allow the permitting authority to impose requirements which exceed title V applicable requirements, but not to waive any title V requirements for title V sources.

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 City's implementation of its permits program. The City of Albuquerque/ Bernalillo County address this requirement in the operating permits program plan part of the submittal under Section IV—Appendices B, C and H.

## 2. Regulations and Program Implementation

The City of Albuquerque/Bernalillo County have submitted Air Quality Control (AQC) regulation No. 41-"Operating Permit Regulations" and AQC No. 21-"Fee Regulations," for implementing the City of Albuquerque/ Bernalillo County part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was submitted in the final submittal on April 4, 1994. Copies of all applicable State and local statutes and regulations which authorize the part 70 program, including those governing State/City administrative procedures, were submitted with the City's program. The City of Albuquerque/Bernalillo County also submitted a list of insignificant activities with the submittal for the EPA's review and approval with the City/County operating permits program. This list, which underwent the City/County public participation process during the operating permits regulation hearing, is being approved by the Regional Office with this document. The list can be found in the submittal under Item II-"Operating Permits Program Description," Attachment II-3-"List of Insignificant Activities."

The City of Albuquerque/Bernalillo County operating permits regulations followed the State of New Mexico operating permits regulation AQCR 770. The State's regulations follow part 70 very closely with a few exceptions. The cross-reference chart submitted with the State's operating permits program submission can also be used for reviewing the City/County's program due to the close similarity of the State and City/County permit regulations. The New Mexico submittal addresses the cross-reference chart under Item VI-"Various Provisions", Attachment VI-1, indicating where each paragraph of the part 70 regulation is addressed in AQCR 770. The City submitted AQC 41, the

**Operating Permits Regulations for the** City, as Attachment I in the Final City Attorney's Opinion. The following requirements, set out in the EPA's part 70 operating permits program review, are addressed in the operating permits program plan and in AQC 41 Attachment I of the City/County's submittal as follows: (A) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2)): AQC 41.02, "List of Insignificant Activities"; (B) Provisions for continuing permits or permit terms if a timely and complete application is submitted, but action is not taken on a request prior to permit expiration (40 CFR 70.4(b)(10)): AQC 41.04(A)(4); (C) Provisions for action on permit applications (40 CFR 70.4(b)(6)): AQC 41.04(A)(3); (D) Provisions for permit content (including 40 CFR 70.4(b)(16)): all applicable requirements: AQC 41.03(C)(1); a fixed term: AQC 41.03(C)(2); monitoring and related recordkeeping and reporting requirements: AQC 41.03(C)(3) through (5); source compliance requirements: AQC 41.03(C)(7); (E) Operational flexibility provisions (40 CFR 70.4(b)(12)): AQC 41.03(C)(8); (F) Provisions for permit issuance, renewals, reopenings and revisions, including public, the EPA and affected State review to be accomplished in an expeditious manner (40 CFR 70.4(b)(13) and (16)): AQC 41.04; and (G) If the permitting authority allows off-permit changes, provisions assuring compliance with sections 70.4(b)(14)and (15): AQC 41(C)(9). The AQC regulations in section 41.04(H) provide that applicants can receive variances from non-Federal conditions only. The City/County prevent any source from receiving a variance from any AQC 41 or part 70 requirement. The City of Albuquerque/Bernalillo County's definition of "title I modification" does not include changes reviewed under a minor new source preconstruction review program ("minor NSR changes"). The EPA is currently in the process of determining the proper definition of that phrase. As further explained below, 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 State preconstruction review programs approved by 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 for National Emission Standard for Hazardous Air Pollutants (NESHAP) established pursuant to section 112 of the Act prior to the 1990 Amendments.

For the reasons set forth in the EPA's proposed rulemaking to revise the interim approval criteria of 40 CFR part 70 (59 FR 44572, August 29, 1994), the EPA believes the phrase "modification under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) is best 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 State/local preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Act and regulations addressing source changes that trigger the application of NESHAPs established pursuant to section 112 of the Act prior to the 1990 amendments, and would include minor NSR changes not covered under the City of Albuquerque/ Bernalillo County operating permits program's definition of "title I modification"

On August 29, 1994, the EPA proposed revisions to its criteria for interim approval of State/local operating permits programs under 40 CFR 70.4(d) to allow State/local operating permits programs with a narrower definition of "title I modification" like the City of Albuquerque/Bernalillo County's to receive interim approval (59 FR 44572). The EPA also solicited public comment on the proper interpretation of "title I modification." (59 FR 44572, 44573). The EPA stated that if, after considering the public comments, it continued to believe that the phrase "title I modifications" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to grant States/locals that adopted a narrower definition, interim approval

The EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking final action on part 70 operating permits programs submitted by the State/locals. However, it will not be possible to delay approval of operating permits programs until final action has been taken on EPA's proposed revisions to the part 70 interim approval criteria. This is because publication of the proposed revisions was delayed until August 29, 1994, and the EPA received several requests to extend the public comment