

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Commitment Letter-Clean fuel fleet or alternative substitute program.	Northern Virginia Ozone nonattainment Area.	1/25/93	9/23/93 58 FR 50846 .....	52.2423(j).
Documents Incorporated by Reference .....	Statewide .....	4/12/89	8/23/95, 60 FR 43714 ...	52.2423(m).
Documents Incorporated by Reference .....	Statewide .....	2/12/93	8/23/95, 60 FR 43714 ...	52.2423(n).
9 VAC 5-60-100 (adopts 40 CFR 63.460 through 63.469 by reference).	Statewide .....	10/9/98	11/3/99, 64 FR 59648 ...	52.2423(q).
Documents Incorporated by Reference (9 VAC 5-20-21, Section E).	Statewide .....	6/22/99	1/7/03, 68 FR 663 .....	52.2423(r).
Documents Incorporated by Reference (9 VAC 5-20-21, paragraph E.12).	Statewide .....	2/23/04	6/8/04, 69 FR 31893 .....	52.2423(s).
Motor vehicle emissions budgets .....	Hampton Roads Ozone Maintenance Area.	8/29/96	6/26/97, 62 FR 34408 ...	52.2424(a).
Motor vehicle emissions budgets .....	Richmond Ozone Maintenance Area.	7/30/96	11/17/97, 62 FR 61237 ..	52.2424(b).
1990 Base Year Emissions Inventory-Carbon Monoxide (CO).	Metropolitan Washington Area.	11/1/93 4/3/95 10/12/95	1/30/96, 61 FR 2931 .....	52.2425(a).
1990 Base Year Emissions Inventory-Carbon Monoxide (CO), oxides of nitrogen (NO <sub>x</sub> ), & volatile organic compounds (VOC).	Richmond-Petersburg, Norfolk, Virginia Beach, and Smyth County Ozone Area.	11/11/92 11/18/92 11/1/93 12/15/94	9/16/96, 61 FR 48657 ...	52.2425(b).
1990 Base Year Emissions Inventory-Carbon Monoxide (CO), oxides of nitrogen (NO <sub>x</sub> ), & volatile organic compounds (VOC).	Northern Virginia (Metropolitan Washington) Ozone Nonattainment Area.	11/30/92 11/1/93 4/3/95	9/16/96, 61 FR 54656 ...	52.2425(c).
1990 Base Year Emissions Inventory-oxides of nitrogen (NO <sub>x</sub> ), & volatile organic compounds (VOC).	Northern Virginia (Metropolitan Washington) Ozone Nonattainment Area.	12/17/97	7/8/98, 63 FR 36854 .....	52.2425(d).
Photochemical Assessment Monitoring Stations (PAMS) Program.	Northern Virginia (Metropolitan Washington) Ozone Nonattainment Area.	11/15/94	9/11/95, 60 FR 47081 ...	52.2426.
Attainment determination of the ozone NAAQS .....	Richmond Ozone Nonattainment Area.	7/26/96	10/6/97, 62 FR 52029 ...	52.2428(a).
15% rate of progress plan .....	Northern Virginia (Metropolitan Washington) Ozone Nonattainment Area.	4/14/98	10/6/00, 65 FR 59727 ...	52.2428(b).
Small business stationary source technical and environmental assistance program.	Statewide .....	11/10/92	2/14/94, 59 FR 5327 .....	52.2460.
Establishment of Air Quality Monitoring Network .....	Statewide .....	3/24/80	12/5/80, 45 FR 86530 ...	52.2465(c)(38).
Lead (Pb) SIP .....	Statewide .....	12/31/80	3/21/82, 45 FR 8566 .....	52.2465(c)(61).
Carbon Monoxide Maintenance Plan .....	Arlington County & Alexandria City.	10/4/95	1/30/96, 61 FR 2931 .....	52.2465(c)(107).
Ozone Maintenance Plan, emissions inventory & contingency measures.	Hampton Roads Area .....	8/27/96	6/26/97, 62 FR 34408 ...	52.2465(c)(117).
Ozone Maintenance Plan, emissions inventory & contingency measures.	Richmond Area .....	7/26/96	11/17/97, 62 FR 61237 ..	52.2465(c)(119).

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

[NM-47-1-7606a; FRL-7810-2]

**Clean Air Act Approval of Revisions to the Title V Operating Permit Program in the State of New Mexico, Albuquerque/Bernalillo County, NM, and the State of Arkansas**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action to approve revisions to the title V Operating Permits program for the State of New Mexico, Albuquerque/Bernalillo County, New Mexico, and the State of Arkansas. This includes revisions that the State of New Mexico, Albuquerque/Bernalillo County, New Mexico, and the State of Arkansas, submitted to EPA on November 5, 2002, May 2, 2003, and October 24, 2002, respectively to revise the definition of "Major Source" as defined in the States' or County's regulation. This also includes other administrative revisions to other areas of Arkansas' regulations to incorporate updated Federal regulatory citations.

**DATES:** This direct final rule will be effective November 8, 2004, without further notice, unless EPA receives adverse comments by October 8, 2004. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6comment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

• E-mail: Mr. David Neleigh at [neleigh.david@epa.gov](mailto:neleigh.david@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

• Fax: Mr. David Neleigh, Chief, Air Permits Section (6PD-R), at fax number 214-665-7263.

• Mail: Mr. David Neleigh, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

• Hand or Courier Delivery: Mr. David Neleigh, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Please include the text "Public Comment on File ID No. NM-47-1-7606a" in the subject line of the first page of your comments. EPA's policy is that all comments received will be included in the public file without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through [regulations.gov](http://regulations.gov) or e-mail if you believe that it is CBI or otherwise protected from disclosure. [Regulations.gov](http://Regulations.gov) is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Official File:** Copies of the documents relevant to this action 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 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below 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/County submittals and EPA's technical support document are also available for public inspection at the State/County Air Agency listed below during official business hours by appointment:

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

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

**FOR FURTHER INFORMATION CONTACT:** Allen Chang of the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, telephone (214) 665-7451; fax number 214-665-7263; e-mail address [chang.allen@epa.gov](mailto:chang.allen@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we", "us", or "our" means EPA.

#### Table of Contents

- I. What Is the Background for This Action?
- II. What Is the Federal Approval Process for a Title V Revision?
- III. What Is Being Addressed in the Document?
- IV. What Action Is EPA Taking?
- V. Statutory and Executive Order Reviews

#### I. What Is the Background for This Action?

The State of New Mexico, the Albuquerque/Bernalillo County Air Quality Control Board, and the State of Arkansas have proposed to revise the definition of "Major Source" in response to recent amendments to the definition of "Major Source" in 40 CFR 70.2. See 66 FR 59161 (November 27, 2001).

In 1992, the EPA promulgated a definition of "Major Source" under 40 CFR 70.2. Paragraph (2) of the "Major Source" definition defines a major source of non-hazardous air pollutants

(HAP) as "a source which directly emits, or has the potential to emit non-HAP pollutants, at 100 tons per year<sup>1</sup> or more." The definition requires a source to include fugitive emissions<sup>2</sup> of any such pollutant, as determined by the Administrator. The definition specifically provides that fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source unless the source belongs to a listed category under 40 CFR 70.2, Major Source. The 27th category in the list, 70.2(2)(xxvii), was defined as "all other stationary source categories regulated by a standard promulgated under Section 111 or 112 of the Act, but only with respect to those pollutants that have been regulated for that category."

The EPA proposed two revisions to the definition of "Major Source" regarding when non-HAP fugitive emissions are included in determining major source status. In August 1994, the EPA proposed to revise the definition of "Major Source" to require the counting of fugitive emissions only for source categories subject to a standard under Section 111 or 112 that was promulgated as of August 7, 1980. EPA proposed to add the phrase "promulgated as of August 7, 1980." Subsequently, in August 1995, the EPA proposed a second revision to the definition of "Major Source" to make the definition of "Major Source" consistent with the "Major Source" definition found in the New Source Review Program (e.g. Prevention of Significant Deterioration and Non-Attainment). This revision deleted the pollution limitation in the "Major Source" definition and eliminated the phrase "but only with respect to those air pollutants that have been regulated for the category." See 60 FR 45530 (August 31, 1995).

Both of these revisions were promulgated by the EPA on November 27, 2001. The EPA then required the States to make the same changes to their definition of "Major Source" no later than November 27, 2002, to ensure that their rules would be consistent with the final rule (66 FR 59162).

States may include requirements that are more stringent than the Federal requirements, by requiring sources subject to section 111 or 112 standards promulgated after August 7, 1980, to count fugitive emissions in major source

<sup>1</sup> Under paragraph (3) of the major source definition, the major source threshold is less than 100 tons per year in certain non-attainment areas.

<sup>2</sup> Under 40 CFR 70.2, "fugitive emissions" are defined "as those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening."

determinations under section 302 or part D of Title I.

The proposed revisions to the rules of the State of New Mexico, the Albuquerque/Bernalillo County Air Quality Control Board, and the State of Arkansas are consistent with the definition of "Major Source" in 40 CFR 70.2.

## II. What Is the Federal Approval Process for a Title V Revision?

In order for the States/County regulations to be approved as part of the title V Operating Permits program (Operating Permits Program), the States/County permitting authority must formally adopt these regulations consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and formal adoption by a state/local-authorized rulemaking body.

Once a rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the Operating Permits Program. We must then provide for public notice and seek additional comment regarding the proposed Federal action on the state submission. If we receive adverse comments, we must address them prior to any final Federal action by us.

## III. What Is Being Addressed in This Document?

The EPA is taking direct final action to approve into the Operating Permits program the following submitting States/County:

### A. New Mexico State Title 20 of the New Mexico Administrative Code Section 20.2.70

The State of New Mexico initially adopted the first revision in 1994 but did not submit it to EPA at that time because EPA had not yet finalized the Federal revision. New Mexico is now submitting to EPA both revisions to its Operating Permits Program. These changes revise the definition of "Major Source" to be identical to the Federal term as defined in 40 CFR 70.2.

The State of New Mexico adopted these revisions on September 25, 2002, and submitted the revisions to us for approval as a revision to its Operating Permits Program on November 5, 2002. The State of New Mexico's definition is consistent with the term as defined in 40 CFR 70.2.

### B. Title 20 of the New Mexico Administrative Code Section 20.11.42.7 (Bernalillo County)

Albuquerque/Bernalillo County Air Quality Control Board (Board) revised

the definition of "Major Source" in 20.11.42 NMAC Operating Permits to remove the phrase, "but only with respect to those air pollutants regulated for that category." The previous definition of "Major Source", stated, "All other stationary source categories regulated by a standard promulgated under the Section 111 or 112 of the Federal Act, but only with respect to those air pollutants regulated for that category." The Board adopted the revision on December 11, 2002, and submitted the revision to us for approval on May 2, 2003. The Board's definition of "Major Source" is consistent with the term as defined in 40 CFR 70.2.

### C. The Arkansas Operating Permit Program Regulation 26 Chapter 2 Definitions, Major Source (B)(27)

The Arkansas Department of Environmental Quality (ADEQ) adopted two revisions to its Operating Permit Program on August 23, 2002, and submitted both revisions to us for approval on October 24, 2002. These changes revise the definition of "Major Source" to be identical to the Federal term as defined in 40 CFR 70.2.

The ADEQ also made other non-substantive administrative revisions, such as updating regulation dates and correcting typographical errors.

Our approval of these revisions to the definitions of "Major Source" for the State of New Mexico, Albuquerque/Bernalillo County, New Mexico, and the State of Arkansas is consistent with the revisions to the term "Major Source" that EPA promulgated on November 27, 2001, under 40 CFR 70.2.

## IV. What Action Is EPA Taking?

We are approving the above revisions to the definitions of "Major Source" to the Operating Permits program for the State of New Mexico, Albuquerque/Bernalillo County, New Mexico, and the State of Arkansas. This includes revisions to NMAC 20.2.70, NMAC 20.11.42.7, and the Arkansas Operating Permit Program Regulation 26, respectively submitted on November 5, 2002, May 2, 2003, and October 24, 2002.

We are processing these revisions as a direct final action because they add noncontroversial regulations to the above-referenced Operating Permits Programs. We do not anticipate adverse comments. Please note that if we receive adverse comments on a part of this rule and if the part can be severed from the remainder of a rule, we may adopt as final those parts of the rule that are not subject to an adverse comment.

## V. 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 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, 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 title V 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 operating permit program submission for failure to use

VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a title V operating permit program submission, to use VCS in place of a title V operating permit program 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. The 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 November 8, 2004. 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.

Dated: August 23, 2004.

**Richard E. Greene,**  
*Regional Administrator, Region 6.*

■ Chapter I, 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 as follows:

■ a. By adding paragraph (c) to the entry for Arkansas.

■ b. By adding paragraphs (e) and (f) to the entry for New Mexico.

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

\* \* \* \* \*

Arkansas

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(c) The Arkansas Department of Environmental Quality; submitted its operating permits program revisions on October 24, 2002; the Arkansas Operating Permit Program Regulation 26, effective November 8, 2004.

\* \* \* \* \*

New Mexico

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(e) The Environmental Department; submitted the following program revisions on November 5, 2002: NMAC 20.2.70, effective November 8, 2004.

(f) Albuquerque/Bernalillo County Air Quality Control Board; submitted the following program revisions on May 2, 2003: NMAC 20.11.42.7, effective November 8, 2004.

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[FR Doc. 04-20333 Filed 9-8-04; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**46 CFR Part 221**

[Docket No. MARAD 2004-19030]

**RIN 2133-AB55**

**Trading Restrictions on Vessels Transferred to a Foreign Registry: Amendment of List of Prohibited Countries**

**AGENCY:** Maritime Administration, DOT.  
**ACTION:** Final rule.

**SUMMARY:** In accordance with foreign policy considerations, the Maritime Administration (MARAD) currently prohibits the foreign transfer of an interest in or control of certain U.S. documented or previously U.S. documented vessels to an entity in the foreign countries listed in the

Department of Commerce's list of prohibited countries set forth in Country Group E. Currently, the rule specifically lists the countries set forth in Country Group E. This final rule amends regulations to incorporate Country Group E by reference and eliminates the separate listing.

**EFFECTIVE DATE:** This final rule is effective on September 8, 2004.

**ADDRESSES:** This final rule is available for inspection and copying between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays, at the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. An electronic version of this document along with all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Len Sutter, Attorney-Advisor, Office of Chief Counsel, Division of Maritime Programs, Maritime Administration, at (202) 366-5177, fax (202) 366-7485.

**SUPPLEMENTARY INFORMATION:**

Under 46 CFR part 221, subpart B—Transfers to Noncitizens or to Registry or Operation under Authority of a Foreign Country (Subpart B), MARAD implements authority provided by 46 U.S.C. 808(c)(1) to regulate the transfer to foreign ownership and registry of certain U.S. documented vessels. Currently, under subpart B, certain ownership, registry and trading restrictions apply to entities in certain foreign countries set forth in 46 CFR 221.13(a)(4) (MARAD Prohibited Countries). For this purpose, MARAD incorporates the countries listed by the Department of Commerce in 15 CFR part 740, Supplement 1, Country Group E (Country Group E Prohibited Countries). In lieu of reproducing the list of Country Group E Prohibited Countries in MARAD's regulations, and amending our regulations each time the list is changed, this final rule amends 46 CFR 221.13(a)(4) to incorporate the Country Group E Prohibited Countries list by reference in MARAD's regulations. In this manner, MARAD's regulations will remain current with any changes made by the Department of Commerce to the Country Group E list of Prohibited Countries.

**Rulemaking Analyses and Notices**

*Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Pub. L. 104-121*

Under Executive Order 12866, the Office of Management and Budget