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