

environmental benefit resulting from the decrease in sulfur dioxide emissions.

DATES: This direct final rule is effective on May 19, 2009 without further notice, unless EPA receives relevant adverse comment by April 20, 2009. If EPA receives relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this rule will not take effect.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0748 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* a-and-r-docket@epa.gov and fellner.christian@epa.gov.

3. *Facsimile:* (202) 566-9744.

4. *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

5. *Hand Delivery:* Deliver in person or by courier to: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2084-

0748. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>. This includes any personal information provided, unless the comment contains information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2008-0748. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then electronically identify within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes 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 public docket. Information so marked will not be