

The commission adopts new §§106.1, 106.2, 106.4, and 106.6, concerning General Requirements.

The new sections contain general provisions related to exemptions from air quality permitting requirements. Sections 106.1, 106.2, 106.4, and 106.6 are adopted with changes to the proposed text as published in the July 12, 1996, issue of the Texas Register (21 TexReg 6409). Sections 106.3 and 106.5 are being withdrawn by the commission.

This rulemaking action is the first action in the commission's plan to recodify standard exemptions in a new Chapter 106, concerning Exemptions from Permitting. Prior to the construction of a new facility or modification to an existing facility, permit authorization must be obtained from the commission. The Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057, allows the commission to exempt types of facilities and changes to permitted facilities from the statutory requirement to obtain a preconstruction permit if the commission determines these types of facilities to be insignificant sources of air contaminants. The commission currently exempts these types of facilities from permitting requirements by the Standard Exemption (SE) List in §116.211. Chapter 106 will eventually replace §116.211, including the SE List, and will provide a unique section number for each exemption.

Chapter 106 will be organized in subchapters containing related exemptions.

Exemptions will be added to Chapter 106 in future rulemaking actions through a stepwise process. The majority of the exemptions from the current SE List will be transferred to Chapter 106 unchanged from their current form in future rulemaking actions. Where the commission determines that changes are needed to specific exemptions, they will be proposed for inclusion in this new chapter with those changes.

Once all of the exemptions in the current SE List have been duplicated in this new chapter, §116.211 will be repealed. Construction or modification of facilities that commences on or after the effective date of a relevant exemption in Chapter 106 must qualify for an exemption under Chapter 106; an exemption in §116.211 will no longer be available for use. Until an exemption is listed in the new chapter, the exemptions in §116.211 may continue to be used to exempt facilities.

This initial action in the recodification process will create a new Subchapter A, which will contain the general requirements related to exemptions currently found in §116.211.

The rules address the following problem: the current structure of the SE List hampers flexibility and speed in regulatory reform. The SE List is currently contained in one section of the Texas Administrative Code. Texas Register rules prohibit more than one rulemaking proceeding from amending a given section at the same point in time. This prohibition limits any rulemaking activities concerning standard exemptions from occurring any time one or more of the exemptions are being amended. This proposal is the first step in assigning each previous standard exemption a section number. This approach will allow rulemaking to proceed on individual exemptions.

A public hearing on the proposal was held on August 8, 1996, in Austin. No oral testimony was presented. Written comments were received from the following 15 commenters: The United States Environmental Protection Agency (EPA), Dupont Gulf Coast Regional Manufacturing Services (DuPont), Amoco Corporation (Amoco), Texas Utilities Services, Inc. (TU), Eastman Chemical Company (Eastman), Union Carbide Corporation (Union Carbide), the City of Dallas, Brown McCarroll & Oaks

Hartline (Brown McCarroll), Texas Mid-Continent Oil & Gas Association (TMOGA), EC-Applied, Inc., the Texas Industry Project, Exxon Company, U.S.A., Exxon Chemical Americas, Houston Lighting & Power (HL&P), and the Texas Paper Industry Environmental Council.

Dupont, Amoco, TU, Exxon Company, U.S.A., Exxon Chemical Americas, and HL&P stated that they endorsed the comments of the Texas Industry Project.

Dupont, Amoco, Brown McCarroll, TMOGA, TU, Eastman, Union Carbide, the Texas Industry Project, Exxon Company, U.S.A., Exxon Chemical Americas, HL&P, and the Texas Paper Industry Environmental Council stated that the addition of “changes to permitted facilities” in the proposed §106.2 and §106.4 changed the long-standing agency practice of allowing changes at non-permitted facilities, including grandfathered facilities. These commenters stated their belief that the new language proposed in the rules contradicted the commission’s statement in the preamble that this action was a recodification of existing rules, and that the proposal had significant fiscal implications to the regulated community as a result. TMOGA and Brown McCarroll suggested language to address this concern.

**The commission has made changes to the rules so that they are consistent with the existing language in §116.211. The changes resolve concerns about notice and fiscal implications. However, the commission will consider whether to re-propose the language in the near future to be consistent with statutory language limiting use of standard exemptions for changes at non-permitted facilities.**

TMOGA and Brown McCarroll suggested use of the word “modifications” in place of “changes,” or suggested changing the references to Subchapter B.

**The suggestions are no longer necessary due to the revisions which made the rules consistent with current §116.211.**

TMOGA suggested a change in the language regarding the effective date of the new chapter.

**The commission agrees and has incorporated the suggested change.**

The City of Dallas commented that it is concerned about confusion to the public and to the affected agencies about the restructuring of the exemptions, especially during the interim period before all exemptions are codified. It recommended that the old exemption number be included with each standard exemption as it is codified into Chapter 106.

**The commission agrees to include the old exemption number in the recodified exemptions in Chapter 106.**

Brown McCarroll commented that proposed §106.4(a)(1) and (2) should be revised to read as follows:

“shall be exempted if it meets the general requirements.”

**The subsection proposed to be changed by this commenter was changed in response to other comments received.**

Brown McCarroll commented that the words “or modifications” should be added to proposed §106.4(d) so that it will read as follows: “After construction or modification of the facility, ....”

**The basis for the commenter’s concern has been addressed by the removal of reference to “changes at permitted facilities” from the rule.**

Brown McCarroll commented that the commission should justify its imposition of the requirements of §116.134 through §106.5(c).

**In light of the commission’s response agreeing to limit this rulemaking to recodification of existing rules, the language has been removed and may be re-proposed at a later date.**

TMOGA commented that the record storage requirements of §106.6(e) are impractical at unmanned facilities and submitted suggested language.

**The final rule will incorporate the language of existing §116.117(a) to address the commenter’s concern.**

EC-Applied, Inc. commented that a paragraph regarding netting/offsets for projects with greater than five ton-per-year emissions should be included in the adoption and that the requirements in §116.150 need to be mentioned or at least referenced.

**The commission has added language to remind individuals of the requirements contained in §116.150.**

EPA commented that the agency should not use December 31, 1997, in §106.4(b)(3)(B) as EPA has not yet approved a nitrogen oxides waiver for the Houston and Beaumont areas beyond the year 1996.

**The commission agrees that the comment is accurate with regard to the currently approved SIP. The commission has requested an extension of the waiver to December 31, 1997. If this extension is approved by EPA, the suggested revision would necessitate future revision of this rule to reflect approval of the December 31, 1997 extension. The commission recently adopted two similar rule revisions incorporating the requested extension to December 31, 1997. Also, this portion of the rule will not have any substantive effect until after EPA action on the extension request, because only the used oil burning space heater standard exemption is being incorporated into this chapter for the present time. Should EPA not approve the extension request, the commission will revise all affected rules as appropriate. For these reasons, the commission adopts the rule as proposed.**

During the October 9, 1996, agenda meeting, staff requested continuation of this item to allow time to address concerns raised with regard to the previous direction received to make the proposal consistent with §116.211. The commission has revised the rule to comply with this direction.

The new sections are adopted under the Texas Health and Safety Code, the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

## **CHAPTER 106**

### **SUBCHAPTER A : GENERAL REQUIREMENTS**

#### **§§106.1 - 106.6**

##### **§106.1. Purpose.**

This chapter identifies facilities or types of facilities which the commission has determined will not make a significant contribution of air contaminants to the atmosphere and pursuant to the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057, are exempt from the permit requirements of the TCAA, §382.0518.

##### **§106.2. Applicability.**

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 exemption. Facilities or types of facilities contained in this chapter must qualify for an exemption under this chapter and may not be qualified for an exemption listed in §116.211 of this title (relating to Standard Exemption List). Facilities or types of facilities not contained in this chapter may qualify for an exemption under §116.211 of this title.

**§106.4. Requirements for Exemption from Permitting.**

(a) To qualify for an exemption, the following general requirements must be met.

(1) Total actual emissions authorized under exemption from the proposed facility shall not exceed 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO<sub>x</sub>); or 25 tpy of volatile organic compounds (VOC) or sulfur dioxide (SO<sub>2</sub>) or inhalable particulate matter (PM<sub>10</sub>); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(2) Except as noted in paragraph (3) of this subsection, any facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any modification which constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for an exemption under this chapter. Persons claiming an exemption under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area) to ensure that any applicable netting requirements have been satisfied.

(3) Any facility or group of facilities, which constitute a stationary source, as defined in §116.12 of this title, that emits NO<sub>x</sub> and is located in the Houston/Galveston ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) or the Beaumont/Port Arthur ozone nonattainment area (Hardin, Jefferson, and Orange Counties) can exceed the major source/major modification level listed in Table 1 of §116.12 of this title (relating to Nonattainment Review Definitions) if the following conditions are met.

(A) Any new facility or group of facilities, which constitute a new stationary source, as defined in §116.12 of this title, and emit NO<sub>x</sub> in an amount, after netting, exceeding the major source threshold or major modifications exceeding the major modification level for NO<sub>x</sub> listed in Table 1, shall register by submitting a Form PI-8.

(B) The registration shall be submitted prior to commencement of construction, but not later than December 31, 1997.

(C) No other applicable limits contained in this section shall be exceeded.

(4) Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and

regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for an exemption under this chapter.

(5) Unless at least one facility at an account has been subject to public notification and comment as required in Chapter 116, Subchapter B or Subchapter D of this title (relating to New Source Review Permits or Permit Renewals), total actual emissions from all exempted facilities at an account shall not exceed 250 tpy of CO or NO<sub>x</sub>; or 25 tpy of VOC or SO<sub>2</sub> or PM<sub>10</sub>; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(6) 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 exemption in this chapter must meet the revised requirements to qualify for an exemption.

(7) A proposed facility shall comply with all applicable provisions of the FCAA, §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of the FCAA, Part C and Part D and regulations promulgated thereunder.

(8) There are no permits under the same Texas Natural Resource Conservation Commission account number that contain a condition or conditions precluding the use of a standard exemption or an exemption under this chapter.

(b) No person shall circumvent by artificial limitations the requirements of §116.110 of this title (relating to Applicability).

(c) The emissions from the facility shall comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public, and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facility.

(d) Facilities exempted by this chapter are not exempted from any permits or registrations required by local air pollution control agencies. Any such requirements must be in accordance with TCAA, §382.113 and any other applicable law.

**§106.6. Registration of Emissions.**

(a) An owner or operator may certify and register the maximum emission rates from facilities exempted under this chapter in order to establish enforceable allowable emission rates which are below the emission limitations in §106.4 of this title (relating to Requirements for Exemption from Permitting).

(b) All representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration under this section become conditions upon which the exempt facility shall be constructed and operated.

(c) It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless the certified registration is first revised.

(d) The certified registration must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility.

(e) The certified registration shall be maintained on-site and be provided immediately upon request by representatives of the Texas Natural Resource Conservation Commission or any air pollution control agency having jurisdiction. If the plant site is unmanned, the regional manager may authorize an alternative site to maintain this documentation. Copies of the certified registration shall be included in applications for permits subject to review under the undesignated heads in Chapter 116, Subchapter B of this title (relating to New Source Review Permits).

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 23, 1996.