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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0033; FRL-9770-8]

Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the New Mexico SIP to update the New Mexico NNSR and PSD SIP permitting programs consistent with federal requirements. EPA finds that these revisions to the New Mexico SIP meet the Federal Clean Air Act (the Act or CAA) and EPA regulations, and are consistent with EPA policies. New Mexico submitted the PSD and NNSR SIP permitting revisions in two SIP submittals on June 11, 2009 and May 23, 2011. EPA is finalizing this action under section 110 and parts C and D of the Act.

DATES: This final rule will be effective **insert date 30 days after date of publication in the Federal Register**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2011-0033. All documents in the docket are listed in the *www.regulations.gov* index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted

material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air Planning Section (6PD-L), 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 or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page 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, 75202.

The State submittal is also available for public inspection during official business hours by appointment: New Mexico Environment Department, Air Quality Bureau, 1301 Siler Road, Building B, Santa Fe, New Mexico 87502.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-2115; fax number 214-665-6762; e-mail address *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means EPA.

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I. Background for Final Action

The background for today's action is discussed in detail in our October 12, 2012 proposal (77 FR 62200). In that notice we proposed to approve portions of two submittals from New Mexico, dated June 11, 2009 and May 23, 2011, that update the New Mexico Nonattainment New Source Review (NNSR) and Prevention of Significant Deterioration (PSD) permitting SIP rules consistent with federal requirements. Specifically, these SIP submittals address federal PSD and NNSR permitting requirements promulgated in EPA's Phase 2 8-hour Ozone Implementation Rule (70 FR 71612, November 29, 2005), NSR PM_{2.5} Rule (73 FR 28321, May 16, 2008), PM_{2.5} PSD Increment – Significant Impact Levels (SILs) – Significant Monitoring Concentration (SMC) Rule (75 FR 64864, October 20, 2010) and Reasonable Possibility in Recordkeeping Rule (72 FR 72607, December 21, 2007).

Our October 12, 2012 proposal provides a detailed description of all relevant submittals and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period closed for this action on November 13, 2012; we did not receive any comments.

II. Final Action

EPA is approving portions of two revisions to the New Mexico SIP submitted by the Governor of New Mexico on June 11, 2009 and May 23, 2011. EPA has made the determination that the submitted regulations are approvable in accordance with section 110 and parts C and D of the Act and EPA's regulations, and consistent with EPA guidance. EPA is approving revisions to Part 74 of the New Mexico Administrative Code (NMAC), Title 20 (Environment Protection), Chapter 2 (Air Quality) except for revisions to 20.2.74.303(A) NMAC submitted on May 23,

2011. EPA is approving revisions to Part 79 NMAC, Title 20, Chapter 2 submitted on June 11, 2009 and May 23, 2011.

Specifically, EPA is approving the following revisions to Part 74 submitted on May 23, 2011. These revisions satisfy the PM_{2.5} PSD requirements under EPA's May 16, 2008 and October 20, 2010 final PM_{2.5} PSD permitting implementation rules, and EPA's December 21, 2007 Reasonable Possibility in Recordkeeping Rule.

- 20.2.74.7 NMAC – Definitions,
- 20.2.74.300 NMAC – Obligations of Owners or Operators of Sources,
- 20.2.74.303 NMAC – Ambient Impact Requirements,
- 20.2.74.306 NMAC– Monitoring Requirements,
- 20.2.74.403 NMAC – Additional Requirements for Sources Impacting Class I Federal Areas,
- 20.2.74.502 NMAC – Significant Emission Rates,
- 20.2.74.503 NMAC – Significant Monitoring Concentrations,
- 20.2.74.504 NMAC – Allowable PSD Increment, and
- 20.2.74.505 NMAC – Maximum Allowable Increases for Class I Waivers.

EPA is approving the following revisions to Part 79 submitted June 11, 2009. These revisions satisfy EPA's November 29, 2005 Phase 2 8-hour Ozone Implementation Rule for nonattainment areas.

- 20.2.79.7 NMAC – Definitions,
- 20.2.79.109 NMAC – Applicability, and
- 20.2.79.115 NMAC – Emission Offsets.

EPA is also approving the following revisions to Part 79 submitted May 23, 2011. These revisions satisfy EPA's PM_{2.5} NNSR requirements under EPA's May 16, 2008 and October 20, 2010 final PM_{2.5} NSR permitting implementation rules, and the December 21, 2007 Reasonable Possibility in Recordkeeping Rule. New Mexico also made some nonsubstantive changes in 2011 to 20.2.79.109 NMAC as adopted and submitted in 2009, and we are approving these nonsubstantive changes.

- 20.2.79.7 NMAC – Definitions,
- 20.2.79.109 NMAC - Applicability, and
- 20.2.79.119 NMAC - Tables

EPA explained in the proposal for this action that it is severing the revisions to 20.2.74.303(A) NMAC submitted on May 23, 2011 relating to PM_{2.5} significant impact levels (SILs). These revisions are equivalent to the provisions EPA has requested the D.C. Circuit Court in pending litigation to remand and vacate at 40 CFR 51.166(k)(2) that were promulgated on October 20, 2010, and conflict with our intentions for the use of SILs to demonstrate compliance with CAA section 163(a). (*Sierra Club v. EPA*, Case No 10-1413, D.C. Circuit). Therefore, 20.2.74.303 NMAC as adopted by NMED on January 1, 2011, and SIP-approved by EPA on July 20, 2011, remains the SIP-approved section. See 76 FR 43149. The NMED continues to retain the ability to implement the PM_{2.5} SILs at 20.2.79.119 NMAC consistent with EPA's interpretation of CAA section 163(a). Further, the revisions to 20.2.74.303(A) NMAC submitted on May 23, 2011, will remain before EPA for review. EPA will revisit these submitted revisions after the court addresses EPA's request for remand with vacatur or EPA initiates rulemaking to revise 40 CFR 51.166(k)(2).

III. 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 CAA. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 CAA; 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 its 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 oxides, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 3, 2013

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. Section 52.1620(c) is amended by revising the entries for Parts 74 and 79 under the first table titled “New Mexico Administrative Code (NMAC) Title 20 – Environment Protection Chapter 2 – Air Quality”.

The revisions read as follows:

§ 52.1620 Identification of plan.

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(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				
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Part 74	Permits – Prevention of Significant Deterioration	6/3/2011	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	Revisions to 20.2.74.303(A) NMAC submitted 5/23/2011, effective 6/3/2011, are <u>NOT</u> part of SIP.

				20.2.74.303 NMAC submitted 12/1/2010, effective 1/1/2011, remains SIP approved (6/20/2011, 76 FR 43149).
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Part 79	Permits – Nonattainment Areas	6/3/2011	[Insert date of FR publication] [Insert <u>FR</u> page number where document begins]	
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