the DRE standard in lieu of DRE testing during the initial comprehensive performance test if you have not modified the design or operation of the source since the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

* * * * *

3. Section 63.1207 is amended by:

a. Revising paragraph (c)(2)(i)(A).

b. Revising paragraph (l) introductory text by designating the text after the heading as (l)(1) and revising newly designated paragraph (l)(1).

The revision read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Initiated after March 30, 1999;

* * * * *

(l) Failure of performance text—(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to September 30, 2003 (or a later compliance date approved under § 63.6(i)).

* * * * *

[FR Doc. 01–30267 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–002; FRL–7113–6]

Clean Air Act Full Approval of Operating Permits Program; State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating 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. *See* 60 FR 30037 and 61 FR 32693. The TNRCC revised its program to satisfy the conditions for full approval, and EPA proposed full approval in the **Federal Register** on October 11, 2001 (66 FR 51895). This notice only takes action on issues related to correcting interim approval issues. We will address other issues at a later date as described in sections V.C and V.D of this document.

EFFECTIVE DATE: This rule is effective on November 30, 2001.

ADDRESSES: Copies of documents relevant to this action are available inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two days in advance.

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

Texas Natural Resource Conservation Commission, 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 IA contingent on the State revising its program to correct the deficiencies. Because Texas's 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). 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. On November 5, 2001, EPA received a Statement by the Attorney General of Texas stating that the laws of Texas provide adequate authority to carry out all aspects of the program.

On October 11, 2001 (66 FR 51895), we proposed full approval of Texas's title V Operating Permits Program based on our determination that Texas had corrected the IA deficiencies identified in our June 7, 1995 and June 25, 1996 actions. On November 13, 2001, we received comments on our proposal. Our response to the comments are in section III of this action.

In today's action, we are promulgating final full approval of the Texas Operating Permits Program based upon our determination that Texas has corrected the deficiencies identified in the IA rulemaking. We are approving revisions which the TNRCC adopted October 15, 1997 (submitted June 12, 1998) and May 9, 2001 (submitted June 1, 2001). We will take appropriate action on the remaining provisions of the June 1, 2001, submittal in a separate **Federal Register** action. We are also not taking action on issues unrelated to correcting IA issues. We will address these issues at a later date as described in sections V.C and V.D of this notice.

III. What Is Our Response to Comments?

On November 13, 2001, we received two comment letters on the proposed full approval of the Texas program. We received comments from Public Citizen, on behalf of the Public Citizen's Texas Office, Lone Star Chapter of the Sierra Club, Environmental Defense, Citizens for Health Growth, Galveston Houston Association for Smog Prevention, Neighbors for Neighbors, Quality of Life El Paso, Clean Water Action, Texas Center for Policy Studies, and the law firm of Lowerre & Kelly (collectively referred to as Public Citizen). We also received comments from the law firm of Baker Botts, L.L.P., on behalf of the Texas Industry Project.

Below is our response to the comments received on the proposed full approval of the Texas Operating Permits program. In this notice, we are only addressing the comments which relate to our determination that Texas has corrected the IA deficiencies in its title V program. We also received comments which relate to (and in many cases are the same as) comments the we received from citizens in response to our **Federal Register** Notice published December 11, 2000. Because these comments are not related to the correction of IA deficiencies, they will be addressed in a separate **Federal Register** action as described in section V.C of this preamble. In addition, we also received comments not related to the correction of IA deficiencies and which were not raised in response to the December 11, 2000 **Federal Register** notice. These issues will be handled as described in section V.D.

A. Comment A—EPA Failed To Determine Whether Texas's Current Operating Permits Program Complies With Part 70 and Title V

Public Citizen states that since receiving IA, Texas has completely revised its operating permits program. However, EPA has never reviewed these changes to determine whether the interim program that Texas has been running substantially complies with the requirements of part 70. Public Citizen contends that EPA is proposing to grant Texas full approval of its federal operating program without ever analyzing whether or not Texas current program actually meets the minimum requirements of part 70. Public Citizen does not agree with EPA's position to only look narrowly at whether the problems in the 1996 program have been remedied.

Public Citizen believes that, in order to be granted full approval, EPA must evaluate whether Texas's entire program meets the requirements of part 70 and title V and that EPA's notice of proposed approval indicates that such an evaluation has not been undertaken. 66 FR 51895, 51896 (October 11, 2001). Public Citizen does not believe that EPA can turn a blind eye to elements of the program which were not raised as interim deficiency issues and which do not comply with part 70. Public Citizen realizes that EPA is proposing to look at the additional elements of the current program after full approval is granted; however, they believe that EPA has a duty to ensure that Texas's program meets statutory and regulatory requirements before approval can be granted. For the reasons noted below, Public citizen believes that Texas's program does not comply with part 70 and that full approval should be denied.

EPA Response to Comment A

We are aware that issues other than those listed in the June 25, 1996, IA exist in the Texas program and that the Texas regulations have undergone changes since 1996 that EPA has not approved. We agree that these issues must be addressed and that Texas must submit all changes made since 1996 to EPA for review and approval. For the reasons discussed below, however, we disagree that limiting our review to correction of IA deficiencies prohibits us from granting Texas full program approval at this time.

In 1990, Congress amended the Clean Air Act, 42 U.S.C. 7401 *et seq.*), by adding title V, 42 U.S.C. 7661 to 7661f, which requires certain air pollutant emitting facilities, including ''major source[s]'' and ''affected source[s],'' to obtain and comply with operating permits. *See* 42 U.S.C. 7661a(a). Title V is intended to be administered by local, state or interstate air pollution control agencies, through permitting programs that have been approved by EPA. *See* 42 U.S.C. 7661a(a). The EPA is charged with overseeing the State's efforts to implement an approved program, including reviewing proposed permits and vetoing improper permits. *See* 42 U.S.C. 7661a(i) and 7661d(b). Accordingly, title V of the Act provides a framework for the development, submission and approval of state operating permit programs. Following the development and submission of a state program, the Act provides two different approval options that EPA may utilize in acting on state submittals. *See* 42 U.S.C. 7661a(d) and (g). Pursuant to section 502(d), EPA ''may approve a program to the extent that the program meets the requirements of the Act * * *'' The EPA may act on such program submittals by approving or disapproving, in whole or in part, the state program. An alternative option for acting on state programs is provided by the IA provision of section 502(g). This section states: ''[i]f a program * * * substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval.'' This provision provides EPA with the authority to act on State programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submittals that meet the requirements of eleven key program areas are eligible to receive IA. *See* 40 CFR 70.4(d)(3)(i)–(xi). Finally, section 502(g) directs EPA to ''specify the changes that must be made before the program can receive full approval.'' 42 U.S.C. 7661a(g); 40 CFR 70.4(e)(3). This explicit directive encompasses another, implicit one: once a state corrects the specified deficiencies then it will be eligible for full program approval. The EPA believes this is so even if deficiencies have been identified sometime after final IA, either because the deficiencies arose after EPA granted IA or, if the deficiencies existed at that time, EPA failed to identify them as such in proposing to grant IA.

Thus, an apparent tension exists between these two statutory provisions. Standing alone, section 502(d) appears to prevent EPA from granting a state operating permit program full approval until the state has corrected all deficiencies in its program no matter how insignificant, and without consideration as to when such deficiency was identified. Alternatively, section 502(g) appears to require that EPA grant a state program full approval if the state has corrected those issues that the EPA identified in the final IA. The central question, therefore, is whether Texas by virtue of correcting the deficiencies identified in the final IA is eligible at this time for full

approval, or whether Texas must also correct any new or recently identified deficiencies as a prerequisite to receiving full program approval.

According to settled principles of statutory construction, statutory provisions should be interpreted so that they are consistent with one another. *See Citizens to Save Spencer County* v. *EPA,* 600 F.2d 844, 870 (D.C. Cir. 1979). Where an agency encounters inconsistent statutory provisions, it must give maximum possible effect to all of the provisions, while remaining within the bounds of its statutory authority. *Id.* at 870–71. Whenever possible, the agency's interpretation should not render any of the provisions null or void. *Id.* Courts have recognized that agencies are often delegated the responsibility to interpret ambiguous statutory terms in such a fashion. *See Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 845 (1984). Harmonious construction is not always possible, however, and furthermore should not be sought if it requires distorting the language in a fashion never imagined by Congress. *Citizens to Save Spencer County,* 600 F.2d at 870.

In this situation, in order to give effect to the principles embodied in title V that major stationary sources of air pollution be required to have an operating permit that conforms to certain statutory and regulatory requirements, and that operating permit programs be administered and enforced by state permitting authorities, the appropriate and more cohesive reading of the statute recognizes EPA's authority to grant Texas full approval in this situation while working simultaneously with the State, in its oversight capacity, on any additional problems that were identified. To conclude otherwise would disrupt the current administration of the state program and cause further delay in Texas's ability to issue operating permits to major stationary sources. A smooth transition from IA to full approval is in the best interest of the public and the regulated community and best reconciles the statutory directives of title V.

Furthermore, requiring the State to fix any deficiencies that may exist and that have been identified in the past year to receive full approval runs counter to the established regulatory process that is already in place to deal with newly identified program deficiencies. Section 502(i)(4) of the Act and 40 CFR 70.4(i) and 70.10 provides EPA with the authority to issue notices of deficiency (''NODs'') whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing a part 70 program, or that the State's permit program is inadequate in any other way. Consistent with these provisions, in its NOD, EPA will specify a reasonable time frame for the permitting authority to correct any identified deficiencies. The Texas title V IA expires on December 1, 2001. This deadline does not provide adequate time for the State to correct any deficiencies that may be identified at this time prior to the expiration of IA. Allowing the State's program to expire because of issues identified as recently as March 2001 will cause disruption and further delay in the issuance of permits to major stationary sources in Texas. As explained above, we do not believe that title V requires such a result. Rather, the appropriate mechanism for dealing with additional deficiencies that are identified sometime after a program received IA but prior to being granted full approval is a notice of program deficiency or administrative deficiency as discussed herein. This process provides the State an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire state operating permit program. As a result, addressing newly identified problems separately from the full approval process will not cause these issues to go unaddressed. To the contrary, Texas will be placed on notice that it must promptly correct the non-IA deficiencies within a specified time period or face the imposition of sanctions and disapproval of its program. Furthermore, because Texas is also required to submit for review and approval all changes that it has made to its title V program since we granted IA, EPA will also disapprove any program revisions that are inconsistent with part 70 through formal notice and comment rulemaking.

B. Comment B—Lack of Sufficient Attorney General (AG) Statement

Public Citizen contends that in the preamble to Texas's 2001 revisions to its program, Texas stated that it would provide an AG Opinion with its submittal package for full approval that would address such issues as Texas Audit Privilege Act.[1] Likewise, in Part I of Texas's Submittal Package, Texas stated that ''a legal opinion from the Office of the AG (AG) will be forwarded as a supplement to this submittal after the end of the 2001 Texas Legislative Session.'' Public Citizen also asserts that Texas had not, however, submitted an AG statement at the time EPA proposed full approval of Texas's program. Public Citizen contends that, in fact, Texas did not file an AG statement with EPA until November 8, 2001, five days before the end of the public comment period on EPA's proposed full approval, and that there was no notice to the public that such statement was available for comment.

Because an AG statement was not produced prior to EPA's proposed full approval of Texas's program, Public Citizen claims that EPA cannot possibly have had sufficient information to determine that Texas's program complied with the requirements of part 70. Likewise, Public Citizen contends that because an AG statement was not provided until five days before the close of the comment period, the public has not had an adequate opportunity to comment on the opinion.

Public Citizen also asserts that there were issues that should have been addressed in the AG statement, such as the Sunset legislation (House Bill 2912), as well as other statutes or regulations adopted by Texas since IA.

Furthermore, because the statement ''incorporates'' earlier AG statements, Public Citizen contends that it is impossible to determine exactly what is included in this certification and the statement is so vague that it is difficult to determine what authority is being certified. For example, Public Citizen refers to Section IV of the AG Statement which states that state law provides authority to incorporate monitoring consistent with 40 CFR 70.6.[2] It goes on, however, to state that Texas has authority to incorporate monitoring consistent with 40 CFR 70.6(a)(3)(i)(B). Public Citizen asserts that the Texas's program is flawed in that it does not include monitoring ''sufficient to assure compliance'' as required by 40 CFR 70.6(c)(1), and that the AG statement does not even address this issue.

Likewise, Public Citizen contends that the statement's analysis of SB766 is flawed. First, Public Citizen contends that the AG argues that Section 12 of SB766 does not impact the enforceability of title V permits because it only excuses modifications which occurred before March 1, 1999 and Texas's operating permits program did not include minor new source review conditions until 2001. Public Citizen contends that what the AG fails to state is that each day of operation after modification without the required permit is an ongoing violation.

[1] The EPA is unaware of such a statement in the preamble to Texas's Chapter 122 revisions. The TNRCC, however, did agree to address amnesty provisions of SB 766 in an AG statement. 26 TexReg 3747, 3758–59 (May 25, 2001).

[2] This provision is actually in Section VI of the AG statement.

Therefore, Public Citizen contends that facilities covered by title V may be in continuous violation for modifications made prior to March 1, 1999. Public citizen also argues that the statement argues that Section 12 does not excuse violations of PSD or Nonattainment NSR requirements. Public Citizen contends that while the AG crafts an argument based on legislative history, the AG will not be the final authority on whether or not Section 12 applies to PSD or Nonattainment NSR violations. Public Citizen also contends that the courts will have to decide this issue. Finally, Public citizen believes that the statement misstates important facts. For example, the statement says that applying for *and* obtaining a Voluntary Emission Reduction Permit (VERP) permit is one of the preconditions of Section 12's applicability. Public Citizen argues that SB766 only requires, however, that sources apply for a VERP permit to be eligible for Section 12's immunity and that the statute does not require that such a permit be issued. Public Citizen believes SB766 impermissibly limits Texas's enforcement authority.

EPA Response to Comment B

As stated in our response to Comment A above, EPA believes that Texas only needs to correct the IA deficiencies in order for EPA to grant the State full program approval. As such, for the purpose of this approval, the revised AG statement must only address issues related to the correction of IA deficiencies. The EPA will address the AG discussion of SB 766 in its response to the Citizen Comment letters, as explained in section V.C. Any potential flaws in Texas's program that EPA did not identify as IA deficiencies will also be addressed as set forth in Sections V.C and D.

The EPA believes that it did have sufficient information to propose full approval even though it had not yet received the revised AG statement. The EPA received three previous AG opinions (1993, 1996, and 1998) stating that the laws of Texas provide adequate authority to carry out all aspects of the program. Furthermore, EPA worked closely with TNRCC to correct the IA deficiencies, and was well aware of the changes that were made by TNRCC regarding the IA deficiencies prior to proposing full approval. The EPA did not find any problems in the previous AG statements relating to TNRCC's authority to correct the IA deficiencies to meet the part 70 requirements. In fact, all of the IA deficiencies that EPA identified were corrected by regulatory changes. Based on the three prior AG statements, EPA believed that these changes were within the authority of TNRCC to promulgate. Furthermore, Public Citizen did not raise any issues regarding TNRCC's authority to revise its regulations to correct the IA deficiencies or that the revisions were beyond the scope of TNRCC's authority in its comments. Therefore, EPA believes that it did have sufficient information to propose full approval even though it had not yet received the revised AG statement. For the same reasons, EPA also believes that although Public Citizen had less than 30 days to review the AG statement, this does not prevent EPA from promulgating final approval of the Operating Permits Program.

We also believe, contrary to Public Citizen's assertion, that one can determine what authority is included in the AG statement. For example, Public Citizen claims that the AG states that state law provides authority to incorporate monitoring consistent with 40 CFR 70.6. However, Public Citizen asserts that the Texas's program is flawed in that it does not include monitoring ''sufficient to assure compliance'' as required by 40 CFR 70.6(c)(1), and that the AG statement does not even address this issue.

40 CFR 70.4(b)(3) provides that the AG statement must include citations to administrative regulations that demonstrate adequate authority to carry out the program. In section VI of the AG statement (Monitoring, Recordkeeping and Reporting), the Texas AG cites to several provisions of the Texas Administrative Code which relate to monitoring. These regulations include 30 TAC 122.142(c) & (h), and 30 TAC Chapter 122, Subchapters G (Periodic Monitoring—122.600 *et seq.*) and H (Compliance Assurance Monitoring—122.700 *et seq.*). Sections 122.142(c) and (h) require permits to contain periodic monitoring and compliance assurance monitoring. Subchapters G and H implement the periodic monitoring and compliance assurance monitoring requirements. Therefore, one can determine what authority is included in the AG statement, and the AG statement addresses the issue of monitoring sufficient to determine compliance. The issue of whether Texas's periodic monitoring regulations and compliance assurance monitoring regulations are deficient will be addressed in our response to the citizen comment letters, as set forth in section V.C. Therefore, we do not agree with these comments.

C. Comments on Minor New Source Review (MNSR)/Part 70 Integration

The EPA received six comments pertaining to minor new source review (MNSR)/Part 70 Integration. The comments pertain to (1) Incorporation of MNSR, (2) Timing of incorporation on minor new source review requirements, (3) Procedure for incorporation of MNSR requirements, (4) Lack of sufficient monitoring, (5) Lack of specificity in MNSR permits, and (6) TNRCC's schedule for incorporating MNSR requirements into existing title V permit and authorizations.

1. Comment C1—Incorporation of Minor New Source Review (MNSR)

Public Citizen acknowledged that Texas has included Chapters 106 and 116 as applicable requirements. While Chapters 106 and 116 are the chapters that provide for preconstruction permits, Public Citizen is concerned that Texas's language is not as clear as the part 70 requirement that the definition of applicable requirement include ''any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act.'' 40 CFR 70.2. Public Citizen believes that EPA should explain whether and how the Texas definition of applicable requirement is consistent with the part 70 definition and includes both past and future minor new source review requirements. In addition, because of the facial discrepancy between the Texas regulations and the part 70 definition, Public Citizen believes that the Texas AG should provide a legal opinion affirming this understanding.

EPA Response to Comment C1

As the commenter noted, Chapters 106 and 116 implement Texas's preconstruction permit program. These chapters are part of the definition of applicable requirements. Texas's regulations also defines ''applicable requirement'' to include the terms and conditions of all preconstruction permits. The definition of ''applicable requirement'' in Section 122.10(2)(H) now provides that an applicable requirement includes:

(H) All of the requirements of Chapter 106, Subchapter A of this title (relating to permits by rule), or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) *and any term or condition of any preconstruction permit.* (Emphasis added).

Furthermore, Section 122.231(c) provides that:

The executive director shall institute proceeding to reopen permits * * * to incorporate the requirements of Chapter 106, Subchapter A * * * or Chapter 116 of this title *or any term or condition of any preconstruction permit.*'' (Emphasis added).

Thus, the definition for ''applicable requirement'' and the regulations for incorporating MNSR permits include the terms and conditions of preconstruction permits, and includes the Texas regulations which implement Texas's preconstruction review program. The preconstruction review program in Chapters 106 and 116 includes MNSR. Therefore, EPA believes that the definition of applicable requirement in 30 TAC 122.10(2)(H) includes any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act and is consistent with part 70.

We disagree with Public Citizen's contention that an AG statement must confirm this understanding. State regulations must be consistent with the part 70 regulations, but they do not have to track the exact language of part 70. The EPA believes that Section 122.10(2)(H) is consistent with part 70 definition, and therefore disagrees with this comment.

2. Comment C2—Timing of Incorporation of MNSR Requirements

Public Citizen asserts that under Texas's proposal, MNSR requirements will not be incorporated before or upon transition to full approval. In fact, Public Citizen argues that some permits will not be reopened to include minor new source review permit terms and conditions for up to four years, or even up to renewal. Public Citizen also contends that Texas proposes to merely send notification to permit holders upon transition to full approval that their permits will have to be reopened at some time in the future to include minor new source review.

Further, Public Citizen contends that Texas's program does not assure that all permits issued by the State after full approval would include minor new source review permit terms and conditions. Public Citizen argues that the state is allowing those permits that went out for public notice prior to June 3, 2001 to be issued without incorporating minor new source review permit terms and conditions. Public Citizen contends that this violates 40 CFR 70.4(d)(3)(ii)(D) and should not be permitted.

EPA Response to Comment C2

We disagree that the procedures Texas will use to incorporate MNSR requirements into title V permits violates part 70. Texas will reopen its title V permits consistent with 40 CFR 70.4(d)(3)(ii)(D). The September 20, 2001 agreement, as set forth in the **Federal Register**, describes the process for reopening permits to incorporate MNSR requirements. 66 FR at 51897.

The reopening procedure (which begins no later than December 1, 2001) consists of notification of title V permit holders as follows: (1) Direct notification in writing to each individual permit holder no later than December 1, 2001; (2) during stakeholder meetings; (3) through the TNRCC website; and (4) another follow-up letter which will be sent to each permit holder when it is time to reopen the permit holder's permit to incorporate the MNSR permits and permits by rule (PBR).[3]

The procedure provides that all title V permits will be reopened to incorporate MNSR. Permits nearing renewal (*i.e.,* those with less than two years remaining until renewal) will be reopened at renewal to incorporate MNSR. Permits not close to renewal (*i.e.,* those with two or more years remaining until renewal (which includes permits issued prior to June 3, 2001)) will be reopened within three to four years initial issuance to incorporate MNSR. 66 FR at 51898.

This process is consistent with the requirement in 40 CFR 70.4(d)(3)(ii)(D) that a state ''institute proceedings to reopen part 70 permits,'' and provides for a reasonable transition time for a State to reopen title V permits to incorporate MNSR. The reopening process that TNRCC described in its September 20, 2001 letter, and is described above, represents an agreement between EPA and TNRCC on how proceedings will be instituted to reopen all title V permits and ensure that they will have the MNSR requirements. This agreement meets the requirements of part 70 and ensures that all title V permits will be reopened in a timely manner to incorporate MNSR. Furthermore, the requirements of the MNSR permits are enforceable by Texas and EPA even if they have not yet been incorporated into the title V permit. Therefore, we do not agree with this comment.

[3] Although the September 20, 2001 letter from Texas did not reference PBRs as to this issue, the letter did state that PBRs will be cited to the lowest level of citation necessary to make clear what requirements apply to the facility. Furthermore, PBRs also fall under Texas's MNSR program.

3. Comment C3—Procedure for Incorporation of MNSR Requirements

Public Citizen alleges the following:

First, Texas is not proposing to use the reopening provisions of 40 CFR 70.7(f) and (g) in order to incorporate minor new source review requirements into its existing title V permits, but instead will utilize its minor revision process. Public Citizen contends that part 70 only allows the use of streamlined procedures during the interim period. Because Texas did not adopt provisions during the IA period to ensure that MNSR would be properly incorporated into all title V permits upon full approval, Texas must follow the reopening provisions of 40 CFR 70.7(f) and (g) to incorporate MNSR into title V permits.

Second, Public Citizen argues that the 40 CFR 70.4(d)(3)(ii)(D) requirement that states ''institute proceedings to reopen permits * * * upon or before granting of full approval'' requires the immediate submission of applications or updates to pending applications and does not allow for the delay provided by Texas rules.

Third, Public Citizen argues that Texas is proposing to assume that applicants who have already certified compliance are in compliance with the minor new source review permit terms and conditions which are now applicable. Consequently, Public Citizen contends that Texas will not require an updated compliance certification to certify compliance with these permit terms and conditions, contrary to 40 CFR 70.5(c)(8) and 70.5(b) for compliance certifications and supplementary information.

EPA Response to Comment C3

In response to the first allegation, EPA disagrees that the streamlined procedures set forth in part 70 may only be used during the interim period, and that Texas must use the reopening provisions of 40 CFR 70.7(f) and (g) to incorporate MNSR into its existing title V permits. To the contrary, 40 CFR 70.4(d)(3)(ii)(D) specifies that the State must upon or prior to receiving full approval, ''institute proceedings to reopen part 70 permits to incorporate excluded minor NSR permits * * * [and] * * * [s]uch reopenings need not follow full permit issuance procedures nor the notice requirement of § 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 minor NSR permits.'' As described in our **Federal Register** notice proposing approval of the Texas Operating Permits Program,

Texas will institute proceedings to reopen its part 70 permits on or before full program approval and will use the provisions in 30 TAC 122.215 and 122.217 to incorporate the MNSR permits into existing title V permits, which is the permit revision procedure in effect under Texas's approved part 70 program. 66 FR 51897–98. Thus, for the reasons stated herein, EPA believes that Texas's procedures for reopening title V permits to incorporate MNSR is consistent with the requirements of part 70.

In response to the second allegation, EPA disagrees that 40 CFR 70.4(d)(3)(ii)(D) requires the immediate submission of applications or updates to pending applications. As previously discussed, this section requires a state to ''institute proceedings to reopen part 70 permits'' to incorporate MNSR *on or before a State receives full approval.* The 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 has stated that it 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. 66 FR at 41897–98. Thus, as required by part 70, TNRCC will have *instituted proceedings* to incorporate MNSR prior to full approval. Part 70 does not require that the reopening occur prior to full approval, just that the process begin.

In response to the third allegation, EPA disagrees that Texas will assume that applicants who have already certified compliance are in compliance with the MNSR permit terms and conditions which are now applicable. Furthermore, we believe that the allegation is consistent with of the September 20, 2001, agreement set forth in the October 11, 2001 **Federal Register** notice. 66 FR 51897–98. The process described in the agreement contains no provision which would allow Texas to assume the applicants who have already certified compliance are in compliance with the MNSR permit terms and conditions. To the contrary, 30 TAC 122.142(e) provides that if an emission unit is not in compliance with the applicable requirements (e.g., MNSR requirements) at time of permit issuance, the permit must contain a compliance schedule. Furthermore, Public Citizen's assertion is not consistent with the provisions in 30 TAC 122.146—Compliance Certification Terms and Conditions, which contains no provision which would allow Texas to assume the applicants who have already certified compliance are in compliance with the MNSR permit terms and conditions. Thus, we do not agree with these comments.

4. Comment C4—Lack of Sufficient Monitoring

Public Citizen alleges that Texas has stated that all minor new source review permits incorporated into title V permits will include monitoring that complies with 40 CFR 70.6(a)(3) and (c)(1). Public Citizen argues that those Texas operating permits that were issued or sent to public notice prior to June 3, 2001, clearly will not include adequate monitoring. Thus Public Citizen contends that these operating permits will not include all required applicable requirements or the monitoring sufficient to assure compliance with those requirements. Further, as discussed below, Public Citizen maintains that Texas's program does not provide for incorporation of sufficient monitoring into its title V permit. Public Citizen argues that Texas's program does not require that monitoring sufficient to assure compliance be incorporated into its title V permits. Further, Public Citizen contends that the provisions for incorporation of 40 CFR 70.6(a)(3) monitoring allow this monitoring to be incorporated in an untimely manner that does not provide for sufficient public participation. Public Citizen argues that Texas's program does not assure that adequate monitoring for minor new source review requirements will be incorporated into Texas permits.

EPA Response to Comment C4

The first allegation is that permits that were issued or sent to public notice prior to June 3, 2001 will not include all applicable requirements (*e.g.* MNSR is missing) and will not include all required monitoring. As described in the October 11, 2001 **Federal Register** notice, the TNRCC will reopen all title V permits which the TNRCC had authorized for public notice before June 3, 2001. Those permits which as of December 1, 2001, are two years or less before renewal will be reopened to incorporate MNSR no later than renewal. Permits for which renewal is longer than two years after December 1, 2001 will be reopened within three to four years of initial issuance, which is more expeditious than renewal. The September 20, 2001 agreement provides that all the MNSR permits include all monitoring, reporting and recordkeeping (MRR) requirements as required by part 70. 66 FR at 51898. Thus, Texas will add any necessary provisions to its title V permits to ensure that the requirements of part 70 concerning periodic monitoring (40 CFR 70.6(a)(3)(i)(B)) and monitoring sufficient to assure compliance as required by 40 CFR 70.6(c)(1) are met. It is the continuing responsibility of the source and permitting authority to ensure that a title V permit is not issued until it fully complies with the requirements of part 70. Therefore, we do not agree with this comment.

Public Citizen further alleges that Texas's program does not require that monitoring sufficient to assure compliance be incorporated into its title V permits. Under 30 TAC 122.142(c), each permit must contain periodic monitoring requirements that are designed to produce data that is representative of the emissions unit's compliance with applicable requirements. This is consistent with 40 CFR 70.6(c)(1) which provides that title V permits must contain ''periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit * * *'' In addition, 30 TAC 122.142(b)(2)(B)(ii) provides that each emission unit in the permit must contain specific terms and conditions for monitoring requirements associated with the applicable requirement sufficient to ensure compliance with the permit. Therefore, we do not agree with this comment.

Finally, Public Citizen alleges that the Texas program does not provide for sufficient public participation when Texas incorporates monitoring requirements into its title V permits. As stated above, the September 20, 2001, agreement assures that Texas will reopen title V permits in a timely manner to incorporate MNSR and that the incorporation procedures are consistent with part 70. 66 FR at 51897–98. Finally, with regard to the public participation aspect of the comment, if Texas adds MRR when the permit is reopened, then Texas is not required to follow the public participation requirements of 70.7(f)(3) when it adds monitoring. However, if MRR is not included at this time, then Texas would be required to provide for public participation (see 40 CFR 70.7(e)(4)(i)). Therefore, we do not agree with this comment.

5. Comment C5—Lack of Specificity in MNSR Permits

Public Citizen alleges the following:

First, Texas is not requiring permittees to identify all applicable MNSR provisions, but will instead produce a list of all PBRs (one type of minor new source review authorization) developed before 1991. Permittees would then attach the list of PBRs to their title V permit and application and indicate that some of the authorizations on the list applied to them. Permittees would not be required to identify which specific authorizations applied to them until a later date. Public Citizen contends that this makes it impossible for the public to evaluate whether a permittee has correctly identified applicable requirements and will prevent the addition of required monitoring to assure compliance with the applicable pre-1991 PBRs.

Second, Texas will not require all MNSR authorizations to be incorporated into its title V permits. Only those authorizations listed on the unit attribute form will be required to be incorporated into Texas's title V permits.

Third, the Texas approach for incorporating MNSR permit terms and conditions and PBR into title V permits violates title V and part 70. Public Citizen argues that the statute and EPA regulations require title V permits to assure compliance with all applicable requirements, including enforceable emissions limitations and standards. For example, Public Citizen refers to section 504(c) which requires each permit to ''set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' Public Citizen also contends that 40 CFR 70.2 defines applicable requirements to include ''[a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act.'' Public Citizen also contends that section 70.6(a)(1) further requires that each permit shall include ''emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Public Citizen contends that the permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.'' Similarly, Public Citizen contends that 40 CFR 70.6(a)(3) requires each operating permit to contain all monitoring and testing associated with applicable requirements, such as minor NSR permit terms and conditions.

Therefore, Public Citizen contends that the Texas approach for assuring compliance with minor NSR permit terms and conditions by identifying and cross-referencing the minor NSR permit by permit number, and PBRs by their Section number, fails to comply with the aforementioned requirements of title V and part 70. Public Citizen contends that the aforementioned provisions require the terms and conditions of minor NSR permits, including actual enforceable emissions limitations and standards, operational requirements, and monitoring, for example, to be identified in title V permits, an obligation that is not fulfilled by unhelpful cross-references to permit numbers or rule sections.

EPA Response to Comment C5

In response to the first allegation, in the September 20, 2001 agreement, as set forth in the October 11, 2001 **Federal Register** notice, the TNRCC agreed that each title V permit will 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; [4] (2) the MNSR permits and PBR are incorporated by reference into the title V permit by identifying its permit number or the PBR by its Section number; and (3) the terms and conditions of each MNSR permit and PBR are included in the title V permits and are subject to part 70 requirements. 66 FR at 51897. The September 20, 2001, agreement further ensures that TNRCC will ensure availability of all MNSR permits and files to the public. The table of contents to the title V permit will also indicate the location within the title V permit of each MNSR preconstruction authorization numbers (file numbers).[5] 66 FR at 51898.

In response to the second allegation, the September 20, 2001, agreement, as set forth in the October 11, 2001 **Federal Register** notice, requires *all* MNSR permits and PBR to be incorporated into title V permits. The September 20, 2001 agreement does not contain any provision which would limit Texas only to incorporating only those authorizations listed on the unit attribute form as alleged by Public Citizen.

In response to the third allegation, we do not agree that Texas's approach for incorporating MNSR permits and PBR violates title V and part 70. As stated above, all the title V permits will incorporate the necessary MRR which will assure compliance with the title V permit, including MNSR and PBR requirements. Texas's program provides for inspection, entry, monitoring, compliance certification, and reporting requirements. See 30 TAC 122.142—122.146. Furthermore, the September 20, 2001 agreement provides that under the incorporation by reference process, Texas must incorporate all terms and conditions of the MNSR permits and PBR, which would include emission limits, operational and production limits, and monitoring requirements. We therefore believe that the terms and conditions of the MNSR permits so incorporated are fully enforceable under the full approved title V program that we are approving in this action. We therefore do not agree with these comments.

6. TNRCC's Schedule for Incorporating MNSR Requirements Into Existing Title V Permit and Authorizations

Baker Botts, L.L.P., does not support TNRCC's schedule for incorporating MNSR requirements into existing title V permits. The commenter believes that such incorporation should take place no sooner than renewal of the operating permit.

EPA Response to Comment C6

As set forth in our response to Comment C2—Timing of Incorporation of MNSR requirements, Texas will reopen its title V permits as follows: permits nearing renewal (*i.e.,* those with less than two years remaining until renewal) will be reopened at renewal to incorporate MNSR. Permits not close to renewal (*i.e.,* those with two or more years remaining until renewal (which includes permits issued prior to June 3, 2001)) will be reopened within three to four years initial issuance to incorporate MNSR. 66 FR at 51898. This schedule provides for a reasonable transition time for a State to reopen title V permits to incorporate MNSR. Baker Botts'

[4] As previously stated, although the September 20, 2001 did not reference PBRs as to this issue, it did state that PBRs will be cited to the lowest level of citation necessary to make clear what requirements apply to the facility. PBRs also fall under Texas's MNSR program.

[5] The September 20, 2001 agreement does not mention a table of contents, as was indicated in the **Federal Register** notice. 66 FR at 51898. This was not part of the agreement because TNRCC was already including a table of contents in its title V permits which references attachments for preconstruction authorizations. The attachment lists the relevant preconstruction authorizations, including PBRs. Likewise, the reference to providing the entire permit file to the requestor in Items 4 and the modification procedures in Item 5 of the MNSR procedures (66 FR at 51898) were not included in the September 20, 2001 agreement. TNRCC will, of course, provide the entire permit file to anyone to requests it. As to Item 5, this relates to modification permit revision procedures, as required by its regulations.

proposal would delay this incorporation for permits with two or more years until renewal until the permit is renewed, thus further delaying the incorporation of MNSR requirements. The EPA believes that the commenter's approach is not consistent with part 70, and therefore disagrees with this comment.

D. Comment D—Emergency Provisions and TNRCC Upset/Maintenance Reporting Rules

Baker Botts, L.L.P. acknowledges that the TNRCC had removed its upset/maintenance reporting rules from its June 2001 submittal and is not proposing to use the upset/maintenance reporting rules to satisfy emergency provisions of 40 CFR part 70. As a result of TNRCC's actions, this deficiency no longer exists. However, Baker Botts also believes that the TNRCC's upset/maintenance reporting rules do not undermine the part 70 deviation reporting requirements. If a site's upset report previously submitted to TNRCC contains the information required for title V deviation reporting purposes, that report may be referenced in a site's deviation report; however, if a site has not already reported a deviation under sections 101.6 or 101.7, the Texas title V program requires the site to include the event in its next title V deviation repot. Thus, Baker Botts believes TNRCC's upset/maintenance reporting rules are not grounds for finding of deficiency.

EPA Response to Comment D

The EPA agrees that emergency provision deficiency has been corrected. However, Baker Botts claims that the upset/maintenance rules do not undermine part 70 deviation reporting requirements, and that the upset/reporting rules are not grounds for a finding of deficiency. The EPA did not state in its October 11, 2001 **Federal Register** notice that the upset/maintenance rules undermine Part 70 deviation reporting requirements, or that the upset/reporting rules are deficient. Therefore, this comment is beyond the scope of this action.

E. Comment E—Definition of ''Major Source''

Public Citizen asserts that part 70 requires fugitive emissions for all sources subject to Clean Air Act section 111 and 112 standards to be included in the calculation to determine whether a source is ''major.'' Public Citizen contends that Texas current definition of ''major source'' only requires inclusion of fugitives for source categories regulated under section 111 or 112 as of August 7, 1980.

Public Citizen states that Texas has not changed its regulations in response to this deficiency. The EPA's proposed approval acknowledges that Texas definition does not match the current requirement in 40 CFR 70.2. 66 FR 51895, 51899 (October 11, 2001). The fact that EPA has proposed to amend the regulation does not alter Texas's obligation to comply with it.

EPA Response to Comment E

Texas' definition of major source for category 27 reads as follows:

(xxvii) any stationary source category regulated under FCAA, § 111 (Standards of Performance for New Stationary Sources) or § 112 for which EPA has made an affirmative determination under FCAA, § 302(j) (Definitions).

On November 27, 2001, EPA revised the definition of ''major source'' for category 27 to read as follows:

(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

66 FR 59161, 59166. Texas' regulation is consistent with the revised 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 70 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 now consistent with the current requirements of both parts 70 and part 71. Therefore, EPA does not agree with this comment.

F. Comment F—Definition of ''Title I Modification''

Public Citizen asserts that part 70 states that minor permit modification procedures may be used only for those permit modifications which ''are not modifications under any provision of title I of the Act.'' 40 CFR 70.7 (e)(2)(i)(A)(5). Public Citizen further argues that part 70 states that off-permit changes may be made if certain conditions are met, including the requirement that the changes not be ''modifications under any provision of title I of the Act.'' 40 CFR 70.4(b)(12).

Public Citizen states that in EPA's notice of proposed interim approval for Texas, EPA interpreted ''title I modifications'' to include minor new source review and pre-1990 National Emissions Standards for Hazardous Air Pollutant (''NESHAP'') requirements. 60 FR 30037, 30041 (June 7, 1995). Public Citizen argues that because Texas defined title I modification to exclude changes reviewed under a minor new source review program or changes that trigger the application of NESHAPS established prior to the 1990 amendments, EPA found Texas's program deficient. *Id.*

Public Citizen maintains that Texas removed the definition of title I modification from its regulations in response to EPA's comments. They contend that Texas has clearly stated, however, that it maintains its interpretation that largely excludes modifications made pursuant to Texas's minor new source review program from the definition of title I modification. As a result Public Citizen argues that Texas is proposing to allow minor new source review authorizations and modifications to be incorporated into its title V permits through minor modification and off-permit procedures.

Public Citizen contends that ''title I modifications'' clearly include modifications under State minor new source review programs. Public Citizen refers to Section 110(a) of the Clean Air Act is clearly within title I of the Act. Further, Public Citizen contends that section 110(a)(2)(c) refers to ''modifications'' of minor new source review authorizations. Public Citizen contends that the interpretation adopted by EPA in the preamble to the 1994 proposal for revisions to part 70 constitutes the Agency's initial, definitive interpretation of ''title I modification.'' 59 FR 44460, 44462 (Aug. 29, 1994). Accordingly, Public Citizen contends that EPA may only change such an interpretation pursuant to notice and comment rulemaking. *See* generally, *Paralyzed Veterans* v. *D.C. Arena,* 111 F.3d 579, 586 (D.C. Cir. 1997).

EPA Response to Comment F

As stated in proposal and in the June 7, 1995 **Federal Register** notice, we noted that at the time of interim approval Texas's 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. Since part 70 does not have a definition of title I modification, Texas's elimination of its definition of title I modification corrected the deficiency by removing

the possibility of a conflicting regulatory definition.

Thus, as to the adequacy of the Texas regulations, the commenter's assertions regarding the meaning and status of EPA's statements in the August 29, 1994 proposed Part 70 revisions, and the June 7, 1995 proposed approval concerning the definition of ''Title I modification'' have been rendered moot by Texas' removal of the definition from its regulations. It follows that there is no need for EPA to respond to the commenter's views regarding EPA's statements for the purpose of resolving a possible regulatory conflict. Moreover, to the extent that the commenter remains concerned about this issue due to the manner in which Texas has implemented its program, the commenter's generalized allegations that Texas maintains interpretations that are at odds with what the commenter believes EPA's interpretations are, or should be, such allegations lack sufficient specificity to require a response. If there are specific permits as to which the commenter believes Texas is implementing its program in a manner inconsistent with the requirements of applicable Federal law, it may of course present them to EPA for response.

G. Comment G—Fugitive Emissions in Applications

Public Citizen states that EPA noted in the June 7, 1995, notice of proposed IA that Texas did not require fugitive emissions to be included in permit applications in the manner required by 40 CFR 70.3. 60 FR 30037 (June 7, 1995). Public Citizen contends that Texas still does not require that complete permit applications include fugitive emissions. While Texas did adopt Section 122.132(e)(10), as indicated in the proposed full approval notice, Public Citizen contends that this provision does not ensure that applications and permits will include fugitive emissions. Public Citizen contends that Texas allows facilities to submit ''abbreviated applications,'' which are required to include only: (1) Identifying information regarding the site and applicant, (2) certification by a responsible official and (3) any other information deemed necessary by the executive director. 30 TAC 122.132(c). Public Citizen contends that these applications do not require the submissions of fugitive emission information.

Similarly, Public Citizen contends that Texas's regulations provide for a ''phased permit detail process.'' 30 TAC 122.131. Public Citizen contends that this process allows sites with 75 or more emission units in nonattainment areas, or with 150 or more emission units in attainment areas, to qualify for the phased permit detail process. Public Citizen contends that these sites are allowed to submit permit applications that include fugitive emission information and all other detailed information for only a portion of their emissions units. Public Citizen contends that the sites are then required to follow a schedule, included as a term and condition of the permit, for submitting the additional detailed information. 30 TAC 122.131(b).

Thus, Public Citizen contends that Texas's abbreviated application and phased permit detail process do not comply with Part 70's requirement that permit applications include fugitive emissions in the same manner as stack emissions. 40 CFR 70.3(d).

EPA Response to Comment G

Although TNRCC does allow facilities to submit an abbreviated application, the fact remains that the remaining information, including fugitive emissions information, is required for every operating permit. The TNRCC informs the facility when the remaining information needs to be submitted. 30 TAC 122.132(c) & 122.132(e)(10). This applies even if the ''phased permit detail process'' is followed. 30 TAC 122.131(b). The abbreviated application procedure was developed to allow TNRCC to develop the application submittal schedule without requiring the applicant to continually update and certify the detailed application information prior to the technical review of the permit. 26 TexReg at 3762. It does not make any difference that the abbreviated application does not contain fugitive emissions information so long as this information is submitted when requested by TNRCC and is available to the public when the draft permit goes out for public comment. A full application, including fugitive emissions information, is required prior to TNRCC issuing a draft permit. 30 TAC 122.132(c) & (e); 26 TexReg at 3762. Therefore, EPA does not agree with this comment.

H. Comment H—Inadequate Personnel and Funding

Public Citizen contends that EPA noted in the proposed approval that Texas had to provide complete projection of program costs for four years after approval was required for full approval. 66 FR 51895, 51902 (Oct. 11, 2001). Public Citizen argues that Section 70.4(b)(8) of EPA's regulations require states to submit a statement that adequate personnel and funding have been made available to develop, administer, and enforce the operating permit program. Public Citizen contends that this 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. 40 CFR 70.4(b).

Public Citizen further contends that Texas's supplemental ''Statement of Adequate Personnel and Funding'' submitted on August 22, 2001, acknowledges that the agency will face a funding shortfall for its operating permits program in 2003 unless the fees charged by the State are increased. The statement says, ''staff will recommend to the Commission to raise the emissions fee to $30 per ton. Public Citizen contends that this increase is necessary to provide the funding to support the title V activities of the state and is contingent on approval by the Commission.'' Likewise, Public Citizen contends that the Texas Sunset Commission Staff Report on the TNRCC noted that the title V fund—the Clean Air Account—will have a $3.2 million shortfall by fiscal year 2003. Commenters believe that the State must commit to raising the emission fee in 2003, rather than merely stating that staff will recommend such an increase.

Even with the increase in fees, however, Commenters do not believe that Texas has demonstrated adequate personnel and funding to run the state operating permits program. Public Citizen argues that the most complex and time-consuming title V facilities in Texas are due to be permitted over the next few years. Further, minor new source review requirements will have to be incorporated into Texas permits during this period. Public Citizen contends that in EPA's proposal for revisions to IA criteria, EPA noted:

> Texas has pointed to the exceptionally large number of part 70 sources which are located in the State and which are candidates for minor NSR. Texas estimates that it has over 3,000 part 70 sources, including the nations largest concentration of chemical manufacturing and petroleum refining facilities. Many of these sources have large numbers of emission units, making part 70 permitting difficult and time-consuming. * * * While Texas's burden of processing part 70 applications will be heavy in any event, Texas contends that the added burden of integrating minor NSR into part 70 permits will completely overwhelm the State's processing system in the initial years of implementation.

59 FR 44572, 44574–44575 (Aug. 29, 1994).

Public Citizen contends that despite this huge increase in workload, Texas has projected that only a very small increase in the percentage of time,

required by only some of the divisions assigned to title V, will be needed in the coming years. For example, Public Citizen argues that the air permits division is projected to only provide an 8.3% increase in staff time, while the field operations and enforcement divisions project no increase. Public Citizen does believe Texas had projected costs for staff adequate to handle incorporation of minor new source review and the processing and enforcement of the large, complex sites that will require permitting in the next few years.

In addition, Public Citizen contends that as a result of the low salaries offered by the Texas Natural Resource Conservation Commission (TNRCC), the agency often has numerous vacancies. Public Citizen contends that the high turnover means that there is often a lack of trained, experienced personnel and that remaining personnel must shoulder an unreasonable workload.

EPA Response to Comment H

As stated in the proposal, 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), and therefore we do not agree with this comment.

I. Comment I—Monitoring Requirements and Public Participation

Baker Botts L.L.P. responded to our proposal to take no action on TNRCC's Chapter 122 revisions relating to periodic monitoring (PM), compliance assurance monitoring (CAM), and public participation. It believes that these provisions meet the requirements of part 70 and that we should approve them. Baker Botts further states that Texas's part 70 program satisfies all part 70 requirements with respect to compliance and deviation reporting based on the monitoring requirements and that the deviation reporting and compliance certification of 30 TAC Chapter 122 fully comply with part 70.

EPA Response to Comment I

As stated in the October 11, 2001, proposal and in section IV of this preamble, we are not taking action on provisions relating 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) at this time. Texas submitted these revisions to EPA for approval on June 1, 2001. Some of these revisions are related to the comments we received from citizens in response to our **Federal Register** notice published December 11, 2000. The citizens identified areas where they believe that certain of these provisions are deficient. The rationale for taking no action on these provisions is outlined in detail in our response to Comment A, section III of this notice. We will respond to the citizen comments as described in section V.C of this preamble which provides additional information on the citizen comment letters. As discussed therein, we will respond 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. Any provisions unrelated to the citizen comment letters will be addressed in accordance with section V.D.

J. Comment J—Statutory Changes Enacted After State Submittal of Operating Program

Public Citizen claims that several statutory changes adopted since 1995 constitute program deficiencies, and that these changes were not adequately addressed, or not addressed at all, in the AG statement. These statutes include the following:

a. Audit Privilege—Tex. Rev. Civ. Stat. Art. 4447cc. (2 commenters);

b. Voluntary Emissions Reduction Permit Program—SB766;

c. Regulatory Flexibility—SB 1591 (1997) Section 5.123, Texas Water Code; and

d. TNRCC Sunset Legislation—HB2912.

Audit Privilege Act Comments

Baker Botts, L.L.P. states that the Audit Privilege Act does not limit the TNRCC's ability to adequately administer and enforce the title V program.

Public Citizen states that the Audit Privilege Act prevents the State from having the authority to seek appropriate penalties and injunctive relief for Clean Air Act violations. Public Citizen argues that there is no AG statement reflecting the interpretation or implementation of the Texas audit privilege law to respond to the deficiency noted in EPA's IA of the Texas title V Program. Public Citizen further argues that Texas has implemented and interpreted the law contrary to EPA's audit policy and the requirements for state title V permit programs. While the EPA reached an agreement with Texas on amendments to its law in 1997, Public Citizen contends that EPA made it clear that the actual implementation of the law would be a critical factor in EPA's future evaluation of the law.

Public Citizen contends that the Audit Privilege Act violates EPA guidance [6] because of inadequate limits on privileged information. Public Citizen contends that The EPA guidance limits the circumstances under which information may be ''privileged'' pursuant to an audit law. Public Citizen also contends that Information may not be privileged if (1) it is required by law, regulation or permit (2) state access is needed to verify compliance, or (3) an audit presents evidence of criminal conduct. It also contends that it is unclear under the Texas audit law whether information required to be reported or maintained pursuant to title V or a title V permit may be considered exempt. Thus, Public Citizen contends that EPA must require Texas law to be amended to make clear that none of this information may be privileged, withheld from the public, or excluded from any judicial or administrative proceeding involving any party.

Also, Public Citizen alleges that Texas law does not have a sufficient limit on claims of privilege regarding documents needed to verify compliance. Because Texas Audit law allows certain information collected during an audit to be held as privileged, even if no notice of audit is filed with the state, Public Citizen contends that many companies do audits just to claim the privilege. Thus, Public Citizen contends that whether violations were found during an audit cannot be determined under Texas law because industry can simply claim privilege for all information collected during the audit. Public Citizen contends that no subsequent inspection will include inspection of the ''privileged'' documents because TNRCC has instructed its personnel to not ask for information from audits and to even refuse to look at information offered by the regulated entity. There is no provision for reviewing documents

[6] Herman & Nichols, Effect of Audit Immunity/Privilege Laws on States' Ability to Enforce title V Requirements (April 5, 1996).

that are required to be made available or public under Texas law.

Furthermore, Public Citizen contends that the law does not prevent all evidence of criminal conduct from being disclosed. While the law provides that such information may be used in criminal proceedings, it does not remove the barrier to obtaining such information for use in criminal investigations.

Public Citizen also claims that the Audit Privilege Act violates EPA guidance by providing inadequate limits on immunity from penalties. Public Citizen contends that EPA's guidance requires state audit laws to limit the types of violations that may be exempt from penalties. Public Citizen argues that the guidance provides that state audit laws must not exempt (1) repeat violations, (2) violations of previous court or administrative orders, (3) violations resulting in serious harm or risk of harm, or (4) violations resulting in substantial economic benefit to the violator. *Id.* at p. 4. The Texas Audit Privilege Law exempts repeat violations and violations of previous court orders or administrative orders. Tex. Rev. Civ. Stat. art. 4447cc, Sec. 10. (2000).

Public Citizen contends that the Texas audit law does provide that a violation is not exempt if the violation resulted in ''injury or imminent and substantial risk of serious injury to one or more persons at the site or off-site substantial actual harm or imminent and substantial risk of harm to persons, property, or the environment.'' *Id.* at Sec. 10(b)(7). Public Citizen argues that this standard is higher than the ''resulting in serious harm or risk of harm'' provided by EPA guidance. Likewise, the Texas law provides that immunity does not apply if ''the violations have resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors'' conflicts with EPA's requirement that immunity not be granted where the violation resulted in a substantial economic benefit.

Public Citizen contends that these problems with Texas law are exacerbated by the fact that Texas does not require facilities to prove their entitlement to immunity. Public Citizen contends that facilities are not required to submit proof of such entitlement to the State when they conduct an audit. The audit documents themselves are simply labeled as privileged by the permittee. Further, Public Citizen contends that the Audit Privilege Act expressly states that in a civil or administrative enforcement action ''[a]fter the person claiming the immunity establishes a *prima facie* case of voluntary disclosure * * * the enforcement authority has the burden of rebutting the presumption by a preponderance of the evidence or, in a criminal case, by proof beyond a reasonable doubt.'' Tex. Rev. Civ. Stat. art. 4447cc, Sec. 10(f) (2000).

Although more than 500 disclosures of violation have been filed, Public Citizen contends that TNRCC has never collected a penalty because a violation was a continuous or repeat violation, caused the risk of serious injury, or because a competitive advantage or economic benefit was obtained through the violation.

Public Citizen also claims that as a result of its audit law, Texas lacks the minimum enforcement authority required by title V to administer a state operating permits program because Texas lacks authority to recover civil penalties for ''each violation'' occurring at a title V source, if that violation qualifies for the immunity provisions of the Texas Audit Privileges Law. Therefore, EPA must disapprove the Texas program as a result of the state's inadequate enforcement authority.

EPA Response to Audit Privilege Act Comments

Public Citizen has raised a mixture of authority and implementation issues regarding the Audit Privilege Act. EPA is responding below to the authority issue and will respond to the implementation issues at a later date, as the implementation issues are unrelated to correcting interim approval deficiencies.

The EPA believes that the Texas Audit Privilege Act (Audit Act) is not in conflict with Texas's authority to enforce Title V. In evaluating the Audit Act, as well as those of other states, EPA has looked to the requirements for enforcement authority contained in the federal environmental statutes and their implementing regulations for all federal programs to determine if the state retains the minimum requirements necessary for approval or authorization of those federal programs.[7]

With respect to the issue regarding alleged inadequate limits on privileged information, Texas has said that it will interpret Section 9(c) of the Audit Act[8] as giving the public the right to obtain any information in the state's possession required to be made available under federal or Texas law, irrespective of whether it is privileged under Texas law. This interpretation is consistent with federal delegation provisions that require States to make information publicly available. For example, Section 3006(f) of the Resource Conservation and Recovery Act (RCRA) requires that to be authorized, a state must make public any information it has obtained on ''facilities and sites for the treatment, storage and disposal of hazardous waste * * * in substantially the same manner * * * as would be the case if the Administrator [of EPA] was carrying out the provisions of this subchapter in such state.'' Section 3007(b) of RCRA goes even further in requiring public availability of information obtained from ''any person'' by the state or EPA, as long as the information may not be claimed as confidential under the Freedom of Information Act (FOIA). Federal regulations governing the Safe Drinking Water Act provide the same degree of public access.

Likewise, under Section 114(c) of the Act, any records, reports or information obtained under section 114(a) of the Act must be available to the public, as long as the information may not be claimed as confidential under FOIA. Sections 502(b)(8) and 503(c) of the Act and 40 CFR 70.4(b)(3)(viii) provide that the permit application, compliance plan, permit, monitoring and compliance report are available to the public, subject to the same protections under FOIA. In addition, these same authorities provide that the contents of a Title V permit cannot be claimed as confidential. The Texas AG has certified that:

> State law provides authority to make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report, except for information entitled to confidential treatment. State law provides that the contents of an operating permit shall not be entitled to confidential treatment.

Attorney General Statement, Section XIII (October 29, 2001). Therefore, EPA believes that the Audit Privilege Act meets the minimum federal statutory and regulatory requirements for access to information.

Furthermore, EPA disagrees that the Audit Privilege Act provides a barrier to obtaining information for use in criminal investigations. The Audit Privilege Act limits the application of the privilege to ''civil or administrative proceedings'', which cannot reasonably be read as encompassing criminal investigations. *See* Tex. Rev. Civ. Stat. Art. 4447cc, Sec. 5(b). In addition,

[7] See, for example, Clean Air Act sections 110, 114, and 502 and 40 CFR 70.11; Resource Conservation and Recovery Act section 3006 and 40 CFR part 271; Clean Water Act Section 402 and 40 CFR 123.27.

[8] ''If information is required to be available to the public by operation of a specific state or federal law, the governmental authority shall notify the person claiming the privilege of the potential for public disclosure prior to obtaining such information under Subsection (a) or (b).'' Tex. Rev. Civ. Stat. Art. 4447cc, Sec. 9(c).

Section 9(b) removes any limit on the State's ability to review any information that is required to be made available under federal or state law prior to any in camera determination that such material may be privileged.[9] Those requirements encompass virtually all information that is relevant to determining a violation, leaving the State with ample authority to conduct both civil and criminal investigations without the encumbrance of a prior hearing to determine whether the material can be reviewed.

As to the issues regarding alleged inadequate limits on immunity from penalties, EPA points out that if the violation ''results in injury or imminent and substantial risk of serious injury to one or more persons at the site or off-site substantial actual harm or imminent and substantial risk of harm to persons, property, or the environment'', or ''the violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors'', immunity does not apply. Tex. Rev. Civ. Stat. Art. 4447cc, Sec. 10(b)(7) and 10(c)(5). Furthermore, EPA believes that Texas has retained authority to curb abuses because it can issue administrative or consent orders for violations even if these are voluntarily disclosed, and the subsequent violation of such orders is not entitled to immunity under State law. In addition, Texas has the discretion to determine that a pattern of significant violations should disqualify a company from further penalty amnesty.

Therefore, for the reasons set forth in the **Federal Register** notice (66 FR at 51903) and as set forth above, EPA believes that TNRCC has adequate authority to enforce Title V. Because implementation issues are not related to interim approval issues, we will address those allegations as set forth in Section V.D.

K. Comment K—Confidentiality

In this comment, Public Citizen is concerned that public air-related information that should not be classified as confidential is being withheld under claims of confidentiality. Much of this comment is identical to a comment received in a citizen comment letter. This portion of the comment will be addressed as set forth in section V.C. Public Citizen did raise one additional issue, namely, the alleged change in the treatment of emissions data by the Texas AG. Public Citizen contends that previously, a 1975 AG statement prevented companies from stopping the release of emissions data to the public if a company had claimed the emissions data as confidential. Now, Public Citizen contends that the AG has stated that emissions related data, including modeling of impacts, and information in a number of other documents of impacts, and information in a number of a other documents claims as confidential business information must be excluded from public access. Thus, Public Citizen asserts that Texas should submit a supplemental AG statement on this issue, and EPA should withhold approval until this issue is resolved.

EPA Response to Comment K

As previously noted, EPA is fully approving the Texas operating permit program because we believe that Texas has adequately addressed the IA deficiencies we identified in our 1995 and 1996 **Federal Register** notices. As such, for the purpose of this approval, Texas is only required to address issues related to the correction of IA deficiencies. The EPA will address the issue relating to the confidentiality of emissions data as set forth in section V.D.

IV. 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's 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** notice 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 V.C of this preamble which provides additional information on the citizen comment letters. We will take appropriate action on the other revisions to Chapter 122 at a later date.

V. What Is Involved in This Final Action?

A. Final Action

In this action, we are promulgating 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 granting full approval.

B. Indian Lands and Reservations

In its program submission, Texas did not assert jurisdiction over Indian country. To date, no tribal government in Texas has applied to EPA for approval to administer a title V program in Indian country within the state. The EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA,* (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. The EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

C. Citizen Comment Letters

On May 22, 2000, EPA promulgated a rulemaking that extended the IA period of 86 operating permits programs until December 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 notice 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

[9] ''Notwithstanding the privilege established under this Act, a regulatory agency may review information that is required to be available under a specific state or federal law, but such review does not waive or eliminate the administrative or civil evidentiary privilege where applicable. Tex. Rev. Civ. Stat. Art. 4447cc, Sec. 9(b).

within 90 days of publication of the **Federal Register** notice.

Several citizens commented on what they believe to be deficiencies with respect to the Texas title V program. As stated in the October 11, 2001 **Federal Register** notice proposing to fully approve the Texas operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 14, 2001 to timely public comments on programs that have obtained IA. 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. In addition, we will publish a notice of availability in the **Federal Register** notifying the public that we have responded in writing to these comments and how the public may obtain a copy of our response. 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. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies.

D. Non IA Issues Not Addressed in Citizen Comment Letter Responses

Public Citizen raised many issues in response to our October 11, 2001, proposal that are not related to the IA issues and were not raised in response to EPA's December 2000 notice soliciting citizen comments on state operating permit programs. These issues include sufficiency of the AG Statement, statutory changes enacted after 1995, Audit Privilege Act implementation, confidentiality of emissions data, alleged failure of Texas's compliance assurance monitoring provisions to comply with part 64, public participation in enforcement, emergency orders, temporary sources, alleged violation of statutory deadlines, insignificant emission units, and acid rain requirement. For the reasons set forth in our response to Comment A in section III, EPA believes that limiting our review to IA issues does not limit our ability to grant full approval to Texas. Therefore, EPA will address the issues at a later date.

VI. What Is the Effective Date of EPA's Full Approval of the Texas Title V Program?

The EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the state's program effective on November 30, 2001. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except— * * * (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. EPA's IA of Texas's prior program expires on December 1, 2001. In the absence of this full approval of Texas's amended program taking effect on November 30, 2001, the federal program under 40 CFR part 71 would automatically take effect in Texas and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Texas to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because Texas has been administering the title V permit program for six years under an IA. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

VII. Administrative Requirements

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this final approval 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 final approval 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 approves 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). This rule merely approves 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 final approval 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 significant 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.

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. The 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). This rule will be effective on November 30, 2001.

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 February 4, 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 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: November 29, 2001.

Lawrence E. Starfield,

Acting Deputy Regional Administrator, Region 6.

For the reasons set out in the preamble, Appendix A of Part 70 of title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended under the entry for Texas by adding paragraph (b) to read as follows:

Appendix A to part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Texas

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(b) The Texas Natural Resource Conservation Commission submitted program revisions on June 12, 1998, and June 1, 2001, and supplementary information on August 22, 2001; August 23, 2001; September 20, 2001; and November 5, 2001. The rule revisions adequately addressed the conditions of the IA effective on July 25, 1996, and which will expire on December 1, 2001. The State is hereby granted final full approval effective on November 30, 2001.

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[FR Doc. 01–30270 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7110–7]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Indiana final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on August 17, 2001 at 66 FR 43143 and provided for public comment. The public comment period ended on September 17, 2001. We received no comments. No further opportunity for comment will be provided. EPA has determined that Indiana's revisions satisfy all the requirements needed to qualify for final authorization, and is authorizing the State's changes through this final action.

DATES: This final authorization will be effective on December 6, 2001.

ADDRESSES: You can view and copy Indiana's application from 9 am to 4 pm at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, (mailing address P.O. Box 6015, Indianapolis, Indiana 46206) contact Lynn West (317) 232–3593, and EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION: On August 17, 2001, U.S. EPA published a proposed rule proposing to grant Indiana authorization for changes to its Resource Conservation and Recovery Act program, listed in section E of that notice, which was subject to public comment. No comments were received. We hereby determine that Indiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus,