deadline for the public to comment on the proposed rule.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: July 10, 2001.

Anthony Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. Section 36.4337 is amended by:

a. Redesignating paragraphs (i) through (n) as paragraphs (j) through (o), respectively.

b. In paragraphs (a), (b), and (e) introductory text, removing ''(j)'' and adding, in its place, ''(k)''.

c. In newly redesignated paragraph (k)(4), removing ''(j)(3)'' and adding, in its place, ''(k)(3)''; and in paragraph (k)(5), removing ''(j)(3) and (j)(4)'' and adding, in its place, ''(k)(3) and (k)(4)''.

d. In newly redesignated paragraph (l)(3), removing ''(k)(2)'' and adding, in its place, ''(l)(2)''.

e. Revising paragraph (c)(5).

f. Adding a new paragraph (i).

The revision and addition read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility, and lender certification.

* * * * *

(c) * * *

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

(i) Excellent long-term credit;

(ii) Conservative use of consumer credit;

(iii) Minimal consumer debt;

(iv) Long-term employment;

(v) Significant liquid assets;

(vi) Downpayment or the existence of equity in refinancing loans;

(vii) Little or no increase in shelter expense;

(viii) Military benefits;

(ix) Satisfactory homeownership experience;

(x) Completion of financial or homeownership counseling program within twelve months preceding the date of the loan;

(xi) High residual income;

(xii) Low debt-to-income ratio;

(xiii) Tax credits of a continuing nature, such as tax credits for child care; and

(xiv) Tax benefits of homeownership.

* * * * *

(i) *Homeownership counseling.* As a condition of obtaining a VA-guaranteed home loan, a first-time homebuyer, within twelve months preceding the date of the loan, must complete a homeownership counseling course addressing, at a minimum, the following subjects: the essentials of becoming a homebuyer, debt management, home maintenance, and available assistance for the homeowner who has trouble making payments. The course should take approximately three (3) hours and may be individualized, in a classroom setting, computer-based, or a correspondence course. Courses meeting this criteria are available from: the U.S. Department of Housing and Urban Development (HUD), the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), educational institutions, and entities used by state or local government housing programs. The veteran shall submit to the lender a certificate of completion from the counseling provider.

* * * * *

[FR Doc. 01–25459 Filed 10–10–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–002; FRL–7079–1]

Clean Air Act Proposed Full Approval Operating Permits Program for the State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes full approval of the Operating Permit Program submitted by the Texas Natural Resource Conservation Commission (TNRCC or Commission) based on the revisions submitted on June 12, 1998, and June 1, 2001, which satisfactorily address the program deficiencies identified in EPA's June 7, 1995, and June 25, 1996, Interim Approval (IA) Rulemakings. In addition, today's document takes no action on additional provisions submitted June 1, 2001, which relate to general operating permits, public participation, compliance assurance monitoring, and periodic monitoring. The EPA will take appropriate action on these items in a separate Federal Register action.

DATES: The EPA must receive your written comments on this proposal no later than November 13, 2001. You must address your comments to the contact indicated below.

ADDRESSES: Please address your written comments on this action to Ms. Jole C. Luehrs, Chief, Air Permitting Section, Attention: Mr. Stanley M. Spruiell, at the EPA Region 6 Office listed below. You may review copies of the State's submittal and other supporting information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before visiting day.

EPA, Region 6, Air Permitting Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

TNRCC, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permitting Section (6PD–R), EPA, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas

75202–2733, telephone (214) 665–7212 or e-mail at *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I. What Is the Operating Permit Program?

Title V of the Clean Air Act (the ''Act'') Amendments of 1990 required all States to develop Operating Permit Programs that meet certain Federal criteria. In implementing the title V Operating Permit Programs, permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the Act. The focus of the title V Operating Permit Program is to facilitate compliance and improve enforcement by issuing each source a permit that consolidates all of the applicable requirements of the Act into a federally enforceable document. This consolidation of all applicable requirements enables the source, the public, and the permitting authority to readily determine which of the Act's requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution as defined by title V and certain other sources specified in the Act or in EPA's implementing regulations. This includes all sources regulated under the acid rain program, regardless of size, which must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year (tpy) or more of volatile organic compounds (VOC), carbon monoxide (CO), lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM–10); those that emit 10 tpy of any single hazardous air pollutant (HAP) specifically listed under the Act; or those that emit 25 tpy or more of a combination of HAP. In areas that are not meeting the National Ambient Air Quality Standards for ozone, CO, or PM–10, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential of emitting 50 tpy or more of VOC or NO_X.

II. What Is Being Addressed in This Document?

Where a title V Operating Permit Program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 CFR part 70, we granted interim approval (IA) contingent on the State revising its program to correct the deficiencies. Because Texas' Operating Permit Program substantially, but not fully, met the requirements of part 70, we granted a source category-limited IA to the program in a rulemaking published on June 25, 1996 (61 FR 32693). A source category-limited Operating Permits Program is limited to certain specified sources.[1] This approval was scheduled to expire July 27, 1998, by which time the State would have been required to have received full approval. However, we subsequently promulgated nationally applicable rulemakings that extended all State Operating Permit Program IAs to December 1, 2001. *See* 63 FR 40054, July 27, 1998, and 65 FR 32035 (May 22, 2000).

The IA notice stipulated numerous conditions that had to be met in order for the State's program to receive full approval. Texas submitted revisions to its interim approved Operating Permit Program dated June 12, 1998, and June 1, 2001. Texas also submitted supplementary information to EPA on August 22, 2001, August 23, 2001, and September 20, 2001. These submittals are described below. This FR notice describes changes that have been made to Texas' Operating Permit Program which correct the IA deficiencies.

June 12, 1998. Texas submitted regulations to us which promulgated a new Operating Permit Program to cover all sources. Its previous Operating Permits Program covered only sources with certain SIC codes.[2] These regulations were adopted on October 15, 1997, and were promulgated in the *Texas Register* on October 31, 1997. This submittal corrected some but not all IA deficiencies. To date, we have not acted on the June 12, 1998, submittal.

June 1, 2001. Texas submitted the following revisions to its operating permits regulations:

- Regulations promulgated in the *Texas Register* on February 26, 1999, concerning general operating permits.
- Regulations promulgated in the *Texas Register* on September 24, 1999, concerning the State's procedural rules on public participation;
- Regulations promulgated in the *Texas Register* on September 1, 2000, concerning general operating permits and compliance assurance monitoring; and,
- Regulations adopted May 9, 2001, and promulgated in the *Texas Register* on May 25, 2001, which correct the remaining IA deficiencies.

In today's action, we are proposing to approve revisions as identified below which the TNRCC adopted October 15, 1997 (submitted June 12, 1998) and May 9, 2001 (submitted June 1, 2001) which correct Texas' IA deficiencies. We will take appropriate action on the remaining provisions of the June 1, 2001, submittal in a separate FR action.

Following the June 1, 2001, submittal, Texas submitted supplementary information as follows:

August 22, 2001. A letter from Mr. Jeffrey A. Saitas, P.E., Executive Director, TNRCC, to Mr. Gregg Cooke, Regional Administrator, Environmental Protection Agency, Region 6. This letter

[1] In Texas, this program only covered sources with a Standard Industrial Classification (SIC) code of 1311, 1321, 4911, 4922, 4293, and 5171.

[2] Footnote 1, supra.

included Texas' four year cost projection for its Operating Permits Program.

August 23, 2001. The TNRCC submitted a notice to EPA (letter from Mr. Jeffrey A. Saitas, P.E., Executive Director, Texas Natural Resource Conservation Commission, to Mr. Carl E. Edlund, Director, Multimedia Planning and Permitting Division) informing EPA that it would not be using its upset rules to satisfy the emergency provisions of 40 CFR 70.6(g), and thus removed these provisions from its June 1, 2001, submittal.

September 20, 2001. Texas provided supplemental information to clarify the procedures that it will follow to incorporate the provisions of its MNSR permits into its title v operation permits.

We propose to grant full approval of the Texas Operating Permits Program based upon our determination that Texas has corrected the deficiencies identified in the IA program. The following sections of this preamble summarize each IA deficiency, the revisions that Texas has submitted, and our basis for determining that the deficiency has been corrected.

We have also prepared a Technical Support Document which contains our complete evaluation and analysis of the IA deficiencies and our basis for finding that each deficiency has been corrected.

III. What Are the Program Changes That We Propose To Approve?

As stipulated in the June 7, 1995 (60 FR 30037), and June 25, 1996 (61 FR 32693), Federal Register Documents, full approval of Texas' title V Operating Permit Program was made contingent upon the following rule changes to correct the IA deficiencies identified therein.

A. MNSR/Part 70 Integration

In the June 7, 1995, document, EPA pointed out that chapter 122 did not properly address MNSR as an applicable requirement. Specifically, we noted that the definition of ''applicable requirement'' in section 122.10 excluded MNSR as an applicable requirement and was inconsistent with the Federal definition of applicable requirements in 40 CFR 70.2. We also identified the following sections of chapter 122 as directly related to and a part of the MNSR/part 70 integration issue: permit application (sections 122.130–122–139), permit revisions (sections 122.210–122.221), and permit content (sections 122.141–122.145) (60 FR at 30039).

On May 9, 2001, Texas made the following revisions to chapter 122 pertaining to MNSR:

• *Section 122.10(2)—Definition of Applicable Requirement.* Texas revised the definition of ''applicable requirement'' to add the following as applicable requirements: (1) all of the requirements of chapter 106, subchapter A (Permits by Rule—General Requirements), and (2) the requirements of chapter 116 (Control of Air Pollution by Permits for New Construction or Modification). These provisions are Texas' regulations for authorizing the construction of new and modified sources, including MNSR. By adding these provisions as applicable requirements, Texas now recognizes MNSR as an applicable requirement. By revising the definition of applicable requirement, Texas also corrected EPA concerns regarding permit revisions (sections 122.210—122.221). Texas also revised the following sections of Chapter 122 relating to permit applications and permit content to require inclusion of MNSR in these areas:

• *Section 122.132(e)(11)—Permit Applications.* As revised, this section provides that for any application for which TNRCC has not authorized initiation of public notice by the effective date of the revisions (June 3, 2001), the applicant must include any preconstruction authorizations that are applicable to emission units at the site.

• *Section 122.142(b)(3)—Permit Content.* As revised, this section provides that each title V permit for which TNRCC has not authorized initiation of public notice by the effective date of the revisions (June 3, 2001), shall contain any preconstruction authorization that is applicable to the emission units at the site.

Therefore, Texas has properly addressed MNSR as an applicable requirement.

On June 20, 1996, EPA promulgated a revision to part 70 that provided a mechanism to grant Interim Approval (IA) for programs that did not include MNSR requirements. 61 FR 31443, 31448. Texas was granted IA of its Operating Permits Program using this mechanism (61 FR at 32695). Under this mechanism, Texas is required to revise its rules to include MNSR as an applicable requirement in order to receive full program approval, and institute proceedings to reopen part 70 permits to incorporate excluded MNSR permits as terms of part 70 permits (40 CFR 70.4(d)(3)(ii)(D)). As noted above, Texas has revised its rules to include MNSR.

On May 9, 2001, Texas adopted section 122.231(c). This provision provides that TNRCC will, before December 1, 2001, institute proceedings to reopen part 70 permits to incorporate MNSR permits as terms of the part 70 permits no later than renewal of the permit if the TNRCC had authorized the initiation of public notice for the permit by the effective date of the rule (June 3, 2001). These reopenings do not have to follow full permit issuance procedures nor the notice requirements of section 122.231(e), but may instead follow the permit revision procedure in effect under the State's approved part 70 program for incorporation of MNSR permits. This abbreviated procedure is authorized by 40 CFR 70.4(d)(2)(ii)(D). For the remaining applications which the TNRCC has not authorized initiation of public notice by the effective date of the revisions (June 3, 2001), the applicant must include any preconstruction authorizations that are applicable to emission units at the site.

On September 20, 2001, TNRCC clarified that it will follow the procedures described below for incorporating MNSR into its permits:

1. *Newly-issued title V permits.* The TNRCC will incorporate MNSR permits and permits by rule (PBR) into all newly issued title V permits. The title V permit will clearly state: (1) that the terms and conditions of MNSR permits and PBR identified and cross-referenced in the title V permit are included as applicable requirements; (2) the MNSR permits and PBR are incorporated by reference into the title V permit by identifying the MNSR permit by its permit number, or the PBR by its section number; and (3) the title V permit states that terms and conditions of the MNSR permits and PBR are included in the title V permit and subject to part 70 requirements.

Since June 3, 2001 (the effective date of revisions to Chapter 122 adopted May 9, 2001), TNRCC has been required to implement this requirement by incorporating the MNSR permits and permits by rule (PBR) into all title V permits for which the initiation of public notice was not authorized by June 3, 2001.

2. *Reopening existing title V permits.* In accordance with 40 CFR 70.4(d)(3)(ii)(D), TNRCC will institute proceedings to reopen previously issued title V permits and draft title V permits for which TNRCC issued or authorized the initiation of public notice prior to June 3, 2001. The TNRCC will begin these proceedings no later than December 1, 2001. The TNRCC will accomplish this reopening through direct notification in writing to each individual permit holder, during stakeholder meetings, and through the TNRCC website. Another follow-up letter will be sent to each permit holder when it is time to reopen the permit

holder's permit to incorporate the MNSR permits and PBRs. This is consistent with the general notice published in the *Texas Register* preamble during the proposal and final adoption of the revisions (26 *Texas Register* 890, 892 (January 26, 2001); 26 *Texas Register* 3747, 3775–76 (May 25, 2001).

For existing permits nearing renewal (*i.e.,* those with less than two years remaining until renewal), TNRCC will reopen such permits at renewal to incorporate the MNSR permits. For permits not close to renewal (*i.e.,* those with two or more years remaining until renewal), TNRCC will reopen the permits to incorporate the MNSR permits within three to four years of initial issuance, which is more expeditious than renewal. As provided by 40 CFR 70.4(d)(3)(ii)(D), Texas' proceedings to reopen these permits need not follow full permit issuance procedures nor the notice requirement of 40 CFR 70.7(f)(3), but may instead follow the permit revision procedure in effect under the State's approved part 70 program for incorporation of MNSR permits. The approved procedure for incorporating MNSR permits is TNRCC's procedure for minor modification of title V permits. These provisions are set forth in sections 122.215 and 112.217, which satisfy the provisions for minor permit modification procedures in 40 CFR 70.7(e)(2).

3. All MNSR permits and PBR included or referenced in title V permits will include all monitoring, reporting, and recordkeeping requirements of part 70. If an MNSR permit or PBR is determined to be deficient in any of these regards, TNRCC will add the necessary provisions to ensure that the requirements of part 70 concerning periodic monitoring (40 CFR 70.6(a)(3)(i)(B)) and monitoring that is sufficient to assure compliance(40 CFR 70.6 (c)(1)) are met. These provisions are set forth in sections 122.142.

4. The TNRCC will ensure that for anyone who asks to see a title V permit, the file clerk will provide the entire permit file to that person. The table of contents to the title V permit also will indicate the location within the title V permit of the MNSR preconstruction authorization numbers (file numbers). If the requestor wants to see all portions of the title V permit, including the MNSR files, then the entire title V permit file, with all its parts, will be provided.

The TNRCC has informed EPA that it can accept reasonably late comments when there are problems with accessing the title V permit including the MNSR portions. The extension of time would be evaluated on a case by case basis. In addition, the public notice will clarify that the TNRCC Regional office file will include the Title V permit and the MNSR portions. The TNRCC also agreed that it would facilitate access to the entire file to those who cannot get to the TNRCC Regional office. The public notice will explain where and how to make known any difficulties that a member of the public may have had in getting to the Regional office where the MNSR permits are located. In response to public comments, including reasonably late comments described above, TNRCC will make requested changes to a title V permit if TNRCC deems such change to be necessary to ensure that the permit meets the requirements of chapter 122.

5. The TNRCC will also modify title V permits when changes occur that require new MNSR permits or PBR, or modifications to existing MNSR permits. Modification of the title V permit will incorporate the MNSR requirements that apply to the change following the appropriate permit revision procedures. This will be accomplished following the permit modification procedures in the approved State part 70 program which include requirements for significant, minor, or administrative permit modification procedures in chapter 122, whichever apply to the particular change. Notwithstanding the above, changes eligible for off-permit treatment, or operational flexibility, may follow the procedures for off-permit changes or operational flexibility under the approved State part 70 program.

Based on the foregoing, we have determined that the above procedures meet the requirements for reopening permits to incorporate MNSR requirements. Therefore, this deficiency has been corrected.

B. Emergency Provisions

In the June 7, 1995, document, EPA stated that section 122.143 was inconsistent with emergency provisions of 40 CFR 70.6(g)(3). Section 122.143 referenced chapter 101, which contained notification requirements for major upsets. Chapter 101 provided the following:

> The owner or operator of a facility must notify the Executive Director of TNRCC as soon as possible of any major upset condition which causes or may cause an excessive emission that contravenes the intent of the statute or the regulations. If the information required in the notification is unknown at the time of the initial notification, then the owner or operator must provide such information as soon as possible, and submit a written report with such information not later than two weeks from the onset of the upset condition. This allowance for time of agency notification by the permittee is inconsistent with 40 CFR 70.6(g)(3) which requires the permittee to submit notice of the emergency to the permitting authority within two working days.

60 FR at 30043–30044.

In the 1998 submittal, TNRCC adopted section 122.145(3)(A), which provided that ''reports of deviations from any unauthorized emissions, upset or maintenance, and start-up and shutdown shall be submitted in accordance with sections 101.6, 101.7 and 101.11 of this title (relating to Upset Reporting and Recordkeeping Requirements; Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; and Exemptions from Rules and Regulations).'' However, as EPA noted in its February 26, 2001, letter to TNRCC providing comments in the proposed chapter 122 revisions, sections 101.6, 101.7, and 101.11 are not consistent with the emergency provisions in 40 CFR 70.6(g) for the following reasons: (1) the regulations do not define ''emergency'' consistent with 40 CFR 70.6(g)(1); (2) the regulations improperly provided for exemption from permit requirements rather than an affirmative defense; (3) the regulations only provided for prompt reporting of certain upsets; and (4) an upset provision in a State Implementation Plan (SIP) cannot substitute for the emergency reporting and related affirmative defense provisions of part 70.

On May 9, 2001, TNRCC revised Section 122.145. The TNRCC did not make any changes in response to EPA's comments. However, TNRCC deleted section 122.145(3) because it claimed that it was redundant with the upset and maintenance reporting requirements in chapter 101 (26 *Texas Register* at 3751). As adopted May 9, 2001, and submitted June 1, 2001, the Texas regulations do not meet the emergency provisions in 40 CFR 70.6(g) for the reasons set forth above.

However, as stated in the preamble for our proposed rulemaking on August 31, 1995, there is no requirement for a State to adopt the emergency provisions in 40 CFR 70.6(g) (60 FR 45530, 45559). Following our discussions with TNRCC concerning this statement, TNRCC notified us by letter dated August 23, 2001, that it would not use its upset rules to satisfy the part 70 emergency provisions, and thus removed these provisions from its June 1, 2001, submittal. Based upon TNRCC's withdrawal of its upset rule from its title

v submittal, this deficiency no longer exists. Accordingly, the Texas title V program no longer provides an emergency defense; however, the Texas SIP provisions in chapter 101 do continue to provide for reporting of upsets and malfunctions. These provisions do provide that exceedance of emission limits during properly-reported upsets and malfunctions may be excused from civil penalties.

C. Operational Flexibility

In the June 7, 1995, document, EPA stated that the part 70 regulations require an Operating Permits Program to allow for operational flexibility. The EPA noted that section 122.221 was inconsistent with 40 CFR 70.4(b)(12) which allows changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed emissions allowed under the permit. The Texas permit regulation did not define or include these operational flexibility requirements. Therefore, it was not clear what type of changes could be processed through the State's operational flexibility provision (60 FR at 30044).

In the 1998 submittal, TNRCC deleted its operational flexibility provisions previously contained in the 1993 version of section 122.221. However, deletion of the operational flexibility provisions did not correct the deficiency because the part 70 regulations require an Operating Permit Program to allow for operational flexibility.

On May 9, 2001, Texas adopted a new section 122.222 to provide operational flexibility, consistent with 40 CFR 70.4(b)(12), and to specify requirements for off-permit changes, consistent with 40 CFR 70.4(b)(14). Texas also adopted a definition for ''FCAA section 502(b)(10) changes'' in section 122.10(11) that is identical to the definition of ''section 502(b)(10) changes'' in 40 CFR 70.2. Therefore, this deficiency has been corrected.

D. Definition of Major Source

In the June 7, 1995, and the June 25, 1996, documents, we noted that the definition of ''major source'' in section 122.10 was inconsistent with the definition of ''major source'' as defined in 40 CFR 70.2. Both definitions identify 27 stationary source categories which are required to include a source's fugitive emissions in determining whether a source is major. In Texas' definition, category 27 was defined as ''any other stationary source category which as of August 7, 1980, is being regulated under section 111 or section 112 of the Act.'' This definition was inconsistent with 40 CFR 70.2, which requires fugitive emissions to be counted for all source categories regulated by section 111 or section 112 of the Act, not just those which existed as of August 7, 1980 (60 FR at 30041 and 61 FR at 32695).

In the 1998 submittal, TNRCC revised the definition of major source in section 122.10(14) as follows: ''any stationary source category regulated under FCAA section 111 (relating to Standards of Performance for New Stationary Sources) or section 112 for which EPA has made an affirmative determination under FCAA, section 302(j) (relating to Definitions).'' Texas did not change the definition in the 2001 submittal.

Texas' revised definition still does not match 40 CFR 70.2 for the reasons set forth above. However, EPA has subsequently stated that it failed to follow the necessary procedures under section 302(j) of the Act in adopting the current definition in part 70 (60 FR at 45547–45548).

Moreover, the Agency has a final rulemaking under development to revise the major source definition to no longer require sources in categories subject to section 111 or 112 standards promulgated after August 7, 1980, to count fugitive emissions for purposes of part D or section 302. The revised definition will match the definition in part 71, which requires fugitive emissions to be counted for ''any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or section 112 of the Act.'' 40 CFR 71.2.

Texas' regulation is consistent with the revised definition and the part 71 definition because both cover the same universe of sources. The Texas requirement to count fugitive emissions applies to sources ''for which EPA has made an affirmative determination under FCAA section 302(j)'' whereas the part 71 definition applies to sources which were ''subject to section 111 or 112 standards promulgated as of August 7, 1980.'' Because August 7, 1980, was the date of EPA's last ''affirmative determination under section 302(j),'' the Texas requirement is consistent with the part 71 requirement. Based on the foregoing, we no longer consider this to be a deficiency.

E. Definition of Regulated Pollutant

In the June 7, 1995, document, EPA pointed out that section 122.10 did not define ''regulated air pollutant'' as required by part 70, instead adopting a definition of ''air pollutant'' that is inconsistent with part 70. The definition of ''air pollutant'' included any pollutant listed in section 112(b) or section 112(r) of the Act and subject to a standard promulgated under section 112 of the Act. The term ''air pollutant'' is also used in the Texas definitions for ''potential to emit'' and ''major source.'' This was inconsistent with the part 70 regulation, in which applicability is based on a source's potential to emit any air pollutant, including those listed pursuant to section 112, rather than on pollutants which are subject to a promulgated standard (60 FR at 30040–30041).

In the 1998 submittal, Texas revised the definition of air pollutant in section 122.10 as follows: ''(F) any pollutant subject to a standard promulgated under FCAA, section 112 (relating to Hazardous Air Pollutants) or other requirements established under section 112, including section 112(g) and (j). However a pollutant shall not be considered an air pollutant under this chapter solely because it is subject to standards or requirements under section 112(r).'' However, because Texas' revised definition excluded listing under section 112(r) as an indicia of regulated air pollutants, the definition of ''air pollutant'' was still inconsistent with the definition of ''regulated air pollutant'' in 40 CFR 70.2.

In the 2001 submittal, Texas revised the definition of ''air pollutant'' in section 122.10(1)(F) to include any pollutant subject to requirements under the Federal Clean Air Act, section 112(r). The 2001 changes track the language of ''regulated air pollutant'' in 40 CFR 70.2 and therefore corrects this deficiency.

F. Treatment of Research and Development (R&D) Facilities

In the June 7, 1995, document, EPA observed that Texas treated R&D facilities through the definition of ''site'' in section 122.10 in a manner inconsistent with the definition of ''major source'' in 40 CFR 70.2, and the applicability provisions of 40 CFR 70.3(b). Texas defined ''site'' in section 122.10 to allow R&D operations to be treated as a separate site from any manufacturing facility with which they are collocated (60 FR at 30040).

In the 1998 submittal, Texas revised the definition of ''site'' to provide that R&D facilities will be considered a separate site from any collocated manufacturing facility except for those R&D facilities that produce products for commercial sale. The definition of ''site'' in the 1998 submittal continued to inappropriately exempt R&D activities from being aggregated with other collocated sources when the R&D activities have the same 2-digit SIC code

as the other collocated sources. In addition, the definition of site inappropriately exempted R&D activities from source aggregation when the R&D activity has a different 2-digit SIC code from a collocated source, and the R&D activity is a support facility for the collocated source. Although the Texas rule exempted R&D activities which did not produce commercial products, a support relationship may exist under the current part 70 rule in circumstances where no commercial product is produced. For example, the R&D activity could produce raw materials that are used by a collocated manufacturing source to produce final products where the raw materials are not sold, but the final products are.

In the 2001 submittal, Texas amended the definition of site in section 122.10(30) to clarify that, for purposes of operating permit applicability, R&D operations and collocated manufacturing facilities would be considered a single site if they have the same two-digit SIC code or the R&D operation is a support facility for the manufacturing facility. This revision is consistent with the definition of major source contained in 40 CFR 70.2 and corrects the deficiency.

G. Fugitive Emissions Not Included in Permit Application

In the June 7, 1995, document, EPA stated that the permit application must include fugitive emissions from units not subject to an applicable requirement, as required by 40 CFR 70.3(d). Chapter 122 did not meet this requirement (60 FR at 30043). In the June 25, 1996, document, EPA maintained that TNRCC must require sources to quantify fugitive emissions from units covered by an applicable requirement. For fugitive emission units that are not covered by an applicable requirement, EPA stated that a general description of the emissions would suffice (61 FR at 32696).

In the 2001 submittal, Texas added section 122.132(e)(10), specifying that fugitive emissions would be included in permit applications and permits in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. Section 122.132(e)(10) is consistent with 40 CFR 70.3(d) and meets the requirements of part 70. This revision corrects the deficiency.

H. Permit Additions

In the June 7, 1995, Notice, EPA noted that sections 122.215—122.217 required that certain permit revisions be processed as ''permit additions.'' The criteria for ''permit additions'' appeared to be the same as the Federal criteria for some types of changes noted under minor permit modification provisions (40 CFR 70.7) and for some changes allowed as ''off permit'' changes under 40 CFR 70.4(b)(14). The EPA stated that the permit addition procedures set forth in sections 122.215—122.217 were not equivalent to the minor permit modification procedures in part 70 (60 FR at 30042).

In the 1998 submittal, the State deleted the permit addition procedures and replaced them with procedures for minor permit revisions (new sections 122.213—122.217). However, the State failed to correct the underlying deficiencies in the permit addition procedures when it promulgated its minor permit revision procedures in 1997.

In 2001, Texas revised its minor permit revision regulations to be consistent with 40 CFR 70.7(e)(2). These changes included:

- Repeal of existing sections 122.215 and adoption of a new section 122.215;
- Amendments to section 122.216 and 122.217;
- Adoption of a section 122.218; and
- Repeal of existing section 122.219 and adoption of a new section 122.219.

Texas will submit sections 122.215—122.218 as revisions to its SIP. These sections will complement the provisions of chapter 101, subchapter H, Emissions Banking and Trading, which has been submitted as a SIP revision. Additional details of these changes are discussed in the TSD.

As discussed above, sections 122.215—122.219 as adopted by TNRCC meet the requirements of part 70.

I. Prohibition of Case-By-Case Determinations as Minor Permit Revisions

In the June 7, 1995, document, EPA pointed out that section 122.215 (Permit Additions) did not require case-by-case reasonably available control technology (RACT) changes to be processed as significant permit modifications. This regulation allowed TNRCC to process case-by-case RACT determinations as minor permit revisions. 40 CFR 70.7(e)(2)(i)(A)(3) prohibits the use of minor permit modification provisions to make ''case-by-case'' RACT equivalency determinations. Therefore, the Texas provision is not equivalent to the part 70 regulations (60 FR at 30042).

In the 1998 submittal, the State deleted the permit addition procedures and replaced it with procedures for minor permit revisions. However, the State failed to correct this deficiency in the permit addition procedures when it promulgated its minor permit revision procedures.

In 2001, Texas repealed section 122.215 and added a new Section 122.215 incorporating all criteria in 40 CFR 70.7(e)(2)(i)(A)(1)–(5) for minor permit revisions. This includes 40 CFR 70.7(e)(2)(i)(A)(3), which specifies that minor revisions may only be used for changes that do not require or change a case-by-case determination of an emission limitation or standard. This would include a case-by-case RACT determination. Therefore, case-by-case RACT determinations would be incorporated into a permit with a significant permit revision and must satisfy all procedural requirements for significant permit revisions, such as public notice, EPA review, public petition, and affected State review. Therefore, Texas has corrected this deficiency.

J. Prohibition on Operating Changes Until Source Has Submitted Minor Permit Application

In the June 7, 1995, document, EPA noted that Section 122.216 allowed applications for permit additions to be submitted to TNRCC no later than 90 days after the owner or operator has obtained or qualified for a preconstruction authorization. This regulation also provided that after the source received its preconstruction permit, it could make the requested operating change before submitting the operating permit application within the 90-day time frame (60 FR at 30042). However, 40 CFR 70.7(e)(2)(v) provides that no owner or operator may make an operating change if such operating change would require a modification of a term or condition of the original part 70 permit until the source has submitted an application for the minor permit modification. Accordingly, a State may allow the source to make the change proposed in its minor permit modification application only after the source files that application.

In the 1998 submittal, the State deleted the permit addition procedures and replaced them with procedures for minor permit revisions. However, the State failed to correct this deficiency in the permit addition procedures when it promulgated its minor permit revision procedures.

In 2001, Texas amended section 122.217(a)(2) to require a permit holder to submit an application for a minor permit revision to the Executive Director, as opposed to a notice. Under the amendment, a permit holder will be required to submit the application prior to making the operational changes

described in such application. The submitted revisions now require such changes to meet the requirements in sections 122.215—122.218 which contain TNRCC's requirements for minor permit revisions. The revisions to section 122.217(a)(2) meet the requirements of 40 CFR 70.7(e)(2)(v) and correct the deficiency.

K. EPA and Affected State Notification and Review, EPA Objection, and Permitting Authority Deadline To Issue or Deny Permit Additions

In the June 7, 1995, document, EPA stated that the permit addition procedures outlined in Section 122.217 were not equivalent to the procedures specified in 40 CFR 70.7(e)(2) because of the lack of EPA's ability to review and comment on permit additions, and the lack of a permitting authority deadline to issue or deny a permit addition. The EPA stated that this regulation must be amended to allow timely EPA review, and require that TNRCC issue or deny the permit modification within 90 days of receipt of an application or 15 days after the end of the Administrator's 45-day review period, whichever is later (60 FR at 30042).

In the 1998 submittal, the State deleted the permit addition procedures and replaced them with procedures for minor permit revisions. However, the State failed to correct this deficiency in the permit addition procedures when it promulgated its minor permit revision procedures.

In 2001, Texas adopted section 122.217(e), which requires TNRCC to notify EPA and affected States of a requested minor permit revision within five working days of receipt of a complete application. Also, Texas amended Section 122.217(g) to require the Executive Director to take final action on a permit revision application no later than 90 days after receipt of a complete application, or 15 days after the end of the EPA review period. Furthermore, section 122.217(g) would no longer allow the Executive Director to take final action on a permit revision application before the resolution of any EPA objection. This amendment would require the Executive Director to resolve any issues resulting from an EPA objection and issue or deny the application for permit revision within 15 days. The revisions to section 122.217 meet the requirements of 40 CFR 70.7(e)(2)(iii) and (iv), and are approvable.

L. Source Applicability of Part 70

In the June 7, 1995, document, EPA stated that section 122.120(4)(A)–(C), which addressed the applicability of part 70 and the Texas federal operating permit program, was inconsistent with 40 CFR 70.3(a). We noted that section 122.120(4) could potentially exempt any source, even a major source, from the requirement to obtain a part 70 permit. 60 FR at 30039–30040. In the 1998 submittal, Texas revised section 122.120(4) to clarify that the rule is not exempting major sources from applicability to chapter 122. In addition, Texas revised section 122.120(4)(C) to clarify that any non-major source in a source category designated by EPA, not just a section 111 and section 112 source, is subject to the operating permits program. Texas has corrected this deficiency.

M. Definition of Title I Modification

In the June 7, 1995, document, EPA noted that Texas' definition of ''title I modification'' in section 122.10 did not include changes reviewed under a minor source preconstruction review plan (MNSR), nor did it include changes that trigger the application of National Emission Standards for Hazardous Air Pollutants (NESHAP) established pursuant to section 112 of the Act prior to the 1990 Amendments. 60 FR at 30041. In the 1998 submittal, Texas deleted the definition of title I modification from section 122.10. The elimination of the definition is consistent with part 70, which does not contain a definition of title I modification. This deficiency has been corrected.

N. Compliance Schedule Requirements

In the June 7, 1995, document, EPA stated that section 122.132(b)(3)(B) was not as stringent as 40 CFR 70.5(c)(8)(iii)(C) because it did not require the compliance schedules to be at least as stringent as ''any judicial consent decree or administrative order to which the source is subject.'' 60 FR at 30041. Section 122.132(b)(3) sets forth the requirements for compliance plans for those units out of compliance. In the 1998 submittal, Texas revised section 122.132(b)(3)(B) (now section 122.132(e)(4)(C)(iii)) to read as follows: ''a compliance schedule (resembling and at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject), including remedial measures to bring the emission unit into compliance with the applicable requirements.'' This deficiency has been corrected.

O. Application Shield for Significant Modifications

In the June 7, 1995, document, EPA stated that section 122.138 incorrectly allowed an application shield for significant permit modifications. We pointed out that the application shield provision in 40 CFR 70.7(b) only applies to ''a timely and complete application for permit issuance (including for renewal),'' not to applications for significant permit modifications. 60 FR at 30041. In the 1998 submittal, Texas deleted the reference to ''significant permit modification'' from the application shield provisions of section 122.138. This deficiency has been corrected.

P. Changes Allowed Under Administrative Permit Amendments

In the June 7, 1995, document, EPA objected to section 122.211(5), which provided that a change at a site may qualify as an administrative permit amendment if the change is similar to those in section 122.211(1)-(4). 60 FR 30041. This is contrary to 40 CFR 70.7(d)(1)(vi), which allows the incorporation of changes similar to the listed provisions to be administrative amendments only if ''the Administrator has determined as part of the approved part 70 program'' that the changes are similar.'' In the 1998 submittal, Texas revised its former section 122.211(5), now redesignated as section 122.211(6), to read as follows: ''to allow for the incorporation of changes similar to those in paragraphs (1)–(5) of this section and approved by EPA.'' We believe that this corrects this deficiency and is consistent with part 70, so long as the State secures EPA approval pursuant to rulemaking and a similar change qualifying for an administrative amendment becomes a part of the state's approved part 70 program regulations. The TNRCC understands and acknowledges that it must obtain EPA approval. With this understanding, this deficiency has been corrected.

Q. Renewal of General Permits

In the June 7, 1995, document, EPA stated that 40 CFR 70.4 requires the State to issue acid rain permits for a fixed term of five years, and all other permits for a period not to exceed five years, except for permits issued for solid waste incineration units combusting municipal waste subject to provisions under section 129(e) of the Act. These permits can have a fixed permit term of twelve years. However, section 382.0543(a) of the Texas Health and Safety Code provides that an operating permit is subject to renewal at least

every five years. This is acceptable for solid waste incineration units combusting municipal waste. The statute does not, however, limit the general permit term to a maximum of five years. 60 FR at 30043. In the 1998 submittal, Texas adopted section 122.501(f) which provides that ''general operating permits must be renewed, consistent with the procedural requirements in subsection (a) of this section, at least every five years after the effective date.'' Subsection (a) repeats the procedure for issuance of the general permit. Therefore, Texas has corrected this deficiency.

R. Public Notice To Include Emissions Change

In the June 7, 1995, document, EPA stated that 40 CFR 70.7(h) requires, except for modifications qualifying for minor permit modification procedures, that the public notice requirements for all permit proceedings must include the ''emissions change involved in any permit modification.'' Section 122.153 did not specify this requirement. 60 FR at 30042. The EPA reiterated this comment in the June 25, 1996, document. 61 FR at 32696. In the 1998 submittal, Texas repealed section 122.153 and adopted section 122.320. Section 122.320(b)(5) requires public notice for all significant permit revisions to include ''the air pollutants with emission changes.'' This change is consistent with § 70.7(h)(2), and corrects this deficiency.

S. Interpretation Shield

In the June 7, 1995, document, EPA expressed concerns that section 122.145(e) contained ambiguities surrounding the ''interpretation shield.'' We identified three specific items that the State must address through a written commitment prior to obtaining final approval. These items included: interpretations made under section 122.145(e) must be limited to applicability issues only; EPA must have the opportunity to review and veto every section 122.145(e) action; and interpretations must be based on the most recent EPA guidance and any TNRCC written guidance pre-approved by EPA. 60 FR at 30043. In the 1998 submittal, Texas deleted the ''interpretation shield'' concept outlined in section 122.145(e), and replaced it with section 122.148, which is consistent with the permit shield described in 40 CFR 70.6(f). Texas' response addresses this deficiency.

T. Off-Permit Changes

In the June 7, 1995, document, EPA stated that the permit addition procedures specified in Section 122.215 would allow companies to make changes that EPA does not consider ''off-permit,'' as provided by 40 CFR 70.4(b)(14). We cited Texas'' narrow definition of ''applicable requirement'' excluding minor new source review as the problem. 60 FR at 30039 and 30044. In the 1998 submittal, Texas eliminated the permit addition revision process outlined in section 122.215 and replaced it with a minor permit revision process. The elimination of the permit addition revision process is consistent with part 70 and corrects the deficiency.

IV. Permit Fee Demonstration and Adequate Personnel Funding

The Permit Fee Demonstration was not changed as a result of the revisions to chapter 122. In regard to Adequate Personnel and Funding, EPA pointed out in the June 7, 1995, document that since EPA had not received a complete projection of program costs for four years after approval (40 CFR 70.4(b)(8)), this would be required for full approval. 60 FR at 30044. 40 CFR 70.4(b)(8) requires states to provide a statement that adequate personnel and funding have been made available to develop, administer, and enforce the program. Furthermore, 40 CFR 70.4(b)(8)(v) specifies that the statement must include an estimate of the permit program costs for the first four years after approval, and a description of how the state plans to cover those costs.

On August 22, 2001, Texas submitted a complete four-year projection. In its fee demonstration, Texas documented that it requires an average of $34,274,000 per year to cover the cost of the title V program. Texas projects that it will collect an average of approximately $36,840,000 per year in fees from title V sources. This demonstration indicates that the title V fees that Texas anticipates will be collected are sufficient to cover the program costs with an adequate margin of safety. The TNRCC has the authority to adjust the emissions fee as necessary using its rulemaking authority (Texas Health & Safety Code Section 382.0621). The demonstration submitted by Texas meets the requirements of 40 CFR 70.4(b)(7) and (8).

V. Did Texas Submit Other Title V Program Revisions?

The June 1, 2001, submittal included other changes that Texas made to chapter 122. These changes were made after we granted IA of Texas' operating permits program and do not address the IA deficiencies. Because the following changes do not address the IA issues, they do not affect our decision to grant full approval of Texas operating permits program.

The additional revisions to chapter 122 relate to General Operating Permits (promulgated February 26, 1999), Public Participation (promulgated September 24, 1999) and Compliance Assurance Monitoring and Periodic Monitoring (promulgated September 1, 2000).

We have received comments from citizens concerning these additional provisions in response to our **Federal Register** document published December 11, 2000. The citizens identified areas where they believe these provisions are deficient. We will respond to the citizen comments as described in section VIII.C of this preamble which provides additional information on the citizen comment letters. As discussed therein, we will respond by December 1, 2001, either by publishing a notice of deficiency if we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency.

We are taking no action on the above described provisions until we have completed our review of the citizen comments. We will take appropriate action on the additional provisions following our review of the citizen comments and the resolution of any deficiencies that we may identify.

VI. Audit Privilege Law

Section 502(d) of the Act authorizes States to implement a title V operating permit program. The statute also sets forth the minimum elements of a State permit program, including the requirement that the permitting authority have adequate authority to assure that sources comply with all applicable requirements, as well as authority to enforce permits, including recovering minimum civil penalties and appropriate criminal penalties. 42 U.S.C. 7661a(b)(5)(A) and (E). Pursuant to title V, EPA promulgated regulations specifying the minimum required elements of State Operating Permit programs, found at 40 CFR part 70. These regulations explicitly require States to have certain enforcement authorities, including authority to seek injunctive relief to enjoin a violation, to bring suit to restrain persons where a facility is posing an imminent and substantial endangerment to public health or welfare, and suit to recover appropriate criminal and civil penalties. *See* 40 CFR 70.11. Section 113(e) of the Act sets forth penalty factors for EPA or a court to consider in assessing penalties for civil or criminal violations of the Act, factors which necessarily

apply to penalties for violations of title V permits.

In the June 25, 1996 Notice, EPA stated that Texas would have to demonstrate that the passage of Texas House Bill 2473 (1995), the Texas Environmental, Health and Safety Audit Privilege Act (Audit Privilege Act) did not limit TNRCC's ability to adequately administer and enforce the federal operating permit program. 61 FR at 32697. The Audit Privilege Act created an immunity from civil, administrative, and criminal penalties for environmental violations discovered through an audit as defined by the Act. The Audit Privilege Act also created a privilege for information associated with audits which prohibits their disclosure in administrative, civil, or criminal actions for violations of environmental law. The EPA was concerned that the Audit Privilege Act may extend penalty immunity to facilities which commit repeat violations and violations which may cause harm to human health and the environment, and make no provision for recoupment of penalties for economic benefit, as required by section 113(e) of the Act. To the extent that the Audit Privilege Act provides immunity from civil penalties that does not permit consideration of these factors, appropriate civil penalties cannot be assessed by a state.

The EPA was also concerned that the Audit Privilege Act may prevent the State from obtaining appropriate criminal penalties. Evidence necessary to prove that a crime has been committed may be protected by privilege which may inhibit or prevent the State from assessing appropriate criminal penalties. The State must have the ability to obtain appropriate criminal penalties where an audit report reveals evidence of prior criminal conduct on the part of managers or employees. Another problematic aspect of the Audit Privilege Act was the disparity between its provisions limiting disclosure of audit report information by employees and others, and sections 113 and 322 of the Clean Air Act, which specifically protects whistle-blowers from retaliation and provide awards for persons who furnish information that leads to a criminal conviction or civil penalty. The Texas Audit Privilege Act did not, by its terms, create or impose special sanctions on informants, but it asserted that a ''Party to a confidentiality agreement * * * who violates that agreement is liable for damages caused by the disclosure * * * '' In addition, sanctions were created with regard to government officials who disclose privileged information. The EPA was concerned that both of these provisions may have a negative impact on disclosures well beyond the intended reach of the privilege. Confidential informants are an important source of leads for State and Federal enforcement programs.

The EPA and TNRCC negotiated a set of technical amendments to the Audit Privilege Act, Texas Rev. Civ. Stat. Ann. Art. 4447cc (Vernon Supp. 1998), with the purpose of removing any barriers to state assumption of federal programs. These amendments did the following: (1) Eliminated the application of immunity and privilege provisions to criminal actions; (2) eliminated the application of immunity where a violation results in a serious threat to health or the environment, or where the violator has obtained a substantial economic benefit that gives it a competitive advantage; (3) made it clear that Texas laws will not subject individuals to sanctions for reporting any violations of environmental law to a law enforcement agency; and (4) clarified that the privilege does not impair access to information required to be made available under federal or state law. The TNRCC also assured EPA that the Audit Privilege Act does not impair the State's authority or ability to obtain injunctive relief, issue emergency orders, or taint its ability to independently obtain or use evidence of a violation. The 75th Texas Legislature enacted Texas House Bill 3459 (1997) to adopt the amendments agreed upon without any other significant changes in the law. The amendments to the Audit Act have been in effect since September 1, 1997.

Based on the amendments to the Audit Privilege Act and TNRCC's assurances, EPA has concluded that the TNRCC retains adequate authority to enforce the requirements of any authorized or delegated program (which would include title V), and thus the Audit Privilege Act would not be a barrier to approval of Federal programs. Letter to Mr. Barry R. McBee, TNRCC from Mr. Steven A. Herman, Assistant Administrator dated March 19, 1997. However, in the June 25, 1996, document, EPA stated that all interested parties will have opportunity to comment on the acceptability of this law for full title V approval. 61 FR at 32696. Therefore, EPA is providing the public the opportunity to comment on the acceptability of the Audit Privilege Act.

VII. Miscellaneous Full Approval Issues

In the June 25, 1996 Notice, EPA stated the following:

> Significant changes to Texas laws were made by the Texas legislature in 1995. These statutory changes raise issues of concern which the State must address before full approval can be granted. The State has an obligation to address all the relevant, recently enacted laws and demonstrate how they meet title V and part 70.
>
> This final agency action today does not waive the EPA's right to raise statutory concerns and any attendant regulatory revisions the EPA deems necessary to the State and identify inconsistencies with those legislative changes which must be corrected for full approval. The EPA will present its position on the laws to TNRCC prior to the 1997 legislative session, during TNRCC's corrective rulemaking, and its FRN proposing action on the State's submittal for full approval. Therefore, interested parties will have full opportunity to comment on the merits of the EPA's position on the acceptability of the Texas 1995 laws (such as the Texas Senate Bill 14, ''Takings Impact Assessment,'', among others) for full title V program approval.

61 FR at 32697.

In addition, concerns were raised about TNRCC's laws and procedures governing the public availability of emissions data. Id. at 32698. This concern was raised after the public comment period ended for the proposed interim approval.

When EPA made these statements, it did not anticipate that over five years would pass between interim approval and full approval. The Texas Legislature has meet three times since this statement was made. On June 25, 1998, Texas requested revised interim approval for its operating permits program. Shortly thereafter, on August 10, 1998, Texas supplemented its submittal with a supplemental Attorney General's (AG) statement. This supplemental AG statement addressed, among other things, Texas Senate Bill 14 referenced above. The EPA never acted on Texas' request for revised interim approval because it was challenged on the May 22, 2000 rulemaking that extended the IA period of 86 operating permits programs until December 1, 2001. The EPA settled the lawsuit and the settlement prohibits further extensions of the interim approval deadline. Thus, if EPA does not grant full approval of Texas' operating permits program by December 1, 2001, a Federal operating permit program will be automatically implemented in Texas. *See* 65 FR 77024, 77025 (December 8, 2000).

In addition, EPA also gave citizens the opportunity to identify deficiencies they perceive to exist in Texas' operating permits program, including alleged substantive deficiencies and implementation deficiencies. 65 FR 77376 (December 11, 2001). EPA

received comments outlining numerous alleged deficiencies with the Texas program.

VIII. What Is Involved in This Proposed Action?

A. Proposed Action

In this action, we are proposing full approval of the operating permits program submitted by the State of Texas. The program was submitted by Texas to us for the purpose of complying with federal requirements found in title V of the Act and in part 70, which mandate that States develop, and submit to us, programs for issuing operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands. We have reviewed this submittal of the Texas operating permits program and are proposing full approval.

B. Indian Lands and Reservations

In its operating permits program submittal, Texas does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in Texas has authority to administer an independent title V program in the State. On February 12, 1998, EPA promulgated regulations under which Indian tribes could apply and be approved by EPA to implement a title V operating permits program (40 CFR part 49). For those Indian tribes that do not seek to conduct a title V operating permits program, EPA has promulgated regulations (40 CFR part 71) governing the issuance of Federal operating permits in Indian country. 64 FR 8247, February 19, 1999.

C. Citizen Comment Letters

On May 22, 2000, EPA promulgated a rulemaking that extended the IA period of 86 operating permits programs untilDecember 1, 2001. (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a document in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document.

Several citizens commented on what they believe to be deficiencies with respect to the Texas title V program. The EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** document published on December 11, 2000 (65 FR 77376), EPA will respond by December 1, 2001 to timely public comments on programs that have obtained IA; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

IX. Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355(May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 2, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–25592 Filed 10–10–01; 8:45 am]

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