

The Texas Natural Resource Conservation Commission (commission) adopts new §106.8, Recordkeeping; and §106.263, Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities; amended §106.181, Used-Oil Combustion Units; §106.355, Pipeline Metering, Purging, and Maintenance; §106.454, Degreasing Units; and the repeal of §106.263, Repairs and Maintenance. The adopted new §106.8 is placed in Chapter 106, Subchapter A, General Requirements. Subchapter A is being submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan. Sections 106.8, 106.263, and 106.355 are adopted *with changes* to the proposed text as published in the May 4, 2001 issue of the *Texas Register* (26 TexReg 3351). Sections 106.181 and 106.454 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted new §106.8 specifies recordkeeping requirements for Chapter 106. While considering the implementation of Senate Bill 766 in 2000, the commission received comments from the EPA stating that Chapter 106 should include requirements that a source operating under a permit by rule (PBR) be able to continuously demonstrate compliance with the general requirements for use of a PBR and the specific conditions of the individual PBR under which the source is authorized. Because of these comments, and in order to ensure enforceable limits on potential to emit for insignificant facilities, the commission examined its recordkeeping requirements under Chapter 106 and is adopting amendments.

There are two distinct types of PBRs. Many PBRs only list the type of facility and state that it is permitted by rule and have no restrictions other than the general restrictions applicable to all PBRs as contained in §106.4, Requirements for Permitting by Rule. These “one-liners” have no recordkeeping requirements imposed by this adoption. Other PBRs have specific conditions and may or may not individually require recordkeeping.

Those who claim a PBR have the responsibility to be aware of their compliance status and should have the appropriate records to demonstrate compliance with the emission limitations and conditions available at the time of an investigation. However, the commission believes that recordkeeping requirements should be kept to a minimum and avoid duplication. The recordkeeping requirements are described in detail in the SECTION BY SECTION DISCUSSION, but generally requirements are adopted as follows. Facilities authorized under the one-liners will not have new recordkeeping requirements imposed under the adopted rules but may be asked to provide information demonstrating compliance. While these facilities are expected to comply with the general restrictions in §106.4, the commission expects that verification of compliance would be intuitively obvious on inspection or could be demonstrated by records otherwise kept for business purposes. Facilities currently required to keep records under a specific PBR will generally be affected only by the record retention requirements of this adopted rulemaking. Other PBRs have specific construction or operational restrictions but do not contain recordkeeping requirements. The commission expects that these facilities should be able to meet the recordkeeping requirements with records kept for normal business purposes such as material use and purchase records.

The adopted new §106.263 concerns the authorization of routine maintenance, start-up, and shutdown emissions under a PBR. Under the current §106.263, Repairs and Maintenance, which is repealed by this adoption, a significant amount of emissions (unlimited number of uses each up to 25 tons) could appear to have been authorized. This was not consistent with the goals of maintenance reporting and exemption requirements in 30 TAC §101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements and §101.11, Exemptions from Rules and Regulations. Under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.057, Exemption, the commission may exempt from permitting certain changes at facilities that will not make a significant contribution of air contaminants to the atmosphere. This new section limits the emissions from multiple maintenance, start-up, and shutdown occurrences, as well as from temporary facility operations associated with maintenance activities, by requiring cumulative accounting of emissions on an annual basis to ensure that the emissions are insignificant. This new section also limits the use of §106.263 to maintenance, start-up, or shutdown activities that result in emissions below the reportable quantity (RQ) as defined in §101.1(82), Definitions. Maintenance, start-up, or shutdown emissions at or above the RQ must either be reported under §101.7 and meet the demonstration requirements of 101.11 or be incorporated into the facility's permit. Restrictions based on RQs are not applicable to temporary maintenance facilities. Other amendments to this section are intended to clarify applicability for temporary maintenance facilities. Recognizing that these short-term emission limits, particularly the nitrogen oxides (NO_x) RQ of ten lb/day, may be too low for many maintenance activities, the commission will continue to collect information and scientific justification on the necessity for a higher value which shows protection of public health and welfare for possible future rule changes.

The amendments to §106.181, Used Oil Combustion Units, clarify the applicability of the PBR. The amendments to §106.355 clarify the authorization of air emissions for certain pipeline construction and operation and establish the relation of the section to the Chapter 101 general air quality rules on maintenance. The amendment to §106.454 excludes remote reservoir units from cold solvent cleaner requirements and eliminates the freeboard ratio requirement for remote reservoir units.

SECTION BY SECTION DISCUSSION

Subchapter A: General Requirements

New §106.8 is adopted with changes to the proposed text. The new §106.8 specifies requirements for recordkeeping and compliance demonstrations for all PBRs. The creation and retention of appropriate records showing continuing compliance with PBR requirements has always been a responsibility of the facility owner or operator in order to operate under a PBR. The new section specifies the types of records that are required to demonstrate compliance with the general conditions of §106.4 and the conditions of the individual PBR claimed. This new section will affect all PBR claims, regardless of the date when the owner or operator began using the PBR.

The new §106.8(a) states that owners or operators of facilities operating under de minimis status as defined in §116.119, De Minimis Facilities or Sources, are not affected by this rule because no authorization is required. The commission does not require records for de minimis facilities or sources.

The new section also outlines the requirements for two types of PBRs in §106.8(b) and (c), those referred to as “one-liners” (including all of Chapter 106, Subchapter C, Domestic and Comfort Heating

and Cooling) and those which have specific conditions, respectively. One-liners are those PBRs which only name the type of facility, designate it as permitted by rule, and impose no other conditions in the PBR itself. Owners or operators of facilities authorized by one-liners are not required to maintain ongoing compliance records, but only to collect and present information when individually requested by the executive director. Compliance with all historical PBRs which meet the one-liner criteria would be verified in the same way. The claimant would only need to provide information, such as business records, to demonstrate compliance with §106.4, if appropriate. All historical PBRs can be found on the commission's website. In response to public comment, the commission added rule language stating that the commission will maintain a list of PBRs at its central office in Austin, its regional offices, and its website on the world wide web.

The commission determined the following current sections of Chapter 106 meet the one-liner criteria and are referenced as Exhibit A: 1) Subchapter C, Domestic and Comfort Heating and Cooling; §106.101, Domestic Use Facilities; §106.102, Comfort Heating; and §106.103, Air Conditioning and Ventilation Systems; 2) Subchapter D, Analysis and Testing; §106.121, Hydraulic and Hydrostatic Testing Equipment; §106.122, Bench Scale Laboratory Equipment; and §106.123, Vacuum-producing Devices for Laboratory Use; 3) Subchapter F, Animal Confinement; and §106.163, Race Tracks, Zoos, and Animal Shelters; 4) Subchapter I, Manufacturing; §106.228, Platen Presses for Laminating; and §106.229, Textile Dyeing and Stripping Equipment; 5) Subchapter J, Food Preparation and Processing; §106.242, Food Preparation; and §106.244, Ovens, Barbecue Pits, and Cookers; 6) Subchapter K, General; §106.265, Hand-held and Manually Operated Machines; and §106.266, Vacuum Cleaning Systems; 7) Subchapter L, Feed, Fiber, and Fertilizer; Division 1, Feed, §106.282, Feed Grinding

Facilities; Division 2, Fiber, §106.291, Cotton Gin Stands; and Division 3, Fertilizer, §106.301, Aqueous Fertilizer Storage; 8) Subchapter M, Metallurgy; §106.312, Wax Melting and Application; §106.314, Shell Core and Mold Machines; §106.316, Metal Inspection; §106.317, Miscellaneous Metal Equipment; and §106.318, Die Casting Machines; 9) Subchapter N, Mixers, Blenders, and Packaging; and §106.331, Cosmetics Packaging and Pharmaceutical Packaging and Coating; 10) Subchapter Q, Plastics and Rubber; §106.391, Rubber and Plastic Curing Presses; and §106.394, Plastic Compression and Injection Molding; 11) Subchapter R, Service Industries; §106.411, Steam or Dry Cleaning Equipment; §106.412, Fuel Dispensing; §106.413, Bond Lining to Brake Shoes; §106.414, Packaging Lubes and Greases; §106.415, Laundry Dryers; and §106.419, Photographic Process Equipment; 12) Subchapter S, Surface Coating; §106.431, Milling and Grinding of Coatings and Molding Compounds; and §106.434, Powder Coating Facility; 13) Subchapter T, Surface Preparation; and §106.451, Wet Blast Cleaning; 14) Subchapter U, Tanks, Storage, and Loading; and §106.471, Storage or Holding of Dry Natural Gas; and 15) Subchapter X, Waste Processing and Remediation; and §106.531, Sewage Treatment Facility.

Owners or operators of all other facilities which are constructed, modified, or operated under a PBR will be required to maintain records to demonstrate that the facility meets the conditions of §106.4, if appropriate, and the applicable PBR conditions. The form and content of these records are specified in new §106.8(c)(1) - (6).

The new §106.8(c)(1) requires that the owner or operator of a facility retain a copy of the PBR and general requirements that authorized the facility's construction or changes. In response to public

comment, the commission added language clarifying that the PBR and general conditions are to be those in effect at the time the PBR was claimed. The PBR and general requirements of Chapter 106 (previously §116.211, Standard Exemption List) in effect at the time of the original authorization have historically remained in effect as long as the facility is in existence and is not reconstructed or changed. By keeping a copy of the PBR and general requirements in effect, both the commission and the claimant understand any conditions and restrictions which may apply to the facility. The commission maintains historical and current copies of all PBRs and general requirements on its web site to assist the regulated community in finding the appropriate claim. Copies are available at http://tnrcc.state.tx.us/air/nsr_permits/exempt.htm. These historical files also help the regulated community and commission staff in those cases where the actual construction or installation date cannot be determined. In those cases, the commission would accept a demonstration of compliance with a PBR and general requirements in effect when a clear record of the existence of the facility has been established. The claimant could also choose to demonstrate compliance with any PBR and general requirements in effect after the date a facility was shown to be in existence.

The new §106.8(c)(2) requires claimants to keep sufficient information to demonstrate that the facility meets the requirements of §106.4 or the general conditions in effect at the time of construction or change. This subsection also requires records which show compliance with the PBR claimed including, but not limited to, air contaminant emission type and quantities, equipment or operational specifications, and any other applicable PBR conditions. In response to public comment, the commission added the language that limits compliance to applicable general requirements in effect at the time of construction or change. The information and data should be sufficient to demonstrate

compliance with all applicable requirements of §106.4 or equivalent general requirements. PBRs may contain conditions to ensure emissions from facilities are insignificant in accordance with TCAA, §382.057, Exemption, and §382.05196, Permits by Rule.

Detailed emission calculations are not necessary for demonstrating compliance with all PBRs; therefore, the new §106.8 does not require emission calculations for all PBR holders. Records of some operating parameters are sufficient to demonstrate compliance with most PBRs. All PBR holders are encouraged to use records they currently keep (production records, purchase records, etc.) to demonstrate compliance with the emission limitations. Recordkeeping frequency will vary depending upon the specific characteristics of a given facility. Records of applicable operating parameters or emission calculations, whichever is being used, will have to be summarized as often as needed (if at all) to ensure that the owner or operator is aware of and can demonstrate they are within the emission limitations. The limits are expressed in terms of a rolling 12-month basis. Texas Government Code, Chapter 311, the Code Construction Act, §311.005 provides that the default definition of a “year” is 12 consecutive months unless a statute or rule requires otherwise. PBR holders will have to factor the 12-month rolling basis into their recordkeeping procedures.

In some cases, the only required calculation will be a one-time calculation to demonstrate a facility is incapable of exceeding the limitations. In this case, the PBR holder will be aware of their compliance status at all times by virtue of the one-time calculation, and no monthly or yearly summary will be needed. In other cases, the PBR holder may be able to determine operating limits, such as the total number of operating hours per month and/or production rates that will ensure the facility remains below

the emission limits. The owners or operators of these facilities will only need to summarize the relevant operating parameter on a monthly basis. Owners or operators of facilities with more variable operations, such as a batch operation with varying emission rates and operating hours, might need to calculate their emissions on a regular basis. A PI-7 Permit by Rule Registration Form, with required documentation, and a Permit by Rule General Requirements Checklist could be used by claimants to demonstrate initial compliance with this section.

Other records required under the new §106.8(c)(2) may include information regarding public notice where a site or commission account has more than one facility authorized under a PBR and the combined emissions of these facilities exceed the limitations of §106.4(a)(4). In addition, a record of the date of construction or modification of the PBR facility will demonstrate compliance with §106.4(a)(5). Conditions which cannot change, such as distances from permanently affixed facilities to any property line at the time of construction, or ambient operating temperatures with no external, reaction, or raw material heating source, will not need to be recorded. However, where equipment could be moved with relative ease, new offsite receptors could be built, or external heat sources are on site, pictorial records (construction drawings, photographs, temperature readings) might be appropriate.

Since mechanisms and documents to address limitations, conditions, and emission requirements vary widely based on the level of detail in each PBR, the commission intends to provide guidance by developing and expanding checklists for all current PBRs. These checklists are intended for use by the commission and facility operators. Operators may also receive compliance assistance from the commission's small business and local government assistance representatives by calling 1-800-447-

2827. Checklists and guidance documents will be posted on the commission's web site. These checklists will assist the commission and claimants in identifying which types of records might be used for compliance with the new §106.8(c)(2). To minimize duplication and unnecessary paperwork, the commission will focus on records which may already be maintained by claimants for other business reasons. The type of records generally envisioned include, but are not limited to, production records, operating hours, material purchase or usage notations, and/or emissions calculations. For example, compliance with the emission limits of sulfur dioxide from a boiler firing natural gas could be demonstrated by records of the sulfur content in the fuel gas (provided by the supplier) and the volume of gas fired in the boiler (purchase receipts). Another example would be a surface coating operation under §106.454 which currently requires extensive materials and usage records to be created and summarized over various periods of time.

The commission reviewed all PBRs to determine which claimants will most likely be affected by the requirements of the new §106.8(c)(2). Three distinct categories of current PBRs have been identified by the commission: 1) PBRs which have neither specific conditions nor recordkeeping requirements (referred to as one-liners in Exhibit A); 2) PBRs which contain specific recordkeeping requirements (Exhibit B); and 3) PBRs which contain specific emission, operational, or abatement conditions but no recordkeeping requirements (Exhibit C). Numerous PBRs currently contain recordkeeping requirements, and these operators will be moderately affected by the requirement to demonstrate their compliance with §106.4. In many cases, claimants using these PBRs will only have to retain the records that the individual PBR requires. These PBRs include the following and are referenced as Exhibit B: 1) Subchapter G, Combustion; §106.183, Boilers, Heaters, and Other Combustion Devices;

2) Subchapter I, Manufacturing; §106.224, Aerospace Equipment and Parts Manufacturing; §106.225, Semiconductor Manufacturing; §106.226, Paints, Varnishes, Ink, and Other Coating Manufacturing; and §106.231, Manufacturing, Refinishing, and Restoring Wood Products; 3) Subchapter K, General; §106.261, Facilities (Emission Limitations); and §106.263, Repairs and Maintenance; 4) Subchapter O, Oil and Gas; §106.355, Metering, Purging, and Maintenance of Pipelines; 5) Subchapter P, Plant Operations; §106.375, Aqueous Solutions for Electrolytic and Electroless Processes; 6) Subchapter Q, Plastics and Rubber; §106.392, Thermoset Resin Facilities; 7) Subchapter R, Service Industries; §106.417, Ethylene Oxide Sterilizers; and §106.418, Printing Presses; 8) Subchapter S, Surface Coating; §106.433, Surface Coat Facility; §106.435, Classic or Antique Automobile Restoration Facility; and §106.436, Auto Body Refinishing Facility; 9) Subchapter T, Surface Preparation; §106.452, Dry Abrasive Cleaning; and §106.454, Degreasing Units; 10) Subchapter V, Thermal Control Devices; §106.493, Direct Flame Incinerators; §106.494, Pathological Waste Incinerators; and §106.496, Trench Burners; 11) Subchapter W, Turbines and Engines; §106.512, Stationary Engines and Turbines; and 12) Subchapter X, Waste Processes and Remediation; and §106.533, Water and Soil Remediation.

Other PBRs have specific construction or operational restrictions but do not contain recordkeeping requirements. Under the new §106.8(c)(2), owners or operators of these facilities will be required to create operational records to demonstrate compliance with individual PBR conditions, as well as the general limitations of §106.4. These PBRs include the following and are referenced as Exhibit C: 1) Subchapter D, Analysis and Testing; §106.124, Pilot Plants; 2) Subchapter E, Aggregate and Pavement; §106.141, Batch Mixers; §106.142, Rock Crushers; §106.143, Wet Sand and Gravel

Production; §106.144, Bulk Mineral Handling; §106.145, Bulk Sand Handling; §106.146, Soil Stabilization Plants; §106.147, Asphalt Concrete Plants; §106.148, Material Unloading; §106.149, Sand and Gravel Processing; and §106.150, Asphalt Silos; 3) Subchapter F, Animal Confinement; §106.161, Animal Feeding Operations; and §106.162, Livestock Auction Facilities; 4) Subchapter G, Combustion; §106.181, Small Boilers, Heaters, and Other Combustion Devices; and §106.182, Ceramic Kilns; 5) Subchapter I, Manufacturing; §106.221, Extrusion Presses; §106.223, Saw Mills; and §106.227, Soldering, Brazing, Welding; 6) Subchapter J, Food Preparation and Processing; §106.241, Slaughterhouses; §106.243, Smokehouses; and §106.245, Ethyl Alcohol Facilities; 7) Subchapter K, General; §106.262, Facilities (Emission and Distance Limitations) (Previously SE 118); and §106.264, Replacements of Facilities; 8) Subchapter L, Feed, Fiber, and Fertilizer; Division 1, Feed, §106.281, Feed Milling; §106.283, Grain Handling, Storage, and Drying; and Division 3, Fertilizer, §106.302, Portable Pipe Reactor; 9) Subchapter M, Metallurgy; §106.311, Crucible or Pot Furnace; §106.313, Tumblers for Cleaning or Deburring Metal; §106.315, Sand or Investment Molds; §106.319, Foundry Sand Mold Forming Equipment; §106.320, Miscellaneous Metallic Treatment; §106.321, Metal Melting and Holding Furnaces; and §106.322, Furnaces To Reclaim Aluminum or Copper; 10) Subchapter N, Mixers, Blenders, and Packaging; §106.332, Chlorine Repackaging; and §106.333, Water-based Adhesive Mixers; 11) Subchapter O, Oil and Gas; §106.351, Salt Water Disposal (Petroleum); §106.352, Oil and Gas Production Facilities; §106.353, Temporary Oil and Gas Facilities; and §106.354, Iron Sponge Gas Treating Unit; 12) Subchapter P, Plant Operations; §106.371, Cooling Water Units; §106.372, Industrial Gases; §106.373, Refrigeration Systems; §106.374, Lime Slaking Facilities; and §106.376, Decorative Chrome Plating; 13) Subchapter Q, Plastics and Rubber; §106.393, Conveyance and Storage of Plastic and Rubber Material; §106.395,

Equipment for Mixing Plastic and Rubber (No Solvent); §106.396, Equipment for Mixing Plastic and Rubber (With Solvent); and 14) Subchapter R, Service Industries; §106.416, Uranium Recovery Facilities; 15) Subchapter S, Surface Coating; §106.432, Dipping Tanks and Containers; 16) Subchapter T, Surface Preparation; §106.453, Washing and Drying of Glass and Metal (Previously SE 42); 17) Subchapter U, Tanks, Storage, and Loading; §106.472, Organic and Inorganic Liquid Loading and Unloading; §106.473, Organic Liquid Loading and Unloading; §106.474, Hydrochloric Acid Storage; §106.475, Pressurized Tanks or Tanks Vented to a Firebox; §106.476, Pressurized Tanks or Tanks Vented to Control; §106.477, Anhydrous Ammonia Storage; and §106.478, Storage Tank and Change of Service; 18) Subchapter V, Thermal Control Devices; §106.491, Dual Chamber Incinerators; §106.492, Flares; and §106.495, Heat Cleaning Devices; 19) Subchapter W, Turbines and Engines; §106.511, Portable and Emergency Engines and Turbines; and 20) Subchapter X, Waste Processing and Remediation; §106.532, Water and Wastewater Treatment; and §106.534, Municipal Solid Waste Landfills and Transfer Stations.

The new §106.8(c)(3) requires owners or operators to maintain records at the facility site unless the facility normally operates unattended, in which case the records must be maintained at the location within the state which controls operations of the facility.

The new §106.8(c)(4) requires that records be made available in a reviewable format at the request of personnel from the commission or any air pollution control program having jurisdiction. This implies no requirement as to the type of media on which the records are retained, and the commission expects that a combination of computer files, strip charts, graphs, drawings, pictures, operator logs, and other

paper files (calculations, raw data, assumptions, and summaries) will be used. The commission may require that these records be duplicated when necessary at the facility owner or operator's expense and submitted to the commission upon request. In cases where records are maintained at a location other than the facility, the commission may require that the records be delivered or mailed at operator's expense to a designated location.

The new §106.8(c)(5) requires that owners or operators of facilities authorized by PBR begin keeping records as required under §106.8 on April 1, 2002. This date was delayed from January 1, 2002 in response to public comment. Owners or operators will be required to keep records to demonstrate ongoing compliance with this section. As with all air permits and authorizations issued by the commission, annual emission limits will have to be met on a rolling 12-month basis. A rolling 12-month period means that records must be available to demonstrate compliance with conditions of the individual PBR and §106.4 for any continuous 12-month period within the established retention period. Additionally, any data for the partial month of an inspection should be available. In response to public comment, the commission added language stating that records required by this section and used to demonstrate compliance with the requirements of §106.4 prior to April 1, 2002 are not required. Also in response to comment, the commission deleted the universal requirement that records be retained for five years. The commission added a new paragraph (6) that requires a five-year retention of records only if the facility is a major source required to have or obtain a federal operating permit (FOP). This will include facilities subject to new source performance standards (NSPS), national emissions standards for hazardous air pollutants (NESHAP), or facilities located at a site classified as major under 30 TAC

§122.10(13), General Definitions. All other facilities will be required to retain records for two years, which is consistent with the requirements of Chapter 116.

Subchapter G: Combustion

Section 106.181 is adopted as proposed. The amended section revises the title of the section and revises and restructures the text of the rule to clearly state that this PBR applies only to small combustion units burning used oil.

Subchapter K: General

The repeal of the current §106.263 is adopted, and a new §106.263 is adopted with changes to the proposed text. The commission reorganized the adopted section for clarity. The new §106.263(a) establishes the types of facilities and activities that can be authorized under this PBR.

The new §106.263(b) contains the types of facilities and activities which are excluded from authorization under this PBR. This PBR is not intended to authorize permanent facilities, and does not apply to facilities which meet the requirements of §116.119, De Minimis Facilities or Sources.

Specifically listed in the rule are several PBRs which the commission has historically viewed as including or addressing maintenance, start-up, or shutdown activity emissions. These PBRs include: §106.231, Manufacturing, Refinishing, and Restoring Wood Products; §106.351, Salt Water Disposal (Petroleum); §106.352, Oil and Gas Production Facilities; §106.353, Temporary Oil and Gas Facilities; §106.355, Metering, Purging, and Maintenance of Pipelines; §106.392, Thermoset Resin Facilities; §106.418, Printing Presses; §106.433, Surface Coat Facilities; §106.435, Classic or Antique

Automobile Restoration Facilities; §106.436, Auto Body Refinishing Facility; and §106.512, Stationary Engines and Turbines. If facilities are operating under these designated PBRs, §106.263 cannot be used in order to prevent multiple uses of PBRs authorizing maintenance emissions.

The commission clarified in §106.263(b) that this PBR does not apply to piping fugitive emissions from valves, flanges, compressors, pumps, and other standard piping components which are otherwise authorized under a permit or another PBR. These are not included under this PBR since when emissions are estimated from these facilities, some or all of the components are assumed to be leaking throughout the useful life of the facility and first-attempt repair requirements are included in permits. Any subsequent maintenance or repair would not be covered under the permit or another PBR and §106.263 could be used to cover the emissions associated with the necessary shutdown, purging, and equipment maintenance emissions. For example, adjusting packing to reduce a small leak would not need to be covered under this PBR if it is otherwise authorized as a first-attempt repair required by the permit. However, in most cases, if a process unit or facility needed to be shutdown and/or lines purged to isolate or repair a facility, the associated emissions would need to be covered either under this PBR or the General Rules.

As part of the reorganization of the section, the commission also clarified in subsection (b) those activities that will not qualify as routine maintenance. The rule specifies that routine maintenance does not include reconstruction under federal definitions, enhancements, or new permanent facilities. Enhancements are any physical changes or changes in method of operation that result in improvements in unit capacity or capability beyond previously existing performance or authorized levels. These

enhancements are specifically excluded from authorization under this PBR and must be authorized under a permit or another PBR.

The new §106.263(c) establishes the types of maintenance, start-up and shutdown activities, and temporary maintenance facilities which are authorized under this PBR. In response to public comment, the commission clarified in §106.263(c)(1) that routine maintenance activities are those that are planned and predictable and ensure the continuous normal operation of a facility or control device or return a facility or control device to normal operating conditions. Also in response to public comment, the commission deleted the requirement that routine maintenance occur at least once every 12 months.

As reorganized, the new §106.263(c)(2) defines routine start-up and shutdown as those that are planned and predictable and includes them as activities authorized under this section. Start-up is the set of activities and associated emissions that prime and prepare a facility to transition from no production to production at the normal operating range. Shutdown is the period beginning where the facility is brought below the normal operating range to ceasing operation, and includes the emptying and degassing/depressurization of the equipment. Shutdown ends at the point start-up begins. An upset can occur during any of these states or modes, and emissions resulting from the upset are not intended to be covered in this PBR or by a permit and would need to be reported under §101.6, Upset Reporting and Recordkeeping Requirements.

As reorganized, the new §106.263(c)(3) includes the construction and operation of temporary facilities used to perform maintenance work. This paragraph was designated §106.263(c)(4) in the proposal.

Several types of temporary maintenance facilities have historically been registered and authorized under the previous version of §106.263. In many cases, emissions from temporary maintenance facilities occur at the same time as other maintenance activities; therefore, keeping these requirements in a single PBR will reduce duplication of records. The new §106.263(c)(3)(A) - (F) specifically defines the types of temporary facilities which are covered under this rule. These temporary maintenance facilities are included in this adoption because they have been historically authorized by the commission and have a record of insignificant emissions. In response to public comment, the commission included a new subparagraph (F) that authorizes liquid or gas-fired vaporizers used for the purpose of vaporizing inert gases as a temporary maintenance facility.

The new §106.263(c)(3)(A) includes abrasive blasting, surface preparation, and surface coating operations on immovable, fixed structures. Historically, the commission has authorized these maintenance activities under the current §106.263 if the blasting, surface preparation, and coating supplies and equipment are taken to the object fixed in place and there is no practical means of moving the object to a designated area for surface preparation. These fixed objects include, but are not limited to, highway bridges, water towers, and buildings. If an object can be taken to a designated area, then other PBRs such as §106.433, Surface Coat Facility, and §106.452, Dry Abrasive Cleaning, will apply.

The new §106.263(c)(3)(B) covers engines and turbines during testing and repair. Since 1995, the commission has allowed testing of an engine or turbine to be considered part of the maintenance on that unit and authorized emissions associated with testing under the current §106.263. Stationary engines and turbines historically authorized under §106.512, Stationary Engines and Turbines, along with their

routine maintenance, start-up, and shutdown are not covered under the adopted new §106.263. During the next fiscal year, the commission plans to develop a standard permit to cover these facilities. Until a new PBR or standard permit is adopted which specifically addresses engine and turbine testing, the authorization as a temporary facility under §106.263 is necessary.

The new §106.263(c)(3)(C) includes engines, compressors, pumps, and associated purging which are associated with maintenance activities. These additional units are frequently seen in the field when maintenance activities occur and have historically been authorized under the current §106.263. The use of this PBR is not intended for replacement units, but only additional facilities which are needed during maintenance. The new §106.263(c)(3)(D) specifies several abatement units associated with controlled degassing and cleaning of vessels. While abatement is not specifically required by this PBR, the subparagraph clarifies under what conditions control equipment, when used, is authorized by this PBR. The new §106.263(c)(3)(E) defines temporary piping and associated facilities which are needed to bypass a unit or section of pipeline during maintenance situations. Such bypass lines reduce or eliminate emissions during maintenance.

The new §106.263(d) establishes the emission limits for routine maintenance, start-up, and shutdown that may be authorized under this PBR. The section has been modified from the proposal to address these types of emissions separately from temporary maintenance facilities. For clarity, emissions limits for temporary maintenance facilities have been placed in a new §106.263(e). Twenty-four hour emissions are limited to the reportable quantities defined in §101.1(82), Definitions. Facilities that cannot meet these emission limits, or the cumulative 12-month emission limits referenced in the new

§106.263(f), must either seek authorization for the emissions under Chapter 116 or comply with the reporting requirements and exemption criteria of §101.7 and §101.11. This subsection also includes a reference to a new §106.263(f), which addresses the accumulation of emissions over a 12-month period. The cumulative emissions resulting from maintenance, start-up, shutdown, and temporary maintenance facilities must collectively be less than any applicable emission limit in §106.4. By definition, individual uses of PBRs authorize insignificant emissions. To date, there has been no general mechanism by which the commission limits multiple uses of PBRs. The commission is limiting the use of §106.263 because multiple uses of insignificant authorizations may result in significant emissions, based on quantity or toxicity.

The new §106.263(e) establishes requirements for specific temporary maintenance facilities in addition to the limits of §106.263(f). In response to public comment, the commission refers to temporary facilities “listed” in §106.263(c)(3), instead of referring to “defined” facilities. To ensure that construction of all facilities and associated emissions are properly authorized under either Chapter 116 or Chapter 106 in accordance with TCAA, §382.051, the new §106.263(e)(1) - (4) contains references to other PBRs that have requirements applicable to these same specific facilities. The new §106.263(e)(5) requires other control devices used to control degassing vents to have an overall destruction or removal rate of 90% or better. The new §106.263(e)(6) will require an owner or operator of a temporary facility that cannot meet the emissions limitations of the PBR to obtain a preconstruction permit authorization under Chapter 116. The new §106.263(e)(7) establishes the length of time temporary facilities are expected to operate at a given location when being used to support maintenance activities. In most cases, it is not expected that these facilities will operate for more than

180 days. The PBR addresses maintenance activities requiring the operation of temporary facilities for more than 180 days by requiring registration of that facility with a PI-7 Registration Form. The commission expects to use these registrations to gather information for possible future rule changes regarding short-term emission rates and associated potential impacts to ensure protection of the public health and welfare. At that time, the commission may also consider additional flexibility of these requirements based on legislative programs, such as Environmental Management Systems, Innovative Programs, and Regulatory Flexibility, as required by HB 2912, 77th Legislature, 2001.

The new §106.263(f) was created as a result of the reorganization of the section since the proposal. The new subsection applies the rolling 12-month emission limits in §106.4 to all facilities and activities covered by §106.263. This restriction prevents significant accumulation of emissions authorized under PBR.

The new §106.263(g) also resulted from the reorganization of the section and contains the requirements for specific records that demonstrate compliance with all conditions of the section. In response to public comment, the commission omitted the requirement to maintain records on measures taken to minimize maintenance emissions. The commission requires the remaining records to demonstrate compliance with the 24-hour and 12-month emission restrictions of this PBR. Quantifications of air emissions resulting from maintenance and repair activities or temporary facilities associated with maintenance may be reviewed to determine whether short-term emission rates and the scope of the PBR should be addressed in future regulations.

Subchapter O: Oil and Gas

Amended §106.355 is adopted with changes to the proposed text. The amendments to §106.355 modify the section title to read “Pipeline Metering, Purging, and Maintenance” and add language that clarifies that this PBR is applicable to pipelines between sites. Process piping is covered by other sections of Chapter 106 or under an air quality permit.

The adopted amendments to §106.355(2) limit uncontrolled releases of butadiene to the atmosphere to 0.04 pounds per hour. Butadiene is a toxic compound currently being reviewed by the commission. Under the current PBR, up to one ton of butadiene can be released to the atmosphere during any metering, purging, or maintenance operation. By continuing to authorize controlled emissions of butadiene through combustion in a smokeless flare, the amendment will continue to allow necessary maintenance and purging while being more protective of the public’s health and safety. A negligible amount of butadiene is specified for those cases where it may apply. Other air contaminants with the exception of carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen are limited to uncontrolled releases of one ton per occurrence. The commission added the exemption for these substances in response to public comment.

The amendments to §106.355(3) exempt certain pipeline maintenance activities involving sweet natural gas from recordkeeping requirements because sweet natural gas is generally not a threat to the general public or their property. This paragraph also specifically prohibits venting of sweet natural gas near a known or suspected ignition source to ensure public health and safety.

The new §106.355(4) states that maintenance that cannot meet the emission restrictions of this section or is not authorized under Chapter 116 must be reported under §101.7 and quality for an exemption under §101.11. This wording is necessary to ensure the regulated community is aware of its obligations and choices under the TCAA and the rules of the commission.

The new §106.355(5) requires recordkeeping to demonstrate compliance with the section. Operations authorized by §106.355 will likely include many different points on one or more pipelines belonging to a single operator. This paragraph allows the owner or operator to maintain all records demonstrating compliance in a single set of files at an appropriate site in Texas. The records will consist of the information describing the maintenance activities and their associated emissions. For clarity, this paragraph states that the resetting of flow meters and their calibration are considered routine operations, separate from maintenance and purging.

Subchapter T: Surface Preparation

Section 106.454 is adopted as proposed. Section 106.454(3) excludes remote reservoirs since they are more specifically covered under §106.454(2). Even though remote reservoirs may be a subset of cold solvent cleaners, the two types of equipment do not operate in the same way and have different designs. In a remote reservoir unit, the liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area. Thus, a freeboard ratio requirement is not applicable to remote reservoirs because the solvent does not pool around the parts. For a cold solvent cleaner, the solvent does pool around the parts and a freeboard is necessary. The purpose of the freeboard is to ensure that when parts are placed into the

solvent pool there is enough empty air space between the solvent level and the top of the tank to minimize solvent drag out when an air stream passes over the open reservoir. The design also prevents solvent overflow when parts are placed in the pool, thus decreasing air emissions.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this adoption is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. Major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This adoption is not a major environmental rule because its primary purpose is to specify the types of records required to ensure compliance with the individual and general conditions of PBRs and to specify the activities which may be authorized under particular PBRs. Specifically, the new and amended sections relate to recordkeeping requirements for all PBRs; emissions related to maintenance on facilities and emissions related to temporary maintenance facilities; pipeline metering, purging, and maintenance; specifications for cold solvent remote reservoir cleaners; and the applicability of the PBR for used oil combustion units.

In addition, a regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a major environmental rule as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. First, this adoption does not exceed a standard set by federal law, but it is consistent with federal standards relating to emissions monitoring and recordkeeping requirements. Second, this adoption does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; TCAA, §382.016, which authorizes the commission to require the measuring and monitoring of air contaminant emissions from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs; §382.057, which establishes the commission's authority concerning exemptions; as well as the other sections cited in the STATUTORY AUTHORITY section of this preamble. Third, this adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The state is required to have a minor stationary source program under 42 United States Code, §7410(a)(2)(C), and PBRs are part of the minor stationary source program. Fourth, this adoption was not developed solely under the general powers of the agency, but was

specifically developed under the specific state laws and authorizations noted in the STATUTORY AUTHORITY section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the adopted rulemaking is to revise the rules to establish and clarify the requirements for compliance demonstrations and the activities which may be authorized under particular PBRs. The adopted rules will substantially advance these stated purposes by providing specific rule provisions that address these matters.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the rules do not affect a landowner's rights in private real property because this adoption does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commissions rules in 30 TAC

Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity and quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). In carrying out its duty to maintain and control the state's air quality, the commission is clarifying the regulatory requirements in Chapter 106, which authorizes facilities and associated activities that will not make a significant contribution of air contaminants to the atmosphere. Specifically, the proposal clarifies the application and use of the specific PBRs addressed in this adoption and clarifies the general recordkeeping requirements for all PBRs. In addition, the CMP policy applicable to this action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This action complies with 40 CFR 50, National Primary and Secondary Ambient Air Quality Standards. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. No comments on the CMP consistency determination were received.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because Chapter 106 contains applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits), owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 106 requirements for each emission unit affected by the revisions to Chapter 106 at their site.

HEARING AND COMMENTERS

A public hearing on the proposal was offered on May 29, 2001. Twenty-nine commenters submitted written comments during the public comment period which closed on June 4, 2001. All of the commenters opposed specific parts of the proposal.

Submitting comments were Air Products and Chemicals, Inc. (Air Products); Association of Automotive Service Providers of Texas (AASP); Baker Botts L.L.P. on behalf of the Texas Industrial Project (TIP); BP Amoco (BP); Branch Smith, Inc. (Branch); Craig's Cleaners (Craig); Dallas Small Business Advisory Committee (Dallas SBAC); Dow Chemical Company (Dow); Etheridge Printing (Etheridge); ExxonMobil Refining and Supply Company (ExxonMobil); Fort Worth Small Business Advisory Committee (Ft. Worth SBAC); Golden Triangle Small Business Advisory Committee (GTSBAC); Houston Small Business Advisory Committee (Houston SBAC); Johnson's Cleaners (Johnson); Longhorn Collision Center (Longhorn); Nesbit's Cleaners (Nesbit); Printing Industries of the Gulf Coast (PI); River City Collision, Inc. (River); San Antonio Manufacturers Association (SAMA); Small Business Compliance Advisory Panel (CAP); Solar Turbines (Solar); Southwest Dry Cleaners Association (Southwest); Texas Chemical Council (TCC); Texas Cotton Ginners' Association

(TCGA); Texas Oil and Gas Association (TXOGA); Twin Oaks Cleaners (Twin Oaks); EPA, Vanguard Metal Technologies (Vanguard); X-Press Copy & Printing (XPress); and one individual.

RESPONSE TO COMMENTS

Comments on 106.8

TXOGA and ExxonMobil agreed with the proposal to exempt de minimis facilities and “one-liners” from the proposed recordkeeping requirements. They recommended modifying §106.8(b) to delete the reference to the current requirements of §106.4 and recommended that the subsection require demonstration of compliance with the general conditions applicable at the time of construction or modification. They stated that the proposed language appears to be an invitation to over-zealous inspectors to make a request for documentation of compliance with the current general conditions.

The commission revised the rule to ensure that the language of §106.8(b) is clear that the general requirements in effect at the time of construction or modification under a PBR (or standard exemption) are those with which the facility owner or operator must demonstrate compliance. Inspectors will confine their investigations to information required to show compliance under the commission’s rules.

Dow commented that it is unnecessary to maintain a copy of PBRs under which a facility is authorized. The PBR number and effective date is sufficient and the PBR can be retrieved from the commission website.

The commission did not revise the rule in response to this comment. The PBR and general requirements of Chapter 106 (previously §116.211, Standard Exemption List) in effect at the time of the original authorization have historically remained in effect as long as the facility is in existence and is not reconstructed or changed. By keeping a copy of the PBR and general requirements in effect, both the commission and the claimant understand any conditions and restrictions which may apply to the facility.

TCC, TIP, ExxonMobil, BP, and TXOGA commented that recordkeeping requirements under §106.8 should not be retroactive and that provisions of existing PBRs should not be changed through §106.8. This requirement could be interpreted to require that an owner or operator produce records for activities authorized by PBR for an indefinite period in the past even when these activities are no longer occurring. These records may not exist as not all PBRs required recordkeeping. Older properties may have been sold numerous times making tracking of documentation difficult. No records should be required of facilities currently incorporated into a permit or if the facility no longer exists. Recordkeeping requirements should begin on a specific date and apply to those facilities currently operating under a PBR.

The commission revised the rule to state that compliance demonstration record keeping shall begin April 1, 2002. Beginning April 1, 2002, all existing facilities authorized by PBR shall begin keeping records that demonstrate compliance with the general and specific requirements in place at the time of construction or modification. The rule does not require recordkeeping for facilities that were shut down prior to the effective date of this rule. Nothing in the rule requires the

operator to have records showing continuous compliance since the facilities were installed. The operator should however be able to demonstrate the applicability of the particular PBR claimed. Facilities that have been incorporated into a permit and are no longer authorized by a standard exemption or PBR are not required to comply with §106.8.

TXOGA, ExxonMobil, and TCGA stated that the inability to fully document the installation date of a piece of equipment should not disallow a historically claimed PBR or standard exemption and recommended modifications to §106.8(b) that would allow the use of best available records when reasonable efforts fail to obtain definitive records on construction or modification. TIP added that if the requirement to produce retroactive records is adopted then the cost of compliance with this rule will far exceed the estimated \$500 in the proposal preamble. TCGA described a scenario where a small business makes a minor change that was believed not to be subject to commission regulation. If the change is discovered after the fact, the business must show compliance with the applicable PBR to demonstrate compliance with the commission rules and could be cited for not keeping necessary records. TCGA commented that it was counterproductive to have PBRs that authorize insignificant changes coupled with a record keeping system that causes small businesses to be in violation of rules that they do not know exist.

The commission did not revise the rule in response to this comment. The commission believes that the operator must establish authorization for all facilities as defined under the TCAA as of the date of construction. In order to determine the proper authorization that applies to an operator's facility, the date of installation must be established to a reasonable degree of certainty. Chapter

106, Subchapter A, specifically states in §106.2, Applicability, that “This chapter applies to facilities or types of facilities listed in this chapter where construction is commenced on or after the effective date of the relevant PBR.” Additionally, the rule goes on to state in §106.4(a)(6) that “Construction or modification of a facility commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific PBR in this chapter must meet the revised requirements to qualify for a PBR.”

The PBR and general requirements of Chapter 106 (previously §116.211, Standard Exemption List) in effect at the time of the original authorization have historically remained in effect as long as the facility is in existence and is not reconstructed or modified. To assist the regulated community in finding the appropriate PBR to claim, the commission maintains historical and current copies of all PBRs and general requirements on its web site. These historical files also help the regulated community and commission staff when a facility’s actual construction or installation date cannot be determined. In that case, the commission would accept a demonstration of compliance with a PBR and applicable general requirements when a clear and reasonable record of the existence of the facility can be established. The claimant could also choose to demonstrate compliance with any PBR and general requirements in effect after the date a facility was shown to be in existence. Overall, the commission has incorporated provisions in §106.8 to provide owners and operators flexibility in complying with recordkeeping requirements, if any, that apply to their operations and activities. In addition to the language recognizing PBR claims and applicable requirements as of the time of construction, the commission has evaluated

all PBRs and identified specific ones which warrant minimum recordkeeping requirements to temper the potential burden on smaller businesses.

Considering the flexibility and technical assistance available through the commission's webpages, as well as the one-on-one assistance from region and Air Permits staff, the commission does not anticipate that compliance with these requirements will be excessively burdensome or will result in substantial cost for most facility owners or operators. This is especially true if regulated customers have made a diligent and continuing effort to maintain compliance with appropriate laws and rules during the life of the facility operations. Instead of being counterproductive, the commission is, in part, making these compliance demonstrations clearer to the regulated community and providing a definitive mechanism for ongoing assurance of compliance.

TCC commented that the effective recordkeeping date should be extended until January 1, 2003. They anticipate adoption of these amendments sometime after August 2001 which, under the proposed date of January 1, 2002, leaves only four months to gather records or make decisions about continued authorization under a PBR as opposed to a new source review permit. Air Products supported these comments. TXOGA and ExxonMobil agreed that a later implementation date is needed to provide affected industries additional time for research and compilation. They recommended a date one year from the effective date of these amendments.

The commission revised the rule to provide for an implementation date of April 1, 2002. The commission intends for the delay in the implementation date of the rule to allow PBR holders time

to obtain copies of the historical PBRs from the commission and identify which existing operational records will be used to demonstrate compliance.

Dow requested clarification that they will not be inspected for records older than January 1, 2002 as it is very difficult to fill in record gaps for years prior to the effective date of new recordkeeping requirements. TXOGA stated that the proposed implementation date of January 1, 2002 should alternatively be clarified as to whether it requires a record of compliance for 2001.

The commission clarified the rule regarding the intent that recordkeeping showing compliance with the annual emission limits of §106.4 will begin as of April 1, 2002 and not require recordkeeping required by §106.8 for earlier time periods. The first full annual record is required to be available on April 1, 2003.

SAMA commented that, rather than create a general recordkeeping requirement that applies to all PBRs, each individual PBR should be amended to include recordkeeping.

The commission did not revise the rule in response to this comment. A general requirement for all PBRs is appropriate when, as in this instance, the same minimum requirements would be required in all PBRs. In some instances, it may be appropriate to add or subtract from these general requirements in individual PBRs, and the commission may consider this in a future rulemaking.

Instead of restrictive rule language in each PBR, guidance documents and PBR checklists will detail the kinds of records that may be used to comply with §106.8 for each PBR facility. The use of guidance documents will provide flexibility for the commission and customers and facilitate updating for clarity and usefulness. Guidance documents will be available through the commission's Austin central office, regional offices, and the commission's website.

SAMA suggested that the list of PBRs that only name the type of facility without stating PBR conditions, the one-liners, be made a part of this rule adoption.

The commission did not revise the rule in response to this comment. Adding the one-liner list to the rule text would make the list more difficult to update as each revision must go through rulemaking which can be a four- to six-month process. The one-liner list is predicted to change over time due to PBR review, revision, or removal to the de minimis list. However, the current list of one-liners is included in the preamble to the rule. An up-to-date list of all current and historical one-liners will be available through the commission's Austin central office, regional offices, and the commission's website.

TXOGA stated that documentation of PBR compliance should be limited to existing facilities for which registration was required at the time of construction. The rule should include a presumption that all current facilities in operation under a PBR for at least five years were constructed or modified under the claimed PBR.

The commission did not revise the rule in response to this comment. It would be inappropriate for the commission to include such a presumption in the rule because minor new source review, including authorizations under PBRs, is now part of the FOP program. EPA requires the facilities covered under the FOP to demonstrate compliance with applicable rules and regulations, regardless of the date of construction, installation, or change. Additionally, sites with facilities authorized by PBR that are not major, and thus not required to have an FOP, may have to demonstrate that the potential to emit is below the limit for a major site. Since many PBRs, including those associated with oil and gas facilities, have the potential to become applicable requirements in a FOP, the commission requires that all facilities operating under Chapter 106 be able to demonstrate ongoing compliance with all applicable requirements, including authorization of the facility by the appropriate PBR or standard exemption and the applicable general requirements and emission limits.

TXOGA recommended that the requirement in §106.8(c)(2)(A) to maintain records sufficient to demonstrate compliance with all general requirements be limited to facilities constructed after the effective date of these amendments.

The commission did not revise the rule in response to this comment. The use of PBRs is statutorily limited to facilities that will not make a significant contribution of air contaminants to the atmosphere and the commission is obligated to ensure that emissions from all facilities operating under PBRs fit within that restriction. However, the commission did revise the rule to clarify that the records required for facilities operating under a PBR must demonstrate

compliance with the general requirements in effect at the time of construction, installation, or change to a facility. The commission also revised §106.8(c)(1) to state that only a copy of the general requirements in effect, if any, at the time of construction, installation, or change, need to be kept.

TXOGA stated that demonstration of compliance should be limited to emission factors applicable at the time of facility construction or modification.

The commission did not revise the rule in response to this comment. The commission believes that use of the most current emission factors should be required in order to yield the most accurate estimate of emissions and determine the continued suitability of a facility for authorization under PBR. It is reasonable to expect that refinement of emission factors through time may demonstrate that a facility under PBR is actually above §106.4 or other applicable limits and should be under a new source review permit. The continual upgrading of calculation methods based on scientific, engineering, and technical information is necessary to ensure that the ambient air quality of Texas is preserved.

Dow supported the concept of using production or other business records as a method of demonstrating compliance with PBRs. In addition to the examples given in the preamble, they referred to PBRs where negotiated conditions led to unusual records. They provided the example of railcar unloading which is restricted to three cars per hour. The emissions from this approved limit were calculated during promulgation and the result was the three car limit. No further calculation should be necessary. They

also mentioned other PBRs such as §106.261, Facilities (Emission Limitations) and §106.262, Facilities (Emission and Distance Limitations) to confirm that calculations made during promulgation which resulted in the adopted limits render it unnecessary to perform additional calculations. TCGA agreed that one-time calculations are sufficient if an owner or operator can demonstrate compliance with permit conditions.

The commission agrees that business records other than those specifically mentioned in the preamble may be sufficient to demonstrate compliance with the general and specific conditions of a particular PBR. Unlike many older PBRs, which have not changed in decades, recently promulgated PBRs may have considered ongoing compliance with the general limitations of Chapter 106 and may contain specific requirements and work practices which are designed to prevent emissions from exceeding the prescribed limits in §106.4. Records of such work practices as specified in an individual PBR, such as the number of rail cars loaded per hour mentioned by Dow, when combined with one-time worst-case emission calculations, could negate the need for repeated emission calculation to demonstrate compliance with a general or specific emission limitation. The commission supports the opportunity for facility operators to complete a one-time, worst-case emission calculation to demonstrate ongoing compliance for any PBR.

SAMA suggested that if the records are made available, the inspector should do the calculations to determine emission levels. SAMA suggested that PBRs have annual limitations that are intended to maintain §106.4 emission levels. They stated that the facilities referred to in the rule will not help

anyone. CAP commented that the calculation of emissions is complicated and burdensome and will require extensive assistance from commission staff.

The commission did not revise the rule in response to this comment. However, the commission agrees that emissions calculations can be difficult for small business, and staff will revise available guidance documents and checklists to assist PBR holders. The commission established and maintains PBRs on the assumption that owners or operators using the PBR are aware of their facility's suitability for authorization under the PBR. Many PBRs were developed before the annual emission limits in §106.4 (previously §116.211) were established and, therefore, did not consider continuous compliance with these general limits for insignificance. In addition, many PBRs authorize a wide variety of activities and facility operations which, while not of concern on a short-term basis, may exceed the annual limits of §106.4. Compliance with both an individual PBR and the general limitations of §106.4 requires that PBR holders perform calculations to determine emission levels. In many cases, these calculations may only be required once, and subsequent records of material use could then serve as a compliance indicator. The de minimis facilities and sources are referred to in the rule in order to clarify that emissions authorized under de minimis are not required to comply with the recordkeeping requirements in §106.8. All PBR holders are encouraged to use records they currently keep, such as production and purchase records, to demonstrate compliance with the emission limitations.

EPA suggested that PBR holders making one-time calculations to demonstrate compliance with a PBR be required to retain records of the calculations and recalculate if there are operational changes at the facility. EPA also states that these requirements may be implicit in the rule.

The commission did not revise the rule in response to this comment. The commission agrees with EPA's comments and emphasizes that this method of compliance demonstration with the limits of Chapter 106 is the most efficient for both the commission and facility operators. The commission also acknowledges that if any operational parameters used in the initial demonstration change, the facility operator must recalculate the emissions estimate and update the compliance demonstration.

Southwest, CAP, Longhorn, River, AASP, Craig, Vanguard, Etheridge, Branch, PI, Johnson, and XPress commented that the rules are burdensome for small business with little apparent environmental benefit. CAP stated that the rule will not benefit air quality because PBRs already require compliance with conditions designed for environmental protection.

The commission did not revise the rule in response to this comment. The commission recognizes that recordkeeping may be burdensome; however, the requirements that the commission is adopting are designed to take advantage of and use records that owners or operators are already keeping for business purposes. The commission agrees that the general and specific conditions of PBRs are designed to protect the environment and ensure that emissions from these facilities are insignificant. The recordkeeping requirements of this adoption are intended to provide a mechanism by which owners or operators, as well as commission staff, are able to determine if a facility is in compliance with the conditions of the PBR under which it operates.

CAP, Dallas SBAC, Houston SBAC, Fort Worth SBAC, GTSBAC, Longhorn, Southwest, River, AASP, Vanguard, Twin Oaks, and Nesbit commented that businesses that emit low levels of pollutants and are not required to get a FOP should be exempt from recordkeeping requirements. TCGA suggested that businesses not required to get a FOP would supply records only upon request. CAP, Dallas SBAC, Fort Worth SBAC, and GTSBAC added that there is a low probability that the emission limits in PBRs will ever be exceeded.

The commission established PBRs as a method for facility authorization that is less burdensome for both the operator and the commission. In many cases, a facility authorized by PBR will easily fit within the operating conditions of Chapter 106. Others operate closer to the specific and general PBR limits. In either case, because the use of PBRs is statutorily limited to facilities that will not make a significant contribution of air contaminants to the atmosphere, the commission is obligated to ensure that emissions from all facilities fit within that restriction. Recordkeeping is the tool the commission uses to make that assurance.

Facilities with very low emissions may currently be exempted from recordkeeping under the de minimis classification, and the one-liner PBRs require minimal recordkeeping to be supplied to the commission only on request. Also, owners or operators of facilities who believe that the emissions of the facility are very low may petition the executive director to have the facility classified as de minimis. The commission believes that facilities that do not fit into these two categories have the potential to exceed the PBR general requirements. Consequently, the commission requires records as a verification of the facility's continued suitability to be authorized

under a PBR and did not revise the rule in response to this comment. The commission has made every effort, where possible, to allow records kept for other business purposes to also serve as records of compliance with PBR conditions. The commission will also develop guidance for specific PBR categories to aid owners and operators in determining the kinds of records that they will need for their specific facility.

PI, River, AASP, and SAMA commented that five years is an excessive period of time to retain records. TCC, TIP, TXOGA, SAMA, and River commented that the five-year record retention requirement is excessive and should not be based on FOP program recordkeeping requirements as many facilities authorized under PBRs are not subject to FOP requirements.

The commission agrees with the comments concerning record retention and revised the rule language to allow minor sources that are not required to obtain a FOP, or comply with other, more lengthy federal recordkeeping requirements, to retain records for only two years. The commission revised §106.8(c)(6) to require only major sites to maintain records for five years. The commission notes that many facility owners or operators should perform additional research into their federal status. For example, oil and gas facilities are potentially subject to 40 CFR 63, Subpart HH, concerning maximum achievable control technology and thus are subject to the five-year retention requirement.

EPA suggested that the rule language in §106.8(c)(5) state that a five-year record retention requirement supercede any other retention period stated in an individual PBR. EPA also suggested that the preamble

be clarified to state if the five-year retention requirement applies to all PBRs or just those associated with sites holding FOPs.

The commission agrees with EPA's comment and revised §106.8(c)(6) to clarify that the requirements of records retention supercede any requirements currently contained in an individual PBR. This section was also revised to distinguish the record retention time frames of major and minor federal sources.

Johnson suggested an exemption from recordkeeping for boilers, heaters, and other combustion devices with a maximum heat input of less than 10,000,000 BTU per hour and fueled by natural gas or liquid petroleum with a sulfur content of no more than 0.1 grain per cubic foot.

The commission did not revise the rule in response to this comment. The commission does not believe that such an exception can be technically justified considering that one of these units may be located at a potentially major site. The commission notes that a one-time calculation from manufacturer's specifications is likely to demonstrate that such facilities, in certain circumstances, are incapable of exceeding the emission limitations. This would meet the recordkeeping requirements of this adoption.

The commenter operates a dry cleaning business. If the boiler is used only for steam or dry cleaning of clothes, then §106.411, Steam or Dry Cleaning Equipment, could be used to authorize

the boiler emissions. Section 106.411 is a one-liner, thus information demonstrating compliance would only need to be presented upon request.

TCC, Dow, ExxonMobil, and TXOGA commented that the commission should not limit alternate record storage to those facilities that are normally unmanned. Certain facilities may have personnel present but are not suitable for record storage because of facility function or staffing. Alternate storage should be available to all facilities, and the commission should avoid defining roles for facility personnel.

The commission did not revise the rule in response to this comment. While the commission agrees with the comment that the rule language should not define roles for facility personnel, the commission believes that it is important for facility personnel to be aware of the conditions of the PBR under which the facility operates. The local operator should understand what is required to comply with all conditions and limits and to keep records demonstrating compliance. Also, the commission believes that it is necessary for manned facilities to keep copies of records to facilitate an efficient determination of compliance during an investigation.

TCC, Dow, ExxonMobil, and TXOGA commented that the commission should also delete the phrase “in a reviewable format” from §106.8(c)(4) as the phrase is vague and adds no meaning to the requirement. TIP agreed that the language should be deleted and stated that owners or operators should be allowed time to provide this information. The rule and preamble imply that the information should be instantaneously available.

The commission did not revise the rule in response to this comment. Consistent with long-standing practice, it is essential for the investigators to be able to review records during an investigation in order to compare those records with observed operations. The current wording of the rule allows for flexibility in the format of records. For example, it is acceptable for owners or operators to maintain records electronically, but the records should be printable in order for commission staff to review the information and make copies for the commission files.

TXOGA recommends that the requirement to have compliance data available for a partial month as stated in the preamble for §106.8(c)(5) is unreasonable and should be deleted. This requirement implies daily compliance records which are not compiled for most facilities.

The commission did not revise the rule in response to this comment. The commission disagrees with the comment that §106.8(c)(5) or the language in the preamble implies that compliance records be compiled daily. The preamble states that data, not summaries, upon which the compliance record will be based, should be available for the partial month of inspection. Any partial month data will be required only upon request and would be needed in the case where the data would be critical to the investigation.

TCC and TIP commented that they are unaware of any general commission requirement stating that permit and PBR compliance will be determined on a rolling 12-month average. PI stated that the 12-month rolling average with a five-year retention period is an unnecessary burden as the sources affected by the amendment will not be close to any permitting levels. TIP stated that the language in §106.4,

since first promulgated in 1985, has consistently referred to emissions in tonnage per year. It is TIP's opinion that compliance with PBR limits should be based on an annual calendar average rather than a rolling 12-month average. TIP further stated that imposing recordkeeping requirements through §106.8 that change the requirements of §106.4 from "per year" limits to a 12-month rolling average requirement makes §106.4 more stringent and this substantive change was not properly noticed. Dow commented that the 12-month period should be deleted and recordkeeping requirements should default to the condition prescribed in the PBR. There is no benefit to requiring a 12-month period if existing production or other records demonstrate compliance with the PBR. The 12-month period also does not fit well with contract work which may cause sporadic operation of a facility. They also stated that this requirement does not necessarily fit well with maintenance activity which may have to be planned based on part availability, weather, or contractor resources.

The commission did not revise the rule in response to this comment. Texas Government Code, Chapter 311, the Code Construction Act, was promulgated in 1985 and applies to all commission rules. Section 311.005 provides that the default definition of a "year" is 12 consecutive months unless a statute or rule requires otherwise. The commission has historically required annual emissions compliance demonstrations for permits on rolling time periods. Although individual permit general and special conditions sometimes varied on the specific requirements from 1972 to 1994, the commission adopted consistent recordkeeping retention requirements for permits in November 1994. Specifically, §116.115(b)(6), General and Special Conditions, effective December 8, 1994, required that information to demonstrate compliance "shall be retained for at least two

years following the date the information or data is obtained.” All permit actions since 1994 have included the rolling two-year requirement for recordkeeping.

To maintain consistency between Chapters 106 and 116, the commission included a rolling recordkeeping requirement in §106.8(c)(5) which states that facilities must, “... keep records to support a compliance demonstration for any consecutive 12-month period.” Current language in §106.4 and §116.115, General and Special Conditions, requires compliance with emissions limits in tons per year and refers to an emission rate, not a calendar year. Other existing PBRs are consistent with this distinction and refer to a ton per year limit while specifying a rolling retention period for records, such as §106.418, Printing Presses; §106.183, Boilers, Heaters, and Other Combustion Devices; and §106.224, Aerospace Equipment and Parts Manufacturing. The language in §106.8(c)(5) is meant to clarify that the records kept must support a compliance determination for a rolling 12-month period. The commission recognizes that hourly, daily, and even weekly data compilation may, for purposes of Chapter 106, be burdensome and determined that monthly rolling records are reasonable and necessary to ensure that emissions remain insignificant from facilities operating under this chapter. Based on the long-standing history of rolling record retention periods and compliance demonstrations, the commission believes that the rolling retention requirements in §106.8 do not result in a substantive change to §106.4 requirements. In addition, the commission believes that the notice of the proposed rule change was sufficient to satisfy the requirements of Texas Government Code, §2001.024, Content of Notice, and provided adequate notice to solicit comments from interested persons.

TXOGA and ExxonMobil recommended an additional exemption from recordkeeping for facilities which under normal operation have no emissions other than fugitive emissions. This would include facilities like pipeline headers which consist of pipes, valves, and meters and are generally remote sites.

The commission did not revise the rule in response to this comment. Regardless of whether air contaminants are released through a stack or escape from less defined spaces, pollutants are emitted into the atmosphere from the operation of facilities authorized under this chapter. Facilities which emit fugitive emissions may, by themselves, be major sources. In addition, there are no regulatory restrictions to where these facilities may be located and most are not exclusively isolated in remote areas. In some cases, minimal recordkeeping may be needed or a one-time calculation may be sufficient given the fixed number of pipes, valves, and meters.

Comments on §106.263

TIP commented that the commission appears to be creating a hierarchy for the authorization of maintenance emissions and that it should clarify that the use of §106.263 to authorize maintenance emissions is discretionary.

The commission did not revise the rule in response to this comment. However, the use of §106.263 is discretionary. The new §106.263 establishes conditions for routine maintenance, start-up and shutdowns, and temporary facilities associated with maintenance to ensure air emissions from these activities and facilities are insignificant. Specifically, the PBR can be used for individual events that do not cause emissions at or above an RQ if, when added collectively at a

site to all other emissions authorized by this rule on a rolling 12-month basis, it does not exceed the limits in §106.4. Many maintenance activities have the potential to emit significant quantities of air contaminants and will have to be permitted or reported under the general rules. Under House Bill 2912, 77th Texas Legislature, 2001, the commission will be required to assess unauthorized, unscheduled emission events. In order to do this, the commission will need to make a clear distinction between emissions that result from planned events such as routine maintenance and those that are unscheduled such as upsets.

CAP, Fort Worth SBAC, Dallas SBAC, GTSBAC, PI, and Houston SBAC commented that businesses not required to have an FOP should be exempted from the requirements of §106.263. Southwest also asked that small businesses be exempted from §106.263. The calculation of emissions from maintenance would be a huge burden for small businesses with little compliance benefit. Very small operations like graffiti removal would be affected. CAP stated that this is a large effort to catch a few offenders.

Under the current §106.263, up to 25 tons of emissions could appear to be authorized under each use of the PBR, and there are no restrictions on the number of times the PBR can be used. The intent of the adopted new §106.263 is to prevent significant accumulations of emissions through multiple uses of the PBR and to limit the off-property effects of maintenance emissions. While a business may meet the statutory definition of a small business, it may still have the potential to emit significant amounts of air contaminants. Because the intent of this adoption is to limit off-property effects of air contaminants, the commission believes that the restrictions of §106.263

should apply to large and small businesses. Also, adoption of this new section will not impose additional recordkeeping requirements on small businesses, who are currently required to record their maintenance emissions under §101.7.

While the commission cannot calculate all maintenance emission for small business, it will aid small businesses by answering questions through its Small Business and Environmental Assistance Division. In many cases, emissions from routine maintenance will be consistent and predictable and not require case-by-case calculations. Very small operations, such as the graffiti removal example given by the commenter, may qualify as de minimis based on actual emissions potential. Qualification as de minimis would remove the operation from any permitting or reporting requirements under §106.263.

The commission believes that maintenance emissions of 25 tons per year or more are significant additions to a facility's emissions and these emissions should be reviewed for off-property effects. The commission's intent for this adoption is not to target a specific industry or facility for possible enforcement action.

During the analysis of comment, the commission observed that there may be some confusion over when this PBR and associated recordkeeping would be required for piping fugitive emissions. For this reason, the commission clarified in §106.263(b) that this PBR does not apply to piping fugitive emissions from valves, flanges, compressors, pumps, and other standard piping components which

are otherwise authorized under a permit or another PBR. These are not included under this PBR since when emissions are estimated from these facilities, some or all of the components are assumed to be leaking throughout the useful life of the facility and first-attempt repair requirements are included in permits. Any subsequent maintenance or repair would not be covered under the permit or another PBR and §106.263 could be used to cover the emissions associated with the necessary shutdown, purging, and equipment maintenance emissions. For example, adjusting packing to reduce a small leak would not need to be covered under this PBR if it is otherwise authorized as a first-attempt repair required by the permit. However, in most cases, if a process unit or facility needed to be shutdown and/or lines purged to isolate or repair a facility, the associated emissions would need to be covered either under this PBR or the General Rules.

TCC, ExxonMobil, BP, and Dow stated that authorization for maintenance under §106.263 should be based on types of activity that can be planned or projected and not frequency. This would allow facilities that conduct routine maintenance at intervals of greater than 12 months to use the PBR. TXOGA and TIP agreed adding that equipment is maintained according to the manufacturer's recommendations, which may not correspond to the regulated schedule. Dow added several examples of equipment, such as chlorine cell diaphragms, styrene catalyst, and light hydrogen plants, that require maintenance at greater than one year intervals. They also stated that the title of §106.263 should begin with the words "Planned Maintenance."

The commission agrees with this comment and revised the rule to remove the 12-month frequency restriction for maintenance emissions authorized by PBR. The commission will consider further rulemaking to require authorization in new source review permits for maintenance emissions at or above an RQ. The commission may use the 12-month restriction for this authorization because of the potential size and duration of these less frequent events and the difficulty in establishing yearly emission limits for those events that occur less frequently than once every 12 months. The commission did not revise the rule to change the title to include the words “Planned Maintenance” and relies on the word “routine” because it includes the concept of predictability as well as planning.

TXOGA and ExxonMobil objected to disallowing any enhancement to a facility as a maintenance activity. Enhancements that do not constitute modifications are a common and legitimate part of maintenance work. They recommended changing the word “enhancement” to “modification” in §106.263(c)(2).

The commission revised the rule to clarify the intent and purpose for the use of this PBR, but the commission disagrees with the comment for two reasons. Changes to facilities (referred to as enhancements in the proposal) are prohibited in §106.263(c)(1)(B). This PBR was never intended, and has not been historically used, to include changes to facilities which increased production or changed emissions beyond previously existing performance levels. The revised PBR specifically excludes changes at an existing facility that may result in de-bottlenecking or other improvements in unit capacity/capability. Potential emissions associated with these enhancements and other

changes must be authorized under a permit or a different PBR as any increase in capacity or production potentially may result in increased emissions not only for the specific facility, but upstream and downstream of the facility. This PBR's function is not to authorize ongoing emission increases, but only to authorize limited activity emissions.

TCC suggested that the commission allow the operation of temporary maintenance activities for a period shorter than one year with approval of the executive director. Plants should not be penalized for keeping equipment that is not used on-site. Requiring registration for temporary facilities after 180 days should not be necessary to justify that no permanent facility is constructed.

The commission did not revise the rule in response to this comment. The registration requirement is intended to cover units in operation for 180 days or more, not equipment only used occasionally at the site.

TXOGA and ExxonMobil stated that a new §106.263(c)(4)(F) should be added to include temporary replacement facilities to maintain site operations during the period permanent facilities are being repaired, provided that they do not result in emission increases relative to the permanent facilities.

The commission did not revise the rule in response to this comment. These facilities are not meant to assist the maintenance process but are used to continue facility operations while primary equipment is under maintenance. The commission's experience suggests that such units have large

potential emissions. These units are replacements which must be authorized under other PBRs or by permitting (§106.264, relating to Replacement of Facilities, for example).

TXOGA concurs with the proposed changes to §106.263(c)(3) concerning start-up and shutdown but commented that, in general, the proposed changes to §106.263 negate the usefulness of the section as they are too restrictive.

Under the current §106.263, Repairs and Maintenance, a significant amount of emissions (more than one occurrence of up to 25 tons each) could appear to be authorized. This is not consistent with the maintenance reporting and exemption requirements in §101.7 and §101.11. Under TCAA, §382.057, the commission may exempt from permitting certain changes at facilities that will not make a significant contribution of air contaminants to the atmosphere. The adopted new §106.263 will limit the emissions from multiple maintenance, start-up, and shutdown occurrences, as well as facility operations associated with maintenance activities, by requiring cumulative accounting of emissions on an annual basis to ensure insignificance. The adopted new section will also limit the short-term emissions to maintenance, start-up, or shutdown activities that result in emissions below the RQ to protect the public health and welfare. The commission recognizes that these requirements are a significant restriction on the use of §106.263, but the commission believes that many owners or operators will find that §106.263 remains a useful authorization mechanism. The commission may reevaluate the use of RQs to limit short-term emissions in the future.

TCC commented that the commission should use a more equitable approach to limit multiple uses of a PBR for maintenance activity and that the use of §106.263 should not be prohibited once the cumulative threshold for PBR emissions in §106.4, Requirements for Permitting by Rule, is reached. The restrictions in §106.4 should apply on a “per facility” or “per activity” basis and on an annual and not a rolling 12-month basis. They state that TCAA, §382.05196, authorizes the commission to adopt PBRs for certain types of facilities and TCAA, §382.057, authorizes the commission to exempt from pre-construction requirements, changes within the facility if such changes are insignificant. TCC concludes that §106.263 should be applied to facilities and not to sites and that the commission does not have statutory authority to regulate site activity through a PBR. TIP agreed with this reasoning and conclusion. Dow recommended modifying the rule text to refer to the emission limits in §106.4 to indicate that §106.263 could be used for each individual pollutant with a limit in §106.4. They state that the restriction to §106.4 discourages maintenance and that maintenance, start-up, and shutdowns require expenditures and would only be undertaken if necessary. TXOGA stated that, in general, the proposed changes to §106.263 negate the usefulness of the section as they are too restrictive. The result of the amendments is to reclassify maintenance activities as having unauthorized emissions that are indistinguishable from those that are reported under Chapter 101. TCC also stated that temporary maintenance facilities should not be subject to cumulative limits because the emissions are temporary.

Texas Clean Air Act, §382.05196, states that nothing in the statute shall be construed to limit the commission’s general power to control the state’s air quality and that the commission shall specifically define the terms and conditions for a PBR. The commission believes that the emissions restrictions of §106.263 are necessary to prevent a significant addition of maintenance

emissions from a site, which can have many facilities, without the review of those emissions for off-site effects. The §106.4 limitations on emissions authorized under PBRs were established at a threshold where the commission believes a review of these emissions for off-site effects is unnecessary because of the total mass emissions. The commission believes that this is an appropriate threshold for the use of §106.263, even though it does restrict the use of the PBR. The commission does not believe that the inability to use §106.263 is a deterrence to maintenance because Chapter 101 contains the procedures necessary to exempt maintenance emissions from compliance with rules and permit limits.

The commission acknowledges that the intent of this adoption is to restrict the use of §106.263 through emission limitations and that the recordkeeping requirements are similar to those in §101.7. The commission has explained its reasoning for the restriction on emissions under the PBR and the recordkeeping requirements are needed to demonstrate that the individual uses of the PBR do not exceed an RQ and that cumulative uses do not exceed the standards in §106.4. The commission does not require the users of §106.263 to provide information concerning the minimization of emissions. This is a reduction in recordkeeping as compared to those required under §101.7. The commission believes that this might provide incentive for the use of §106.263 as an authorization mechanism for maintenance emissions.

TCC, Dow, BP, and TIP stated that the commission should not limit the use of §106.263 for the authorization of maintenance activity based on a RQ which was not intended as an authorization limit. PBRs are a type of authorization and limiting their use based on an RQ significantly reduces the

flexibility available under the PBR. TIP stated that using RQs as a limitation on the use of §106.263 is irrational and a misapplication of the RQ concept as originally used by the commission, and requested deletion of the RQ limitation on §106.263. TIP stated that RQs were intended to serve an informational purpose rather than an authorization purpose and quoted language from the adoption preamble concerning RQs that RQs are not intended to represent a specific degree of hazard associated with certain releases. The RQ restriction is particularly significant concerning the RQ for nitrogen oxides (NO_x) which is ten pounds and would eliminate any flaring activity. This RQ is too low and has been recognized by EPA as unreasonable. TXOGA also recommended against the use of the current NO_x RQ as a threshold for maintenance emissions under §106.263. ExxonMobil agreed that the NO_x RQ is too low and renders §106.263 useless for maintenance where NO_x is a combustion by-product. Solar also commented that the NO_x RQ eliminates the use of §106.263 for the testing and repair of engines and turbines when §106.263(c)(4)(B) suggests such testing would be authorized. One individual also suggested examining the NO_x RQ in order to establish a more realistic number for combustion emissions. TIP added that the default RQ of 100 pounds would greatly restrict the activities under §106.263 on equipment that emits pollutants for which no RQ has been established.

The commission did not revise the rule in response to these comments. The commission restricted short-term emissions by use of the RQs to help limit potential impacts. The commission may reopen §106.263 at a future date to determine if different short-term emission rates may be more appropriate. At that time, the commission may also consider additional flexibility of these requirements based on legislative programs, such as Environmental Management Systems,

Innovative Programs, and Regulatory Flexibility, as required by HB 2912, 77th Legislature, 2001.

The use of RQs as a threshold is consistent in this adoption and in the general air quality rules where the RQ is used as a reporting threshold. In both cases the commission is not making a conclusion about the relative hazard of emissions above an RQ, but is concluding that the emissions may require further evaluation. Under the general air quality rules, an immediate report of emissions above an RQ provides information to the commission staff about a significant event that may warrant further investigation. This is the same rationale for the use of the RQ as a cutoff point for the use of §106.263. Under this adoption, emissions above an RQ must either be reported under Chapter 101 or permitted under Chapter 116, which would include an evaluation of off-site effects.

As this adoption was developed, the commission received informal comments that the NO_x RQ of ten pounds per day may be too low for use for some temporary maintenance facilities. The commission requested alternative limits from stakeholders, along with justification on the necessity for the higher value and how that value would be protective of public health and welfare. The commission did not receive an alternative evaluation or recommendation, so an abbreviated evaluation of NO_x effects was performed by staff. Screen modeling with typical combustion exhaust parameters for a turbine (stack release 14 meters (m), diameter 1.7 m, exit velocity 5.63 m per second, and exhaust temperature approximately 400 degrees Fahrenheit) shows the maximum concentration of NO_x occurs at 27 m from the source and 18 pounds of NO_x in a 24-hour period (day) would be the maximum amount of emissions from a given facility to result in an

impact of 1.0 micrograms per cubic meter (the de minimis standard for NAAQS and the value for which additional review would not be required). This value is not substantially different from the NO_x RQ, and the commission does not believe a revised standard is warranted in advance of the potential future rulemaking referenced earlier. The commission did not propose an amendment to any RQs for this rule action; therefore, under Texas administrative law, the RQs cannot be revised at this adoption. The absence of an RQ for a substance does not necessarily mean the absence of off-site effects related to that substance. The commission acknowledges that a default RQ is a restriction on the use of §106.263, but believes that the default RQ is necessary to allow for the evaluation of off-site effects either through a permit or under Chapter 101. Recognizing that these short-term emission limits, particularly the NO_x RQ of ten lb/day, may be too low for many maintenance activities, the commission will continue to collect information and scientific justification on the necessity for a higher value which shows protection of public health and welfare for possible future rule changes.

TXOGA and ExxonMobil recommended that the reference to immovable fixed structures in §106.263(c)(4)(A) be removed as it is an unnecessary restriction that could hinder best management practices for facility maintenance.

The commission did not revise the rule in response to this comment. In general, surface coating and abrasive blasting facilities are required to use §106.433, Surface Coat Facility, and §106.452, Dry Abrasive Cleaning, respectively. If a surface coating facility is established in a fixed location to which parts are brought for painting, then §106.433 must be used. The fixed location could be a

spray booth, paint hangar, or outdoor concrete pad. However, the commission may authorize surface coating or abrasive blasting as a maintenance activity under §106.263 if the painting or abrasive blasting supplies and equipment are taken to the object fixed in place and there is no practical means of moving the object to a designated painting and/or blasting area. This would apply to water storage tanks, highway bridges, refinery piping, and buildings, as examples.

Air Products and TCC stated that gaseous nitrogen is used for process and storage tank purging and that the liquid or gas-fired vaporizers attached to cryogenic trailers should be included in the temporary facilities list.

The commission agrees with the comment and revised the rule to include authorization of liquid or gas-fired vaporizers, for the purpose of vaporizing inert gas, as temporary facilities.

TXOGA commented that there is nothing in the language of the PBRs concerning salt water disposal (petroleum), oil and gas production facilities, temporary oil and gas facilities, or stationary engines and turbines to indicate that maintenance, start-up, and shutdown of those facilities is required to be covered by their respective PBRs. These facilities should be deleted from the list of facilities that are ineligible to use §106.263 for authorization of maintenance emissions. TXOGA members have been advised by commission personnel in the past that §106.263 would be available for these operations. Dow commented that it is not clear that the PBRs listed authorize the same type of maintenance, start-up, and shutdown activity as §106.263.

The commission did not revise the rule in response to these comments. The PBR for Stationary Engines and Turbines, §106.512, addresses maintenance. The salt water disposal (petroleum), oil and gas production facilities, and temporary oil and gas facilities PBRs are broadly inclusive, covering an entire site and many different named and implied activities. The commission considers these factors, as well as long-standing Air Permits Division practices and guidance, to be sufficient to exclude such operations from using §106.263. The commission clarifies that the referenced PBRs are written to be inclusive, justifying their exclusion from simultaneous use of this rule.

TCC stated that §106.263(d)(1) should be changed to refer to the control devices “listed,” not “defined,” in §106.(c)(4)(D). TCC also stated that the list of temporary facilities is too limited and the rule should include the language, “others as approved by the executive director.”

The commission revised the rule to reference specific temporary maintenance facilities “listed” in §106.263(c)(3). The commission disagrees with the suggestion that other temporary facilities should be authorized by the approval of the executive director except through a case-by-case permit review. Consequently, the suggested addition was not made.

Dow commented that flares used for start-up, shutdown, and maintenance should only be required to operate with a stable flame present without smoking for more than five minutes in a two-hour period due to the variability of the gas stream.

The commission did not revise the rule in response to this comment. The PBR requires that the temporary flare meet the requirements of §106.492(1) and (2)(c), Flares. These requirements cover reasonable and usual design specifications, steps to ensure safety when acid gases are burned, and a prohibition on burning liquids. The commission believes the more broad standards suggested would be inappropriate because this rule is intended to apply across the state in a wide variety of circumstances.

TCC commented that the commission should clarify the intent of §106.263(d)(1)(E) as to which temporary facilities might be used in conjunction with maintenance activities in the degassing of process or storage vessels. They also stated that authorization under PBR should not be necessary for activities required under the commission's rules. Dow requested that the term "temporary maintenance facility" be clarified to indicate whether authorization is required to bring in temporary equipment or to activate an infrequently used control device. They suggested that the term should apply to both examples.

The commission did not revise the rule in response to this comment. The commission believes that authorization is appropriate for new, but temporary, facilities needed for events requiring control under such rules as 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds. The commission chose to add temporary facilities as an option to the rule to allow the regulated community flexibility. The language is such that it allows the operator to use this PBR to meet other requirements, such as those in Chapter 115. The commission considers the "infrequently used control device" to be a permanent facility. Permanent facilities not already

authorized in a permit should be covered under 30 TAC §116.617, Standard Permits for Pollution Control Projects, or a PBR specifically designed for a permanent facility.

Solar commented that the current §106.511, Portable and Emergency Engines and Turbines, allows 876 hours per year of engine and turbine use for portable, emergency, or standby service. This limit should be incorporated into §106.263 with a provision for netting analysis for NO_x emissions within a nonattainment area in excess of five tons per year. Solar further stated that NO_x limits for the purposes of §106.263 should be expressed in annual limits rather than pounds per 24-hour period. Solar refers to a statement in the proposal preamble where the commission states “Many maintenance activities have the potential to emit significant quantities of air contaminants which otherwise should be controlled or eliminated.” Since past determinations of best available control technology have not required the control of engine testing emissions, it appears that these emissions cannot be reasonably controlled and should not be unnecessarily limited by the amendments to §106.263. An hourly emission limit on testing would place Solar at a competitive disadvantage on international markets as some customers demand field testing of equipment. Solar recommended that the commission use this PBR amendment to address testing issues rather than wait for the development of a standard permit concerning testing.

The commission did not revise the rule in response to this comment because the NO_x RQ limits are not applicable to temporary facilities. If an engine is otherwise authorized by a permit, or under §106.511 or §106.512, those authorizations, which typically require compliance testing, can be used to cover the emissions from activation, reactivation, or testing of an engine or turbine in its normal

location. Engine or turbine testing performed at any other location is considered a temporary facility and is not limited by the NO_x RQ.

The requirement in §106.263 for NO_x emissions from maintenance, start-up, and shutdown activities to meet the RQ is meant to ensure that the activities which occur under this PBR will not contravene the intent of the TCAA or potentially adversely affect the public health and welfare.

The RQ values have been established by the EPA so that certain levels of contaminants are reviewed in further detail by a regulatory agency.

TCC commented that §106.263(e) should be revised to delete the requirement that documentation should be separate and distinct from records of other air authorizations. This requirement is unclear and implies a separate filing system for PBRs.

The commission did not revise the rule in response to this comment. The rule is intended to be used across a site, has language capping 24-hour emissions for activities, and includes annual emissions limits for all activities and temporary facilities to ensure overall insignificance in accordance with the TCAA. Therefore, it is appropriate to require separate and distinct records to ensure that the collective and cumulative emissions are within the specified limits of the rule.

TCC and TXOGA commented that the commission should delete recordkeeping requirements from §106.263(e) as they are redundant with the general requirements in §106.8. Additionally, the subsection contains provisions that are similar to §101.11. TXOGA also commented that the result of the

amendments is to reclassify maintenance activities as having unauthorized emissions that are indistinguishable from those that are reported under Chapter 101. There is no need to duplicate these provisions. TXOGA and ExxonMobil added that the justification required for unauthorized emissions should not also be required for authorized maintenance emissions under §106.263. Dow commented that recordkeeping under this subsection applies to start-up, shutdown, and maintenance conducted after the effective date of this rule.

The commission revised the rule in response to this comment. The commission deleted the proposed §106.263(e)(5), which would have required records of any actions taken to minimize emissions, since this information is not necessary for compliance with the section. However, other recordkeeping requirements were retained. The commission included recordkeeping requirements in subsection (g) of the reorganized section for several purposes. The similarity to the requirements of §101.11 are provided for consistency within the commission rules since both of these sections address activities associated with emissions from facility maintenance, start-up, and shutdown. By including similar format, owners and operators will be able to keep similar information and not create widely different records, but keep the records separate for the different requirements. However, not all requirements of §101.11 are included in §106.263. Only those items which are relevant and necessary to demonstrate compliance with the requirements of the PBR are included. In addition to the recordkeeping requirements of §106.8, the following records are required for the following reasons: 1) the type and reason for the activity and the processes and equipment involved are required so that the applicability and exclusions of §106.263(b) and (c) are clearly demonstrated; 2) the date and time of the activity is needed to demonstrate compliance

with the 12-month cumulative rolling limits of the rule; 3) the duration of the activity is necessary as an integral part of air emissions calculations; and 4) the air contaminants and amounts emitted are required to demonstrate compliance with the emission limitations of §106.4. All of this information is also needed so that the commission may gather information over time on how this PBR is used for the future evaluation of short-term emission limits and refinement of the PBR.

Comments on §106.355

TXOGA commented that the title of §106.355 should be changed to refer to downstream pipelines to more accurately reflect the application of the section. ExxonMobil agreed that the title did not accurately reflect the subject of the section and suggested that it be moved to a more appropriate subchapter such as Chapter 106, Subchapter K, General. ExxonMobil also suggested that language be added to the section that would clarify the scope of the PBR to cover piping, valves, meters, pumps, and other appurtenances intrinsic to the operation of a natural gas or hazardous liquid pipe system located between permitted sites.

The commission did not revise the rule in response to this comment. The commission agrees that renumbering the PBR and placing it in Chapter 106, Subchapter K, would be appropriate.

However, because the commission did not propose such a revision, under Texas administrative law, the section cannot be amended at this adoption. The commission will consider this change in a future rulemaking.

Changing the title to read as suggested would not reflect the overall applicability of this PBR. The commission does not have authority for authorizing pipelines, as that authority rests with the Texas Railroad Commission and the United States Department of Transportation. Emissions from metering, purging, and maintenance operations of facilities associated with a pipeline (valves, meters, pumps, and other appurtenances) are covered by this rule. Internal combustion or turbine engines associated with a pump or compressor station can be authorized under §106.512.

TCC and TXOGA commented that the commission should clarify that no authorization under a PBR is required to construct a pipeline and that outside battery limit piping and other process piping at industrial complexes is authorized. TCC also stated that the term “equipment leak” as used in §106.355(2) is confusing and should be replaced with fugitive emissions. ExxonMobil agreed that the preamble should be clear on the point that no authorization is needed to construct natural gas and crude oil pipelines between service plants or wellheads and initial refining points.

The commission did not revise the rule in response to this comment. As previously noted, the commission does not have the authority to authorize pipeline construction. “Equipment leak fugitive emissions” is the commonly accepted term which describes emissions from the fittings associated with piping.

Dow commented that the proposal does not address the maintenance of the miles of process pipe within a site and that the maintenance on this pipe is essentially identical to that on pipe between sites. They requested clear guidelines on where to authorize intra-site pipeline maintenance.

The commission did not revise the rule in response to this comment. This PBR has historically covered specific pipeline operations which are separate from piping related emissions at a single site. Process piping equipment leak fugitives are covered by other sections of Chapter 106 or under an air quality permit. Section 106.352, Oil and Gas Production Facilities, covers oil and gas exploration and production pipeline metering, purging, and related emissions activities. The commission determined that §106.352 covers gas pipelines emissions sources up to, but not beyond, the natural gas liquids plant serving the line. Emissions sources along dedicated crude oil pipelines all the way to the initial refining operation would also be covered by §106.352. Emission sources on pipelines transporting multiple liquids, including crude oil, which is no longer under the ownership of an oil exploration and production operator, would be authorized under §106.355.

TCC and Dow commented that uncontrolled butadiene emissions should be limited to ten pounds per day rather than 0.04 pounds per hour. The proposal of §106.263 makes reference to the allowed use of the PBR for releases below an RQ and that the PBR can be used for releases of butadiene. Section 106.355 should contain consistent limitations.

The commission did not revise the rule in response to this comment. Section 106.355 is limited to a few compounds which are gases at atmospheric conditions and are explosion risks. However, butadiene is also toxic and degassing this compound to the atmosphere without control presents a significant health risk. Degassing butadiene is allowed under the PBR with appropriate controls.

TCC and TXOGA commented that the commission should add additional clarification as to which routine operations, as stated in §106.355(5), are exempt from recordkeeping requirements.

The commission confirmed that the rule, as proposed, indicates that the resetting of flow meters is not considered maintenance or purging. The commission also deleted §106.355(5)(E) because information concerning minimization of emissions is not necessary to determine compliance with this PBR.

TXOGA and ExxonMobil recommended including carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen as exemptions from the one ton emission limit in §106.355(2). This is consistent with exemptions for other metering, purging, or maintenance operations.

The commission agrees with this comment and revised the rule accordingly.

TXOGA and ExxonMobil recommended that the term “commercial grade” be deleted from §106.355(3) and replaced with “sweet natural gas” as a more widely understood term.

The commission agrees with the comment and revised the rule accordingly.

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC, and under Texas Health and

Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The new section is also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

SUBCHAPTER A: GENERAL REQUIREMENTS

§106.8

§106.8. Recordkeeping.

(a) Owners or operators of facilities and sources that are de minimis as designated in §116.119 of this title (relating to De Minimis Facilities or Sources) are not subject to this section.

(b) Owners or operators of facilities operating under a permit by rule (PBR) in Subchapter C of this chapter (relating to Domestic and Comfort Heating and Cooling) or under those PBRs that only name the type of facility and impose no other conditions in the PBR itself do not need to comply with specific recordkeeping requirements of subsection (c) of this section. A list of these PBRs will be available through the commission's Austin central office, regional offices, and the commission's website. Upon request from the commission or any air pollution control program having jurisdiction, claimants must provide information that would demonstrate compliance with §106.4 of this title (relating to Requirements for Permitting by Rule), or the general requirements, if any, in effect at the time of the claim, and the PBR under which the facility is authorized.

(c) Owners or operators of all other facilities authorized to be constructed and operate under a PBR must retain records as follows:

(1) maintain a copy of each PBR and the applicable general conditions of §106.4 of this title or the general requirements, if any, in effect at the time of the claim under which the facility is operating. The PBR and general requirements claimed should be the version in effect at the time of construction or installation or changes to an existing facility, whichever is most recent. The PBR holder may elect to comply with a more recent version of the applicable PBR and general requirements;

(2) maintain records containing sufficient information to demonstrate compliance with the following:

(A) all applicable general requirements of §106.4 of this title or the general requirements, if any, in effect at the time of the claim; and

(B) all applicable PBR conditions;

(3) keep all required records at the facility site. If however, the facility normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the plant site;

(4) make the records available in a reviewable format at the request of personnel from the commission or any air pollution control program having jurisdiction;

(5) beginning April 1, 2002, keep records to support a compliance demonstration for any consecutive 12-month period. Unless specifically required by a PBR, records regarding the quantity of air contaminants emitted by a facility to demonstrate compliance with §106.4 of this title prior to April 1, 2002 are not required under this section; and

(6) for facilities located at sites designated as major in accordance with §122.10(13) of this title (relating to General Definitions) or subject to or potentially subject to any applicable federal requirement, retain all records demonstrating compliance for at least five years. For facilities located at all other sites, all records demonstrating compliance must be retained for at least two years. These record retention requirements supercede any retention conditions of an individual PBR.

SUBCHAPTER G: COMBUSTION

§106.181

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC, and under Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

§106.181. Used-Oil Combustion Units.

Small boilers and heaters burning used oil that has not been mixed with hazardous waste are permitted by rule provided that all of the following conditions are met:

(1) the combustion unit or combination of combustion units at the same account have a maximum capacity of 1.0 million Btu per hour (MMBtu/hr) and each individual combustion unit is not greater than 0.5 MMBtu/hr;

(2) the combustion gases from the combustion unit(s) are vented to the ambient air in accordance with the following requirements:

(A) through an unobstructed vent; or

(B) through a vertical vent with a cap; and

(i) a flat roof, through a minimum of a three-foot stack; or

(ii) a sloped roof, through a stack that is at least three feet higher than the highest point on the roof or three feet higher than a point extending ten feet horizontally from the roof; and

(3) the combustion unit(s) burns only used oil the owner or operator generates on-site or used oil received from household do-it-yourself used oil generators.

SUBCHAPTER K: GENERAL

§106.263

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC, and under Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

§106.263. Repairs and Maintenance.

SUBCHAPTER K: GENERAL

§106.263

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC, and under Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The new section is also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

§106.263. Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities.

(a) This section authorizes routine maintenance, start-up and shutdown of facilities, and specific temporary maintenance facilities except as specified in subsection (b) of this section.

(b) The following are not authorized under this section:

(1) construction of any new or modified permanent facility;

(2) reconstruction under 40 Code of Federal Regulations, Part 60, New Source Performance Standards, Subpart A, §60.15 (relating to Reconstruction);

(3) physical or operational changes to a facility which increase capacity or production beyond previously existing performance levels or results in the emission of a new air contaminant;

(4) facilities and sources that are de minimis as allowed in §116.119 of this title (relating to De Minimis Facilities or Sources);

(5) piping fugitive emissions authorized under a permit or another permit by rule; and

(6) any emissions associated with operations claimed under the following sections of this chapter:

(A) §106.231 of this title (relating to Manufacturing, Refinishing, and Restoring Wood Products);

(B) §106.351 of this title (relating to Salt Water Disposal (Petroleum));

(C) §106.352 of this title (relating to Oil and Gas Production Facilities);

(D) §106.353 of this title (relating to Temporary Oil and Gas Facilities);

(E) §106.355 of this title (relating to Pipeline Metering, Purging, and Maintenance);

(F) §106.392 of this title (relating to Thermoset Resin Facilities);

(G) §106.418 of this title (relating to Printing Presses);

(H) §106.433 of this title (relating to Surface Coat Facility);

(I) §106.435 of this title (relating to Classic or Antique Automobile Restoration Facility);

(J) §106.436 of this title (relating to Auto Body Refinishing Facility); and

(K) §106.512 of this title (relating to Stationary Engines and Turbines).

(c) The following activities and facilities are authorized under this section:

(1) routine maintenance activities which are those that are planned and predictable and ensure the continuous normal operation of a facility or control device or return a facility or control device to normal operating conditions;

(2) routine start-ups and shutdowns which are those that are planned and predictable;
and

(3) temporary maintenance facilities which are constructed in conjunction with maintenance activities. Temporary maintenance facilities include only the following:

(A) facilities used for abrasive blasting, surface preparation, and surface coating on immovable fixed structures;

(B) facilities used for testing and repair of engines and turbines;

(C) compressors, pumps, or engines and associated pipes, valves, flanges, and connections, not operating as a replacement for an existing authorized unit;

(D) flares, vapor combustors, catalytic oxidizers, thermal oxidizers, carbon adsorption units, and other control devices used to control vent gases released during the degassing of immovable, fixed process vessels, storage vessels, and associated piping to atmospheric pressure, plus cleaning apparatus that will have or cause emissions;

(E) temporary piping required to bypass a unit or pipeline section undergoing maintenance; and

(F) liquid or gas-fired vaporizers used for the purpose of vaporizing inert gas.

(d) Emissions from routine maintenance (excluding temporary maintenance facilities), start-up, and shutdown are:

(1) limited to 24-hour emission totals which are less than the reportable quantities defined in §101.1(82) of this title (relating to Definitions) for individual occurrences;

(2) required to be authorized under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or comply with §101.7 and §101.11 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements, and Demonstrations) if unable to comply with paragraph (1) of this subsection or subsection (f) of this section; and

(3) required to comply with subsection (f) of this section.

(e) In addition to the emission limits in subsection (f) of this section, specific temporary maintenance facilities as listed in subsection (c)(3) of this section must meet the following additional requirements:

(1) flares or vapor combustors must meet the requirements of §106.492(1) and (2)(C) of this title (relating to Flares);

(2) catalytic oxidizers must meet the requirements of §106.533(5)(C) of this title (relating to Water and Soil Remediation);

(3) thermal oxidizers must meet the requirements of §106.493(2) and (3) of this title (relating to Direct Flame Incinerators);

(4) carbon adsorption systems must meet the requirements of §106.533(5)(D) of this title;

(5) other control devices used to control vents caused by the degassing of process vessels, storage vessels, and associated piping must have an overall vapor collection and destruction or removal efficiency of at least 90%;

(6) any temporary maintenance facility that cannot meet all applicable limitations of this section must obtain authorization under Chapter 116 of this title; and

(7) temporary maintenance facilities may not operate at a given location for longer than 180 consecutive days or the completion of a single project unless the facility is registered. If a single project requires more than 180 consecutive days to complete, the facilities must be registered using a PI-7 Form, along with documentation on the project. Registration and supporting documentation shall be submitted upon determining the length of the project will exceed 180 days, but no later than 180 days after the project begins.

(f) All emissions covered by this section are limited to, collectively and cumulatively, less than any applicable emission limit under §106.4(a)(1) - (3) of this title (relating to Requirements for Permitting by Rule) in any rolling 12-month period.

(g) Facility owners or operators must retain records containing sufficient information to demonstrate compliance with this section and must include information listed in paragraphs (1) - (4) of this subsection. Documentation must be separate and distinct from records maintained for any other air authorization. Records must identify the following for all maintenance, start-up, or shutdown activities and temporary maintenance facilities:

- (1) the type and reason for the activity or facility construction;
- (2) the processes and equipment involved;
- (3) the date, time, and duration of the activity or facility operation; and
- (4) the air contaminants and amounts which are emitted as a result of the activity or facility operation.

SUBCHAPTER O: OIL AND GAS

§106.355

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC, and under Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

§106.355. Pipeline Metering, Purging, and Maintenance.

Metering, purging, and maintenance operations for gaseous and liquid petroleum pipelines (including ethylene, propylene, butylene, and butadiene pipelines), between separate sites as defined in §122.10(29) of this title (relating to General Definitions), are permitted by rule provided that operations are conducted according to the following conditions of this section:

(1) emissions of volatile organic compounds, except equipment leak fugitive emissions, are burned in a smokeless flare; or

(2) total uncontrolled emissions of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen may not exceed one ton during any metering, purging, or maintenance operation. Uncontrolled butadiene emissions may not exceed 0.04 pounds per hour.

(3) venting of sweet, natural gas from pipelines is exempt from paragraphs (1), (2), and (5) of this section. Operators may not vent gas in areas of known or suspected ignition sources.

(4) if any maintenance activity cannot meet all of the requirements of this section, or the emissions are not authorized under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), then activities must comply with §101.7

and §101.11 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; and Demonstrations).

(5) records of all maintenance and purging emissions must be kept by the owner or operator of the facility or group of facilities at the nearest office within Texas having day-to-day operational control. These records must include all information required in this paragraph and in paragraphs (1) - (4) of this section. Resetting flow meters (changing orifice plates, etc.) and calibration of meters are considered routine operations under this rule, not maintenance or purging. Records must identify the following for all maintenance and purging activities covered by this section:

(A) the type and reason for the activity;

(B) the processes and equipment involved;

(C) the date, time, and duration of the activity; and

(D) the air contaminants and amounts which are emitted as a result of the activity.

SUBCHAPTER T: SURFACE PREPARATION

§106.454

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC, and under Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

§106.454. Degreasing Units.

Any degreasing unit that satisfies the following conditions of this section is permitted by rule.

(1) The following general requirements are applicable to all degreasers unless specifically noted by the conditions of this section.

(A) Units subject to paragraphs (3) - (5) of this section shall meet the following:

(i) register with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7 and a Degreasing Unit Checklist;

(ii) on a monthly basis, records shall be kept of total solvent makeup (gross usage minus waste disposal).

(B) Waste solvent from all degreasing operations shall be stored in covered containers, and be removed by a licensed disposal service or until emptying into an authorized on-site waste management facility.

(C) Porous or absorbent materials, such as cloth, leather, wood, or rope shall not be degreased.

(D) Leaks shall be repaired immediately, or the degreaser shall be shut down until repairs are completed.

(E) A permanent and conspicuous label summarizing proper operating procedures to minimize emissions shall be posted on or near the degreaser.

(F) Each unit, regardless of the county in which it is located, shall meet the requirements of §115.412 and §115.415 of this title (relating to Control Requirements and Testing Requirements).

(2) The following conditions apply only to remote reservoir cleaners.

(A) The cleaner shall be designed to prevent exposure of the solvent reservoir to the atmosphere except for the drain openings. The drain openings shall not exceed 3.0% of the total cleaner open area and shall under no conditions exceed 16 square inches.

(B) All solvent sprays shall be a solid fluid stream (not a fine, atomized, or shower type spray) and at a minimal operating pressure that is necessary to prevent excessive splashing, but not to exceed ten pounds per square inch, gauge (psig).

(C) The true vapor pressure of the solvent shall not exceed 0.6 pounds per square inch, absolute (psia) as measured or calculated at an operating temperature of 100 degrees Fahrenheit.

(D) The solvent shall not be heated.

(3) The following conditions apply only to cold solvent cleaners, not including remote reservoirs.

(A) The cleaner shall have a freeboard that has a minimum four-inch water cover or provides a freeboard ratio (the distance from top of the solvent level to the top edge of the degreasing tank divided by the degreaser width) equal to or greater than 0.7. For water covers, the solvent must be insoluble in and heavier than water.

(B) The unit shall be equipped with a cover which is closed whenever parts are not being handled in the cleaner. Also, the cover must be designed for easy one-handed operation if any of the following conditions are present:

(i) the true vapor pressure of the solvent is greater than 0.3 psia as measured or calculated at 100 degrees Fahrenheit;

(ii) the solvent is agitated;

(iii) the solvent is heated.

(C) If a solvent spray is used, it shall be a solid fluid stream (not a fine, atomized, or shower-type spray) with a minimal operating pressure that is necessary to prevent splashing above the acceptable freeboard. The operating pressure shall not exceed ten psig.

(D) An internal-cleaned parts drainage rack or facility, for enclosed draining under a cover, shall be provided. An external-cleaned parts drainage rack or facility, for enclosed draining under a cover, may be used if the vapor pressure of the solvent is less than 0.6 psia at 100 degrees Fahrenheit. In all cases, parts shall be drained for at least 15 seconds or until dripping ceases.

(E) The Form PI-7 registration is not required if total solvent makeup (gross usage minus waste disposal) is 110 gallons per year (gallon/yr) or less.

(F) Total solvent makeup shall not exceed the following:

(i) chlorinated solvents - 660 gallons/yr;

(ii) all other solvents - 1,500 gallons/yr.

(4) The following conditions apply only to open top solvent vapor degreasers.

(A) The surface area of the solvent shall not exceed 15 square feet.

(B) The unit shall be equipped with a cover that can be opened and closed easily without disturbing the vapor zone. If the degreaser opening exceeds ten square feet, a powered cover shall be required.

(C) The cover shall be closed at all times except when parts are moved into and out of the degreaser.

(D) The unit shall be equipped with a properly sized refrigerated chiller, or the unit shall have a freeboard ratio (the distance from top of the vapor level to the top edge of the degreasing tank divided by the degreaser width) equal to or greater than 0.75.

(E) Exhaust ventilation for the unit shall operate between 50 and 65 cubic feet per minute (cfm) per square foot of degreaser open area unless this conflicts with Occupational Safety and Health Administration (OSHA) requirements. Ventilation fans or other sources of air agitation shall not be operated near the degreaser opening.

(F) The exhaust stacks shall discharge vertically with no restrictions or obstructions to flow. The stack height shall extend at least 1.3 times the building height as measured from ground level.

(G) Total solvent makeup (gross usage minus waste disposal) shall not exceed the following:

(i) chlorinated solvents - 660 gallons/yr;

(ii) all other solvents - 1500 gallons/yr.

(5) The following conditions apply only to conveyORIZED degreasers.

(A) The inlet and outlet openings shall be closed at all times except when processing work through the degreaser.

(B) The unit shall be equipped with a properly sized refrigerated chiller which has a volatile organic compound removal efficiency of at least 85%, or the unit shall have a freeboard ratio (the distance from top of the vapor level to the top edge of the degreasing tank divided by the degreaser width) equal to or greater than 0.75.

(C) A drying tunnel or other means of control shall be used to limit liquid or vapor carry-out.

(D) Entrances and exits to the degreaser shall be designed to silhouette work loads.

(E) Exhaust ventilation for the unit shall operate between 50 and 65 cfm per square foot of degreaser opening unless this conflicts with OSHA requirements. Ventilation fans or other sources of air agitation shall not be operated near the degreaser openings.

(F) The exhaust stacks shall discharge vertically with no restrictions or obstructions to flow. The stack height shall extend at least 1.5 times the building height as measured from ground level.

(G) Total solvent makeup (gross usage minus waste disposal) shall not exceed the following:

(i) chlorinated solvents - 660 gallons/yr;

(ii) all other solvents - 1,500 gallons/yr.