The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as gun, hunting gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the emergency change has no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the emergency change will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the emergency change meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the emergency change does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Daniel LaPlant drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: July 17, 2002.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: July 16, 2002.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 02–23640 Filed 9–17–02; 8:45 am]

BILLING CODE 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–104–1–7401a; FRL–7378–7]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Control of Air Pollution by Permits for New Sources and Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve revisions of the Texas State Implementation Plan (SIP). Specifically, EPA is approving revisions to regulations of the Texas Commission on Environmental Quality (TCEQ) which relate to the permitting of new sources and modifications. The EPA is approving revisions which recodify several provisions of the existing SIP without substantive changes and will strengthen the SIP as it pertains to permit alterations and the permitting of new and modified sources. Approval of these revisions will bring the SIP provisions relating to the permitting of new and modified sources more closely in line with Texas' existing program. This action is being taken under section 110 of the Federal Clean Air Act, as amended (the Act, or CAA).

DATES: This final rule is effective on October 18, 2002.

ADDRESSES: Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

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

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell of the Air Permits Section at (214) 665–7212, or at *spruiell.stanley@epa.gov.*

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

Table of Contents

I. What Are We Approving?

In today's action we are approving into the Texas SIP revisions of Title 30 Texas Administrative Code (TAC), Chapter 116, ''Control of Air Pollution by Permits for New Construction or Modification.'' The Governor of Texas submitted the following revisions to 30 TAC Chapter 116 (Chapter 116) to the Administrator of EPA after adequate notice and public hearing:

A. August 31, 1993 (the ''1993 submittal'')

The 1993 submittal includes revisions adopted by Texas on August 16, 1993. The 1993 submittal includes revisions to and recodification of Chapter 116.[1] The 1993 submittal serves as the base regulation for subsequent revisions that TCEQ has adopted, or will adopt.

B. July 22, 1998 (the ''1998 submittal'')

This submittal includes revisions to Chapter 116 adopted by Texas on June 17, 1998. It includes changes which Texas made under its regulatory reform to simplify and clarify its rules.[2] These changes which do not involve substantive changes include: (1) Using shorter sentences, (2) limiting each citation to one main concept, (3) reordering requirements into a more logical sequence, and (4) using more commonplace terminology.[3]

On September 1, 2002, the Texas Natural Resource Conservation Commission (TNRCC) changed its name to the Texas Commission on Environmental Quality (TCEQ). The revisions to Chapter 116 which we are acting upon herein were adopted prior to the agency changing its name from TNRCC to TCEQ. All rules and regulations, orders, permits, and other final actions taken by the TNRCC remain in full effect unless and until revised by the TCEQ.

In today's action, consistent with the following discussion, we are approving these revisions to Chapter 116 as revisions to the Texas SIP.

II. Background

On September 24, 2001 (66 FR 48796), we published a direct final rule approving revisions to and recodification of Chapter 116. We concurrently published a proposed rulemaking with the direct final rule (66 FR 48850) and stated that if we received any adverse comments by the end of the public comment period we would withdraw the direct final rule. We would then respond to the comments when we take final action on the proposed approval.

On October 24, 2001, we received comment letters from Public Citizen and from Lowerre & Kelly (Lowerre), Attorneys at Law on behalf of Quality of Life El Paso. We withdrew our direct final action on November 23, 2001 (66 FR 58667).

In its October 24, 2001, comments, Public Citizen requested additional time to comment on these SIP revisions. Public Citizen requested the additional time to compare more fully the state's submittal against the current SIP and applicable requirements. In response to Public Citizen's request for additional time to comment on the proposed SIP revisions, we reopened the comment period for 30 days on March 20, 2002 (67 FR 12949). Public Citizen provided additional comments on April 12, 2002.

III. Final Action

A. Are We Approving Proposed Revisions to Chapter 101?

On September 24, 2001 (as part of this action), we proposed to approve revisions to Chapter 101, Section 101.1—Definitions. Specifically, we proposed to approve a revised definition of ''nonattainment area'' and to reinstate the definition of ''de minimis impact'' which we had inadvertently removed from Section 101.1 on August 19, 1997 (62 FR 44083).[4] We received no comments on our proposed action to approve revisions to Section 101.1.

On September 26, 2001, Texas submitted revisions to Section 101.1. On November 14, 2001 (as part of a separate action), we approved the revisions to Section 101.1. See 66 FR 57260. The revisions approved on November 14, 2001, incorporate the revised definition of ''nonattainment area'' and reinstated the definition of ''de minimis impact'' and are consistent with our September 24, 2001 proposal. Accordingly, we have revised the TSD to show this change. We are not approving revisions to Section 101.1 in this action.

B. Why Are We Approving the Revisions to Chapter 116?

Approval of these revisions to Chapter 116 will bring the organizational structure and language of the Federally approved SIP for Chapter 116 more closely in line with the Chapter as it currently exists in the State's program. Our approval of these revisions will also facilitate future revisions to Chapter 116, by enabling us to approve such revisions into the current organizational structure. This approval also better serves the State, the public, and the regulated community by making the approved SIP more closely match the words and format of the rules that Texas currently implements.

C. Have We Approved Any Portions of the 1993 Submittal Prior to Today's Action?

We previously approved portions of the 1993 submittal in separate actions as indicated in Table 1 below.

[1] The 1993 submittal also includes revisions to Chapter 101—General Rules, Section 101.1—Definitions. For the reasons stated in section III.A, we are not approving the 1993 changes to Section 101.1

[2] The 1998 submittal also includes provisions for implementing section 112(g) of the Act, and includes a new Section 116.15—Section 112(g) definitions, and a new Subchapter C—Hazardous Air Pollutants: Regulations Governing Construction or Reconstruction Major Sources (Federal Clean Air Act (FCAA), Section 112(g), 40 CFR part 63). We are taking no action on Subchapter C for the reasons stated in section III.E.1.

[3] The 1998 submittal also includes provisions which Texas adopted subsequent to the 1993 submittal but not yet approved by EPA. Except where otherwise indicated, we are taking no action on revisions made after the 1993 submittal which are not substantially equivalent to the 1993 submittal until we complete our review of these subsequent revisions. See discussion in section III.E.2.

[4] Texas also removed several terms which relate to permitting major sources and major modifications in nonattainment areas, and simultaneously recodified those definitions into Section 116.12. We approved the nonattainment definitions in Section 116.12 and the removal of such terms from Section 101.1 in a separate action at 65 FR 43986 (July 17, 2000).

TABLE 1.—PROVISIONS OF 1993 SUBMITTAL PREVIOUSLY APPROVED BY EPA

Approval date	Provisions approved
09/27/95, 60 FR 49781	Table I, Major Source/Modification Emission Thresholds—in Section 116.12—Nonattainment Review Definitions.
08/19/97, 62 FR 44083	Section 116.10—definition of ''de minimis impact.'' [a] Section 116.141(a), and (c)–(e)—Determination of Fees Section 116.160—Prevention of Significant Deterioration Review Requirements. Section 116.161—Source Located in an Attainment Area with Greater than De Minimis Impact. Section 116.162—Evaluation of Air Quality Impacts. Section 116.163—Prevention of Significant Deterioration Permits Fees.
07/17/00, 65 FR 43986	Section 116.12—Nonattainment Review Definitions. Section 116.150—New Major Source or Major Modification in Ozone Nonattainment Area. Section 116.151—New Major Source or Major Modification in Nonattainment Area Other than Ozone. Section 116.170(1) and (3)—Applicability of Reduction Credits.

[a] The definition of ''de minimis impact'' was repealed from Section 116.10 in the 1998 submittal. Today's action approves the State's repeal of this definition from Section 116.10.

With respect to the sections identified above, today's action approves the codification of these provisions into the organization structure adopted in the 1998 submittal and any nonsubstantive changes to the previously approved provisions.

D. Are We Approving Provisions That Did Not Exist in the Former SIP?

We are approving Section 116.116(c) which sets forth provisions for permit alterations. Section 116.116(c) defines a permit alteration as a variation to a representation in a permit application or in a general or special condition of a permit that decreases the allowable emissions or does not change the character or method of control of emissions. The TCEQ must approve any request for permit alteration which may result in an increase in off-property concentrations of air contaminants, may involve a change in permit conditions, or may affect facility or control equipment performance. Changes subject to permit alterations involve no emissions increase. Like kind replacement of emissions units and new emission units are not allowed under the permit alteration provisions. Permit alterations are not granted for changes which qualify for permit amendments under Section 116.116(b). Such permit amendment is required for any change which involves an increase in emissions or a change in the method of control. Examples of permit alterations include:

(1) Changes to a special condition in a permit to add an annual production rate for a unit that was inadvertently left out,

(2) Revising an emission point to show fugitive emissions and emissions from a newly installed control device as two separate emission points, and

(3) Changes to a special condition to reflect that primary seals for external floating roof tanks may be liquid-mounted primary seals or mechanical shoes. The use of alterations is limited only to changes which involve no increase in emissions and no changes in the method of control. Accordingly, such changes will not result in a violation of the applicable portion of the control strategy [5] or interfere with attainment or maintenance of a national standard, thus meeting the requirements of 40 CFR 51.160.[6] Subsection (c) as submitted in 1998 is equivalent to the 1993 submittal.

We also received comments concerning our proposed approval of the provisions for permit alterations. Section IV contains our response to these comments.

E. Are We Approving All Provisions of Chapter 116?

In today's action, we are not approving the provisions of Chapter 116 identified below. We also received comments concerning our proposal to take no action on these provisions. Section IV contains our response to these comments.

[5] The term ''control strategy'' is defined in 40 CFR 51.100(n) as a combination of measures designated to achieve the aggregate emission reductions necessary for attainment and maintenance of national ambient air quality standards.

[6] 40 CFR 51.160 requires each SIP to contain legally enforceable measures that enable the State to determine whether the construction or modification of a facility, building, structure, or installation, or combination thereof will result in: (1) A violation of applicable portions of the control strategy; or (2) interference with attainment of maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring state.

1. Provisions Implementing Section 112(g) of the Act Concerning Constructed or Reconstructed Major Sources of Hazardous Air Pollutants (HAP)

We are taking no action on Subchapter C of Chapter 116—Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, section 112(g), 40 CFR part 63), as submitted in 1998. The program for reviewing and permitting constructed and reconstructed major sources of HAP is regulated under section 112 of the Act and under 40 CFR part 63, subpart B. Under these provisions, States establish case-by-case determinations of maximum achievable control technology for new and reconstructed major sources of HAP. The process for these provisions is carried out separately from the SIP activities. For the reasons discussed above, we are not approving Subchapter C of Section 116 as submitted in 1998.

In addition, and for the reasons discussed above, we are also not approving other provisions of Chapter 116 which pertain to or refer to Subchapter C. These provisions include:

- Section 116.15—Section 112(g) Definitions,
- Section 116.111(2)(K)—Hazardous Air Pollutants,
- Section 116.115(c)(2)(B)(ii)(I)—Special conditions for sources subject to Subchapter C (Hazardous Air Pollutants),
- Section 116.116(b)(3)—Changes at Section 112(g) facilities, and
- Section 116.130(c)—Applications subject to the requirements of Subchapter C of Chapter 116 (relating to Hazardous Air Pollutants).

2. Provisions of the 1998 Submittal Which Are Not Equivalent to the 1993 Submittal

We are approving the 1998 submittal to the extent that it is equivalent to the 1993 submittal. The 1998 submittal includes new provisions as well as numerous changes that Texas adopted subsequent to the 1993 submittal and carried forward into the 1998 submittal. We are still reviewing the new provisions and the changes carried forward from rulemaking actions adopted subsequent to the 1993 submittal. However, if we wait until we complete our review and evaluation of these provisions, we would have to delay action on the portions of the 1998 submittal that we consider to be approvable. As stated above, we believe that it is important to act on the provisions of the 1998 submittal that are consistent with the 1993 submittal to ensure that the approved SIP more closely matches the rules that the TCEQ administers and enforces.

Accordingly, today's action approves the 1998 submittal to the extent that the 1998 submittal is equivalent to the provisions of the 1993 submittal that we are approving. At this time, we are taking no action on the following provisions of the 1998 submittal that are not equivalent to the 1993 submittal, except where otherwise indicated: [7]

- The following definitions in Section 116.10—General Definitions:

''actual emissions''—Section 116.10(1),
''allowable emissions''—Section 116.10(2),
''best available control technology''—Section 116.10(3),
''facility''—Section 116.10(4),
''grandfathered facility''—Section 116.10(6),
''maximum allowable emission rate table (MAERT)''—Section 116.10(8),
''modification of existing facility''—Section 116.10(9),
''new facility''—Section 116.10(10), and
''qualified facility''—Section 116.10(14).

- Section 116.13—Flexible Permit Definitions;
- Section 116.14—Standard Permit Definitions;
- Section 116.110(a)(2)–(3) and (c) which respectively relate to standard permits, flexible permits, and exclusions from permitting;
- Section 116.115(b) and (c)(2)(A)(i) which respectively relate to general conditions and special conditions for sources subject to standard permits;
- Section 116.116(e)–(f) which respectively relate to changes to qualified facilities and use of credits;
- Section 116.117 which relates to Documentation and Notification of Changes to Qualified Facilities;
- Section 116.118 which relates to Pre-Change Qualification;
- Section 116.132(c)–(d) which respectively relate to additional alternate language public notice;
- Section 116.133(f)–(g) which respectively relate to alternate language sign posting;
- Section 116.136—Public Comment Procedures; [8]
- Subchapter F—Standard Permits; and
- Subchapter G—Flexible Permits.

We are reviewing the provisions which we are not acting upon in this action. When we complete our review, we will take appropriate action on these provisions in separate **Federal Register** actions. The TSD contains a detailed evaluation which documents why we are taking no action on these provisions.

3. Provisions of the 1993 Submittal Which Were Repealed in the 1998 Submittal

Texas repealed the following provisions from Chapter 116 in the 1998 submittal:

- Definitions of ''de minimis impact'' [9] and ''emissions unit'' in Section 116.10—General Definitions, and
- Section 116.110(b)—Operations Certificate.

These provisions of the 1993 submittal were repealed in 1998, and are no longer a part of Chapter 116. Thus, we are not approving these provisions of the 1993 submittal.

4. Emission Reductions: Offsets

In letters to TNRCC (now TCEQ) dated August 3, 1999, and September 27, 2000, we informed them that we had concerns relating to the approval of Sections 116.170(2), 116.174, and 116.175. On the basis of subsequent discussions with Texas on August 15, 2000, EPA and TCEQ have agreed that it is appropriate to take no action on Sections 116.170(2), 116.174, and 116.175 in today's action. Our letter to the State on September 27, 2000, confirmed this understanding. We will act on these provisions in a separate action after TCEQ resolves the outstanding concerns to our satisfaction. Additional information regarding our concerns with these provisions is contained in the TSD.

5. Permit Exemptions

On December 29, 1998, Texas requested that we delay action on approving Subchapter C—Permit Exemptions as submitted in 1993. In a subsequent letter dated April 26, 1999, Texas provided its reason for requesting that we delay approval of Subchapter C. Texas requested the delay because of several bills that were before the Texas Legislature which, if passed and signed into law, would affect the new source permitting structure, including the exemptions from permitting. These bills were passed and signed into law. Because we anticipate that Texas will significantly revise and restructure its provisions for exemptions from permitting, we are delaying action on Subchapter C (as submitted in 1993) pending the submission of these SIP revisions.

Because we are taking no action on Subchapter C as submitted in 1993, the existing provisions of Section 116.6 (Exemptions), approved August 13, 1982 (47 FR 35193) remain in the Texas SIP.

We also received comments concerning our proposed action relating to Permit Exemptions. Section IV contains our response to these comments.

6. Permit Renewals

The Governor submitted Subchapter D (Permit Renewals) of Chapter 116 in the 1993 submittal. However, the 1998 submittal incorporates revisions that Texas adopted after the 1993 submittal and which we have not approved. The changes significantly revise Subchapter D to the extent that it is not equivalent to Subchapter D as submitted in the 1993 submittal. We have not completed our review of these changes and are therefore taking no action on Subchapter D in today's action. We will act on Subchapter D in a separate action following our review of the changes adopted subsequent to the 1993 submittal.

7. Emergency Orders

The Governor submitted Subchapter E (Emergency Orders) as part of the 1993 submittal. An Emergency Order authorizes the immediate action for the addition, replacement, or repair of facilities or control equipment, and

[7] In some cases provisions of the 1998 submittal are readily recognized to be consistent with the Act and have the effect of strengthening the SIP even though they are not equivalent to the 1993 submittal. These provisions are identified in the TSD and where identified are being approved in today's action.

[8] In today's action, we are approving Section 116.136 as submitted in 1993.

[9] We previously approved the definition of ''de minimis impact'' prior to its repeal from Section 116.10 in the 1998 submittal. Today, we are approving the repeal of this definition from Section 116.10. We have not acted upon the other provisions which were repealed in the 1998 submittal.

authorizes the associated emissions of air contaminants, whenever a catastrophic event necessitates such construction. An applicant that qualifies for an Emergency Orders would need to submit an application under the requirements of Section 116.411.

On December 10, 1998, the Governor of Texas submitted additional SIP revisions pertaining to Emergency Orders. In that submittal, Texas recodified and revised the provisions pertaining to Emergency Orders into 30 TAC chapter 35. We are still reviewing the December 10, 1998, SIP revisions. We will act on the provisions relating to Emergency Orders in a separate action.

In letters to Texas dated August 3, 1999, and September 27, 2000, we identified concerns related to Subchapter E, submitted August 31, 1993, and with the revisions submitted December 10, 1998. On the basis of subsequent discussions with Texas on August 15, 2000, the EPA and TCEQ have agreed that it is appropriate to take no action on Subchapter E, submitted August 31, 1993, and the SIP revisions submitted December 10, 1998, in today's action. Our letter to Texas on September 27, 2000, confirmed this understanding. We will act on these provisions in a separate action after TCEQ resolves the outstanding concerns to our satisfaction. Additional information regarding our concerns with these provisions is contained in the TSD.

We also received comments concerning our proposal to take no action on Emergency Orders. Section IV contains our response to these comments.

F. Are There Other Changes That We Are Approving?

On September 24, 2001, we proposed to approve Section 116.137 as submitted in 1993. We proposed to approve the 1993 submittal of Section 116.137 based upon Texas making no changes to the regulatory text of that Section in the 1998 submittal. Further review indicates that in the 1998 submittal Texas changed the title of Section 116.137 from ''Notification of Final Action by the Texas Air Control Board'' to ''Notification of Final Action by the Commission''. Accordingly, we have revised the TSD to show this change. We are approving the 1998 submittal of Section 116.137 in today's action.

G. What Is the Effect of Today's Action?

This action approves the recodification of several provisions of Texas regulations for permitting new and modified sources as submitted August 31, 1993, and July 22, 1978. Today's action replaces several Sections of the former SIP with new Sections under the current numbering system used by Texas in Chapter 116. By approving these revisions, the SIP-approved version of Chapter 116 more closely correlates with the numbering system currently used by Texas.

H. What Provisions of the Former SIP Are Replaced by the Recodified Provisions Approved Today?

Table 2 below cross-references the recodified provisions that we are approving to the corresponding provisions in the former SIP. The table identifies the new SIP citation, the former SIP citation, the adoption date of the section that we are approving, the title of the Section, and any explanatory notes. Where noted, the ''comments'' column may identify portions of the ''New SIP Citation'' which we are not approving in today's action. The reasons for not approving such provisions identified in the ''comments'' column are provided in section III and in the TSD.

TABLE 2.—RECODIFIED PROVISIONS OF CHAPTER 116 APPROVED IN THIS ACTION.

New SIP citation	Date adopted of new SIP citation by state	Former SIP citation	Title	Comments
Chapter 116—Control of Air Pollution by Permits for New Construction or Modification				
Subchapter A—Definitions				
Section 116.10	06/17/98	Sections 101.1, 116.3(a)(1)(B), and 116.14(a)(7).	General Definitions	The New SIP Citation does not include Sections 116.10(1), (2), (3), (4), (6), (8), (9), (10), and (14).
Section 116.11	06/17/98	Section 116.14(a)(1)(6)	Compliance History Definitions.	
Subchapter B—New Source Review Permits				
Division 1—Permit Application				
Section 116.110	06/17/98	Sections 116.1(a)–(c), 116.2, and 116.3(b).	Applicability	The New SIP Citation does not include Sections 116.110(a)(2), (a)(3), and (c).
Section 116.111	06/17/98	Section 116.3(a)	General Application	The New SIP Citation does not include Section 116.111(2)(K).
Section 116.112	06/17/98	Sections 116.3(a)(1)(B) and 116.3(a)(13).	Distance limitations.	
Section 116.114	06/17/98	Sections 116.3(f), 116.5, 116.10(a)(1), and 116.10(e).	Application review schedule.	
Section 116.115	06/17/98	Section 116.4	Special provisions	The new SIP citation does not include Sections 116.115(b), (c)(2)(A)(i), and (c)(2)(B)(ii)(I).
Section 116.116	06/17/98	Section 116.5	Changes to facilities	The New SIP citation does not include sections 116.116(b)(3), (e), and (f).

TABLE 2.—RECODIFIED PROVISIONS OF CHAPTER 116 APPROVED IN THIS ACTION.—Continued

New SIP citation	Date adopted of new SIP citation by state	Former SIP citation	Title	Comments
Division 2—Compliance History				
Section 116.120	06/17/98	Section 116.14(b)	Applicability.	
Section 116.121	06/17/98	Section 116.14(c)	Exemptions.	
Section 116.122	06/17/98	Section 116.14(d)	Contents of Compliance History.	
Section 116.123	06/17/98	Section 116.14(e)	Effective dates.	
Section 116.124	06/17/98	Section 116.14(f)	Public notice of compliance history.	
Section 116.125	06/17/98	Section 116.14(g)	Preservation of existing rights and procedures.	
Section 116.126	06/17/98	Section 116.14(h)	Voidance of permit applications.	
Division 3—Public Notice				
Section 116.130	06/17/98	Section 116.10(a)(7)	Applicability	The new SIP citation does not include Section 116.130(c).
Section 116.131	06/17/98	Section 116.10(a)(1) and (2)	Public notification requirements.	
Section 116.132	06/17/98	Section 116.10(a)(3) and (4)	Public notice format	The new SIP citation does not include Sections 116.132(c) and (d).
Section 116.133	06/17/98	Did not exist	Sign posting requirements	The new SIP citation does not include Sections 116.134(f) and (g).
Section 116.134	06/17/98	Section 116.10(a)(5)	Notification of affected agencies.	
Section 116.136	08/16/93	Section 116.10(b)	Public comment procedures.	
Section 116.137	06/17/98	Section 116.10(c)	Notification of final action by the Commission.	
Division 4—Permit Fees				
Section 116.140	06/17/98	Section 116.11(a) and (e)	Applicability.	
Section 116.141	06/17/98	Section 116.11(b)	Determination of fees	Today's action approves Section 116.141(b). Sections 116.141(a), (c)–(e) were previously approved.
Section 116.143	06/17/98	Section 116.11(c)–(f)	Payment of fees.	

I. What Actions Are We Taking on the Provisions of the 1993 Submittal That We Previously Approved?

Table 3 below identifies previously approved provisions of the 1993 submittal. This action recodifies these previously approved provisions in the format submitted in the 1998 submittal with nonsubstantive changes.

TABLE 3.—RECODIFICATION OF PREVIOUSLY APPROVED PROVISIONS OF THE 1993 SUBMITTAL

SIP citation	Adoption date of rule approved in this action	Title	Approval date and FEDERAL REGISTER page of previously approved SIP	Comments
Chapter 116—Control of Air Pollution by Permits for New Construction or Modification Subchapter A—Definitions				
Section 116.10	06/17/98	General Definitions (definition of ''de minimis impact'').	08/19/97, 62 FR 44083	Repealed.[a]
Subchapter B—New Source Review Permits Division 4—Permit Fees				
Section 116.141(a), (c)–(e)	06/17/98	Determination of Fees	08/19/97, 62 FR 44083	Today's action approves nonsubstantive changes in 1998 submittal.

TABLE 3.—RECODIFICATION OF PREVIOUSLY APPROVED PROVISIONS OF THE 1993 SUBMITTAL—Continued

SIP citation	Adoption date of rule approved in this action	Title	Approval date and FEDERAL REGISTER page of previously approved SIP	Comments
Division 5—Nonattainment Review				
Section 116.150	02/24/99	New Major Source or Major Modification in Ozone Nonattainment Area.	07/17/00, 65 FR 43944.	
Section 116.151	03/18/98	New Major Source or Major Modification in Nonattainment Area Other than Ozone.	07/17/00, 65 FR 43944.	
Division 6—Prevention of Significant Deterioration Review				
Section 116.160	06/17/98	Prevention of Significant Deterioration Requirements.	08/19/97, 62 FR 44083	Today's action approves nonsubstantive changes in 1998 submittal.
Section 116.161	06/17/98	Sources Located in an Attainment Area with a Greater than de Minimis Impact.	08/19/97, 62 FR 44083	Today's action approves nonsubstantive changes in 1998 submittal.
Section 116.162	08/16/93	Evaluation of Air Quality Impacts.	08/19/97, 62 FR 44083.	
Section 116.163	08/16/93	Prevention of Significant Deterioration Permits Fees.	08/19/97, 62 FR 44083.	
Division 7—Emission Reduction: Offsets				
Section 116.170	06/17/98	Applicability of Reduction Credits.	07/17/00, 65 FR 43944	Today's action approves nonsubstantive changes in 1998 submittal.

[a] The definition of ''de minimis impact'' was repealed from Section 116.10 in the 1998 submittal. Today, we are approving the repeal of this definition from Section 116.10.

IV. Response to Comments

The following is a summary of the comments that we received October 24, 2001, and April 12, 2002, and our response to those comments. In a separate document, we have included a more detailed response to comments in the docket for this action. You may obtain a copy of this response to comments by contacting the person identified in the section entitled **FOR FURTHER INFORMATION CONTACT**.

Comment 1: On October 24, 2001, Public Citizen commented that the proposal to take ''no action'' is not consistent with section 110(k)(2) of the Act which provides that, within 12 months of a determination that a State submittal is complete, EPA shall act on the submittal in accordance with section 110(k)(3). Section 110(k)(3) provides for full approval or partial approval and partial disapproval. The only other action available to EPA is conditional approval under section 110(k)(4). Taking no action on a SIP submittal after the 12 month period is not an option under the Act. The deadlines for EPA action on the 1993 and 1998 submittals have long since passed; thus EPA must either approve or disapprove the provisions it has proposed to take no action on.

On April 12, 2002, Public Citizen further commented that it does not believe that EPA has the authority to ''take no action'' on portions of Texas'' SIP submittal. The Act provides for approval, disapproval or partial approval/disapproval within 12 months of a completeness determination. Section 110(k)(3) of the Act.

Response 1: We are neither approving nor disapproving (taking no action on) certain provisions of the Texas SIP submittals in this action because we have outstanding questions regarding those provisions and they remain under review. We believe it would be premature to propose action on these provisions before we resolve our outstanding questions with Texas. Our statements that we are taking no action on those provisions should not be taken to mean that we never intend to act on them. We will approve or disapprove those provisions in future actions on the Texas SIP submittals (unless and to the extent that they are withdrawn by Texas).

Comment 2: On October 24, 2001, Public Citizen commented that the lack of EPA action makes the approved regulations extremely difficult, if not impossible to interpret.

Response 2: As discussed in our September 24, 2001, action, this action makes the approved SIP easier to understand because the SIP will more closely match the State's program and the rules that Texas currently implements.

Furthermore, the Table in 40 CFR 52.2270(c), ''EPA Approved Regulations in the Texas SIP,'' clearly identifies the provisions that we are approving. Additionally, for each entry in the Table, we clearly identify for each Section of the State Regulation that we are approving any provisions in that Section that are not included in the SIP under the Column titled ''Explanation.''

The public can also access the current Federally-approved SIP on the EPA Region 6 Web Site. We update the web site to include all SIP revisions after the SIP revisions become effective. The public can access this Web site, review, and download these approved regulations at: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm.

The EPA Region 6 staff is available to provide assistance to any person who wants information concerning what is required in the approved

SIP. For this action, any person may obtain information and assistance concerning the SIP regulations approved

by contacting the person identified in the section entitled **FOR FURTHER INFORMATION CONTACT**.

Finally, revising the existing SIP provisions of Chapter 116 will make the Texas New Source Permitting Program easier to understand because the revised provisions will be in the format that TCEQ uses. If we retained the existing provisions of Chapter 116, then for purposes of Federal administration, implementation, and enforcement, we would have to rely upon the existing SIP citations which differ from the TCEQ's regulations. This disparity would add to confusion and misunderstanding concerning the applicable requirements that a source must meet.

Comment 3: On October 24, 2001, Public Citizen commented that EPA should assure that the provisions for which no action is taken are not referenced in the provisions that are approved, which would constitute tacit approval of such provisions.

On April 12, 2002, Public Citizen further commented that EPA is taking no action on sections of the SIP that are referenced in sections that EPA is approving. It is, therefore, often extremely difficult to determine whether a particular provision will be given effect or not.

Response 3: The TSD contains an annotation of the 1993 and 1998 submittals. In the development of this annotation, we reviewed the regulation that we proposed to approve to ensure that the provisions of Chapter 116 do not reference the provisions that we did not propose to approve. The regulations that we proposed to approve do not reference provisions that we are not approving, except for certain references to 30 TAC Chapter 106—Permits by Rule discussed below. See Comment 4 for further discussion of Chapter 106. As stated in the proposed action, we will review the provisions that we did not approve in this action and either approve or disapprove in separate actions.

Comment 4: On April 12, 2002, Public Citizen commented that while EPA says it is not approving Texas' Chapter 106 exemption rules in this action, EPA is approving 116.110(a)(4) which cross-references Chapter 106. Public Citizen also identified cross-references to Chapter 106 in Sections 116.115(c)(2) and 116.116(d) and commented that ''[i]t is unclear, therefore, whether EPA is authorizing sources to rely on the Chapter 106 exemptions for authorization or whether sources are required to obtain a permit under Section 116.111. Such confusion has made it very difficult to comment on the proposal.''

Public Citizen further commented that because EPA is taking no action on certain provisions of Subchapter C of Chapter 116, the **Federal Register** states that EPA is leaving Section 116.6 regarding exemptions in place. Section 116.6 provides that a permit shall not be required for those sources exempted by the Executive Director of the TCEQ because such sources will not make a significant contribution of air contaminants to the atmosphere.

Public Citizen stated that this rule appears to be contrary to section 110(i) of the Act which provides that an Executive Director-granted variance should have no effect on the Federal enforceability of a provision unless the variance is submitted to EPA and approved into the SIP as a source-specific SIP provision. Leaving such a provision in the SIP creates confusion regarding the effect of such variance.

Response 4: We proposed to approve Sections 116.110(a)(4), 116.115(c)(2)(A)(ii), 116.116(d) and (d)(1), and 116.143(2), which contain cross references to Chapter 106. As discussed in the proposal, Texas has not submitted Chapter 106. Chapter 106 is the TCEQ's program for Permits by Rule, which replaced the provisions for Standard Exemptions. Currently the approved SIP recognizes Standard Exemptions in Section 116.6 which we approved on August 13, 1982 (47 FR 35193). The 1993 submittal recodified the provisions for Standard Exemptions into Subchapter C of Chapter 116. In 1996 Texas subsequently recodified its provisions for Standard Exemptions into Chapter 106. In 2000, Texas redesignated the Standard Exemptions to Permits by Rule.

The criteria and conditions that a source must meet to qualify for a Permit by Rule are in Subchapter A of Chapter 106. Our comparison of Subchapter A of Chapter 106 (as it currently exists in Texas rules) with the provisions of Subchapter C of Chapter 116 (as submitted in 1993) indicates no substantive difference between the two sets of regulations. Thus, TCEQ's current provisions which describe the qualifications for a permit by rule are substantially the same as those in Subchapter C of Chapter 116 in the 1993 submittal. These requirements are substantially the same as the provisions for Exemptions that currently exist in Section 116.6.

We are taking no action on Subchapter C of the 1993 submittal for the reasons discussed in the proposal. See 67 FR 48800, (September 24, 2001). Because Texas has not yet submitted Chapter 106, we are retaining Section 116.6 in the approved SIP. This retention will ensure the continuity of Texas' program for recognizing the former Standard Exemptions (now Permits by Rule). The continuity is maintained because the Permits by Rule which TCEQ recognizes under Chapter 106 remain consistent with the Standard Exemptions which are recognized under Section 116.6.

The TCEQ has stated that it will submit relevant provisions of Chapter 106 to EPA at a future date. However, we believe it necessary to approve the 1993 and 1998 submittals of Chapter 116 now for reasons stated in our proposed approval. When Texas submits Chapter 106 for approval into the SIP, we will take appropriate action. If we approve the provisions of Chapter 106 into the SIP, we will remove Section 116.6 from the SIP. Prior to approval of relevant provisions of Chapter 106 into the SIP, the references to Chapter 106 will be deemed consistent with Section 116.6.

Section 116.6 was approved as part of the SIP in EPA's action on August 13, 1982 (47 FR 35193). Thus, approval of Section 116.6 is not part of this action, and references to it are for explanatory purposes only. Under the circumstances, the provisions of Section 116.6 are not subject to public comment or judicial review as part of this action.

Comment 5: On April 12, 2002, Public Citizen requested clarification that Section 116.7—Request for Exemption,[10] is being deleted from the SIP. Public Citizen believes no such exemption provisions should be included in the SIP.

Response 5: We are deleting Section 116.7. We indicated in the September 24, 2001, action that we are deleting all existing entries under Chapter 116 in 40 CFR 52.2270(c), which includes Section 116.7. Thus, our action is to delete Section 116.7.

Comment 6: On April 12, 2002, Public Citizen commented on Section 116.116(b)(1)(C), which EPA proposed to approve. This provision replaces the existing SIP provision (Section 116.5) which provides that the Executive Director of TCEQ must approve any change which results in an increase in the discharge of the various emissions. Section 116.116(b)(1)(C) requires an application for a permit if the change will cause ''an increase in the emissions rate for any air contaminant.'' Public Citizen asserts that this is a substantive

[10] In its April 12, 2002, letter, Public Citizen identified the citation as 117.07. On April 17, 2002, Public Citizen, in response to our inquiry on April 15, 2002, replied that the citation was not correct, and that the correct citation is Section 116.7.

difference that weakens the existing SIP provision. Under the revised provision, according to Public Citizen, sources can vary from application representations and increase their total emissions without submitting an application as long as the emissions rate does not increase. Public Citizen says that sources should be required to obtain authorization and provide for public participation before varying from representations and causing an increase in pollution.

Response 6: The EPA does not agree that the change weakens the SIP. Section 116.116(b)(1) requires that a permit holder obtain a permit amendment prior to varying from any representation (with regard to construction plans or operation procedures in an application for a permit) or permit condition if the change meets any of three the criteria identified in Section 116.116(b)(1). The ''increase in the emission rate of any air contaminant'' (Section 116.116(b)(1)(C)) is one of three criteria that requires a permit amendment. The comment indicates, without giving any examples, that there could be changes where total emissions increase but the emission rate does not increase and, therefore, a permit amendment would not be required. We believe that would be a very unlikely circumstance. If ''emission rate'' is the mass of pollutant emitted per unit of time, any increase in total emissions must result in an increase in the emission rate for some unit of time.

Furthermore, the scenario envisioned in the comment becomes even more unlikely because any such change would also have to fail to trigger one of the other two criteria to avoid the necessity of obtaining a permit amendment. A permit amendment is also required if the change causes a change in the method of control of emissions (Section 116.116(b)(1)(A)) or a change in the character of the emissions [11] (Section 116.116(b)(1)(B)).[12]

It is also worth noting that Texas made this change to Section 116.116(b)(1)(C) in the 1998 submittal. As stated in its proposed rulemaking of the 1998 submittal:

> Changes have been made throughout the rules as the result of ongoing efforts by the commission for regulatory reform. These changes are for the purpose of *simplification and clarification only, and do not involve substantive changes in the requirements of this chapter.* In general, these changes involve using shorter sentences, limiting each citation to one main concept, reordering requirements into a more logical sequence, and using more commonplace terminology. (Emphasis added).

23 *TexReg* 2953 (March 20, 1998). Texas' proposed rulemaking did not specifically discuss changes made to Section 116.116(b)(1)(C), the citation where Texas changed the reference of ''increase in the discharge of the various emissions'' to ''increase in emissions rate.'' The change was made as the result of the regulatory reform, and was not intended to represent a substantive change in the rule. Texas received no comments on the 1998 revisions to Section 116.116(b)(1)(C) and adopted this provision as proposed. *See* 23 *TexReg* 6988 (July 3, 1998).

Taken together, the recodification of the permit amendment provisions from Section 116.5 to Section 116.116(b)(1) are adequate to meet the requirements of 40 CFR 51.160(a).[13] We therefore do not agree with this comment. In today's action we are approving Section 116.116(b)(1).

Comment 7: On October 24, 2001, and April 12, 2002, Public Citizen commented that it objects to EPA's approval of authorization procedures for new construction or modification that do not meet the requirements of 40 CFR part 51. Specifically, Section 116.116(c) (permit alterations) allows sources to make modifications without providing public participation as required under 40 CFR 51.161, which provides for notice and opportunity for public comment on proposed modifications. The Act requires that citizens be provided with at least a 30-day comment period on permit applications. 40 CFR 51.161. In addition, an analysis of the effect of the construction or modification on ambient air quality must be made available to the public.

On October 24, 2001, Lowerre commented that it objects to the approval of Section 116.116 because it does not allow for public participation on complex issues. Lowerre believes that TCEQ should allow for at least a 30 day notice and reasonable time for public comment for all permit changes that effect emissions or the enforceability of the permit.

Response 7: We do not agree that a modification could qualify for a permit alteration under the rules that we are approving. In NSR, a modification is any change as defined in section 111(a)(4) of the Act.[14] Under section 111(a)(4) of the Act, a change is a modification only if it results in an increase in the amount of emissions or results in emissions of an air pollutant not previously emitted. Under Section 116.116(c) [15] a permit alteration is only authorized in very limited circumstances which do not include modifications, where allowable emissions are decreased or where a change does not involve a change in the method of control of emissions or the character of emissions or an increase in the emission rate of any air contaminant. If a change involves an increase in allowable emissions or a change in the method of control or the character of emissions or an increase in the emission rate of any air contaminant, the source would be required to obtain a permit amendment under Section 116.116(b),[16] which would include public participation.[17]

Under 40 CFR 51.161, a state or local agency must provide for public comment on information submitted by owners and operators as part of the ''legally enforceable procedures in § 51.160.'' 40 CFR 51.161(a). The provisions in 40 CFR 51.160 provide that a SIP must contain ''legally enforceable procedures'' concerning the construction or modification of a source.[18] The ''legally enforceable procedures'' of § 51.160 that are referenced in § 51.161 apply only to ''construction or modification.'' Under Section 116.116(c), permit alterations are defined to exclude changes which would qualify as amendments under Section 116.116(b) and as modifications under section 111(a)(4) of the Act or under 40 CFR 51.160 and 51.161.

---

[11] As used in Texas' regulations, a change in the character of emissions is a change in the emissions of an air contaminant or change in emissions of a family of air contaminants or change in emissions from chemical contaminant to another.

[12] The criteria in 116.116(b)(1)(A) and (B) are also required under the old SIP (Section 116.5) and are recodified without substantive change.

[13] See Footnote 6.

[14] Section 111(a)(4) of the Act defines the term ''modification '' as ''any physical change in, or change in the method of operation of, a stationary source which *increases the amount of any air pollutant emitted by such source* or which results in the emission of any air pollutant not previously emitted.'' (Emphasis added)

[15] Section 116.116(c), defines a permit alteration as:

(A) A *decrease* in allowable emissions;

(B) any change from a representation in a permit application, general condition, or special condition in a permit that does not cause:

(i) A change in the method of control of emissions;

(ii) A change in the character of emissions; or

(iii) An increase in the emission rate of any air contaminant. (Emphasis added)

[16] See our response to Comment 6 for a detailed discussion of permit amendments under Section 116.116(b).

[17] The TCEQ likewise does not consider permit alterations to be modifications. Examples of alterations include name changes, change of test date, and other ''clean up'' changes. See 66 FR 48801 (September 24, 2001) for further discussion on permit alterations.

[18] See Footnote 6.

Accordingly, the TCEQ is not required to provide opportunity for public comment on permit alterations.

Comment 8: On October 24, 2001, Public Citizen commented that permit alterations are not nonsubstantive and that nothing in Section 116.116 limits approval only to nonsubstantive changes. Public Citizen asserts that Section 116.116(c)(2) references alteration applications for changes that result in an increase in off-property concentrations of air contaminants and which affect facility or control equipment performance, which Public Citizen believes are substantive changes.

On April 12, 2002, Public Citizen commented that alterations are not ''*de minimis*.'' Alterations could result in increases in total emissions and, as acknowledged in the rule itself, could result in increases in off-property concentrations of air contaminants. Section 116.116(c)(2)(A). The proposed alteration provisions should not be approved into the SIP.

Response 8: Under Section 116.116(c)(1) a permit alteration is: a decrease in allowable emissions; or any change from a representation in a permit application, general condition, or special condition in a permit that does not cause (i) a change in the character or method of control of emissions; (ii) a change in the character of emissions; or (iii) an increase in the emission rate of any air contaminant.

Section 116.116(c)(2) provides that requests for permit alterations that must receive prior approval by the Executive Director are those that: (A) Result in an increase in off-property concentrations of air contaminants; (B) involve a change in permit conditions; or (c) affect facility or control equipment performance.

The changes described in Section 116.116(c)(2) identify the types of alterations ''that must receive prior approval by the executive director.''

Such prior approval by the Executive Director assures that the types of changes described in Section 116.116(c)(2) in fact qualify as permit alterations as defined under Section 116.116(c)(1).

In addition, all permit changes, including alterations, must satisfy the provisions of Section 116.111(2)(A)(i) which provides that the ''emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the TCAA, *including protection of the health and physical property of the people.''* (Emphasis added)

Thus when a proposed permit alteration will result in an increase in off-property concentrations of air contaminants or will affect facility or control equipment performance, the Executive Directive will have assurance, provided through the technical review of the application, that the emissions from a proposed permit alteration will protect the health and physical property of the people before approving a such request for an alteration.

Comment 9: On October 24, 2001, Lowerre cited a specific example of a concrete products plant which it maintains is attempting to avoid Title V permitting requirements [19] by submitting several permit modifications and forms, including permit alteration applications that are included in Section 116.116. The applicant submitted the applications in an attempt to establish Federally enforceable emission limits below the 100 tons per year major source threshold for particulate matter. Lowerre disagrees with TCEQ that the submission of these applications satisfies the requirements of Title V. Lowerre believes that unless and until all applications and other forms have been approved, the concrete products facility continues to violate Title V.

Lowerre further asserts that TCEQ has been reviewing these applications in piecemeal fashion. While Title V would have allowed for public participation, the TCEQ's piecemeal process for requiring applications separately, especially for the permit alteration applications, does not allow for public participation.

Lowerre also alleges that the source is attempting to circumvent Title V and other rules that apply to major sources. The source is located in an area of Texas which is nonattainment for particulate matter. Lowerre further alleges that the source is subject to nonattainment review for particulate matter. The source has invented a circular argument in an attempt to avoid such requirements.

Response 9: These comments relate to implementation of Section 116.116 rather than to its approvability. This comment only points to an isolated case in which a source allegedly failed to apply appropriate limits on its potential to emit. The appropriate venue for resolving such allegation is through the administration and enforcement of the applicable requirements, not through the disapproval of the regulation. The regulations that we are approving herein are adequate to keep a source's potential to emit below defined and applicable major source and major modification thresholds whenever a source desires to limit its potential to emit below the defined and applicable major source and major modification thresholds. Accordingly, we are approving Section 116.116 as proposed.

Comment 10: On October 24, 2001, Public Citizen commented that EPA should include an analysis that absence of the provisions for which EPA is taking no action will not create gaps or ambiguities, or impediments to implementation of the revised SIP.

Response 10: We have identified no gaps or ambiguities in the approved SIP based upon the absence in the SIP of the provisions for which we are taking no action. Furthermore, other than the sections referring to Chapter 106, Public Citizen has identified no gaps or ambiguities in the regulations that we proposed to approve. Consistent with our response to Comment 4, we do not consider the references to Chapter 106 as an impediment to implementation of the revised SIP. Because we have not found other gaps or ambiguities, we do not consider the approval of these changes as an impediment to implementation of the revised SIP.

Comment 11: On April 12, 2002, Public Citizen commented on Sections 116.410–116.418. EPA should act to deny approval of Texas' Emergency Orders provisions at Sections 116.410–116.418. The Act in section 110(i) provides that, with certain limited exceptions which do not apply here, ''no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.'' The commission does not appear to be authorized to exempt sources from Federal SIP requirements, even during catastrophic conditions. The inclusion of such a provision in the SIP creates the impression that the commission does have such authority; it should be deleted.

Response 11: We are neither approving nor disapproving (taking no action on) the provisions of the Texas SIP submittals relating to Emergency Orders in this action. We have outstanding questions regarding Texas' regulations concerning Emergency Orders, and they remain under review. We believe it would be premature to propose action before we resolve our outstanding questions with Texas. Our statements that we are taking no action

[19] This refers to the provisions of Title V (Permits) of the Act (42 U.S.C. 7661, 7661a–7661f) and the implementing regulations under 40 CFR part 70 (State Operating Permit Programs). Texas' Title V program was approved in a separate action. *See* 66 FR 63318 (December 6, 2001). Thus, approval of the Texas Title V program is not part of this action, and references to it are for explanatory purposes only. Under the circumstances, the Texas Title V program is not subject to public comment or judicial review as part of this action.

on the regulations for Emergency Orders should not be taken to mean that we never intend to act on them. We expect that we will approve or disapprove those provisions in future actions (unless and to the extent that they are withdrawn by Texas).

Comment 12: On October 24, 2001, Public Citizen commented that EPA should include an analysis that State regulations that EPA is approving meet the NSR requirements of the CAA and 40 CFR part 51, subpart I, §§ 51.160, 51.161, 51.165, and 51.166.[20]

Response 12: With the exception of the provisions in Section 116.116(c),[21] the provisions that we are approving are recodification of previously SIP-approved provisions of Chapter 116. The recodified SIP provisions that we have previously approved already meet the provisions in 40 CFR 51.160 and 51.161. The provisions of 40 CFR 51.160 and 51.161 have not undergone substantial change since November 7, 1986 (51 FR 40669). Furthermore, the recodified provisions of Chapter 116 were not substantially changed in the 1993 and 1998 submittals. Thus the recodified provisions continue to meet the requirements of 40 CFR part 51, subpart I.

We approved these revisions to Chapter 116 based upon our finding that Chapter 116 meets the requirements under 40 CFR part 51, subpart I. The existing regulations and the recodified provisions of the 1993 and 1998 submittals of Chapter 116 continue to meet these provisions of the Act and subpart I.

Concerning our proposed approval of Section 116.116(c) concerning Permit Alterations, we addressed how these provisions meet the requirements of 40 CFR part 51, subpart I in the September 24, 2001, action. *See* 66 FR 48801. Additional discussion is also included in our response to Comments 7 and 8.

Comment 13: On October 24, 2001, Public Citizen commented that EPA must show to the public in another notice that Texas' implementation of the revised SIP is consistent with the requirements of the Act. Otherwise, EPA should withdraw its approvals of Texas' prevention of deterioration (PSD) and nonattainment (NNSR) programs and impose Federal regulations which implement these programs.

Response 13: This action is a recodification of existing provisions of the SIP (except for our approval of Section 116.116(c)). We approved the existing provisions based upon our determination that they meet the applicable provisions of section 110(a)(3)(A) of the Act and the regulations under 40 CFR part 51, subpart I—Review of New Sources and Modifications. The recodified provisions continue to meet the requirements of 40 CFR subpart I and are discussed in response to Comment 12. Public Citizen has provided no information which demonstrates any failure by Texas to implement these requirements in a manner consistent with the Act. Accordingly, we are proceeding with approval of these provisions.

Concerning the comment that EPA should withdraw its approvals of Texas' PSD and NNSR programs, the commenter provided no information under which we could take such action. We approved these provisions in separate actions as discussed in section III.C of this action. These prior actions approving the PSD and NNSR programs contain the documentation which demonstrates that these regulations meet the requirements of the Act. Because the provisions relating to NNSR and PSD are already approved as part of the SIP, they are not part of this action, and references to them are for explanatory purposes only. Under the circumstances, the provisions for NNSR and PSD are not subject to public comment or judicial review as part of this action.

Comment 14: On October 24, 2001, Public Citizen commented that it does not agree that the proposed changes are ''nonsubstantive'' as indicated in the proposal; and is concerned that certain changes are substantive. As an example, Public Citizen argued that the September 24, 2001, action did not mention that Texas repealed operating permit requirements formerly codified in Section 116.3. These SIP approved operating permits requirements apply to minor sources and modifications as well as to major sources, and thus have not been wholly replaced by the State's Title V operating permits program. Public Citizen believes that the removal of the State Operating Permitting provisions is a significant change. Further, Public Citizen commented that EPA failed to provide proper notice of the repeal of this permitting program from the SIP.

On April 12, 2002, Public Citizen further commented that the removal of the operating permit provisions from the SIP is a significant substantive change. The operating permit provisions ensured that facilities actually constructed their plants in accordance with their permits and the representations in their applications and that the plants, as constructed, could meet emissions limits and rates specified in permits and applications. The Chapter 122 Title V operating permit program does not cover all sources covered by former Sections 116.1 and 116.3 and does not serve the same purpose as the Chapter 116 operating permit program. Public Citizen does not believe that EPA has demonstrated that the removal of operating permit requirements from the SIP will not interfere with attainment.

Response 14: Our proposal includes the repeal of the former provisions for Texas' state operating permits under Section 116.3(b). Section 116.3(b) provided that the TCEQ would grant an operating permit when specific demonstrations are made. In the 1993 submittal, Texas repealed Section 116.3(b) and replaced it with Section 116.110(b)—Operations Certification. The TCEQ later repealed Section 116.110(b) in the 1998 submittal. Thus, we did not approve Section 116.110(b) as submitted in 1993. Because the 1993 and 1998 submittals together repealed Texas' former regulations for State Operating Permits and for Operations Certification, these provisions are no longer part of Texas' permitting program. Because the repeal of these provisions were submitted as SIP revisions, we must act on them.

Texas' repeal of its state operating permits provisions is not a significant change in the SIP. The provisions of Chapter 116 that we proposed to approve continue to require sources to meet the conditions that were formerly required under Section 116.3(b). This is shown by comparing the former requirements of Section 116.3(b) to provisions of Chapter 116 that we proposed to approve. Our evaluation follows.

Section 116.3(b)(1) required the facility to comply with the Rules and Regulations of the TCEQ and the intent of the Texas Clean Air Act. This is now required under Section 116.111(2)(A) which provides that each preconstruction permit must ensure that the emissions ''comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.''

[20] We have already approved the provisions relating to 40 CFR 51.165 (Permit requirements) and 51.166 (Prevention of significant deterioration of air quality) in separate **Federal Register** actions. Thus the provisions which implement the requirements of 40 CFR 51.165 and 51.166 are not part of this action.

[21] Additional discussion of how Section 116.116(c) meets the requirements of 40 CFR subpart I is contained in the direct final action (66 FR 48801, September 24, 2001), in section III.D of this action, and in our responses to Comments 7 and 8.

Section 116.3(b)(2) required the facility to be constructed and operated in accordance with the requirements and conditions contained in the permit to construct. This is now required under Section 116.115(c) which requires sources to comply with the special conditions contained in the permit document.

Section 116.3(b)(2) required the facility to be constructed and operated in accordance with the requirements and conditions contained in the permit to construct. This is now required under Section 116.115(c) which requires sources to comply with the special conditions contained in the permit document. Section 116.116(a) provides that permits are issued under the condition that the source meet representations with regard to construction plans and operation procedures in the permit application; and meet any general and special conditions attached to the permit. Section 116.116(b) further provides that a permit holder shall not vary from any representation or permit condition without obtaining a permit amendment, if the change would cause: a change in the method of control, a change in the character of the emissions, or an increase in emissions rate of any air contaminant.

Section 116.3(b)(3) required the facility to comply with applicable new source performance standards promulgated by EPA under section 111 of the Act, as amended. This is now required under Section 116.111(2)(D) which provides that the preconstruction permit must require compliance with applicable new source performance standard promulgated under 40 CFR part 60.

Section 116.3(b)(4) required the facility to comply with applicable emission standard for hazardous air pollutants promulgated by EPA under section 112 of the Act, as amended. This is now required under Section 116.111(2)(E), which provides that the preconstruction permit must require compliance with applicable National Emission Standards for Hazardous Air Pollutants promulgated under 40 CFR part 61; and Section 116.111(2)(F), which provides that the preconstruction permit must require compliance with applicable requirements of any National Emission Standards for Hazardous Air Pollutants for Source Categories under 40 CFR part 63.

Accordingly, permitted sources must continue to meet the requirements which formerly existed in Section 116.3(b). The repeal of Section 116.3(b) from the SIP is not a relaxation, as its requirements now exist in other provisions of Chapter 116. Therefore, our approval of Texas' repeal of Section 116.3(b) from the SIP is not a substantive change to the SIP.

We also do not agree that we failed to provide proper notice of the repeal of the State Operating Permit program from the SIP. This was clearly provided for in the September 24, 2001, action. We clearly stated that the proposed action was to replace the existing SIP with the recodified regulations that Texas submitted in 1993 and 1998. Specifically, we proposed to delete the existing Section 116.3, which includes Section 116.3(b). *See* 66 FR 48804. The repeal of Section 116.3(b) was submitted as part of the 1993 submittal which included the basis for its repeal. Consequently, the record of the repeal of Section 116.3(b) was part of the 1993 submittal.

Public Citizen provided no information to support its claim that other changes to the recodified provisions are substantive. Accordingly, we find that the recodified provisions of Chapter 116 are nonsubstantive as documented in the TSD for the proposed action.

Comment 15: On April 12, 2002, Public Citizen commented on Section 116.10(5), which is the definition of ''federally enforceable.'' The list of Federally enforceable limitations and conditions should include all conditions of Texas' Title V operating permits issued pursuant to Chapter 122.

Response 15: Texas' definition of ''federally enforceable'' in Section 116.10(5) includes each of the items specified in the Federal definitions of that term in 40 CFR 51.165(a)(1)(xiv) and 51.166(b)(17).[22] The Federal definitions do not require a State to include conditions of permits issued under Title V of the Act as Federally enforceable requirements. Because Texas' definition of ''federally enforceable'' meets requirements of the Federal definitions, it satisfies the requirements of 40 CFR part 51, subpart I. Accordingly, Texas' definition of ''federally enforceable'' is approvable.

[22] ''Federally enforceable'' is defined in both 40 CFR 51.165(a)(1)(xiv) and 51.166(b)(17) to mean:

* * * all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 10, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended by deleting all existing entries under Chapter 116 and replacing them with new entries as shown below:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
Section 116.6	Exemptions	03/27/75	08/13/82, 47 FR 35194.	
Subchapter A—Definitions				
Section 116.10	General Definitions	06/17/98	09/18/02 and FR cite	The SIP does not include Sections 116.10(1), (2), (3), (4), (6), (8), (9), (10), and (14).
Section 116.11	Compliance History Definitions.	06/17/98	09/18/02 and FR cite.	
Section 116.12	Nonattainment Review Definitions.	02/24/99	07/17/00, 65 FR 43994.	
Subchapter B—New Source Review Permits Division 1—Permit Application				
Section 116.110	Applicability	06/17/98	09/18/02 and FR cite	The SIP does not include Sections 116.110(a)(2), (a)(3), and (c).
Section 116.111	General Application	06/17/98	09/18/02 and FR cite	The SIP does not include Section 116.111(2)(K).
Section 116.112	Distance Limitations	06/17/98	09/18/02 and FR cite.	
Section 116.114	Application Review Schedule	06/17/98	09/18/02 and FR cite.	
Section 116.115	Special Provisions	06/17/98 and FR cite	09/18/02	The SIP does not include Sections 116.115(b), (c)(2)(A)(i), and (c)(2)(B)(ii)(I).
Section 116.116	Amendments and Alterations	06/17/98	09/18/02 and FR cite	The SIP does not include Sections 116.116(b)(3), (e), and (f).

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Division 2—Compliance History				
Section 116.120	Applicability	06/17/98	09/18/02 and FR cite.	
Section 116.121	Exemptions	06/17/98	09/18/02 and FR cite.	
Section 116.122	Contents of Compliance History.	06/17/98	09/18/02 and FR cite.	
Section 116.123	Effective Dates	06/17/98	09/18/02 and FR cite.	
Section 116.124	Public Notice of Compliance History.	06/17/98	09/18/02 and FRccite.	
Section 116.125	Preservation of Existing Rights and Procedures.	06/17/98	09/18/02 and FR cite.	
Section 116.126	Voidance of Permit Applications.	06/17/98	09/18/02 and FR cite.	
Division 3—Public Notice				
Section 116.130	Applicability	06/17/98	09/18/02 and FR cite	The SIP does not include Section 116.130(c).
Section 116.131	Public Notification Requirements.	06/17/98	09/18/02 and FR cite.	
Section 116.132	Public Notice Format	06/17/98	09/18/02 and FR cite	The SIP does not include Sections 116.132(c) and (d).
Section 116.133	Sign Posting Requirements	06/17/98	09/18/02 and FR cite	The SIP does not include Sections 116.133(f) and (g).
Section 116.134	Notification of Affected Agencies.	06/17/98	09/18/02 and FR cite.	
Section 116.136	Public Comment Procedures	08/16/93	09/18/02 and FR cite.	
Section 116.137	Notification of Final Action by the Commission.	06/17/98	09/18/02 and FR cite.	
Division 4—Permit Fees				
Section 116.140	Applicability	06/17/98	09/18/02 and FR cite.	
Section 116.141	Determination of Fees	06/17/98	09/18/02 and FR cite.	
Section 116.143	Payment of Fees	06/17/98	09/18/02 and FR cite.	
Division 5—Nonattainment Review				
Section 116.150	New Major Source or Major Modification in Ozone Nonattainment Area.	02/24/99	07/17/00, 65 FR 43986.	
Section 116.151	New Major Source or Major Modification in Nonattainment Area Other than Ozone.	03/18/98	07/17/00, 65 FR 43986.	
Division 6—Prevention of Significant Deterioration Review				
Section 116.160	Prevention of Significant Deterioration Review Requirements.	06/17/98	09/18/02 and FR cite.	
Section 116.161	Source Located in an Attainment Area with Greater than De Minimis Impact.	06/17/98	09/18/02 and FR cite.	
Section 116.162	Evaluation of Air Quality Impacts.	08/16/93	08/19/97, 62 FR 44083.	
Section 116.163	Prevention of Significant Deterioration Permits Fees.	08/16/93	08/19/97, 62 FR 44083.	
Division 7—Emission Reductions: Offsets				
Section 116.170	Applicability of Reduction Credits.	06/17/98	09/18/02 and FR cite	The SIP does not include Section 116.170(2).

* * * * * * *

[FR Doc. 02–23584 Filed 9–17–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–02–001; FRL–7253–4]

Approval and Promulgation of Carbon Monoxide Implementation Plan; State of Alaska; Anchorage

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Alaska that concerns attainment of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Anchorage CO Nonattainment Area.

EFFECTIVE DATE: This final rule will become effective on October 18, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality (OAQ–107), EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1086.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean EPA. Information on the revisions to the carbon monoxide attainment plan for Anchorage, Alaska is organized as follows:

I. Background Information

This action finalizes EPA's approval of the Anchorage CO attainment plan submitted by the Alaska Department of Environmental Conservation as a revision to the Alaska State Implementation Plan on January 4, 2002. A detailed description of the Anchorage CO attainment plan and EPA's review was published in a proposed rulemaking in the **Federal Register** on June 3, 2002 (67 FR 38218). EPA received no comments on the proposed approval.

II. Final Action

EPA is approving the following elements of the Anchorage CO Attainment plan submitted on January 4, 2002:

A. Procedural requirements, under section 110(a)(1) of the Act;

B. Base year emission inventory, periodic emission inventory and commitments under sections 187(a)(1) and 187(a)(5) of the Act;

C. Attainment demonstration, under section 187(a)(7) of the Act;

D. The TCM programs under 182(d)(1) and 108(f)(1)(A) of the Act;

E. Contingency measures under section 187(a)(3) of the Act;

F. RFP demonstration, under sections 171(1) and 172(c)(2) of the Act; and

G. The conformity budget under section 176(c)(2)(A) of the Act and section 93.118 of the transportation conformity rule (40 CFR Part 93, Subpart A).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality