

April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 CAA, 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 52

Environmental protection, Air pollution control, Carbon monoxide,

Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 21, 2005

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for "Chapter V" under the heading "Polk County" to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
* * *	* * *	* * *	* * *	* * *
Polk County				
CHAPTER V.	Polk County Board of Health Rules and Regulations Air Pollution Chapter V.	1/6/2004	March 30, 2005 [insert FR page number where the document begins].	Article I, Section 5–2, definition of "variance"; Article VI, Sections 5–16(n), (o) and (p); Article VIII, Article IX, Sections 5–27(3) and (4); Article XIII, and Article XVI, Section 5–75 (b) are not a part of the SIP.

* * * * *

[FR Doc. 05–6291 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–162–1–7598; FRL–7892–7]

Limited Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown and Malfunction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes limited approval of revisions to the Texas State Implementation Plan (SIP) concerning excess emissions for which we proposed approval on March 2, 2004. The revisions address reporting, recordkeeping, and enforcement actions for excess emissions during startup, shutdown, and malfunction (SSM) activities. This limited approval action is being taken under section 110 of the Federal Clean Air Act (the Act) to further air quality improvement by strengthening the SIP. See sections 1 and 3 of this document for more information.

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

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

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

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar of the Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 at (214) 665-6691, shar.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

1. What Actions Are We Taking in This Document?
2. What Documents Did We Use in the Evaluation of This Rule?
3. What Is the Basis for a Limited Rather Than a Full Approval?
4. Who Submitted Comments to Us?
5. What Is Our Response to the Submitted Written Comments?
6. What Areas in Texas Will These Rule Revisions Affect?

Statutory and Executive Order Reviews

In this document “we,” “us,” and “our” refer to EPA.

1. What Actions Are We Taking in This Document?

On March 2, 2004 (69 FR 9776), we proposed approval of revisions and deletions to the Texas SIP pertaining to Texas’ excess emissions rule, 30 TAC, General Air Quality Rule 101, Subchapter A, and Subchapter F (September 12, 2002, and January 5, 2004, submittals). Specifically, the revisions address the reporting and recordkeeping, and enforcement actions for excess emissions during SSM activities. The September 12, 2002, and January 5, 2004, submittals primarily address violations of SIP requirements caused by periods of excess emissions due to SSM activities. See section 1 of our March 2, 2004 (69 FR 9776), proposal for additional information.

Generally, since SIPs must provide for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), all periods of emissions in excess of applicable SIP limitations must be considered violations. The EPA cannot approve a SIP revision that provides an automatic exemption for periods of excess emissions violating a SIP requirement. In addition, excess emissions above applicable emission limitations in title V operating permits are deviations subject to title V reporting requirements.

Today, we are finalizing limited approval of the September 12, 2002, and January 5, 2004, revisions and deletions to the Texas SIP. The submitted revisions strengthen the SIP because they clarify that sources are not exempt from underlying SIP emissions limits where there is an emissions activity. Rather, the source may assert an affirmative defense in an action for penalties concerning the emission activity. The revisions also provide: (a)

The commission may issue an order finding that a site has chronic “excessive” malfunctions, (b) if the executive director determines that a facility is having “excessive” malfunctions, the owner or operator must take action to reduce the excess emissions activities and obtain either a corrective action plan or a permit reflecting the control device, other measures, or operational changes required for the said reduction, and (c) the affirmative defense approach for malfunctions does not apply if there is a malfunction at a source under a corrective action plan. This limited approval will strengthen the latest federally approved Texas SIP dated November 28, 2000 (65 FR 70792).

As authorized by section 110(k)(3) of the Act, we are taking final action to grant a limited, rather than full, approval of this rule. We are finalizing this limited approval because we have determined that the rule improves the SIP and is largely consistent with the relevant requirements of the Act. The submittal, as a whole, strengthens the existing Texas SIP. For example, the revised affirmative defense provisions are an improvement over the related provisions in the current SIP, which are removed from the SIP by this action. This limited approval incorporates all of the submitted revisions into the Texas SIP. The entire rule becomes part of the State’s approved, federally enforceable SIP and may be enforced by EPA and citizens, as well as by the State. We are finalizing a limited approval of this rule after review of adverse comments in response to our proposed approval of the rule, and in order to ensure national SIP consistency with EPA’s interpretation of the Act and policy on excess emissions during SSM activities. Sections 101.221, 101.222, and 101.223 will sunset from State law, and therefore from the SIP, by their own terms, on June 30, 2005 without further action by EPA. Upon expiration of the provisions, all emissions in excess of applicable emission limitations during SSM activities remain violations of the Texas SIP, subject to enforcement actions by the State, EPA or citizens.

2. What Documents Did We Use in the Evaluation of This Rule?

The EPA’s interpretation of the Act on excess emissions occurring during startup, shutdown or malfunction is set forth in the following documents: A memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled “Policy on Excess Emissions During Startup, Shutdown, Maintenance, and

Malfunctions;” EPA’s clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation; EPA’s policy memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown” (September 1999 Policy); EPA’s final rule for Utah’s sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977), and EPA’s final rule for Idaho’s sulfur dioxide control strategy 42 FR 58171 (November 8, 1977); and the latest clarification of EPA’s policy issued on December 5, 2001. See the policy or clarification of policy at: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

To find the latest federally approved Texas SIP concerning excess emissions see 65 FR 70792 (November 28, 2000).

3. What Is the Basis for a Limited Rather Than a Full Approval?

Section 101.222(c) addresses excess emissions from scheduled maintenance, startup, or shutdown activities, and section 101.222(e) addresses excess emissions from scheduled maintenance, startup, or shutdown activity from opacity activities. After reviewing the public comments, we believe that these provisions are ambiguous, at best, and inconsistent with the Act, at worst, and could create problems with enforcing the underlying applicable emission limits.

Texas has taken the position that these provisions provide for enforcement discretion by the State. In other words, if the enumerated criteria are met, then the State may exercise its enforcement discretion by choosing not to enforce against periods of excess emissions during scheduled maintenance, startup or shutdown. However, these provisions facially appear to go much further and excuse sources from permitting requirements (101.222(c)) or from the applicable opacity emission limits (101.222(e)) if the criteria are met. Thus, these rules appear to exempt sources from certain applicable SIP requirements. This is inconsistent with the statutory definition of emission limitation. And, if unaccounted for in the SIP, these emissions could interfere, among other things, with the ability of areas within the State to attain and maintain the NAAQS. In addition, to the extent these

provisions create an exemption from compliance, rather than simply explain when the State will exercise enforcement discretion, they would prevent EPA or citizen enforcement.

Moreover, it is unclear whether sections 101.222(c) and (e) may provide for an affirmative defense for certain scheduled maintenance activities. In guidance documents issued by EPA and other final rulemakings, we have indicated that scheduled maintenance activities are predictable events that are subject to planning to minimize releases, unlike malfunctions (emission activities), which are sudden, unavoidable or beyond the control of the owner or operator. The EPA's interpretation of Section 110 of the Act and related policies allows an affirmative defense to be asserted against civil penalties in an enforcement action for excess emissions activities which are sudden, unavoidable or caused by circumstances beyond the control of the owner or operator and where emissions control systems may not be consistently effective during startup or shutdown periods. However, EPA has determined that it is inappropriate to provide an affirmative defense for excess emissions resulting from scheduled maintenance, and to excuse these excess emissions from a penalty action. The State may, however, choose to exercise its enforcement discretion for excess emissions due to predictable events such as scheduled maintenance activities. See 42 FR 21472 (April 27, 1977), 42 FR 58171 (November 8, 1977), and 65 FR 51412 (August 23, 2000).

We are today granting a limited approval of the submitted revisions and deletions to the Texas SIP. We cannot fully approve the rule because sections 101.222(c) and (e): (1) Are ambiguous and unclear as to whether they address only State enforcement discretion, (2) might be interpreted to provide exemptions to SIP permitting requirements, and (3) might be interpreted to provide an affirmative defense for excess emissions from scheduled maintenance activities. Because the provisions found in sections 101.222(c) and (e) are not mandatory requirements of the Act and because section 101.222 will expire from the SIP by its own terms on June 30, 2005, no further action by Texas to correct the rule is necessary. Upon expiration of the provisions, all emissions in excess of applicable emission limitations during SSM activities remain violations of the Texas SIP, subject to enforcement action by the State, EPA or citizens. However, if Texas revises its rules to include an

affirmative defense for excess emissions in the Texas SIP in the future, the State should ensure that the revisions do not contain exemptions from permitting or other SIP requirements, that the affirmative defense does not apply to excess emissions from scheduled maintenance activities, and, if the State wishes to codify its enforcement discretion, that terms are clear and do not bar or limit enforcement actions taken by EPA or citizens for excess emissions which exceed applicable SIP emission limitations. Any revisions should continue to recognize that emissions in excess of applicable emission limitations and SIP requirements are violations of the Texas SIP, subject to enforcement actions by the State, EPA or citizens. If the State submits a revised rule addressing excess emissions during SSM activities, EPA will review the rule for consistency with the requirements of the Act and EPA policy. Below, we summarize and respond to comments received during the public comment period on the proposed March 2, 2004 (69 FR 9776), Texas SIP revision.

4. Who Submitted Comments to Us?

We received one set of written comment on the March 2, 2004 (69 FR 9776), proposed Texas SIP revision. The comment was submitted jointly by the Environmental Integrity Project, Environmental Defense, Galveston-Houston Association for Smog Prevention, Refinery Reform, Community InPower and Development Association, Citizens for Environmental Justice, and Public Citizen's Texas Office (the Commenters).

5. What Is Our Response to the Submitted Written Comments?

Our responses to the written comments concerning the proposed March 2, 2004 (69 FR 9776), Texas SIP revision are as follows:

Comment #1: The Commenters state that Texas' rule is an improvement over its previous illegal exemption provisions; however, the rule still creates an affirmative defense which is too broad.

Response to Comment #1: We appreciate the Commenters' statement that the Texas excess emissions rule approved today into the Texas SIP is an improvement over its previous version, which is removed from the SIP by this action. The criteria and conditions constituting the affirmative defense approach, as incorporated in the rule, are those identified in EPA's 1999 policy on excess emissions. This improvement, in part, constitutes our rationale for a limited approval of this

Texas SIP revision. However, we agree with Commenters that the affirmative defense may be too broad because, as discussed above, it appears to be available for certain maintenance activities. The EPA's interpretation of Section 110 of the Act and related policies allow an affirmative defense to be asserted against civil penalties in an enforcement action for excess emissions activities which are sudden, unavoidable or beyond the control of the owner or operator and where emissions controls may not be consistently effective during startup or shutdown periods. The State may choose to exercise its enforcement discretion for excess emissions from predictable events such as scheduled maintenance activities.

Comment #2: The Commenters state that EPA should disapprove sections 101.222(c) and (e) of Texas' submittal because these provisions maintain an exemption for excess emissions resulting from scheduled startup, shutdown and maintenance. The Commenters believe that the language in section 101.222(c) exempts certain excess emissions from compliance with permitted limits and thus means that no enforcement action can be taken for those periods of excess emissions. The Commenters cite to previous pronouncements by EPA that excess emissions during periods of startup and shutdown must be treated as violations. In addition, the Commenters reject as unfounded the statement by Texas that these exempted emissions are below the level required for inclusion in permits under the Texas Health and Safety Code. The Commenters note that there is no limit on how large these emissions might be.

Response to Comment #2: Section 101.222(c) generally addresses excess emissions from scheduled maintenance, startup, or shutdown activities and section 101.222(e) addresses excess opacity emissions resulting from scheduled maintenance, startup, or shutdown activities. On its face, both sections 101.222(c) and (e) establish criteria similar to those that EPA established for purposes of an affirmative defense. The Texas rule provides that emissions from scheduled startup, shutdown or maintenance must be included in a permit unless the owner or operator of a source proves that all of the criteria are met. The State has explained to EPA that it construes this provision as establishing enforcement discretion on the part of the State. They have explained that where the criteria are not met, then the State may enforce against a source for a violation of the applicable emissions

limitation for the period of excess emissions.

Upon further reading of the Texas rule, we are not convinced that the State's interpretation of the rule is likely to prevail if challenged. We think it is plausible that if EPA or a citizen group sought to enforce against a source which contends to have met the criteria specified in section 101.222(c), the source would offer a defense that such emissions were not subject to permitting requirements and were therefore not violations. Additionally, we are concerned about the interpretation of section 101.222(e), which also seems to provide an exemption from the applicable emission limits if a source can prove that the specified criteria are met. Again, the State has indicated that it interprets this provision not as excusing the source from compliance, but rather as a tool for the exercise of enforcement discretion on the part of the State. However, upon further review, we think the language is ambiguous at best and could well be construed by a court as excusing a source from compliance for these periods of excess emissions. Thus, even if the State chose not to enforce against a source where it believes the source has met the specified criteria, we believe it is possible that a court would dismiss any suit by EPA or citizens to enforce on the basis that the source was not subject to the underlying emission limit.

We believe that at best these provisions are ambiguous and, at worst, do in fact exempt sources from compliance with underlying emission limits if the specified criteria are met. Based on this conclusion, we have concerns about the effect of these provisions on the enforceability of applicable emission limits, and thus have concluded that we cannot fully approve the SIP. As stated above, however, we believe that the new rule, as a whole, strengthens the SIP and we are granting a limited approval of the SIP revisions.

Comment #3: The Commenters state that EPA should only approve sections 101.222(b) and 101.222(d) with the clarification that affirmative defense does not apply to federally performance-based standards. The Commenters state the Texas' rule will allow the affirmative defense to apply to violations of performance based Federal standards such as NSPS and NESHAP.

Response to Comment #3: Chapter 101 addresses violations of SIP requirements caused by periods of excess emissions due to SSM activities. For clarification and public record purposes, all of the federally promulgated performance or

technology-based standards, and other Federal requirements, such as those found in 40 CFR parts 60, 61, and 63; and titles IV, and VI of the Act remain in full effect, and are independent of today's approval of revisions to the Texas SIP. We also want to make clear that today's limited approval of the Texas excess emissions rule into the Texas SIP may not, under any circumstances, be construed as rescinding, replacing, or limiting applicable Federal requirements regardless of the source's category or locality.

Comment #4: The Commenters state the affirmative defense in Texas' rule should not apply where a single source or small group has the potential to cause an exceedance of the NAAQS.

Response to Comment #4: We believe the Texas rule, which places the burden on the source asserting an affirmative defense to demonstrate that the specific activity at issue did not contribute to an exceedance of the NAAQS or PSD increments or to a condition of air pollution, is appropriate. Subsection 101.222(b)(11) requires the source or operator to prove that "unauthorized emissions did not cause or contribute to an exceedance of the NAAQS, PSD increments or to a condition of air pollution." This provision ensures that an affirmative defense could not be sustained for an emissions activity for which the owner or operator has failed to prove that the event did not cause or contribute to an exceedance of the NAAQS, PSD increments or to a condition of air pollution.

Comment #5: The Commenters state the Texas' rule allows boilers and combustion turbines to escape reporting requirements.

Response to Comment #5: Subsection 101.201(a)(3) concerns notification for reportable emissions activities involving boilers or combustion turbines. Subsection 101.211(a)(2) concerns the notification for a scheduled maintenance, startup, or shutdown activity involving a boiler or combustion turbine. Also see subsection 101.201(d) of the rule. We do not believe that Texas' reporting requirements for excess emissions exclude boilers or combustion turbines. For these reasons we disagree with the Commission.

Comment #6: The Commenters state that EPA should announce its intent to automatically re-issue a Notice of Deficiency (NOD) to the State should Texas adopt revised rules prior to June 30, 2005, that do not comply with the Act and EPA's guidance. The Commenters are concerned that Texas

may rescind the existing rules and adopt new rules before June 30, 2005 and once again be in the position of being unable to enforce the excess emissions provision in the SIP.

Response to Comment #6: The present record does not provide sufficient information to enable the Agency to make a determination of whether a notice of deficiency under title V of the Act would be warranted for the circumstances forecast by petitioners.¹ The Agency would need to review the rule allegedly causing the title V program deficiency to determine whether a violation of title V has occurred. However, at this stage, Commenters are only speculating as to future revisions to the rules that the State might or might not adopt. The Agency also balances a number of other factors in determining whether to issue a notice of deficiency, including allocation of agency resources, likelihood of success in pursuing enforcement through an NOD, likelihood of resolving a program flaw through other mechanisms, and how enforcement in a particular situation fits within the Agency's overall policies. It is not practicable to review these factors prior to the time a revision to the Texas rules would warrant such review.

This concludes our responses to the written comments we received during public comment period concerning March 2, 2004 (69 FR 9776), Texas proposed SIP revision.

6. What Areas in Texas Will These Rule Revisions Affect?

These rule revisions affect all sources of air emissions operating within the State of Texas.

Statutory and Executive Order Reviews

Under Executive Order 12866 (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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic

¹ The Agency previously issued an NOD to Texas on January 7, 2002, based on different issues. See 67 FR 732. The State also revised and renumbered its rules relating to reporting, recordkeeping, and enforcement actions for SSM excess emissions, which are the rules at issue in the present action.

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

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 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities 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), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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 a SIP submission for

failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 52

Environmental protection, Air pollution control, Excess Emissions, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 18, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

Subpart SS—Texas

- 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended as follows:

(a) Under Chapter 101, Subchapter A, by revising the entry for Section 101.1;

(b) Under Chapter 101, Subchapter A, by removing the entry for Section 101.1 Table II, "Definitions—List of Synthetic Organic Chemicals;"

(c) Under Chapter 101, Subchapter A, by removing the entries for the following Sections: 101.6, 101.7, 101.11, 101.12, 101.15, 101.16, and 101.17;

(d) Under Chapter 101, Subchapter A, immediately following the entry for Section 101. Rule 19, "Initiation of Review," by adding a new centered heading "Subchapter F—Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities" followed by new entries for Sections 102.201, 101.211, 101.221, 101.222, 101.223, 101.224, 101.231, 101.232, and 101.233.

The revision and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
Chapter 101—General Air Quality Rules				
Subchapter A—General Rules				
Section 101.1	Definitions	08/21/02	03/30/05 [Insert FR citation from published date].	

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]

BILLING CODE 6560–50–P

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 programs. 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