

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