

(iv) If you are authorized under paragraph (b)(5) of this section to use an exception to the requirement to calculate your actual transportation costs, you must follow the reporting requirements of paragraph (c)(1) of this section.

(v) You may not use a transportation allowance that was in effect before March 1, 1988. You must use the provisions of this subpart to determine your transportation allowance.

\* \* \* \* \*

(f) *Allowable costs in determining transportation allowances.* You may include, but are not limited to (subject to the requirements of paragraph (g) of this section), the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section. You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this paragraph.

(1) *Firm demand charges paid to pipelines.* You may deduct firm demand charges or capacity reservation fees paid to a pipeline, including charges or fees for unused firm capacity that you have not sold before you report your allowance. If you receive a payment from any party for release or sale of firm capacity after reporting a transportation allowance that included the cost of that unused firm capacity, or if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS-2014 by the amount of that payment. You must modify the Form MMS-2014 by the amount received or credited for the affected reporting period, and pay any resulting royalty and late payment interest due;

\* \* \* \* \*

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* However, theoretical losses are not deductible in non-arm's-length transportation arrangements unless the transportation allowance is based on arm's-length transportation rates charged under a FERC- or state regulatory-approved tariff under paragraph (b)(5) of this section. If you receive volumes or credit for line gain, you must reduce your transportation allowance accordingly and pay any resulting royalties and late payment interest due;

\* \* \* \* \*

(10) *Costs of surety.* You may deduct the costs of securing a letter of credit, or other surety, that the pipeline requires

you as a shipper to maintain under an arm's-length transportation contract.

(g) \* \* \*

(5) *Fees paid to brokers.* This includes fees paid to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees;

(6) *Fees paid to scheduling service providers.* This includes fees paid to parties who provide scheduling services, if such fees are separately identified from aggregator/marketer fees;

(7) *Internal costs.* This includes salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production; and

(8) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

\* \* \* \* \*

[FR Doc. 05-4515 Filed 3-9-05; 8:45 am]

BILLING CODE 4310-MR-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R01-OAR-2005-ME-0001; A-1-FRL-7881-2]

### Approval and Promulgation of Air Quality Implementation Plans; Maine; NO<sub>x</sub> Control Program

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce emissions of nitrogen oxides from large stationary sources. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

**DATES:** This direct final rule will be effective May 9, 2005, unless EPA receives adverse comments by April 11, 2005. If EPA receives adverse comments, the Agency 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:** When submitting your comments, include the Regional Material in EDocket (RME) ID Number R01-OAR-2005-ME-0001 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [conroy.dave@epa.gov](mailto:conroy.dave@epa.gov).

4. Fax: (617) 918-0661.

5. Mail: "RME ID Number R01-OAR-2005-ME-0001" David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S.

Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Regional Material in EDocket (RME) ID Number R01-OAR-2005-ME-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://www.regulations.gov) Web site are "anonymous access" systems, 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 RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket 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 or any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Christine Sansevero, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023, (617) 918-1699, [sansevero.christine@epa.gov](mailto:sansevero.christine@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. How Can I Get Copies of This Document and Other Related Information?*

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

**II. Rulemaking Information**

This section is organized as follows:

- A. What Action is EPA Taking?
- B. What are the Requirements of Maine's New Regulation?

- C. Why is EPA Approving Maine's Regulation?
- D. What is the Process for EPA To Approve This SIP Revision?

*A. What Action is EPA Taking?*

EPA is approving Maine's Chapter 145, "NO<sub>x</sub> Control Program" and incorporating this regulation into the Maine SIP.

*B. What are the Requirements of Maine's New Regulation?*

Chapter 145 sets year-round NO<sub>x</sub> emission limits for all electric generating facilities and industrial sources with a heat input of greater than 250 million British Thermal Units (BTU) per hour located in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Lincoln, and Knox counties. The rule establishes control requirements for electric generating units (EGUs) and industrial boilers, through both "interim" and "final" emission limits (in pounds per million BTU) as indicated in Table 1 below. The limits are to be met on a 90-day rolling average basis. The rule includes the appropriate testing and recordkeeping requirements to ensure compliance with the specified emission limits. The rule also includes provisions for averaging emissions between units in certain circumstances as well as appropriate monitoring requirements.

TABLE 1.—INTERIM AND FINAL EMISSION LIMITS FOR LARGE STATIONARY SOURCES

Affected source	Interim limits June 15, 2003 thru Decem- ber 30, 2004	Final limits December 30, 2004
Fossil fuel fired EGU with heat input less than 750 mmBTU/hr .....	0.27 lbs/mmBTU .....	0.22 lbs/mmBTU.
Fossil fuel fired EGU with heat input greater than or equal to 750 mmBTU/hr .....	0.19 lbs/mmBTU .....	0.15 lbs/mmBTU.
Fossil fuel fired heat exchangers, primary boilers and resource recovery units with heat input greater than 250 mmBTU/hr.	0.20 lbs/mmBTU .....	0.20 lbs/mmBTU.

While an affected source must comply with the interim limits, the regulation provides for alternative emission limitations for sources that cannot meet the final emission limits using NO<sub>x</sub> control technology approved by the Maine Department of Environmental Protection Commissioner or Maine Board of Environmental Protection under Chapter 145. If an affected source fails to meet the final emission limitation after installing the approved NO<sub>x</sub> control technology, they can apply to the Board to establish an alternative emission limitation based on the actual performance of the NO<sub>x</sub> control technology. Affected sources must apply to the Board for an alternative emission limit by January 1, 2005. The Board will

process any application for alternative emission limits as a license amendment.

The authority to establish alternative emission limits is the functional equivalent of a director's discretion provision. Director's discretion provisions are not acceptable for inclusion in SIPs if the state is relying on the provision to satisfy a Clean Air Act requirement, or to receive credit under its SIP for enforceable emission reductions. Chapter 145, however, is an additional control measure undertaken by Maine that goes beyond what is minimally required by the Clean Air Act. This rule is not meant to implement a Reasonably Available Control Technology requirement and Maine is not covered by the NO<sub>x</sub> SIP

call. Therefore, EPA is approving this rule as a SIP strengthening measure despite the provision allowing the Board to set alternative limits. Fortunately, the rule limits the time frame for requesting an alternative limit; after January 1, 2005 no source may apply for such a limit. As a result, we now know the universe of emissions units that may be receiving an alternative limit. Imposing a limit on the time frame to request an alternate limit has the effect of eliminating the operation of the director's discretion provision after passage of this deadline.

Maine DEP has notified EPA that, on December 28, 2004, one such affected facility, FPL Energy, submitted an application for alternative emission

limits for units 3 and 4 of their Wyman station in Yarmouth, Maine. Once the Board has made a final determination of the alternative limits for units 3 and 4 at Wyman Station, EPA and the public will know what emissions limits are in effect under the rule for these units. Moreover, Maine DEP has committed to submit any alternative emission limits to EPA as a single-source SIP revision<sup>1</sup>. Once the state establishes those limits in an operating license and submits them to EPA for approval as a revision to the SIP, EPA will be able to assign SIP credit for the final emission limits for these units, and there will be no further opportunity for the state to change the limits under the rule unless it is done as a revision to the SIP.

#### C. Why is EPA Approving Maine's Regulation?

EPA has evaluated Maine's Chapter 145 and has determined that this regulation strengthens the existing SIP requirements for large stationary sources. The specific requirements of the regulation and EPA's evaluation of these requirements are detailed in a memorandum dated January 24, 2005, entitled "Technical Support Document—Maine—NO<sub>x</sub> Control Program Regulation" (TSD). The TSD and Maine's Chapter 145 are available in the docket supporting this action.

#### D. What is the Process for EPA To Approve This SIP Revision?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates 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 approve the SIP revision should adverse comments be filed. This action will be effective May 9, 2005, without further notice unless the EPA receives adverse comments by April 11, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing 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. The 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 May 9,

2005, and no further action will be taken on the proposed rule.

#### III. Final Action

EPA is approving Maine's Chapter 145, "NO<sub>x</sub> Control Program" and incorporating this regulation into the Maine SIP.

#### IV. 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 (Pub. L. 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), because it 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 9, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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, Incorporation by

<sup>1</sup> See response to comment number 108 on page 95 of DEP's Supplemental Basis Statement for Chapter 145.

reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 18, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

Part 52 of 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 U—Maine**

■ 2. Section 52.1020 is amended by adding paragraph (c)(56) to read as follows:

**§ 52.1020 Identification of plan.**

- \* \* \* \* \*
- (c) \* \* \*
- (56) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on February 12, 2004.
  - (i) Incorporation by reference.
    - (A) Chapter 145 of the Maine Department of Environmental Protection

Regulations, “NO<sub>x</sub> Control Program,” effective in the State of Maine on July 22, 2001.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

■ 3. In § 52.1031, Table 52.1031 is amended by adding a new state citation, 145, in numerical order to read as follows:

**§ 52.1031 EPA-approved Maine regulations.**

\* \* \* \* \*

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
145	NO <sub>x</sub> Control Program	6/21/01	4/10/05	[Insert FR citation from published date] ...	(c)(56).

**Note.**—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–4709 Filed 3–9–05; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[AZ 135–0085; FRL–7879–3]

**Approval and Promulgation of State Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Arizona; Maricopa County Area; Technical Correction**

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

**ACTION:** Final rule; technical correction.

**SUMMARY:** In this action, EPA is amending the regulations that identify area designations within Arizona. The purpose of this action is to correct this section to clarify the boundary description of the Phoenix Planning Area designated as nonattainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter 10 microns or smaller in diameter (PM–10).

**DATES:** *Effective Date:* This action is effective on April 11, 2005.

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours at the Air Planning Office of the Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. Due

to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, (520) 622–1622 or e-mail to [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:** On July 1, 1987, EPA revised the NAAQS for particulate matter, replacing the standard applicable to Total Suspended Particulates (TSP) with a standard that would apply to PM–10, and establishing new annual and 24-hour standards for PM–10 (52 FR 24634). To assure attainment of the new NAAQS, EPA required that states identify areas as nonattainment/attainment/unclassifiable for PM–10, and submit their designations to EPA, in accordance with the requirements of the Clean Air Act (CAA) section 107(d)(1)(A).

On May 15, 1991, Arizona Governor Fife Symington submitted PM–10 nonattainment area designations for Arizona. Included in these initial designations was the following boundary definition recommendation for the Maricopa County area, also referred to as the Phoenix Planning Area:

“Within the Boundaries of Maricopa County:  
 T6N, R1–3W, R1–7E  
 T5N, R1–3W, R1–7E  
 T4N, R1–3W, R1–7E  
 T3N, R1–3W, R1–7E  
 T2N, R1–3W, R1–7E

T1N, R1–3W, R1–7E  
 T1S, R1–3W, R1–7E  
 T2S, R1–3W, R1–7E and T1N, R7–8E in Pinal County”

We codified Arizona’s initial PM–10 designations on March 3, 1978 (43 FR 8694). The description of the Phoenix Planning Area in the CFR is listed under “Maricopa and Pinal Counties” as:

“The rectangle determined by, and including—  
 T6N, R3W  
 T6N, R7E  
 T2S, R3W  
 T2S, R7E,  
 T1N, R8E”

40 CFR 81.303. Thus, while the area described in our federal regulations is identical to the area described by the State’s initial designation, we did not identify which of the townships and ranges are part of Maricopa County and which are part of Pinal County.

On September 13, 2004, ADEQ sent EPA Region 9 a letter requesting that we revise the Phoenix Planning Area boundary description in 40 CFR 81.303 to conform to the State’s initial 1991 designation with one additional change. Where the State’s 1991 designation identified “T1N, R7–8E in Pinal County”, the State’s 2004 letter requests that the Pinal County portion of this designation be corrected to read “T1N, R8E in Pinal County”, because Township 1 North, Range 7 East is in Maricopa County and not in Pinal County.

The State’s September 13, 2004 request is reasonable and will correct errors made by EPA in codifying the