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 offpermit 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 "offpermit" 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-byreference 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