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,