

(2) Emergency response;  
 (3) Servicing aids to navigation; or  
 (4) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(c) *Effective dates.* This section is effective from September 14, 2001 through September 28, 2001.

(d) *Regulations.* (1) Only emergency response vessels directly assisting with the disaster in lower Manhattan may operate in the sector designated Area A. Commercial vessels assisting with the disaster recovery efforts in Area A must contact Vessel Traffic Services New York (VTSNY) prior to entering the area. Vessels transiting Area A must do so at no wake speed, or speeds not to exceed 10 knots, whichever is less.

(2) Passenger ferry services operating within the RNA are not authorized to use ferry slips south of 14th Street in Manhattan, without receiving express authorization from VTSNY.

(3) Any passenger ferry operating within the RNA is required to contact VTSNY before getting underway to ensure compliance with the foregoing requirements in this section and to inform VTSNY of the vessel's destination.

(4) No vessel whose Certificate of Inspection authorizes it to carry more than 49 passengers may enter, transit or operate within the RNA until Coast Guard Activities New York, Inspection Division, has reviewed and approved that vessel's Security Plan. An approved Vessel Security Plan submitted in accordance with 33 CFR 120 will satisfy the requirements of this section. A Vessel Security Plan shall, at a minimum:

(i) Describe all measures taken to ensure the physical security of the vessel and the security, safety and identity of persons on board the vessel;  
 (ii) Identify those areas and spaces on the vessel that passengers are restricted or prohibited from entering or accessing; and

(iii) Establish a procedure to address and report terrorist or hijacking threats.

(5) Each passenger vessel entering, transiting or operating with the RNA shall keep its pilothouse door closed and locked while underway to ensure maximum protection of the passengers and crew.

(6) All deep draft vessels operating within the RNA must enter the Port via Ambrose or Sandy Hook Channels. Before entering the RNA, the following conditions must be met:

(i) The vessel must be inspected to the satisfaction of the U. S. Coast Guard;

(ii) The vessel's agent must confirm that the vessel's berth is ready to receive the ship;

(iii) The vessel must embark a pilot; and

(iv) The vessel must be escorted by two tugs when transiting the harbor inside of one nautical mile (1 NM) south of the Verrazano Narrows Bridge or the Outerbridge Crossing.

3. Add temporary § 165.T01-166 to read as follows:

**§ 165.T01-166 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.**

(a) *Safety and security zones.* The following are established as safety and security zones:

(1) *Safety and Security Zone A.* Indian Point Nuclear Power Plant: All waters of the Hudson River within 1000 yards of the Indian Point Nuclear Power Station, located south of Peekskill Bay, from Charles Point on the north to the overhead power cables to the south.

(2) *Safety and Security Zone B.* OEM Emergency Command Post and USNS COMFORT: All waters of the Hudson River bound by the following points: from the southeast corner of Pier 95, Manhattan, where it intersects the seawall; thence to approximate position 40°46'20.4" N 074°00'01.0" W; thence to 40°45'56.4" N 074°00'19.1" W; thence to the southeast corner of Pier 84, Manhattan, where it intersects the seawall; thence along the shoreline to the point of origin (NAD 83).

(3) *Safety and Security Zone C.* USNS COMFORT: A moving security zone including all waters within a 200-yard radius of the USNS COMFORT while it is transiting, moored or berthed in any portion of the Port of New York/New Jersey.

(4) *Safety and Security Zone D.* U.S. Coast Guard vessels: All waters within a 50-yard radius of any anchored U.S. Coast Guard vessel.

(5) *Safety and Security Zone E.* Bridge stanchions: All waters within 25 yards of any bridge stanchion in the Port of New York/New Jersey including, but not limited to, the following bridges at the specified mile markers:

(i) In the East River: Brooklyn Bridge (Mile 0.8), Manhattan Bridge (Mile 1.1), Williamsburg Bridge (Mile 2.3), Queensboro Bridge (Mile 5.5), Triboro Bridge (Mile 7.8), Whitestone Bridge (Mile 13.8) and Throgs Neck Bridge (Mile 15.8);

(ii) In the Hudson River: George Washington Bridge (Mile 11.8)

(iii) In the Kill Van Kull: Bayonne Bridge (Mile 1.5);

(iv) In the Arthur Kill: Outerbridge Crossing (Mile 2.0), Goethals Bridge (Mile 11.5) and AK Lift Bridge (Mile 11.6); and

(v) In New York Harbor: Verrazano Narrows Bridge.

(b) *Effective dates.* This section is effective from September 14, 2001 through September 28, 2001

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 14, 2001.

**G.N. Naccara,**

*Rear Admiral, U.S. Coast Guard, District Commander.*

[FR Doc. 01-25289 Filed 10-5-01; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

[AR-13-1-7526a; FRL-7072-2]

### Clean Air Act (CAA) Full Approval of Operating Permits Program and Approval and Promulgation of Implementation Plans; State of Arkansas; New Source Review (NSR)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action to fully approve the Operating Permit Program of the State of Arkansas and to also approve this rule as it pertains to the Arkansas State Implementation Plan (SIP). Arkansas' Operating Permit Program was submitted in response to the directive in the 1990 CAA Amendments that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted interim approval to Arkansas' Operating Permit Program on September 8, 1995. Arkansas revised its program to satisfy the conditions of the interim approval, and this action approves those revisions. Regulation 26, the Regulation of the Arkansas Operating Air Permit Program, is a comprehensive State air quality program which is designed to address all applicable air contaminant emissions and regulatory requirements in a single permit document; as such it incorporates the NSR permitting

requirements for major sources, as defined by title V, CAA section 501–507, 42 U.S.C. 7661–7661f. The EPA is also approving the revised and recodified Regulation 26 as it pertains to the Arkansas SIP.

**DATES:** This direct final rule is effective on December 10, 2001 without further notice unless EPA receives adverse comments in writing by November 8, 2001. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, Air Permits Section (6PD–R), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document and documents related to the fee demonstration, are available for public inspection during normal business hours at the following locations:

EPA, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Arkansas Department of Environmental Quality, Division of Air Pollution Control, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219–8913.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daron Page, EPA, Region 6, at (214) 665–7222.

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” or “our” means EPA. This section provides additional information by addressing the following questions:

- I. Title V Operating Permit Program
  - A. What is the operating permit program?
  - B. What is being addressed in this document?
  - C. What are the program changes that EPA is approving?
  - D. What is involved in this final action?
- II. State Implementation Plan (SIP)
  - A. What is a SIP?
  - B. What is the Federal approval process for a SIP?
  - C. What Does Federal approval of a State regulation mean to me?
  - D. What is being addressed in this action?
  - E. Why is EPA approving the NSR provisions of Regulation 26 into the Arkansas SIP?
  - F. Have the requirements for approval of a SIP revision been met?

- G. What action is EPA taking?
- III. Conclusion
- IV. Administrative Requirements

**I. Title V Operating Permit Program**

*A. What Is the Operating Permit Program?*

The CAA Amendments of 1990 require all States to develop Operating Permit Programs that meet certain Federal criteria. In implementing the Operating Permit Programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the Operating Permit Program is to facilitate compliance and improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into a single document, the source, the public, and the regulators can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include “major” sources of air pollution as defined by title V. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year (tpy) or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter nominally 10 microns and less (PM<sub>10</sub>); those that emit 10 tpy of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tpy or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. There are currently no areas classified as nonattainment in Arkansas.

*B. What Is Being Addressed in This Document?*

Where an Operating Permit Program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 CFR part 70, EPA granted interim approval contingent on the State revising its program to correct the deficiencies. Because Arkansas’ Operating Permit Program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program

in a rulemaking published on September 8, 1995 (60 FR 46771). In this **Federal Register** document, EPA identified three deficiencies that needed to be addressed before the State could receive full approval (60 FR 46773). Arkansas submitted revisions to its interim approved Operating Permit Program on August 4, 2000. This document describes the changes that have been made to Arkansas’ Operating Permit Program.

*C. What Are the Program Changes That EPA Is Approving?*

The first condition for full approval of Arkansas’ Operating Permit Program was that the State was required to amend Regulations 26.4 and 26.7 to incorporate the date of promulgation of the rule at 40 CFR part 70. The purpose of this requirement was to make clear that the permit application and permit content were fully incorporated into the State’s regulations (60 FR 46773). Instead, the State chose to incorporate the language for the permit application and permit content directly into their regulation. We agree that revising Regulation 26.402 to include the language from 40 CFR 70.5(c) and revising Regulations 26.701–26.703 to include the language from 40 CFR 70.6(a)–(c) corrects this deficiency.

The second condition for full approval of Arkansas’ Operating Permit Program was that the language in the State’s Regulation 26.10(B)(1) regarding emission levels must be deleted to make the regulation consistent with the Federal rule at 40 CFR 70.7(e)(2)(i)(A) and the State’s Regulations 26.10(b)(7) and 19.2. *Id.* Regulation 26.10(B)(1) (now Regulation 26.1002(A)) provided that “increases of not over 20% of the applicable definition of major source, or 15 tpy of PM<sub>10</sub> or 0.6 tpy of lead (potential to emit basis), whichever is less, of a regulated air pollutant over permitted rates” could be processed as a minor permit modification. Regulation 19.2 defined a modification as any increase in emissions.<sup>1</sup> Thus, EPA believed that the Arkansas minor permit modification process was inconsistent with itself and 40 CFR part 70.

The purpose behind Regulation 26.1002(A) is to prohibit significant New Source Review (NSR) changes from being processed under the title V minor permit modification procedures. Some of the emission increases proposed

<sup>1</sup> The reference to section 19.2 refers to a designation in Regulation 19 on the date of our interim approval of Arkansas’ title V Operating Permit Program on September 8, 1995. On February 15, 1999, the Arkansas Department of Environmental Quality (ADEQ) revised and recodified Regulation 19.

under Regulation 26.1002(A) are title I modifications, CAA sections 101–193, 42 U.S.C. 7401–7515, and thus cannot be processed as title V minor permit modifications.

Title I modifications include any major modification under major NSR. For example, Regulation 26.1002(A) provides that an emissions increase of 0.6 tpy of lead or 15 tpy of PM<sub>10</sub> could be processed as a minor permit modification. However, these emission increases would be considered major modifications under PSD.<sup>2</sup> Thus, these changes are considered title I modifications, and cannot be processed as a minor permit modification under Regulation 26.1002 and remain consistent with 40 CFR part 70. However, it is our understanding that Arkansas intends that the other gatekeeper provisions of Regulation 26.1002 would prevent such increases from being processed as a minor permit modification to part 70 operating permits. In fact, Regulation 26.1002(G) prevents minor permit modification procedures from being used for any changes that are “modifications under any provision of title I of the Act,” consistent with part 70.

With this understanding that the gatekeeper provisions would prevent all title I modifications—or any other gatekeeper category prohibition under Regulation 26.1002—from being processed as minor permit modifications, we no longer have any objection to this provision.<sup>3</sup>

The third and final condition for full approval of Arkansas’ operating permit program was that Arkansas “must ensure consistency between the operating permits program (Regulation 26) and the State Implementation Plan (SIP) (Regulation 19).” 60 FR 46773. Regulation 19 was submitted to EPA as a revision to the SIP on March 5, 1999. We approved Regulation 19 into the SIP on October 16, 2000. See 65 FR 61103. With regard to title V, this is no longer an interim approval issue. We believe that the Regulation 19 submittal satisfies the title V deficiency identified as Item 3 in the September 8, 1995, **Federal Register** notice.

Arkansas adopted the changes as discussed above on July 21, 2000. The rules became effective on August 10, 2000. Arkansas submitted these revisions to EPA on August 4, 2000.

<sup>2</sup> Section 19.904(a) incorporates 40 CFR 52.21(b)–(r), except section 52.21(i)(12). 40 CFR 52.21(b)(2)(i) and 52.21(b)(23)(i) define the net emission increases that are considered major modifications for PSD.

<sup>3</sup> In addition, Arkansas revised the definition of “modification” in Regulation 19, Chapter 2. This removed the final impediment to approval of this provision. See 60 FR at 46772.

The State is also adjusting its title V fee accounting procedures to include a two-step process to separate monies that represent amounts attributed to activities that incorporate Federal requirements from those that represent State-only requirements. The comprehensive fee of \$19.12 per ton is assessed for all title V sources, based on allowable emissions, less HAPs. That amount attributed to activities that incorporate Federal requirements into the permits will be \$15.296 per ton and the rest of the fee will be attributed to activities incorporating State-only conditions. Arkansas requires \$5,191,370 to cover the cost of the title V program as delineated in the fee demonstration. The State plans to collect a total of approximately \$7,189,943 per year in fees from title V sources. \$5,310,000 will represent the amount collected for activities that incorporate Federal requirements and \$1,879,943 will represent the amount collected for those activities associated with State-only requirements. The current proposal will result in \$5,310,000 in title V fee revenue, which will be sufficient to cover the program costs with an adequate margin of safety. The amount collected to incorporate Federal requirements into the title V permit are considered as meeting the requirement that the State must collect enough fees to sustain the title V program. The ADEQ has the authority to adjust the fee as necessary using its rulemaking authority. The demonstration submitted by Arkansas meets the requirements of 40 CFR 70.4(b)(7) and (8).

#### *D. What Is Involved in This Final Action?*

The State of Arkansas has fulfilled the conditions of the interim approval granted on September 8, 1995 (60 FR 46771), so EPA is taking final action to fully approve the State’s Operating Permit Program. EPA is also taking action to approve other nonsubstantive program changes made by the State since the interim approval was granted. Other changes include recodifying the entire Regulation 26 and making such editorial changes as deleting the words “Department of” and adding the word “Commission” to the name of the agency “Arkansas Pollution Control & Ecology Commission.”

## **II. State Implementation Plan (SIP)**

### *A. What Is a SIP?*

Section 110 of the Clean Air Act (CAA) requires States to develop air pollution regulations and control strategies to ensure that State air quality

meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each State must submit these regulations and control strategies to EPA for approval and incorporation into a Federally enforceable SIP. Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable provisions and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### *B. What Is the Federal Approval Process for a SIP?*

In order for State regulations to be incorporated into the Federally enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a State-authorized rulemaking body. Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us. All State regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled “Approval and Promulgation of Implementation Plans.” The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are “incorporated by reference,” which means that we have approved a given State regulation with a specific effective date.

### *C. What Does Federal Approval of a State Regulation Mean To Me?*

Enforcement of the State regulation before and after it is incorporated into the Federally approved SIP is primarily a State responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address

violations as described in section 304 of the CAA.

#### D. What Is Being Addressed in This Action?

We are approving Regulation 26 as it pertains to the Arkansas SIP. When Arkansas revised Regulation 26 to address the interim approval issues, it made some minor changes, such as recodifying the entire rule. When we approved the Arkansas SIP last October this revised rule was not finalized, so we approved the original Regulation 26. We are now approving the recodified rule as submitted on August 4, 2000. However, there are no significant changes, and the rule remains substantially the same as was approved in our October 16, 2000 action. See 65 FR 61103.

#### E. Why Is EPA Approving the NSR Provisions of Regulation 26 Into the Arkansas SIP?

Chapter 11 of Regulation 19 (approved October 16, 2000, FR 61103) addresses the NSR permitting procedures for major sources which are also subject to Regulation 26—Regulations of the Arkansas Operating Permit Program. Regulation 26 is Arkansas' regulation for its Operating Permit Program under title V of the CAA. Chapter 9 of Regulation 19 describes the process already approved by EPA, for issuance of a permit to a new major source or a major modification of a permit to of an existing source which is major for purposes of the PSD program, by virtue of incorporation by reference of the provisions of 40 CFR 52.21(b)-(r). Chapter 11 requires major sources which are subject to Regulation 26 to also have their permit applications processed in accordance with the procedures contained in Regulation 26, which are incorporated by reference. Thus, Chapter 11 creates the connection between the PSD and title V programs to allow Arkansas to issue one permit to its sources which are defined as major under both programs.

For minor sources, the permitting process is described in Chapter 4 of Regulation 19, which complies with 40 CFR 51.160–51.164. Chapters 4 and 9 of Regulation 19 do not, however, fully address all sources defined as major sources under section 302(j) of the CAA. Chapter 11 is necessary to provide a process for permitting the following:

- Sources which are major for purposes of PSD but undergo a physical change or change in the method of operation which does not result in a significant net emission increase, i.e., minor modifications. Such a change

therefore is not subject to PSD review.<sup>4</sup> Subpart I, however, applies to the construction and modification of all sources, including major and minor sources. Such a change, therefore, must meet the applicable requirements of 40 CFR 51.160–51.164. Regulation 26 contains the provisions which satisfy these provisions of subpart I.<sup>5</sup> These provisions are incorporated into Regulation 19 by Chapter 11.

- A source which is major for title V but not major for PSD. This would include a source whose potential to emit is 100 tpy or more but less than 250 tpy and is not one of the source types listed in 40 CFR 52.21(b)(1).<sup>6</sup> Although a new or modified source which is not a PSD major source is not subject to PSD, the applicable requirements of 40 CFR 51.160–51.164 nonetheless continue to apply as explained above. Regulation 26 contains the provisions which satisfy these provisions of subpart I. These provisions are incorporated into Regulation 19 by Chapter 11.

Chapter 11 of Regulation 19, incorporates the applicable requirements of 40 CFR part 51, subpart I<sup>7</sup> (subpart I) that are in Regulation 26 into Regulation 19, which we have approved into the SIP. Through Chapter 11, the subpart I provisions of Regulation 26 are incorporated by reference.

Through Chapter 11 of Regulation 19, Arkansas ensures that the construction and modification of sources subject to

<sup>4</sup> For purposes of PSD, 40 CFR 52.21(i)(1) provides that no stationary source or modification to which the paragraphs (j)–(r) apply shall begin actual construction without a permit which states that the source or modification meets such requirements. The provisions of § 52.21(j)–(r) apply to the construction of major sources and major modifications. “Major stationary source” is defined in § 52.21(b)(1) and “major modification” is defined in § 52.21(b)(2). A major modification is a physical change or change in the method of operation at a major stationary source which results in a significant net emissions increase. “Net emissions increase” is defined in § 52.21(b)(3) which describes how the net emissions increase is determined. Such increase is significant if it equals or exceeds the significance thresholds in § 52.21(b)(23). Thus, minor modifications at major stationary sources do not fall within the purview of the PSD requirements.

<sup>5</sup> According to Regulation 26, Chapter 2 Definitions, “applicable requirement” is defined as “Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under title I of the Act \* \* \*” (PSD *inter alia*) (this includes Regulation 19, Chapter 3 which requires protection of the NAAQS).

<sup>6</sup> Section 52.21(b)(1) is the definition of “major stationary source.” Under this definition, a source is major for PSD if its potential to emit (PTE) is 100 TPY or more and the source belongs to one of the source categories listed in § 52.21(b)(1)(i)(a). Otherwise, a source is a PSD major only if its PTE is 250 TPY or more, pursuant to § 52.21(b)(1)(i)(b). Under section 302(j) of the Act and 40 CFR part 70, a “major source” includes any stationary source with a PTE of 100 TPY or more.

<sup>7</sup> 40 CFR part 51, subpart I contains the requirements that a SIP-approved program for review of new and modified sources must meet. The subpart consists of §§ 51.160–51–166.

the preconstruction review requirements of the Act will meet the applicable requirements of subpart I. Our October 16, 2000, action includes our analysis of the provisions of Regulation 26 which Arkansas incorporated by reference into Regulation 19 and describes how Regulation 26 meets the requirements of subpart I. It further demonstrates that the procedures in Regulation 26 will ensure that modifications which occur at title V sources will satisfy the requirements of the Act and subpart I.

On October 16, 2000 we approved portions of Regulation 26 which Arkansas adopted July 23, 1993, and submitted to us on October 29, 1993, into the SIP. We had previously approved this version of Regulation 26 at 60 FR 46171 (September 8, 1995) as satisfying the requirements for interim approval under 40 CFR part 70. We have reexamined Arkansas' revisions to Regulation 26 which it submitted to us on August 4, 2000. We find that the revised Regulation 26 continues to meet the requirements of subpart I.

#### F. Have the Requirements for Approval of a SIP Revision Been Met?

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which accompanies this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

#### G. What Action Is EPA Taking?

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate receiving any adverse comments.

### III. Conclusion

We are taking final action to fully approve the Operating Permit Program of the State of Arkansas and to also approve Arkansas Regulation 26 as it pertains to the State Implementation Plan (SIP). EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates receiving no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant final full approval should adverse comments be filed. This

action will be effective December 10, 2001 unless the Agency receives adverse comments by November 8, 2001.

If EPA receives such adverse comments, then EPA will withdraw the final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 10, 2001 and no further action will be taken on the proposed rule.

#### IV. Administrative Requirements

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 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 December 10, 2001. 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

##### 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, New source review, Reporting and recordkeeping requirements.

##### 40 CFR Part 70

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

Dated: September 20, 2001.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

Parts 52, chapter I, title 40 of the CFR 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 E—Arkansas

2. In § 52.170(c), the table is amended as follows:

(a) Under the heading "Regulation 26: Regulations for the Arkansas Operating Permit Program," remove the existing entries for Section 3, Section 4, Section 5, and Section 6, and add new entries for Chapter 3, Chapter 4, Chapter 5, and Chapter 6 as shown below;

(b) Remove the heading "Prevention of Significant Deterioration Supplement to the Arkansas Plan of Implementation for Air Pollution Control"; and remove the entries for Section 1, Section 2, Section 3, Section 4, Section 5, and Section 6 under the heading "Prevention of Significant Deterioration Supplement to the Arkansas Plan of Implementation for Air Pollution Control";

(c) Remove the heading "Regulation for the Control of Volatile Organic Compounds" and remove the entries for Section 1, Section 2, Section 3, Section 4, Section 5, and Section 6 under the heading "Regulation for the Control of Volatile Organic Compounds."

#### § 52.170 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

EPA APPROVED REGULATIONS IN THE ARKANSAS SIP

State citation	Title/subject	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
<b>Regulation 26: Regulations of the Arkansas Operating Permit Program</b>				
<b>Chapter 3: Requirements for Permit Applicability</b>				
Section 26.301	Requirement for a permit	08/10/00	10/9/01 [and page number]	
Section 26.302	Sources subject to permitting	08/10/00	10/9/01 [and page number]	
<b>Chapter 4: Applications for Permits</b>				
Section 26.401	Duty to apply	08/10/00	10/9/01 [and page number]	
Section 26.402	Standard application form and required information	08/10/00	10/9/01 [and page number]	
Section 26.407	Complete application	08/10/00	10/9/01 [and page number]	
Section 26.409	Confidential information	08/10/00	10/9/01 [and page number]	
Section 26.410	Certification by responsible official	08/10/00	10/9/01 [and page number]	
<b>Chapter 5: Action on Application</b>				
Section 26.501	Action of part 70 permit applications	08/10/00	10/9/01	Subsection B Not in SIP
Section 26.502	Final action on permit application	08/10/00	10/9/01 [and page number]	
<b>Chapter 6: Permit Review by the Public, Affected States, and EPA</b>				
Section 26.601	Untitled introduction to Chapter 6	08/10/00	10/9/01 [and page number]	
Section 26.602	Public participation	08/10/00	10/9/01	Only Subsection A(1), A(2), A(5), and D in SIP
Section 26.603	Transmission of information to the Administrator	08/10/00	10/9/01 [and page number]	
Section 26.604	Review of draft permit by affected States	08/10/00	10/9/01 [and page number]	

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For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, 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 by revising paragraph (b) in the entry for Arkansas to read as follows:

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

\* \* \* \* \*

Arkansas

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(b) The Arkansas Department of Environmental Quality submitted program revisions on August 4, 2000. The rule revisions adequately addressed the conditions of the interim approval effective on October 10, 1995, and which would expire on December 1, 2001. The State is hereby granted final full approval effective on December 10, 2001.

[FR Doc. 01-24902 Filed 10-5-01; 8:45 am]

BILLING CODE 6560-50-P