

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 Section 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 Section 101.1, which relates to definitions; Section 101.3, which relates to circumvention; Sections 101.201, 101.211, 101.221, 101.222, and 101.223, which relate to emissions events and maintenance, startup, and shutdown ("MSS") reporting requirements; Section 101.8 and Section 101.9, which relate to sampling and sampling ports, and Section 101.10, which relates to emissions inventory requirements.<sup>1</sup> We are today proposing to approve the revised rule as a revision to Texas' title V program and to find that upon final SIP approval the revisions will satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2001, NOD.

#### F. PTE Registration Requirements

Many stationary source requirements of the Act apply only to major sources, which are those sources whose emissions of air pollutants exceed threshold emissions levels specified in the Act. However, such sources may legally avoid program requirements by taking federally-enforceable permit conditions which limit emissions to levels below the applicable major source threshold. Those permit conditions, if violated, are subject to enforcement by EPA, the State or local agency, or by citizens. Federal enforceability ensures the conditions placed on emissions to limit a source's PTE are enforceable as both a legal and practical matter.

Texas' 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. The TCEQ has revised

Sections 106.6, 116.115, 116.611, and 122.122. 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. The TCEQ is also required to make the records available to the public upon request. The TCEQ also submitted these changes for approval as a SIP revision. We are proposing to approve the amended Sections 106.6, 116.115, 116.611, and 122.122 as revisions to the Texas SIP in a separate **Federal Register** notice. Upon final SIP approval, these changes will make the PTE limits in the certified registrations practically enforceable and federally enforceable. We are also today proposing to approve the revised rules in Section 122.122 as a revision to Texas' title V program and to find that upon final SIP approval the revisions will satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

#### IV. What Other Program Changes Are We Proposing To Approve?

The TCEQ also included in the December 9, 2002, submittal other regulatory revisions that strengthen Texas' program. Today's action also proposes approval of 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

The 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 proposing to approve this revision as consistent with part 70 and EPA's credible evidence rule, 62 FR 8314 (February 24, 1997).

##### B. Concurrent Review

The TCEQ has revised its regulations concerning EPA review of title V permits at Section 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 proposing to approve this revision as consistent with Section 505(b) of the Act and 40 CFR 70.8.

#### V. What Is Our Proposed Action?

We are proposing to approve 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. Elsewhere in today's **Federal Register**, we are proposing to approve related SIP revisions submitted to EPA on December 9, 2002. We are also proposing to approve revisions to the Texas title V Operating Permit 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.

This proposed 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 Permits Program (40 CFR part 49).

For those Indian tribes that do not seek to conduct a title V Operating Permits 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.

#### VI. 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 proposes to approve 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 proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond those 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

<sup>1</sup> The NOD identified the emissions event and MSS reporting requirements at 30 TAC Sections 101.6, 101.7, and 101.11 as SIP provisions that must be included in the definition of "applicable requirements." Since then, TCEQ has revised those rules and recodified them at Sections 101.201, 101.211, 101.221, 101.222, and 101.223 and submitted the rules to EPA for approval as a SIP revision. The EPA is reviewing those rules and will address the SIP submission in a separate rulemaking prior to EPA's final approval of Texas' definition of applicable requirement.