PDP, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

2. Section 872.6730 is amended by revising paragraph (c) to read as follows:

§ 872.6730 Endodontic dry heat sterilizer.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (90 days after the effective date of a final rule based on this proposed rule), for any endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976, or that has on or before (90 days after the effective date of a final rule based on this proposed rule), been found to be substantially equivalent to the endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976. Any other endodontic dry heat sterilizer shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: May 24, 1995.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–13831 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–001; FRL–5217–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes source category-limited interim approval of the operating permits program submitted by the Governor of Texas for the State of Texas for the purpose of complying with Federal requirements which mandate that States develop and submit to EPA programs for issuing operating permits to all major stationary sources, with the exception of sources on Indian Lands. Source category-limited interim approval was specifically requested by the Governor for this submission.

DATES: Comments on this proposed action must be received in writing by July 7, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review (NSR) Section, at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 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: David F. Garcia, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7217.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act, as amended on November 15, 1990 (''the Act''), the EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of a State operating permits program (see 57 **Federal Register** 32250, July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (''the part 70 regulation''). Title V requires States to develop, and submit to the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulation which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, the EPA may grant the program interim approval for a period of up to two years. Where a State requests source category-limited interim approval and demonstrates compelling reasons in support thereof, the EPA may also grant such an interim approval. If the EPA has not fully approved a program by two years after the date of November 15, 1993 or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If the EPA were to finalize this proposed source category-limited interim approval, it would grant that approval for a period of two years following the effective date of final interim approval, and the interim approval could not be renewed. During the interim approval period, the State of Texas would be protected from sanctions, and the EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the State of Texas. Permits issued under a program with interim approval have full standing with respect to part 70, and the State will permit sources based on the transition schedule provided in Regulation XII, Title 31 of the Texas Administrative Code (TAC).

Following final interim approval, if Texas has failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, the EPA would start an 18-month clock for mandatory sanctions. If Texas then failed to submit a corrective program that the EPA found complete before the expiration of that 18-month period, the EPA would be required to apply one of the sanctions

in section 179(b) of the Act, which would remain in effect until the EPA determined that Texas had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of Texas, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Texas had come into compliance. In any case, if six months after application of the first sanction, Texas still had not submitted a corrective program that the EPA found complete, a second sanction would be required.

If following final interim approval, the EPA were to disapprove Texas' complete corrective program, the EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Texas had submitted a revised program and the EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of Texas, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Texas had come into compliance. In any case, if six months after application of the first sanction, Texas still had not submitted a corrective program that the EPA found complete, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Texas has not timely submitted a complete corrective program or the EPA has disapproved a submitted corrective program. Moreover, if the EPA has not granted full approval to Texas' program by the expiration of an interim approval, and that expiration occurs after November 15, 1995, the EPA must promulgate, administer, and enforce a Federal permits program for Texas upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the Governor of each State is required to develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. Texas submitted, under the signature of former Governor Ann W. Richards, the operating permits program submittal to be implemented in all areas of the State of Texas with the exception of Indian Lands. The State of Texas requested that the EPA approve its operating permit program as a source category-limited interim program for a period of two years.

In the State's operating permits program submittal, Texas does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in Texas has authority to administer an independent air program in the State. Upon promulgation of regulations under section 301(d) of the Act, Indian tribes will be able to apply for treatment as States under the Act, and receive the authority from the EPA to implement an operating permits program under title V of the Act. The EPA will, where appropriate, conduct a Federal title V operating permits program in accordance with forthcoming EPA regulations, for those Indian tribes which do not apply for treatment as States under the Act.

The Texas Air Control Board (TACB) was the traditional implementing authority for the Act and all of its amendments. The submittal, including the rules, were adopted by the TACB. The TACB's operations and legal responsibilities were consolidated with operations of other Texas environmental agencies. Therefore, effective September 1, 1993, the Texas Air Control Board became part of a new State of Texas environmental agency, the Texas Natural Resource Conservation Commission (TNRCC). All rules, permits, orders, and any other final actions of the TACB remain in full legal effect unless and until revised by the TNRCC.

40 CFR 70.4(b)(1) requires that the submittal contain a program description of the State's operating permits program describing how it intends to carry out its responsibilities under the part 70 regulations. The Texas Federal Operating Permits program description, volume 1 of the submittal, explains that the Texas operating permits program was developed to satisfy all of the requirements of the part 70 regulation. The operating permit in Texas will be used to consolidate relevant applicable requirements into one permit document.

The program description provides a broad overview of the State's program, a broad description of how the Federal operating permits program in Texas will be implemented in accordance with part 70, and a description of how the program will implement the applicable requirements set forth in other titles of the Act, specifically title I, title III, title IV, and title VII. The State projects over 3,000 sites will be subject to the operating permits program.

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for a State air pollution control agency that has independent legal counsel), demonstrating adequate authority to carry out all aspects of a title V operating permits program. The Texas Attorney General submitted such an opinion in Volume 5 (the submittal supplement), demonstrating adequate legal authority as required by Federal law and regulation for interim approval.

40 CFR 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the State's implementation of its permits program. The State addresses this requirement in the Texas Federal Operating Permits Program Submittal Supplement in Volume 5 (the submittal supplement). The supplemental volume contains a model permit, application forms (including the standard phase II acid rain forms), monitoring, recordkeeping and reporting forms, public notice examples and guidance to implement the operating permits program. The detailed guidance addresses many part 70 requirements including documentation on permit applicability, permit application procedures, permit issuance, permit revisions and reopenings, permit renewals, compliance plan and certifications, and monitoring, reporting and recordkeeping.

2. Regulations and Program Implementation

The State of Texas has submitted TACB Regulation XII, Title 31 of TAC, Chapter 122—''Federal Operating Permits'' (''the Texas permit regulation'') and TACB General Rules, Title 31 of TAC, section 101.27 (''the Texas fee regulation''), for implementing the State's operating permits program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was submitted in the Texas Federal Operating Permits Program Volumes 1 and 2 of the submittal. Copies of all applicable State and local statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program in Volumes 3 and 4.

The following discusses how the Texas permit regulation meets or does not meet the existing part 70 regulation. However, due to pending litigation involving sections of the part 70 regulation, revisions have been proposed, and more proposed revisions may be forthcoming. Any revisions to

the part 70 regulation may alter or obviate the need for the State to make the regulatory changes identified in this notice. During the State's rulemaking process proposing to make changes necessary for full title V approval, the EPA will comment on the State's proposal using the criteria in whatever regulation is in place at that time. In the **Federal Register** notice proposing action on the State's submittal for full approval, the EPA will use the criteria in whatever is the final part 70 regulation, whether it be the existing July 21, 1992, regulation or a later version (''part 70'').

The following requirements, set out in the part 70 regulation, are addressed in the State's submittal: (1) Provisions to determine applicability (40 CFR 70.3(a)): 31 TAC section 122.120; (2) Provisions to determine complete applications (40 CFR 70.5(a)(2)): 31 TAC section 122.134 and the forms (40 CFR 70.4(b)(4)): Supplemental Volume, Operating Permits Guidance; (3) Public Participation (40 CFR 70.7(h)): 31 TAC sections 122.150–122.155; (4) Provisions for minor permit modifications (40 CFR 70.7(e)(2)): 31 TAC sections 122.215–122.217; (5) Provisions for permit content (40 CFR 70.6(a)): 31 TAC sections 122.141–122.145; (6) Provisions for operational flexibility (40 CFR 70.4(b)(12)): 31 TAC section 122.221; (7) Provisions to determine insignificant activities (40 CFR 70.5(c)): 31 TAC section 122.010 (definition of applicable requirement) and sections 122.215–122.217; (8) Enforcement provisions (40 CFR 70.4(b)(5) and 70.4(b)(4)(ii)): Supplemental Volume ''State of Texas Office of the Attorney General'' and Volume 3, ''Texas Health and Safety Code'', section 382.082(b).

The following requirements of 40 CFR part 70 are addressed in the Texas permit regulation:

(a) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2)). These provisions require all sources subject to the operating permits regulations to have a permit to operate that assures compliance by the source with all applicable requirements. The State is to submit a program that, at a minimum, assures adequate authority to issue permits in compliance with all the applicable requirements of title V of the Act and the part 70 regulation. 40 CFR 70.2 defines the term ''applicable requirement'' to include: any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act; any term or condition of any preconstruction permit issued pursuant to regulation approved or promulgated through rulemaking under title I including Part C or D, of the Act; and additional requirements listed in 40 CFR 70.2. 40 CFR part 70 requires all applicable requirements to be adequately addressed in the permit application and the operating permit.

Section 122.010 of the Texas permit regulation defines the term ''applicable requirement.'' Paragraph A of the definition makes specific reference to the Texas State Implementation Plan (SIP) approved chapters which the State considers relevant requirements of title I of the Act. Paragraph B uses the qualifier ''Part C (Prevention of Significant Deterioration) or Part D (Nonattainment Review)'' to further specify what constitute applicable requirements. This definition excludes certain minor NSR permitting activities as applicable requirements. Under the Texas permitting structure, any reasonably available control technology (RACT), maximum achievable control technology (MACT), section 112, or section 111 requirements applicable to minor units at major sources (whether reflected in a minor source permit or not) will be included as part of major source's original title V permit. Any non-RACT, non-111, and non-112 minor NSR permitting requirement will not be included in the major source's title V permit. For this reason, the proposed definition is inconsistent with the definition contained in the part 70 regulation. The EPA interprets the Federal definition of ''applicable requirement'' to include terms and conditions of ''any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I'', including all minor new source review permits.

However, on August 29, 1994, (see 59 FR 44574, Operating Permits Program Interim Approval Criteria), the EPA proposed revisions to 40 CFR part 70 to allow interim approval for States such as Texas whose programs do not provide for incorporating into permits all requirements established through EPA-approved minor NSR programs, and that can show compelling reasons for receiving interim approval. The State of Texas has argued that the State's existing minor NSR program is so stringent as to make the integration of a minor NSR permit into part 70 permits infeasible, and from the standpoint of environmental protection, unnecessary. The EPA acknowledges that Texas' minor NSR program is a very stringent one. The Texas program requires authorization prior to the construction of any new facility or the modification of an existing facility. The term ''facility'' is broadly defined to include any ''point of origin'' of air contaminants, so there is no opportunity for a source to ''net out'' of minor NSR. Moreover, Texas mandates best available control technology (BACT) as the emission control technology which applies to all minor NSR changes. Texas further subjects each minor NSR permit and permit amendment to a health effects evaluation which considers the cumulative effect of the proposed action, together with other air contaminant sources, on ambient air quality. Finally, where the Texas minor NSR program provides for public notice of a permit action, the program provides citizens the right to request a full evidentiary hearing on the action. Texas has also pointed to the exceptionally large number of part 70 sources which are located in the State and which are candidates for minor NSR. On the basis of the showing of compelling reasons described above, the EPA believes that a State or local permitting authority with minor NSR/part 70 integration difficulties such as Texas would warrant interim approval.

The following sections of the permit regulation are directly related and are considered part of the minor NSR/part 70 integration issue: permit application (sections 122.130–122.139), permit revisions (sections 122.210–122.221), and permit content (section 122.141–122.145). For full approval, these sections must be revised to be consistent with part 70.

The August 29, 1994, proposal for Operating Permits Program Interim Approval Criteria requires that, in such interim approval situations, a State: (1) Include a statement in permits that certain minor NSR requirements are not included in permits issued during the interim period; (2) include a cross-reference in each operating permit to the minor NSR permit for that source; and (3) require reopening of permits for incorporation of minor NSR permit conditions upon completion of the interim approval period. If the August proposal is finalized, it is the EPA's position that the Texas program can be granted interim authorization as long as the State complies with the three conditions discussed above.

Section 122.120 of the Texas permit regulation addresses 40 CFR 70.3(a), regarding applicability of part 70. Section 122.120 requires the owner or operator of a site to submit an application for a Federal operating permit if the site contains one or more of the following: (1) Any major source as defined in section 122.010 (relating to

general definitions); (2) any affected source as defined in section 122.012 (relating to acid rain definitions); (3) any solid waste incineration unit required to obtain a Federal operating permit pursuant to section 129(e) of title I of the Act; and (4) any non-major source which the EPA, through further rulemaking, has designated as no longer exempt from the obligation to obtain a Federal operating permit. The State further identifies in sections 122.120(4)(A)–(C) any non-major source subject to section 111, any non-major source subject to section 112 or ''any source in a source category designated by the Administrator pursuant to title III of the Act''. The State's provision regarding applicability is inconsistent with the Federal definition. Sections (4) (A) and (B) each appear to define non-major source as ''*any source*, including an area source,'' subject to standards under section 111 or 112 of the Act. Section 122.120(4) could potentially be interpreted as exempting any source, even a major source, from the requirement to obtain a part 70 permit. For full approval, the State must revise sections 122.120(4) (A) and (B) to clarify source applicability. Additionally, section 122.120(4)(C) of the permit regulation defines non-major source as ''any source in a source category designated by the Administrator pursuant to Title III of the Act.'' 40 CFR 70.3(a) includes a number of different types of sources other than section 112 sources. For full approval, section 122.120(4)(C) of the permit regulation must be modified to be consistent with 40 CFR 70.3(a).

Section 122.010 of the Texas permit regulation defines major source as ''any site which emits or has the potential to emit air pollutants as described in subparagraphs (A), (B), and (C) of this definition.'' The permit regulation defines ''site'' to allow research and development (R & D) operations to be treated as a separate site from any manufacturing facility with which they are co-located. The State's permit regulation is inconsistent with 40 CFR 70.3 which requires that a State's operating permits program provide for the permitting of all major sources, and 40 CFR 70.4(b)(3)(i) which requires that the State demonstrate adequate legal authority to issue permits and assure compliance with each applicable requirement by all part 70 sources.

Confusion over this issue has occurred as a result of language in the preamble to the final July 21, 1992, 40 CFR part 70 rulemaking (57 FR 32264). The preamble language indicates that States would have the flexibility in many cases to treat R & D facilities separately from the manufacturing facilities with which they are co-located. The EPA intended for this language to clarify the flexibility in part 70 for allowing R & D facilities to be treated separately in cases where the R & D facility has a different two-digit Standard Industrial Classification (''SIC'') code and is not a support facility. This approach is consistent with the treatment of R & D facilities in the New Source Review program.

The Texas permit regulation could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources with the same SIC code, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure all part 70 requirements for these sources are met. For full part 70 approval, the Texas permit regulations must treat research and development activities consistent with part 70.

Pursuant to 40 CFR 70.5(c), a permit application must describe all emissions of regulated air pollutants emitted from any emission unit. However, the Administrator may approve, as part of a State program, a list of insignificant activities and emission levels which need not be included in the permit application. The Texas operating permit program is designed to require the applicant to certify all emission units subject to an applicable or potential applicable requirement be described in the permit application.

Section 122.132 of the Texas permit regulation discusses the required information the permittee is to include in the operating permit application. The permit application shall include for each emission unit, or group of similar emission units: (1) Information identifying each applicable requirement, any corresponding emission limitation and any corresponding monitoring, reporting, and recordkeeping requirements; and (2) information identifying potentially applicable requirements for that particular type of emission unit and the basis for the determination that those applicable requirements do not apply.

Therefore, it is necessary for the applicant to identify all potential applicable requirements for each unit and give a basis for all negative applicable determinations. In other words, where a unit has a limitation or a specific characteristic of an emission unit that is limited by a regulation, but the applicant claims the unit is not subject to that regulation, the applicant is required to justify why. The applicant is responsible and is liable for including all applicable and potentially applicable requirements in the permit application. The potential applicable requirement language as a practical manner will require the source to characterize operations and emissions in a manner that is comprehensive enough to allow the State to independently verify which requirements are applicable. This process is subject to audits by State field inspectors, and action could be taken if violations of the Texas Permit Regulation exist.

Pursuant to section 122.120(1) of the Texas permit regulation, the owner or operator of a site shall submit an application to the TNRCC if the source is a major source. Major source applicability is calculated on a site's potential to emit air pollutants. When the applicant is calculating major source applicability, all emissions at each unit will be accounted for at the site, regardless if a unit is potentially subject to an applicable requirement. The operating permit application requires the applicant to indicate all air pollutants that are major at the site. The operating permit will reference pre-construction permits in which specific emission data for each emission unit will reside. Additionally, more detail of specific emission data is contained in an emission inventory database.

The design and approach the State uses to keep activities out of the operating permit application is considered practical and equivalent to part 70. This design attains the same results as a list of insignificant activities or emissions thresholds for units. The EPA believes the procedure set forth in the Texas permit regulation to identify insignificant activities achieves the goal and intent of the part 70 regulation and therefore is consistent and acceptable.

The part 70 regulation requires the permit application to describe all emissions of regulated air pollutants emitted from any emissions unit. A regulated air pollutant includes any pollutant subject to a standard promulgated under section 112 or other requirement established under section 112 of the Act, including sections 112(g), (j), and (r). The Texas permit regulation defines the term ''air pollutant'' and does not define ''regulated air pollutant.'' It defines air pollutant to include ''any pollutant listed in section 112(b) or section 112(r) of the Act *and* subject to a standard promulgated under section 112 of the Act.'' The term ''air pollutant'' is also used in the Texas definitions for ''potential to emit'' and ''major source.'' This creates an inconsistency with the part 70 regulation, in which applicability is based on a source's potential to emit any air pollutant,

including those *listed* pursuant to section 112, rather than on pollutants which are subject to a promulgated standard. For full approval, the definition of ''air pollutant'' must be modified to be consistent with the part 70 regulation.

Section 122.010 of the Texas permit regulation defines ''major source'' and further identifies the twenty-seven stationary source categories required to include a source's fugitive emissions in determining when a source is major. Category xxvii states that, for ''any other stationary source category which, as of August 7, 1980, is being regulated under sections 111 or 112 of the Act,'' fugitives must be counted in determining if the source is major. This is inconsistent with the current 40 CFR 70.2 which requires fugitive emissions to be counted for all section 111 and 112 standards, and which does not limit the stationary source categories to those which existed as of August 7, 1980. For full approval, the State must be consistent with part 70.

Section 122.010 of the Texas permit regulation defines ''title I modification'' as a change at a site that qualifies as a modification under section 111 of title I of the Act or section 112(g) of title I of the Act, or as a major modification under part C or part D of title I of the Act. The State's definition of ''title I modification'' does not include changes reviewed under a minor source preconstruction review program (''minor NSR changes''), nor does 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. The EPA is currently in the process of determining the appropriate interpretation of ''title I modification''. As further explained below, the EPA has solicited public comment on whether the phrase ''modification under any provision of title I of the Act'' in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include minor State preconstruction review programs approved by the EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act and regulations addressing source changes that trigger the application of NESHAP established pursuant to section 112 of the Act prior to the 1990 Amendments.

In the August 29, 1994, proposed revisions to the interim approval criteria at 40 CFR section 70.4(d) the EPA proposes to allow State programs with a narrower definition of ''title I modification'' to receive interim approval (59 FR 44572). The EPA in that notice states its belief that the better reading of ''title I modification'' would include minor NSR and pre-1990 NESHAP requirements, but solicited public comment on the appropriate interpretation of the term (59 FR 44573). If the definition of ''title I modification'' is finalized to include minor NSR changes, States such as Texas which have a narrower definition are eligible for interim but not final approval. If the final definition excludes changes reviewed under minor NSR and changes that trigger a pre-1990 NESHAP requirement, the State's definition of ''title I modification'' would be consistent with part 70.

For similar reasons, the EPA will not construe 40 CFR section 70.7(e)(2)(i)(A)(3) to prohibit the State from receiving interim approval because it allows minor NSR case-by-case determination changes to be processed as minor permit modifications. Again, although the EPA has reasons for believing that the better interpretation of ''title I modification'' is the broader one, the EPA does not believe that it is appropriate to deny interim approval to a State such as Texas on such grounds.

(b) Permit application requirements (40 CFR 70.5(c)). These requirements are addressed in sections 122.130–122.139 of the Texas permit regulation. A transition plan is included in the permit regulation which accounts for six SIC codes subject to the Texas interim approval program. The Texas permit regulation requires the owner or operator to submit a timely and complete application for each site subject to the requirements of the permit regulations.

Pursuant to 40 CFR 70.5(c)(8)(iii)(C), a compliance schedule is required for sources out of compliance at the time of permit issuance. Section 122.132(b)(3)(B) of the Texas permit regulation addresses compliance schedules but appears to not require that schedules be at least as stringent as any consent decree or administrative order to which the source is subject. For full part 70 approval, the State must revise the permit regulation to be consistent with the part 70 regulation.

(c) Permit issuance and revision procedures (40 CFR 70.7). These requirements are provided for in subchapter C of the permit regulation. The State has requested that the EPA approve the proposed operating permits program as a source category-limited interim program for a period of two years. Section (II)(B) of this notice (referring to options for approval/disapproval and implications) further discusses the sites subject to the interim approval program and the Texas rationale for requesting interim approval.

Section 122.241 of the Texas permit regulation requires permit applications for renewal at least six months prior to the date of permit expiration, but not more than eighteen months prior to the date of permit expiration. The permit regulation contains criteria for determining completeness of applications consistent with 40 CFR 70.5(a)(2).

Pursuant to 40 CFR 70.7, the State's program must prohibit a source from operating after the time that the source is required to submit a timely and complete application, except in compliance with a permit issued under a part 70 program. Section 122.138 of the Texas permit regulation allows an application shield if there is a timely and complete application for permit issuance, significant permit modification to a permit, or renewal. The site's failure to have a Federal operating permit is not a violation until the State takes final action on the permit. The application shield provided for in 40 CFR 70.7(b) does not apply to significant modifications, but only applies to a ''complete application for permit issuance (including for renewal)''. For this reason, section 122.138 of the Texas permit regulation is inconsistent with 40 CFR 70.7. For full approval, the Texas permit regulation must be made consistent with the part 70 regulation by deleting the reference in section 122.138 to ''significant permit modification to a permit.''

Sections 122.211–122.213 of the Texas permit regulation contain the requirements of 40 CFR 70.7(d) for administrative amendments, but do not require the Administrator's approval for similar changes allowed by section 122.211. This is inconsistent with 40 CFR 70.7(d)(1)(vi) which requires that, in order for changes other than those specified in 40 CFR 70.7(d) (i) through (v) to be made as administrative amendments, they must first be determined by the Administrator, as part of the approved part 70 program, to be similar to those specified in 70.7(d)(1) (i) through (iv). For full approval, section 122.211 must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, for the Administrator's approval as part of the State's part 70 program.

Sections 122.215–122.217 of the Texas permit regulation requires certain permit revisions to be processed as ''permit additions''. The criteria for ''permit additions'' appear to be the same as the Federal criteria for some types of changes noted under minor permit modification provisions (40 CFR 70.7) and for some changes allowed as ''off permit'' changes under 40 CFR 70.4(b)(14). The State proposes to implement the ''permit addition'' criteria in the interest of providing adequate, streamlined, and reasonable procedures for processing permit revisions. However, the EPA does not consider the streamlined procedures set out in sections 122.215–122.217 of the Texas permit regulation to be equivalent to the minor permit modification procedures found in the part 70 regulation. For full approval, the permit additions rule and all other Texas permit revisions rules must be modified to be consistent with part 70.

The criteria to qualify for permit additions in section 122.215 include the following: A change at a site may qualify as a permit addition if the change is not addressed or prohibited by the Federal operating permit, does not violate any existing term or condition of the Federal operating permit, does not violate any applicable requirement, and is not a title I modification.

Section 122.215(c) also allows a change at a site to be processed as a permit addition if the change ''does not require or change a determination of an emission limitation under section 112(g) or section 112(j) of title I of the Act * * *''. The Federal part 70 regulation contains a similar provision at 40 CFR 70.7(e)(2)(i)(A)(3) with respect to minor permit modification procedures, but the Federal provision is written in general terms to prohibit modifications that change a ''case-by-case'' determination of an emission limitation or standard. Section 122.215(c) of the Texas permit regulation does not require case-by-case reasonably available control technology (RACT) changes to be processed as significant permit modifications. The EPA interprets 40 CFR 70.7(e)(2)(i)(A)(3) provisions prohibiting changes in ''case-by-case'' determinations to apply to RACT equivalency determinations. Therefore, the EPA does not consider the Texas provision to be equivalent to the part 70 regulation. For full approval, the permit regulation must be modified consistent with part 70.

Section 122.215(c)(2) of the Texas permit regulation defines ''significant changes to monitoring, reporting or recordkeeping requirements in the permit.'' The definition includes the ''removal of monitoring, recordkeeping, or reporting terms and conditions, or a substitution in those terms and conditions promulgated pursuant to Federal New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants.'' This definition of significant changes to monitoring, reporting or recordkeeping requirements is acceptable under the current part 70 rule. If any additional rulemaking is promulgated by the EPA on this subject, the State must change its definition consistent with the new rulemaking.

Section 122.216 of the Texas permit regulation allows applications for permit additions to be submitted to the State no later than 90 days after the owner or operator has obtained or qualified for a preconstruction authorization. However, under this rule after the source receives its preconstruction permit, it may make the requested operating change before submitting the operating permit application within the 90-day timeframe. 40 CFR 70.7(e)(2)(v) requires that no operating change be made if a source is changing a term in its original part 70 permit until the source has submitted the operating permit revision application. For full approval, the Texas permit regulation must be revised to be consistent with part 70.

Section 122.217 addresses the procedures used to process permit additions and states ''the permit addition shall not become final until after the EPA's 45-day review period at renewal.'' For the EPA to consider permit additions equivalent to the procedures in 40 CFR 70.7(e)(2), the EPA must have the opportunity to review and object to the issuance in writing within 45 days of receipt of the proposed permit. For full approval, the Texas permit regulation must be consistent with part 70 and allow for timely EPA review.

The Texas permit addition procedures addressed in section 122.217 provide that, within 90 days after receipt of a complete application, the agency is to determine that the requested modification does not meet the permit addition criteria and that it should therefore be reviewed under the significant modification procedure, or the agency is to revise the draft permit addition and transmit to the EPA the new proposed permit addition. This section does not include a deadline for the TNRCC to issue or deny a permit addition modification. The minor permit modification procedures contained in 40 CFR 70.7(e)(2) require a State to issue or deny the permit modification within 90 days or 15 days after the end of the Administrator's 45 day review period, whichever is later. For full approval, the Texas permit regulation must be consistent with part 70.

Subchapter E of the Texas permit regulation contains the acid rain provisions, as well as the deadlines for submitting acid rain permit applications. The provisions and timelines are consistent with those required by title IV of the Act. Section 122.139 of the Texas permit regulation regarding action on permit applications and section 122.136 regarding additional information are consistent with 40 CFR 70.4(b)(6) and 70.7(a)(4).

Pursuant to the part 70 regulation, a permit must be reopened and revised for cause when an additional applicable requirement becomes applicable to a permitted site with a remaining permit term of three or more years. Sections 122.231 and 122.233 of the Texas permit regulation discuss the criteria and procedures for permit reopenings and meet the requirements of 40 CFR 70.7(f).

Provisions for public notice have been contained in section 122.153 of the Texas permit regulation and in section 122.202(a)(3) for general permits. Those sections provide for procedures for public notice and an opportunity for public comment for all permit issuance proceedings, including initial permit issuance, significant modifications, renewals, and initial general permits. 40 CFR 70.7(h) requires the public notice to include the emissions change involved in any permit modification. For full approval, the State must revise its permit regulation to be consistent with part 70.

Provisions for the EPA and affected State review to be accomplished in an expeditious manner as required by 40 CFR 70.8 have been provided for in sections 122.310 and 122.311 of the Texas permit regulation. Section 122.132 of the Texas permit regulation requires the applicant, rather than the permitting authority, to submit the permit application directly to the Administrator. This is acceptable and meets the requirements of 40 CFR 70.8.

40 CFR 70.8(a)(3) requires each State permitting authority to keep records for five years. The State did not address this requirement in the Texas permit regulation. However, the TNRCC is subject to, and must comply with, the State of Texas Records Retention Schedule that is approved by the State Auditor's Office and the Texas State Library and Archives Commission (signed and dated April 7, 1993) requiring permit files to be maintained for three years after a file is closed. A closed file is one that is closed, terminated, expired, or settled.

Therefore, records will be maintained for the life of the permitted facility plus an additional three years. This is consistent with and meets the requirements of 40 CFR 70.8(a)(3).

(d) Permit Content (40 CFR 70.6(a)). The permit content requirements are contained in sections 122.141–122.145 of the Texas permit regulation. 40 CFR 70.3(d) requires fugitive emissions from a part 70 source to be included in the operating permit in the same manner as stack emissions. The definition of an ''emission unit'' in section 122.010 of the Texas permit regulation includes fugitive emissions to be collectively considered as an emission unit. The operating permit will consolidate already existing federally enforceable requirements at relevant emission units. This raises the minor NSR/part 70 integration issue as discussed in section II(A)(2)(a) above because of the manner in which Texas has defined ''applicable requirement''. Under 40 CFR 70.3, a permit application must describe all emissions of regulated air pollutants emitted from any emission unit, including fugitive emissions from emission units not subject to an applicable requirement. Because of the issue discussed in section II(A)(2)(a) of this notice regarding the State's definition of applicable requirement, the State's operating permit program does not ensure that this part 70 requirement will be met. For full approval, Texas must revise the Texas permitting regulation to be consistent with part 70.

The Texas permit regulation allows for such changes as emission trading and anticipated operating scenarios provided the permittee meets the requirements set forth in section 122.221 (operational flexibility), that the permittee comply with Regulation VI (Control of Air Pollution by Permits for New Construction or Modification), and provided the Texas SIP allows it. Regulation VI does not allow for a facility to ''trade emissions'' without best available control technology and an impacts review, nor does Regulation VI allow a source to vary its operating scenario, unless expressly allowed under an existing preconstruction authorization. The Texas permit regulation has adequately addressed emission trading and operating scenarios.

40 CFR 70.6(b) requires all terms and conditions of a permit, including any provisions designed to limit a source's potential to emit, to be enforceable by the EPA and citizens, unless such terms and conditions are specifically designated as not federally enforceable. The State submitted section 122.122 (relating to establishment of federally enforceable restrictions on potential to emit) as a SIP revision on September 17, 1993. Section 122.122 establishes a procedure for grandfathered sources, (i.e. sources exempted from having a State NSR permit because they were constructed or operated prior to 1971), to submit a certification to the State that establishes a limit on potential to emit that is enforceable as a matter of State law. If section 122.122 is approved by the EPA into the SIP, these limits would be federally enforceable as well. The EPA is taking no action on section 122.122 in this notice. A separate action will be taken on the State's proposed SIP revision at a later date.

On January 25, 1995, the EPA's Office of Air Quality Planning and Standards issued guidance which, among other things, announced the availability of a two-year transition period during which a State could give sources additional options for seeking federally enforceable limitations on potential to emit. These options allow a source with a practicably enforceable limit on potential to emit in a State enforceable permit and/or limitations established by State rule (such as by certificates of registration issued pursuant to section 122.122), to certify to the EPA that it accepts the Federal enforceability of that limit for the duration of the transition period. Certifications developed pursuant to section 122.122 will serve as the basis for exercise of this transition policy, provided Texas wishes to exercise this option, and an acceptable certification process is developed between Texas and the EPA addressing the source's acceptance of Federal enforceability.

40 CFR 70.4 requires the State to issue permits for a fixed term of five years in the case of permits for acid rain and all other permits for a period not to exceed five years. 40 CFR 70.4(b)(3)(iv) provides that permits issued for solid waste incineration units combusting municipal waste subject to provisions under section 129(e) of the Act can have a fixed permit term of twelve years. Rather than making the distinction between five and twelve years, section 382.0543(a) of the Texas Clean Air Act provides that an operating permit is subject to renewal at least every five years. This approach for solid waste incineration units combusting municipal waste is acceptable and meets the requirements of the part 70 regulation. The Texas permit regulation does not, however, limit the general permit term to a maximum of five years. For full approval, the State of Texas must revise the general permit term to be consistent with part 70.

Temporary sources, as allowed by 40 CFR 70.6(e), are provided for in section 122.204 of the Texas permit regulation. This section meets the requirements of the part 70 regulation.

The concept of a permit shield is discussed in 40 CFR 70.6(f) as a means by which States could allow an enforcement shield as a permit provision, provided certain criteria were met. The State determined that the permit shield was too broad in scope and too difficult to apply properly. Therefore, the State chose not to include the permit shield as described in the part 70 regulation. Instead, the State adopted section 122.145(e) through which the State intends to provide for an enforcement shield in those situations where the interpretation of a rule is required and may be subject to change.

The EPA believes the intent of the rule is worthy, but is concerned about its ambiguities. Therefore, the EPA believes it can not go forward with a final action granting interim approval to the State of Texas unless the EPA receives a written commitment from the board of the TNRCC or designee agreeing to process any actions taken pursuant to section 122.145(e) as follows: (1) The interpretation made pursuant to section 122.145(e) shall be limited to applicability issues only; (2) the EPA shall have the opportunity to review and veto every section 122.145(e) action; and (3) the interpretation will be based upon the most current EPA guidance, and any guidance developed by the TNRCC must be in writing and preapproved by the EPA. Additionally, for full part 70 approval, the TNRCC must revise section 122.145(e) of the Texas permit regulation to reflect the three previous provisions.

Emergency provisions are provided for in 40 CFR 70.6(g). Section 122.143 of the Texas permit regulation references chapter 101 (General Rules), which contains notification requirements for major upsets. Under this chapter, the owner or operator of a facility must notify the Executive Director of the TNRCC as soon as possible of any major upset condition which causes or may cause an excessive emission that contravenes the intent of the statute or the regulations. In the event that the information required in the notification is unknown at the time of the initial notification, then such information must be provided as soon as possible, and submitted as a written report no later than two weeks from the onset of the upset condition. This allowance for time of agency notification by the permittee is

inconsistent with the part 70 regulation. 40 CFR 70.6(g)(3) requires the permittee to submit notice of the emergency to the permitting authority within two working days. For full approval, the Texas permitting rule must be consistent with the part 70 regulation.

The part 70 regulation requires an operating permits program to allow for operational flexibility. 40 CFR 70.4(b)(12) allows for ''section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed emissions allowable under the permit.'' ''Section 502(b)(10) changes'' are not defined or included in the Texas permit regulation; therefore, it is not clear what types of changes can be processed through the State's operational flexibility provision. Section 122.221 of the Texas permit regulation could be interpreted to allow changes which violate what the EPA considers an applicable requirement. This is inconsistent with the definition of ''Section 502(b)(10) changes'' in the part 70 regulation. Therefore, for full approval, the State must revise its permit regulation such that the definition of ''Section 502(b)(10) changes'' is consistent with part 70.

(e) Off-permit (40 CFR 70.4(b)(14) and 70.4(b)(15)). Section 122.215 of the Texas permit regulation defines off-permit changes under part 70 as changes which qualify as permit additions. Because of the State's narrow definition of applicable requirement, some changes which would be allowed as ''off-permit'' changes under the Texas rule would not be considered ''off-permit'' under the Federal definition of changes which can be made without a permit revision under 40 CFR 70.4(b)(14). Section (II)(A)(2)(a) of this notice identifies issues regarding the definition of applicable requirement that must be addressed prior to full approval.

3. Permit Fee Demonstration

In the fee regulation, the State proposes to charge an emission fee for sources subject to title V in Fiscal Year 1994 (FY 1994) and FY 1995 equivalent to at least the part 70 presumptive minimum fee of $25 per ton of regulated air pollutants, adjusted per the consumer price index (CPI). The emission fee rate for FY 1994 is set at $25 per ton of regulated pollutants including carbon monoxide (CO). Texas does not charge fees above the 4,000 ton per year cap. The State will collect $40 million per year to support all applicable part 70 activities. The generation of $40 million in revenue, if CO emissions were excluded, corresponds to an average of $30.77 per ton of regulated pollutants. This average rate is above the presumptive minimum adjusted by the CPI. The emission fee rate for FY 1995 averages $26 per ton of criteria pollutants including the collection for CO emissions. The fee rate will be reviewed in early calendar year 1995 and every two years thereafter. The fee review will account for projected CPI adjustment, additional staffing needs, and/or emission reductions that may require increasing the fee rate.

Pursuant to 40 CFR 70.4(b)(8), the State must include in the fee demonstration an estimate of the permit program costs for the first four years after approval and a plan detailing how the State plans to cover these costs. The EPA has received the TNRCC FY 1994 and FY 1995 operating budget. Since the EPA has not received a complete four year projection, this will be required for full approval.

4. Provisions Implementing the Requirements of Other Titles of the Act

The State of Texas request for approval of a part 70 program also serves as a request for approval of the State's rulemaking process as a mechanism to gain delegation, when requested by the State for a particular standard, of unchanged section 112 standards under the authority of section 112(l). At this time, the State plans to use the mechanisms of adoption-by-reference and case-by-case adoption to adopt unchanged Federal section 112 requirements into its regulations. The State of Texas may, at any time, exercise its option to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA. The State will receive delegation of those remaining standards and programs through the section 112(l) delegation process.

The radionuclide NESHAP is a section 112 regulation and therefore also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclides is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Texas has demonstrated in its operating permits program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Texas enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. The EPA has determined that this legal authority is sufficient to allow Texas to issue permits that assure compliance with all section 112 requirements.

The State of Texas will pursue delegation of rules and programs, as appropriate, to implement and enforce the existing and future requirements of sections 111, 112, and 129 of the Act, and all MACT standards promulgated in the future, in a manner consistent with State law, to ensure all applicable requirements of part 70 are met.

Section 112(g) of the Act requires that, after the effective date of a permits program under title V, no person may construct, reconstruct, or modify any major source of hazardous air pollutants unless the State determines that the MACT emission limitation under section 112(g) will be met. The EPA has announced its interpretation of the Act in the **Federal Register** (see 60 FR 8333, February 14, 1995) (hereafter Interpretive Notice). The Interpretive Notice postpones the effective date of section 112(g) until after the EPA has promulgated a final rule addressing that provision. The rationale for the revised interpretation was explained in detail in the Interpretive Notice.

The Interpretive Notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule to allow States time to adopt rules implementing the Federal rule. If a decision is made to allow such additional delay in the implementation of section 112(g), the EPA will announce that decision in the final section 112(g) rulemaking.

The State of Texas adopted, and incorporated by reference, the provisions of 40 CFR part 72 in effect on the date of this action for purposes of implementing an acid rain program that meets the requirements of title IV of the Act. It is the EPA's position that this State program meets the requirements of the Federal acid rain program.

5. Enforcement Provisions

40 CFR part 70 requires each operating permit program to provide enforcement authority to address

violations of program requirements by permitted sources. The Texas enforcement provisions are contained in the Texas Clean Air Act (TCAA) and are discussed in the Attorney General's Opinion. Pursuant to 40 CFR 70.11(a)(3)(ii), the permitting authority shall have the authority to recover penalties against any person who knowingly violates any applicable requirement, any permit condition, or any fee or filing requirement. These fees shall be recoverable in a maximum amount of not less than $10,000 per day per violation. The TCAA contains provisions which exceed the $10,000 per day per violation for all cases except for the filing fee criminal enforcement provision. This filing fee provision contained in section 382.092 of the TCAA imposes a penalty for failing to pay a required fee which is punishable ''for an individual by a fine of not more than twice the amount of the required fee, confined in jail not to exceed 90 days, or both fine and confinement and, for a corporation or association, by a fine of not more than twice the amount of the required fee.'' The preamble to part 70 regulation recommends that State enforcement authorities consider as criminal penalties not only fines, but also incarceration, so that State prosecutors will have more inducement to prosecute environmental crimes. Because this provision imposes a range of fines, confinement in jail, and imprisonment, the EPA is proposing to accept that the TCAA meets the criminal enforcement provisions of part 70. The EPA believes the filing fee provision achieves the goal and intent of 40 CFR part 70. The EPA is soliciting comments on the proposed position.

Texas' operating permits program submittal adequately addressed the enforcement requirements of 40 CFR 70.4(b)(4) and 70.4(b)(5) in Volume 1 and the supplemental volume. The submittal contains permit program documentation such as draft copies of the permit forms, application forms, public notice forms, certification forms, and compliance/enforcement reporting forms. Monitoring requirements are contained in this guidance material including the types of monitoring used to demonstrate compliance. However, this guidance may be subject to change once the part 64 enhanced monitoring rules are promulgated. The enforcement program is described in the document ''Guidance on Compliance and Enforcement Matters'' found in attachment IV of the State's submittal. Volume 1 contains a complete description of the State's compliance tracking and enforcement program which includes an agreement between the State and the EPA, entitled ''Fiscal Year 1993 Memorandum of Understanding between the Texas Air Control Board and the U.S. Environmental Protection Agency.''

6. Summary

The State of Texas submitted to the EPA its operating permits program, requesting the EPA to grant interim approval to the Texas operating permits program. The submittal has been reviewed for adequacy to meet the requirements of 40 CFR part 70 (1992). The results of this review are included in the technical support document, which will be available at the docket at the locations noted above. The submittal has adequately addressed all 11 elements required for interim approval as discussed in the part 70 regulation. However, the EPA has in this notice described inconsistencies between the Texas permit regulation and the part 70 regulation. These inconsistencies involve both the permit regulation and program implementation, with regard to applicability, permit application requirements, and permit issuance and revision. It is essential that these inconsistencies be remedied by the State consistent with the Act and 40 CFR part 70 prior to the EPA granting full approval of the State's operating permits program.

Due to pending litigation involving sections of 40 CFR part 70, the part 70 regulation may be revised. Any final revisions may require the State to make regulatory and statutory changes.

The State of Texas addressed all requirements necessary to receive interim approval of the State operating permits program pursuant to title V, 1990 Amendments and part 70 (1992).

B. Options for Approval/Disapproval and Implications

Pursuant to 40 CFR 70.4(d), Texas requested that the EPA approve the Texas Operating Permits Program as a source category-limited interim program for a period of two years. The EPA is proposing to grant interim approval to the operating permits program submitted by Texas on November 15, 1993, for a period of two years.

Volume 1 of the Texas operating permits program submittal includes the rationale for requesting interim approval. The State projects that over 3,000 major sources will be subject to the operating permits program. Many of these sources are complex. The EPA recognizes that a large percentage of the Nation's title V sources will be permitted by a single agency and that a ramp-up period is essential. The time following interim approval will allow the State to hire additional engineers and train experienced engineers to write quality permits that consolidate all applicable requirements into one document. Furthermore, the additional time is necessary to develop a computer information management system that will manage the permits, permit applications, and additional documentation. This computer system will be the mechanism used to interchange information between the TNRCC, the EPA, the affected States, the regulated community, and the general public. Such a database will give interested parties an efficient mechanism to review the current applicable requirements and the compliance status of a source. The EPA is satisfied that the State has demonstrated compelling reasons for a source category-limited interim approval.

Between the interim program and the full program, the transition schedule requires the State to take final action on applications for 400 sites each of the first two years, 1,000 sites the third year, and 600 sites each of the last two years. Therefore, it is projected that 60 percent of the sources required to obtain operating permits will obtain those permits in the first three years of the program.

State-specific circumstances preclude the TNRCC from demonstrating coverage of sources which are responsible for at least 80 percent of the aggregate emissions during the interim period. The State will be required to permit complex stationary sources such as refineries and petrochemical plants. These complex plants can have as many as 3,000 emission units per source. The State's rationale for requesting interim approval is to permit these complex sources toward the end of the permit issuance period (rather than during the first two years). The State designed the interim program to bring in similar types of sources and those which have the fewest number of emission points. This will enable the State to spend its resources on writing quality permits that are federally enforceable. The EPA is confident that the State is addressing enough sources in those first three years to represent a significant portion of the program.

III. Proposed Rulemaking Action

In this action, the EPA is proposing source category-limited interim approval of the operating permits program submitted by the State of Texas. The program was submitted by the State to the EPA for the purpose of complying with Federal requirements

found in title V of the Act and in 40 CFR part 70, which mandate that States develop, and submit to the EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands.

Requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a mechanism for delegation of Federal section 112 standards as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70. Therefore, as part of this interim approval, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's mechanism for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated when requested by the State. The State will receive delegation of the remaining standards through other section 112(l) delegation processes.

The EPA has reviewed this submittal of the Texas operating permits program and is proposing source category-limited interim approval for a period of two years. Certain defects in the State's permit regulation and program implementation preclude the EPA from granting full approval of the State's operating permits program at this time. The EPA is proposing to grant interim approval, subject to the State obtaining the needed regulatory and program implementation revisions within 18 months after the Administrator's approval of the Texas title V program pursuant to 40 CFR 70.4.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by July 7, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

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

VI. Miscellaneous

A. Interim Approval

Proposed interim approval of the part 70 operating permits program for the State of Texas.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 3, 1995.

A. Stanley Meiburg,

Deputy Regional Administrator (6D).

[FR Doc. 95–13926 Filed 6–6–95; 8:45 am]

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40 CFR Part 81

[FRL–5217–3]

Clean Air Act Reclassification; Arizona-Phoenix Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action EPA proposes to find that the Phoenix metropolitan PM–10 nonattainment area has not attained the PM–10 national ambient air quality standards (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas. Section 188(c)(1) of the Act established an attainment date of no later than December 31, 1994 for areas classified as moderate nonattainment areas under section 107(d)(4)(B) of the CAA. This proposed finding is based on monitored air quality data for the PM–10 NAAQS during the years 1992–94. If EPA takes final action on this proposed finding, the Phoenix Planning Area (PPA) will be reclassified by operation of law as a serious nonattainment area for PM–10 under section 188(b)(2)(A) of the CAA.

DATES: Comments on this proposed finding must be received in writing by July 7, 1995.

ADDRESSES: Comments should be addressed to Robert Pallarino, U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, Air Planning Branch, Plans Development Section (A–2–2), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Robert S. Pallarino, U.S. EPA, Region 9, Air and Toxics Division, Air Planning Branch, Plans Development Section (A–2–2), 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1212.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classification

On November 15, 1990, the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. Pursuant to section 188(a), all PM–10 nonattainment areas were initially classified as moderate by operation of law upon designation as nonattainment. These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694).

States containing areas which were designated as moderate nonattainment by operation of law under section 107(d)(4)(B) were to develop and submit state implementation plans (SIPs) to provide for the attainment of the PM–10 NAAQS. Pursuant to section 189(a)(2), those SIP revisions were to be submitted to EPA by November 15, 1991.

B. Reclassification as Serious Nonattainment

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date, whether PM–10 nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's ''air quality as of the attainment