

The commission proposes new §§106.1-106.6, concerning General Requirements and §106.21, concerning Applicability. Proposed new §§106.1-106.6 contain general provisions and definitions related to exemptions from air quality permitting requirements. Proposed new §106.21 contains provisions related to applicability of Subchapter B.

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 a change 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 or changes to be insignificant sources of air contaminants. The commission currently exempts these types of facilities and changes 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Once all of the exemptions in the current SE List have been duplicated in this new chapter, §116.211 will be repealed.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 after September 16, 1996, and after a particular exemption has been added to Chapter 106 must qualify for an exemption under this new chapter; those exemptions 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. Subchapter B, concerning Changes at Permitted Facilities, will contain all exemptions related to changes at permitted facilities.

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 all 126 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.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there should be no significant cost to state or local government as a result of enforcing or implementing the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient use of commission resources and a clearer understanding of exemptions from permitting. There are no fiscal implications for facilities and small businesses, as they are not affected by the recodification of existing rules. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

A public hearing on the proposal will be held August 8, 1996, at 10:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96122-106-AI. Comments must be received by 5:00 p.m., August 12, 1996. For further information, please contact Jim Dodds, (512) 239-1119 or Phil Harwell, (512) 239-1517.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new sections are proposed 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.

The new sections implement Texas Health and Safety Code, §382.057.

CHAPTER 106

SUBCHAPTER A : GENERAL REQUIREMENTS

§§106.1 - 106.6

§106.1. Purpose.

This chapter identifies changes to permitted facilities and 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 changes to permitted facilities and types of facilities listed in this chapter where construction or the change is commenced on or after September 16, 1996. Changes to permitted facilities and 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). Changes to permitted facilities and types of facilities not contained in this chapter may qualify for an exemption under §116.211 of this title.

§106.3. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA and in §101.1 of this title (relating to General Rules) and §116.10 of this title (relating to General Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Major stationary source - Shall have the same definition of this term in §116.12 of this title (relating to Nonattainment Review Definitions) for §106.4(b)(2) and (3) of this title (relating to Requirements for Exemption from Permitting) and shall have the same definition of this term in 40 Code of Federal Regulations (CFR), §52.21 for §106.4(b)(4) of this title.

Major Modification - Shall have the same definition of this term in §116.12 of this title for §106.4(b)(2) and (3) of this title and have the same definition of this term in 40 CFR, §52.21 for §106.4(b)(4) of this title.

Stationary source - Shall have the same definition of this term in §116.12 of this title for §106.4(b)(2) and (3) of this title and shall have the same definition of this term in 40 CFR, §52.21 for §106.4(b)(4) of this title.

§106.4. Requirements for Exemption from Permitting.

(a) The following changes to facilities and types of facilities shall be exempt.

(1) A change to a permitted facility shall meet the general requirements of subsection (b) of this section and the conditions of a specific exemption in Subchapter B of this chapter (relating to Changes at Permitted Facilities).

(2) A facility shall meet the general requirements of subsection (b) of this section and the conditions of a specific exemption in this chapter except for exemptions in Subchapter B of this chapter.

(3) A change to a non-permitted facility shall be exempted if the facility meets the general requirements of subsection (b) of this section and the conditions of a specific exemption in this chapter except for Subchapter B of this chapter.

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

(1) Total actual emissions from a facility, or resulting from a change to a permitted facility, shall not exceed 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_x); or 25 tpy of volatile organic compounds (VOC) or sulfur oxides (SO₂) or inhalable particulate matter

(PM₁₀); 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, or any change which constitutes a major modification 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.

(3) Any facility or group of facilities, which constitute a stationary source, that emits NO_x 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 and emit NO_x in an amount, after netting, exceeding the major source threshold or major modifications exceeding the major modification level for NO_x listed in Table 1, shall register by submitting a 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, or any change which constitutes a major modification 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 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), total actual emissions from all exempted facilities at an account shall not exceed 250 tpy of CO or NO_x; or 25 tpy of VOC or SO₂ or PM₁₀; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(6) Construction of a facility or a change to a permitted 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 facility or change to a permitted 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 (TNRCC) account number that contain a condition or conditions precluding the use of a standard exemption or an exemption under this chapter.

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

(d) After construction of the facility, the emissions from the facility shall comply with all rules and regulations of the TNRCC 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.

(e) Facilities or changes to permitted facilities are not exempted by this chapter 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.

§106.5. Public Notice and Comment Procedures.

(a) This section applies to facilities exempted under this chapter that are located at a permanent or temporary concrete plant engaged in wet batching, dry batching, or central mixing, or producing specialty wet batch, concrete, mortar, grout mixing, or pre-cast concrete products.

(b) The executive director shall make a copy of the registration materials and a preliminary analysis of those materials available to public inspection as provided by §116.131 of this title (relating to Public Notification Requirements).

(c) The owner or operator of the plant shall publish notice of the proposed construction in conformance with §116.132 of this title (relating to Public Notice Format) and §116.134 of this title (relating to Notification of Affected Agencies).

(d) Public comment procedures on the registration shall conform with §116.136 of this title (relating to Public Comment Procedures).

§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. 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 26, 1996.

SUBCHAPTER B : CHANGES AT PERMITTED FACILITIES

§106.21

§106.21. Applicability.

This subchapter only contains exemptions for changes to permitted facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 26, 1996.