EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter F—Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities				
Division 1—Emissions Events				
Section 101.201	Emissions Event Reporting and Recordkeeping Requirements.	08/21/02	03/30/05 [Insert FR citation from published date].	
Division 2—Maintenance, Startup, and Shutdown Activities				
Section 101.211	Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.	08/21/02	03/30/05 [Insert FR citation published date].	
Division 3—Operational Requirements, Demonstrations, and Actions to Reduce Excessive Emissions				
Section 101.221	Operational Requirements	12/17/03	03/30/05 [Insert FR citation from published date].	
Section 101.222	Demonstrations	12/17/03	03/30/05 [Insert FR citation from published date].	
Section 101.223	Actions to Reduce Excessive Emissions	12/17/03	03/30/05 [Insert FR citation from published date].	
Section 101.224	Temporary Exemptions During Drought Conditions.	08/21/02	03/30/05 [Insert FR citation from published date].	
Division 4—Variances				
Section 101.231	Petition for Variance	08/21/02	03/30/05 [Insert FR citation from published date].	
Section 101.232	Effect of Acceptance of Variance or Permit	08/21/02	03/30/05 [Insert FR citation from published date].	
Section 101.233	Variance Transfers	08/21/02	03/30/05 [Insert FR citation from published date].	
*	*	*	*	*

[FR Doc. 05–6313 Filed 3–29–05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–154–2–7609; FRL–7892–6]

Approval of Revisions and Notice of Resolution of Deficiency for Clean Air Act Operating Permit Program in Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Texas Title V operating permits program submitted by the Texas Commission on Environmental Quality (TCEQ) on December 9, 2002. In a Notice of Deficiency (NOD) published on January 7, 2002, EPA notified Texas of EPA's finding that the State's periodic monitoring regulations, compliance assurance monitoring (CAM) regulations, periodic monitoring and CAM general operating permits (GOP), statement of basis requirement, applicable requirement definition, and potential to emit (PTE) registration regulations did not meet the minimum Federal requirements of the Clean Air Act and the regulations for State operating permits pfrograms. This action approves the revisions that TCEQ submitted to correct the identified deficiencies. Today's action also approves other revisions to the Texas Title V Operating Permit Program submitted on December 9, 2002, which relate to concurrent review and credible evidence. The December 9, 2002, submittal also included revisions to the Texas State Implementation Plan (SIP). We published our final SIP approval in the **Federal Register** on November 14, 2003 (68 FR 64543). These revisions to Texas' operating permits program resolve all deficiencies identified in the January 7, 2002, NOD and removes the potential for any resulting consequences under the Act, including sanctions, with respect to the January 7, 2002, NOD.

DATES: This final rule is effective on April 29, 2005.

ADDRESSES: Copies of the documents relevant to this action, including EPA's Technical Support Document, are in the official file which is available at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in

the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact Mr. Stanley M. Spruiell at 214–665–7212 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212, ; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout the document ''we,'' ''us,'' or ''our'' means EPA.

Outline

I. Background

The Clean Air Act (the Act) Amendments of 1990 required all States to develop operating permits programs that meet Title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Texas' operating permit program was submitted in response to this directive on November 15, 1993. We promulgated interim approval of the Texas Title V program on June 25, 1996 (61 FR 32693) and the program became effective on July 25, 1996. Subsequently, we promulgated full approval of the Texas Title V program effective November 30, 2001 (66 FR 63318, December 6, 2001). As explained in the proposed and final full approval, we granted full approval based on our finding that Texas had corrected the deficiencies identified at the time of the interim approval (66 FR at 51897 (October 11, 2001); 66 FR 63319). See also *Public Citizen* v. *EPA*, 343 F.3d 449 (5th Cir. 2003) (denying petitions for review challenging full approval).

Since the interim approval, members of the public filed comments with EPA alleging other deficiencies in the Texas Title V program, and EPA conducted a review of the issues raised. Section 502(i) of the Act and 40 CFR 70.10(b)(1) provide that whenever EPA makes a determination that a State is not adequately administering and enforcing its program in accordance with the requirements of Title V, EPA shall issue a notice to the State.

EPA published a notice of deficiency (NOD) for Texas' Title V Operating Permit Program on January 7, 2002 (67 FR 732). The NOD was based upon our finding that several State requirements did not meet the minimum Federal requirements of 40 CFR part 70 and the Act. TCEQ adopted rule revisions to resolve the deficiencies identified in the January 7, 2002, NOD. These rule revisions became effective, as a matter of State law, on December 11, 2002. TCEQ submitted these rule changes to EPA as a revision to its Title V Operating Permit Program on December 9, 2002. TCEQ also included, in the December 9, 2002, submittal, other regulatory revisions that strengthen Texas' program. On July 9, 2003 (68 FR 40871), we proposed to approve the revisions submitted December 9, 2002, as revisions to Texas Title V operating permits program. We received one comment letter in response to the proposal and our consideration of those comments is summarized in section IV of this preamble. We are approving the Texas rule revisions included in the December 9, 2002, submittal in today's action. The December 9, 2002, submittal also included provisions which TCEQ requested that we approve as revisions to its SIP. We approved those SIP revisions submitted December 9, 2002, on November 14, 2003 (68 FR 64543). We have prepared a Technical Support Document which contains a detailed analysis of our evaluation of this action. The Technical Support Document is available at the address listed above. Elsewhere in today's **Federal Register**, we are also taking final action to grant limited SIP approval of revisions to Title 30 of the Texas Administrative Code (30 TAC) 101.211, 101.221, 101.222, and 101.223, addressing the reporting, recordkeeping and enforcement requirements for excess emissions during startup, shutdown, and malfunction activities. The State has incorporated these provisions into its definition of ''applicable requirement'' for the Title V program.

II. What Is Being Addressed in This Action?

In today's action, we are approving revisions as identified below which TCEQ adopted November 20, 2002 (submitted to EPA December 9, 2002) and find that those revisions and final SIP approval of revisions published on November 14, 2003 and elsewhere in today's **Federal Register** resolve the deficiencies identified in the January 7, 2002, NOD.

A. Periodic Monitoring Regulations

The requirement for periodic monitoring set forth in 40 CFR 70.6(a)(3)(i)(B) states that each Title V permit must include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring.

TCEQ previously implemented periodic monitoring requirements through a phased approach which used either a periodic monitoring GOP or on a case-by-case determination. As a result, all permits did not have periodic monitoring when they were issued. To address the NOD, TCEQ has revised 30 TAC 122.132 and 122.142, and repealed 30 TAC 122.600, 122.604, 122.606, 122.608, 122.610, and 122.612 to ensure that all Title V permits, including all GOPs, contain periodic monitoring requirements that meet the requirements of 40 CFR 70.6(a)(3)(i)(B) when issued. TCEQ has repealed the periodic monitoring and CAM GOPs identified in the NOD and adopted 30 TAC 122.132(e)(13) to require permit applications to include periodic monitoring requirements consistent with part 70. TCEQ has amended 30 TAC 122.142(c) and 30 TAC 122.602 to require periodic monitoring which is consistent with part 70 to be included in all Title V permits, including GOPs, when the permit is issued. The revisions require that periodic monitoring be included in Title V permits at initial issuance under 30 TAC 122.201, permit renewals under 30 TAC 122.243, permit reopenings under 30 TAC 122.231(a) and (b), significant revisions under 30 TAC 122.221, and at minor permit revisions under 30 TAC 122.217. We are

today approving the revised rules and the State's repeals as a revision to Texas' Title V program and find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

B. Compliance Assurance Regulations

CAM is implemented through 40 CFR part 64 and 40 CFR 70.6(a)(3)(i)(A) and requires Title V permits to include ''all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including [40 CFR part] 64 . . .'' 40 CFR 64.5 provides that CAM applies at permit renewal unless the permit holder has not filed a Title V permit application by April 20, 1998, or the Title V permit application has not been determined to be administratively complete by April 20, 1998. CAM also applies to a Title V permit holder who filed a significant permit revision under Title V after April 20, 1998.

TCEQ previously implemented CAM through either a CAM GOP or a case-by-case CAM determination. TCEQ's use of a phased approach did not ensure that all permits would include CAM required by 40 CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5, because a facility did not have to apply for a CAM GOP until two years after the CAM GOP had been issued. To address the NOD, TCEQ has revised the sections of Chapter 122 relating to application content and permit content, to ensure that all permits, including GOPs, include CAM requirements according to the schedule in 40 CFR 64.5. TCEQ amended 30 TAC 122.132(e)(12) to specify that applications for units subject to CAM must be submitted according to the schedule specified in 40 CFR 64.5. TCEQ amended 30 TAC 122.142(h) to require that permits contain CAM in accordance with the schedule in 40 CFR 64.5. TCEQ adopted new 30 TAC 122.221(b)(4) to specify that the Executive Director may issue a significant permit revision if CAM is included for large pollutant-specific emission units, consistent with 40 CFR 64.5(a)(2). TCEQ also adopted 30 TAC 122.147, which specifies the terms and conditions that apply to units subject to CAM requirements, and 30 TAC 122.604 which address CAM applicability. These new and revised rules require that all permits issued after the effective date of the rule include CAM according to the schedule in 40 CFR part 64. We are today approving the revised, amended, and new rules as a revision to Texas' Title V program and find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

C. Periodic Monitoring and Compliance Assurance Monitoring General Operating Permits

The content requirements for part 70 permits are set forth in 40 CFR 70.6 and include periodic monitoring and CAM as permit conditions of all Title V permits. Also, 40 CFR 70.6(d)(1) provides that ''any general permit shall comply with all requirements applicable to other part 70 permits.'' TCEQ previously implemented CAM and periodic monitoring requirements through CAM and periodic monitoring GOPs which did not meet Title V's definition of, or requirements for, general permits. The terms and conditions of Texas' periodic monitoring GOPs and CAM GOPs contained only monitoring requirements, monitoring options, and related monitoring requirements for certain applicable requirements and therefore were missing a number of the requirements of 40 CFR 70.6.

To address the NOD, TCEQ amended Chapter 122 to require that all GOPs include periodic monitoring and CAM, and to eliminate the monitoring GOP process. To ensure that all permits are issued containing periodic monitoring and CAM, the TCEQ adopted amendments requiring periodic monitoring and CAM to be addressed in permit applications and to be included in issued permits. As discussed above, revised 30 TAC 122.132(e)(12) specifies that applications for units subject to CAM must contain elements specified in 40 CFR 64.3, Monitoring Design Criteria, and 40 CFR 64.4, Submittal Requirements. As revised, 30 TAC 122.132(e)(13) requires that applications for all initial permit issuances, renewals, reopenings, and significant and minor permit revisions include periodic monitoring requirements. TCEQ amended 30 TAC 122.142(c), which previously specified that periodic monitoring is only included as required by the Executive Director, and 30 TAC 122.142(h), which previously specified that permits include CAM as specified in Subchapter H. The amendments state that permits must contain periodic monitoring and CAM in accordance with the schedule in 40 CFR 64.5. These amendments will require permits to contain all requirements specified in 40 CFR 70.6. TCEQ eliminated the monitoring GOP process by adopting the repeal of all sections from Subchapters G and H that implemented monitoring through the GOP process. In addition to the previously mentioned periodic monitoring sections that were repealed, TCEQ repealed all of the CAM requirements contained in Subchapter H. The CAM applicability section and the section pertaining to quality improvement plans are adopted under Subchapter G, renamed Periodic Monitoring and Compliance Assurance Monitoring. TCEQ also adopted several amendments to Chapter 122 to clarify periodic monitoring and CAM implementation and to delete any reference to the monitoring GOP process.

TCEQ also amended the GOP definition at 30 TAC 122.10(11) to specify that multiple similar sources may be authorized to operate under a GOP, consistent with the requirement at 40 CFR 70.6(d) that general permits are limited to numerous similar sources. 30 TAC 122.501(a)(1) requires the Executive Director to issue GOPs with conditions that provide for compliance with all requirements of Chapter 122. TCEQ also revised 30 TAC 122.161 to make related miscellaneous changes.

We are today approving the new and revised rules and the repeals as a revision to Texas' Title V program and find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

D. Statement of Basis Requirement

40 CFR 70.7(a)(5) requires that ''[t]he permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.'' TCEQ regulations previously had no State regulation directly corresponding to 40 CFR 70.7(a)(5), and no other State regulations were identified that otherwise gave effect to this requirement. To address the NOD, TCEQ adopted new 30 TAC 122.201(a)(4), which requires that all permits issued by the Executive Director must include a statement that sets forth the legal and factual basis for the conditions of the permit, including references to the applicable statutory or regulatory provisions. The Executive Director will send this statement to EPA and any person who requests it. The statement of basis is required for all initial issuances, revisions, renewals and reopenings of permits. We are today approving the new rule as a revision to Texas' Title V program and find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

E. Definition of Applicable Requirement

Texas' definition of ''applicable requirement'' in 30 TAC 122.10(2) previously did not include all the applicable provisions of its SIP that implemented relevant requirements of the Act as required by 40 CFR 70.2. To address the NOD, TCEQ has amended its definition of ''applicable requirement'' in 30 TAC 122.10(2) to include citations to the relevant requirements of the Act which were identified in the NOD and others identified after issuance of that notice. The applicable requirement definition now includes 30 TAC 101.1, which relates to definitions; 30 TAC 101.3, which relates to circumvention; 30 TAC 101.201, 101.211, 101.221, 101.222, and 101.223, which relate to emissions events and maintenance, startup, and shutdown (''MSS'') reporting requirements; 30 TAC 101.8 and 101.9, which relate to sampling and sampling ports, and 30 TAC 101.10, which relates to emissions inventory requirements.[1] We are today approving the revised rule as a revision to Texas' Title V program and find that, together with the final SIP approval published elsewhere in this **Federal Register**, the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

F. Potential To Emit Registration Requirements

Major sources subject to the requirement to obtain a Title V permit are those sources whose potential to emit certain air pollutants exceed threshold emissions levels specified in the Act. A source may legally avoid the requirement to obtain a Title V permit by limiting its potential to emit to levels below the applicable major source threshold. This can be done by taking a federally enforceable limit on the PTE, which ensures that the conditions placed on the emissions to limit a source's PTE are enforceable as both a legal and practical matter, or through PTE limits that are legally and practically enforceable by a State or local air pollution control agency.[2] Those permit conditions, if violated, are subject to enforcement by EPA, the State or local agency, or by citizens.

Texas' Title V regulations previously allowed a facility to keep all documentation of its PTE limitation registrations on site without providing those documents to the State or to EPA; therefore, the PTE limitations were not practically enforceable. Also, the limitations were not federally enforceable because the Texas regulations at issue were not part of the Texas SIP. TCEQ has revised 30 TAC 122.122, and, though not required by the NOD, also revised similar PTE registration rules in its preconstruction review program (30 TAC 106.6, 116.115, 116.611). These changes require registrations to be submitted to the Executive Director, to the appropriate Commission regional office, and all local air pollution control agencies, and a copy shall be maintained on-site of the facility. TCEQ is also required to make the records available to the public upon request. Thus, these changes cure the previous deficiency regarding practicable enforceability caused by the lack of notice to the State. TCEQ also submitted these changes for approval as a SIP revision. We approved the amended 30 TAC 106.6, 116.115, 116.611, and 122.122 as revisions to the Texas SIP on November 14, 2003 (68 FR 64543). Our final SIP approval of these changes made the PTE limits in the certified registrations legally enforceable by EPA. We are also today approving the revised rules in 30 TAC 122 as a revision to Texas' Title V program and find that, together with the final SIP approval which was published November 14, 2003, the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

III. What Other Program Changes Are We Approving?

TCEQ also included in the December 9, 2002, submittal other regulatory revisions that strengthen Texas' program. Today's action also approves these revisions to the Texas Title V Operating Permit Program submitted on December 9, 2002, which relate to credible evidence and concurrent review.

A. Credible Evidence

TCEQ has revised its definition of ''deviation'' at 30 TAC 122.10(5) and 122.132(e)(4)(B) to require sources to consider ''any credible evidence or information'' to certify compliance. We are today approving this revision as consistent with part 70 and EPA's credible evidence rule, 62 FR 8314 (February 24, 1997).

B. Concurrent Review

TCEQ has revised its regulations concerning EPA review of Title V permits at 30 TAC 122.350(B)(1) to provide that EPA's review period may not run concurrently with the State public review period if any comments are submitted or if a public hearing is requested. We are today approving this revision as consistent with section 505(b) of the Act and 40 CFR 70.8.

IV. What Is Our Response to Comments Received in Response to Our Proposed Rulemaking?

On July 9, 2003 (68 FR 40871), we proposed to approve the revisions submitted December 9, 2002, as revisions to Texas Title V operating permits program. In the proposal, we requested that the public submit comments no later than August 8, 2003. We received one comment letter submitted jointly by Public Citizen, Inc., SEED Coalition, Galveston-Houston Association for Smog Prevention, Sierra Club and Hilton Kelley with four comments. Our response to those comments follows:

Comment 1. Lack of Monitoring in General Operating Permits (GOPs). The commenters provided the following comments relating to lack of monitoring in GOPs that are applicable to certain categories of sources.

Comment 1A. Commenters stated that Texas has not acted to revise its existing GOPs which fail to include applicable requirements and fail to include required monitoring for those requirements. Commenters also note that Texas issues GOPs to facilities that have site-specific requirements that are not included in the GOP, such as minor or major new source review (NSR) or prevention of significant deterioration (PSD) permit terms. Therefore, those applicable requirements cannot be reviewed by EPA or the public to ensure that monitoring sufficient to assure compliance with those permit terms is included in the Title V operating permit.

Response 1A. This comment raises an issue beyond the scope of the deficiency identified in the NOD. EPA identified the deficiency regarding periodic

[1] The NOD identified the emissions event and MSS reporting requirements at 30 TAC 101.6, 101.7, and 101.11 as SIP provisions that must be included in the definition of ''applicable requirement.'' TCEQ has revised those rules and recodified them at 30 TAC 101.201, 101.211, 101.221, 101.222, and 101.223 and submitted the rules to EPA for approval as a SIP revision. Our limited approval of these rules is published elsewhere in today's **Federal Register**. By incorporating the current SIP-approved emissions event and MSS reporting rules into the definition of ''applicable requirement,'' Texas has corrected the program deficiency identified in the January 7, 2002, NOD.

[2] Seitz and Van Heuvelen, Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit (January 22, 1996); Stein, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and section 112 Rules and General Permits (January 25, 1995).

monitoring and compliance assurance monitoring as a deficiency in the regulations. EPA stated: ''Texas's periodic monitoring *regulations* do not meet the requirements of part 70 and must be revised,'' citing problems with the approach of implementing the requirement through a monitoring GOP and use of a phased approach which could delay implementation of periodic monitoring after issuance of a Title V permit. 67 FR at 733. We then concluded that the State ''*must revise its regulations* to ensure that all Title V permits, including all GOPs, when issued, contain periodic monitoring that meets the requirements of 70.6(a)(3)(i)(B).'' *Id.* (emphasis added). EPA made parallel findings for the State's CAM regulations. 67 FR at 734 (''The TNRCC [3] *regulations* do not meet the requirements of the Act and part 70, and TNRCC *must revise its regulations* to ensure that all Title V permits, including all GOPs, will have the CAM required by [40] CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5''). EPA also provided instructions to the State on proper implementation of the periodic monitoring and CAM requirements in individual Title V permits.[4] However, these instructions did not render the monitoring provisions of all Title V permits in the State subject to the NOD. The NOD is clear on its face that only the monitoring regulations were the subject of the NOD and thus were required to be revised.

Nonetheless, EPA notes that it is exercising its oversight authority to ensure that the existing GOPs are corrected. Thus, EPA obtained a commitment and time line from the TCEQ Executive Director in December 2003 to revise all existing GOPs to include periodic monitoring and compliance assurance monitoring. Under this commitment and time line, TCEQ will revise all existing GOPs to ensure the applicability requirements for existing GOPs exclude sources with site-specific requirements. On February 27, 2004 Texas revised the Bulk Fuel Terminal GOP 515 and the Site-Wide GOP 516 to require all affected sources to submit an application for a site operating permit (''SOP'') by September 1, 2004. Facilities subject to these GOPs generally have site-specific applicable requirements. Once all SOPs are issued, the GOPs No. 515 and 516 will be rescinded. The Oil and Gas GOPs 511–514 and Municipal Solid Waste Landfill GOP 517 will also be revised in 2005 to include the specific permits by rule and standard permits that apply to those facilities and to exclude sources with site-specific requirements from the applicability criteria for those GOPs.

Comment 1B. Commenters also requested that their comments and attachments be treated as a Petition to Reopen all existing GOPs pursuant to 40 CFR 70.7(g) to clarify that no source with case or permit-specific applicable requirements may be covered by a GOP if EPA failed to resolve this issue during our review of changes to the Texas operating permits program in response to the NOD.

Response 1B. In light of the State's commitment to make the required changes to its GOPs and the State's actions to initiate those changes, EPA believes there is no need to reopen the existing GOPs as commenter requests. EPA has reviewed and provided comments on the first revision to the Bulk Fuel Terminal and Site-Wide GOPs. Also, commenters have the opportunity to review and comment on the draft GOP permits under 40 CFR 70.7(h), and if necessary, petition EPA to object to a proposed permit under 40 CFR 70.8(a) and (c).

Comment 2. Statement of Basis. Commenters state that the current statements of basis being drafted by TCEQ do not provide the public with an understanding of the decision-making that went into development of the Title V permit. Because Texas is still not implementing the statement of basis requirement as specified in EPA's rules and guidance, this deficiency has not been corrected.

Response 2. By adopting regulatory language which tracks the requirement in 40 CFR 70.7(a)(5), Texas has satisfied the requirement to revise its regulations consistent with 70.7(a)(5). Whether any individual Title V permit contains an inadequate statement of basis is beyond the scope of the deficiency identified in the NOD. EPA intends to address concerns about the adequacy of individual statements of basis through the permit review process. This process includes opportunity for the public to review and comment on the draft permit under 40 CFR 70.7(h), EPA's review, and, if necessary, EPA objection to a proposed permit under 40 CFR 70.8(a) and (c), affected state review under 40 CFR 70.7(b), and the public petition process under 40 CFR 70.8(d).

Comment 3. PTE Limits in Registrations. Commenters submitted the following comments related to PTE registrations:

Comment 3A. The commenters believe that the rules should require that registrations used to limit PTE below any federal limit, including nonattainment NSR and PSD, be submitted to the agency. As EPA noted in the NOD, if PTE limits are merely kept on site, they are not practically enforceable. Because NSR and PSD are applicable requirements under Title V, Title V must assure compliance with these requirements.

Response to Comment 3A. Although the NOD cited only the deficiency in the PTE registration requirements in Chapter 122, the State made conforming changes in its preconstruction review provisions which address the commenter's concerns. The regulations require such PTE registrations to be incorporated into the Title V permit as applicable requirements. The PTE registrations under 30 TAC 106.6 and 116.611 are approved as part of the SIP and are applicable requirements under the part 70 [5]. As applicable requirements, these PTE registrations must be submitted to the reviewing agency (the TCEQ) for incorporation into the source's Title V operating permit. In order to be incorporated into the Title V permit, the owner or operator must provide the relevant information concerning the registration to the permitting authority for incorporation into the Title V permit. Such information must be subject to public participation and review by EPA under 40 CFR 70.7(h) and 70.8.

For permits by rule, relevant information that must be incorporated includes all representations with regard to construction plans, operating procedures, and maximum emission rates, which become conditions upon which the facility permitted by rule shall be constructed and operated. See 30 TAC 106.6(b). This includes certification of maximum emission rates which establish federally enforceable allowable emission rates which are below the emission limitations in 30 TAC 106.4.

For standard permits, relevant information that must be incorporated include the basis of emission rates,

[3] On September 1, 2002, the Texas Natural Resource Commission (TNRCC) changed its name to the Texas Commission on Environmental Quality.

[4] To the extent that this portion of the NOD suggested the implementation of enhanced monitoring beyond that required by 70.6(a)(3)(i)(B) or beyond monitoring required by ''applicable requirements'' under the Act (as described in 69 FR 3202 (January 22, 2004)), this part of the NOD has been superceded by the January 22, 2004, action.

[5] 30 TAC 106.6 and 116.611 were approved as revisions to the SIP on November 14, 2003 (68 FR 64543). SIP provisions are applicable requirements under Title V under 40 CFR 70.2 (paragraph (1) under definition of ''applicable requirement'') and under 30 TAC 122.10(2)(F), which include the requirements of Chapter 106—Permits by Rule and Chapter 116—Control of Air Pollution by Permits for New Construction or Modification.

quantification of all emission increases and decreases associated with the project being registered, sufficient information as may be necessary to demonstrate that the project will comply with 30 TAC 116.610(b) [6], information that describes efforts being taken to minimize any collateral emissions increases that will result from the project, a description of the project and related process, and a description of any equipment being installed. See 30 TAC 116.611(a).

Thus, the registrations which limit a source's PTE to below a threshold which triggers applicability of PSD or NSR under 30 TAC 106.6 and 116.611 are applicable requirements under Title V and must be documented in each Title V permit as described above.

Comment 3B. The rules should include a short-term limit on emissions so that compliance can be determined in a timely manner (not a tons per year limit). The rules should include production or operational limits (not just emission limits) and specific monitoring and reporting to demonstrate compliance with the limit. The general requirement to keep records necessary to demonstrate compliance is not practically enforceable because it is too vague.

Response to Comment 3B. This comment raises issues beyond the scope of the deficiency identified in the NOD. The NOD identified the lack of practicably enforceable PTE limits as being caused by the lack of notice of PTE registrations to the State. We stated: ''One of the requirements for practicable enforceability is notice to the State. Under 30 TAC 122.122, there is no requirement that the State be notified and the registrations are kept on site. Therefore, neither the public, TNRCC, or EPA know what the PTE limit is without going to the site. A facility could change its PTE limit several times without the public or TNRCC knowing about the change. Therefore, these limitations are not practically enforceable, and TNRCC must revise this regulation to make the regulation practically enforceable.'' Thus, the State has cured the deficiency by providing that PTE registrations must be submitted to the State. Nevertheless, EPA notes that the rules under these citations require that a source be able to demonstrate compliance with a certification in a manner that is practically enforceable. This includes information that enables the enforcement authority to verify at any time that the source is in compliance with the terms of its registration. TCEQ rules require registrations to ''include documentation of basis of emission rates.'' See 30 TAC 122.122(c). Such documentation may include appropriate restrictions on operation and/or production which the source relies upon to limit its PTE below major source threshold. Similar requirements are also in 30 TAC 106.6(d) (for permits by rule) and 30 TAC 116.611(a)(1)–(6) (for standard permits).The monitoring and reporting are generally required in 30 TAC 106.8 (for permits by rule), 30 TAC 116.115(8) (for standard permits), and 30 TAC 122.122(f) (for Title V PTE registrations). Furthermore, a specific permit by rule, standard permit, or registration will also contain additional requirements for monitoring and recordkeeping which the source is required to maintain and which is sufficient to limit the source's PTE.

In summary, the regulations which pertain to the registration of emissions in 30 TAC 106.6, 116.115, 116.611, and 122.122 were approved on November 14, 2003 (68 FR 64543).[7] The regulations allow a source limit its PTE of a pollutant below the level of a major source defined in the Act. This includes regulations which Texas revised to allow an owner or operator of a source to register and certify restrictions and limitations that the owner or operator will meet to maintain its PTE below the major source threshold. The changes require the owner or operator to submit the certified registrations to the Executive Director of TCEQ, the appropriate TCEQ regional office, and all local air pollution control agencies having jurisdiction over the site. The changes to 30 TAC 122.122 satisfactorily address the NOD by requiring that PTE registrations are submitted to the State.

Comment 4. ''Applicable requirement'' Definition. Commenters believe that Texas' applicable requirement definition at 30 TAC 122.10(2) does not incorporate all of the relevant provisions of the Texas SIP because it defines the term by reference to specific State regulations, instead of a general reference to the ''relevant requirements of the SIP.'' There is not a one-to-one correlation between the State's regulation and the SIP provisions. Thus, some SIP provisions that implement the CAA requirements are excluded from the Texas definition of ''applicable requirement.'' Commenters cite as an example the State's newly adopted regulation for the definition of reportable quantities at 30 TAC 101.1(84)(p) and (q) rather than the SIP-approved rule. Texas submitted its new definition of reportable quantities to EPA for approval as a SIP revision on September 12, 2002.

Commenters also disagree with EPA's decision in the NOD to confine applicable requirements to those requirements that implement the relevant requirements of the Act, on the ground that it is at odds with Title V, citing 42 U.S.C. 7661a(b)(5)(C). They state that SIPs may include emission limits that transcend the requirements of the Act.

Response 4. EPA disagrees with the commenter. As a threshold matter, EPA reasonably determined in the NOD that ''there is no requirement that the State adopt a definition to generally state that any current provision of the SIP is an applicable requirement. A State may cite to specific provisions of its administrative code. * * *'' We described the SIP provisions that must be included in the definition of ''applicable requirement'' as those that ''implement the relevant requirements of the Act,'' the standard set forth in 40 CFR 70.2. It is inappropriate to revisit those determinations here, as the time for a challenge to 30 TAC 70.2 or the NOD has expired [and the State has reasonably relied on the standards set forth in 30 TAC 70.2 and the NOD in undertaking its corrective action].

Furthermore, EPA has reviewed the rule cited by commenters (30 TAC 101.1(84)(p) and (q)) and found it to be approvable. The proposed approval was published in the **Federal Register** on March 2, 2004 (41 FR 9776). We are today granting limited approval of the SIP revision elsewhere in this **Federal Register** which ensures that Texas' definition of ''applicable requirement'' is complete with respect to the SIP-approved emissions event and MSS reporting rules. Because Texas has chosen to adopt a definition of applicable requirement that lists SIP citations rather than the general definition as set forth in 40 CFR 70.2, the State will be required to revise its Title V program in the future as it adopts an applicable requirement elsewhere in the SIP that is not listed in the definition of applicable requirement in its Title V regulations.

[6] 30 TAC 116.610(b) provides that ''[a]ny project * * * which constitutes a new major source, or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration Review) or Part D (Nonattainment Review) and regulations promulgated thereunder is subject to the requirements of 30 TAC 116.110 of this title (relating to Applicability) rather than this subchapter.''

[7] We note that we proposed approval of the PTE registration requirements as SIP revisions, and received no comments. See 68 FR 40865 (July 9, 2003); 68 FR 64543 (November 14, 2003).

What Is Our Final Action?

We are approving revisions to Texas' regulations for periodic monitoring regulations, CAM regulations, periodic monitoring and CAM GOPs, statement of basis requirement, applicable requirement definition, and PTE registration regulations as revisions to Texas' Title V air operating permits program. We are also approving revisions to the Texas Title V operating permits program submitted on December 9, 2002, which relate to credible evidence and concurrent review. The rule revisions submitted by Texas, as stated above, are in response to the NOD. Based upon our limited approval of the revisions to Chapter 101 elsewhere in today's **Federal Register**, our approval today of the December 9, 2002 revisions to the Texas operating permits program, and our November 14, 2003, final SIP approval of potential to emit requirements, Texas has satisfactorily addressed the deficiencies identified by EPA in the January 7, 2002 NOD. This final action also removes any resulting consequences under the Act, including sanctions, with respect to the January 7, 2002 NOD.

This approval does not extend to ''Indian Country'', as defined in 18 U.S.C. 1151. In its operating permits program submittal, Texas does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in Texas has authority to administer an independent Title V program in the State. On February 12, 1998, EPA promulgated regulations under which Indian tribes could apply and be approved by EPA to implement a Title V operating permit program (40 CFR part 49). For those Indian tribes that do not seek to conduct a Title V operating permit program, EPA has promulgated regulations (40 CFR part 71) governing the issuance of Federal operating permits in Indian country. 64 FR 8247, February 19, 1999.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget (OMB). Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it approves pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The action merely approves existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing State Operating Permit Programs submitted pursuant to Title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove such regulations for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the NTTAA do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 18, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ For the reasons set out in the preamble, appendix A of part 70 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Appendix A to part 70 is amended under the entry for Texas by adding paragraph (c) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Texas

(c) The Texas Commission on Environmental Quality: program revisions submitted on December 9, 2002, and supplementary information submitted on December 10, 2003, effective on April 29, 2005. The rule amendments contained in the submissions adequately addressed the deficiencies identified in the notice of deficiency published on January 7, 2002.

[FR Doc. 05–6314 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 01–92; FCC 05–42]

Intercarrier Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communication Commission (Commission) denies a petition for declaratory ruling filed by T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners, which asked the Commission to find that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of traffic. Because negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act than unilaterally imposed tariffs, however, the Commission also amends its rules to prohibit the use of tariffs in the future to impose compensation obligations with respect to non-access Commercial Mobile Radio Service (CMRS) traffic. Additionally, to ensure that incumbent local exchange carriers (LECs) are able to obtain a negotiated agreement, the Commission adds new rules to clarify that an incumbent local exchange carrier (LEC) may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Communications Act and that during the period of negotiation and arbitration, the parties will be entitled to compensation in accordance with the interim rate provisions set forth in § 51.715 of the Commission's rules, 47 CFR 51.715. These rules will ensure that both incumbent and competitive carriers can obtain compensation terms consistent with the Act's standards through negotiated or arbitrated agreements.

DATES: Effective April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, 202–418–7353, or Peter Trachtenberg, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, 202–418–7369.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling and Report and Order in CC Docket 01–92, adopted February 17, 2005, and released February 24, 2005. The full text of this document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Declaratory Ruling and Report and Order

Background: On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners jointly filed a petition for declaratory ruling asking the Commission to affirm that wireless termination tariffs are inconsistent with federal law governing reciprocal compensation arrangements for the transport and termination of traffic and, therefore, not a proper mechanism for establishing such arrangements. In a public notice published in the **Federal Register,** 67 FR 64120–01, October 17, 2002, the Commission sought comment on the issues raised in the T-Mobile Petition. Further, the Commission determined that the T-Mobile Petition raised issues under consideration in an ongoing rulemaking proceeding, CC Docket 01–92, Developing a Unified Intercarrier Compensation Regime. In this proceeding, the Commission had released a Notice of Proposed Rulemaking (*Intercarrier Compensation NPRM*), 66 FR 28410, May 23, 2001, which initiated a comprehensive review of interconnection compensation issues and raised questions concerning, among other things, the appropriate regulatory framework to govern interconnection, including compensation arrangements, between LECs and CMRS providers. The Commission therefore incorporated the T-Mobile Petition and responsive comments into the rulemaking record.

Discussion: Because the Act and the existing rules do not preclude tariffed compensation arrangements, and because wireless termination tariffs that apply only in the absence of an interconnection agreement are not inconsistent with the compensation standards of sections 251 and 252 of the Act or of § 20.11 of the Commission's rules, and because the tariffs do not prevent a competitive carrier from obtaining a compensation agreement through the negotiation and arbitration procedures of section 252, we find that incumbent LECs were not prohibited under federal law from filing such tariffs. Going forward, however, we amend our rules to make clear our preference for contractual arrangements by prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff. In addition, we amend our rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.

We find that negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act. Accordingly, we amend § 20.11 of the Commission's rules to prohibit LECs from imposing compensation obligations for non-access traffic pursuant to tariff. Therefore, any existing wireless termination tariffs shall no longer apply upon the effective date of these amendments to our rules. After that date, in the absence of a request for an interconnection agreement, no compensation will be owed for termination of non-access traffic. We take this action pursuant to our plenary authority under sections 201 and 332 of the Act.

In light of our decision to prohibit the use of tariffs to impose termination charges on non-access traffic, we find it necessary to ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today. Accordingly, we amend § 20.11