



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0033; FRL-9921-79-Region 6]

**Approval and Promulgation of Implementation Plans; State of New Mexico;
Revisions to the State Implementation Plan; General Definitions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking a direct final action to approve revisions to the New Mexico State Implementation Plan (SIP) related to the General Definitions section of the New Mexico SIP that were submitted by the State of New Mexico on June 11, 2009. EPA has evaluated the SIP revisions for New Mexico and determined these revisions are consistent with the requirements of the Clean Air Act (Act or CAA). EPA is approving this action under section 110 of the Act.

DATES: This direct final rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives significant adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2011-0033, by one of the following methods:

- (1) www.regulations.gov: Follow the on-line instructions.
- (2) E-mail: Ms. Tracie Donaldson at donaldson.tracie@epa.gov.
- (3) Mail or Delivery: Ms. Tracie Donaldson, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2011-0033. 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://www.regulations.gov>, 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 <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an “anonymous access” system, which means that 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 <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 along with any disk or CD-ROM submitted. 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 and any form of encryption and should be free of

any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Tracie Donaldson, (214) 665-6633, donaldson.tracie@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Donaldson or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

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I. Background

A. CAA and SIPs

Section 110 of the CAA requires states to develop and submit to EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). The NAAQS currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. EPA-approved SIP provisions and control strategies are federally enforceable. States revise the SIP as needed and submit revisions to EPA for approval.

B. SIP Revision Submitted on June 11, 2009

On August 31, 2009, the New Mexico Environmental Improvement Board (EIB) adopted amendments to the New Mexico Administrative Code (NMAC) at Title 20, Chapter 2, Parts 2, 74 and 79. Governor Richardson submitted these amendments as a revision to the New Mexico SIP in a letter dated June 11, 2009.

As part of this action, EPA is addressing only the revisions to the NMAC at Title 20, Chapter 2, Part 2, Definitions that were contained in the revisions adopted on August 31, 2009. This includes the addition of two definitions: "PM_{2.5}" and "PM_{2.5} emissions." EPA is not

addressing the revisions to Parts 74 and 79, which were previously addressed in a separate action. See 75 FR 72688.

EPA is also taking this opportunity to recodify the General Definitions of the NMAC as part of this action. The New Mexico EIB adopted the recodification of Title 20, Chapter 2, Part 2 in 2002.

II. EPA's Evaluation

As detailed in the Technical Support Document (TSD) accompanying this action, the definitions of "PM_{2.5}" and "PM_{2.5} emissions" that were submitted as additions to the New Mexico SIP have been reviewed and were found to be consistent with EPA's federal regulations. The 2002 recodification of Title 20, Chapter 2, Part 2 is administrative in nature, does not contain substantive changes, and is approvable.

III. Final Action

For the reasons stated above and in the TSD, EPA is taking direct final action to approve revisions to the New Mexico SIP pertaining to the General Definitions section at NMAC, Title 20, Chapter 2, Part 2, Definitions, as adopted on August 31, 2009, and submitted as SIP revisions on June 11, 2009. EPA is also approving the recodification of Title 20, Chapter 2, Part 2 adopted in 2002 as part of this action.

We are approving the revisions to the New Mexico SIP under section 110 of the Act. We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no significant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will

serve as the proposal to approve the SIP revision if significant adverse comments are received. This rule will be effective on **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication in the Federal Register]** without further notice unless we receive significant adverse comment by **[FEDERAL REGISTER OFFICE: insert date 30 days from date of publication in the Federal Register]**. If we receive significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 action 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 **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 6, 2015.

Ron Curry,
Regional Administrator, Region 6.

40 CFR Part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG – New Mexico

2. In § 52.1620(c), the table titled “EPA Approved New Mexico Regulations” is amended by revising the entry for Part 2 under “New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality”. The revision reads as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA Approved New Mexico Regulations

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
* * * * *				
Part 2	Definitions	8/31/2009	[Insert date of FR publication] [Insert FR page number where document begins]	The following definitions are state specific and are not being approved into the SIP: G. "Carbon dioxide" M. "Greenhouse gas" O. "Hydrofluorocarbons" S. "Methane" V. "Nitrous oxide" AA. "Perfluorocarbons" AN. "Sulfur hexafluoride"
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