



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2005-NM-0006; FRL-9788-8]

#### Approval and Promulgation of Implementation Plans;

New Mexico; New Source Review (NSR) Preconstruction Permitting Program;

#### Clarification of EPA's Approval of the Sunland Park Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for New Mexico. Among the changes, EPA is approving the following: the establishment of a new Minor NSR (MNSR) general construction permitting program; changes to the MNSR Public Participation requirements; the establishment of three different types of MNSR Permit Revisions; and the addition of exemptions for *de minimis* emission sources and activities from obtaining a MNSR permit. EPA finds that these revisions to the New Mexico SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. EPA also is providing clarification of an earlier separate EPA rulemaking action approving the Section 110(a)(1) Maintenance Plan for the 1997 8-hour ozone standard for the Sunland Park 1997 8-hour attainment area. This action is being taken under section 110 of the Act.

**DATES:** This final rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2005-NM-0006. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 through <http://www.regulations.gov> or in hard copy 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 Freedom of Information Act Review Room between the hours of 8:30 am and 4:30 pm 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 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.

The State submittals related to this SIP revision, and which are part of the EPA docket, are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

New Mexico Environment Department, Air Quality Bureau, 1301 Siler Road, Building B, Santa Fe, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7289; fax number (214) 665-6762; e-mail address mohr.ashley@epa.gov.

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

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**I. What is the Background for This Action?**

The background for today’s action is discussed in detail in our November 29, 2012 proposal (77 FR 71145). In that notice, we proposed to approve revisions to the NSR SIP for New Mexico submitted on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006, which incorporate changes to the Construction Permits regulation contained in 20.2.72 of the New Mexico Administrative Code (NMAC), also known as Part 72. Part 72 contains the provisions that establish New Mexico’s Minor NSR permitting program as

well as preconstruction permitting requirements potentially applicable to other programs under the NMAC. EPA also proposed to approve as part of the New Mexico NSR SIP, the letter dated November 7, 2012, from the Secretary committing the New Mexico Environment Department (NMED) Air Quality Bureau to providing notification on the NMED's website of all second 30-day public comment periods provided for under Paragraph B of Section 206 of Part 72.

Our November 29, 2012 proposal provides a detailed description of the submittals and the rationale for EPA's proposed action, together with a discussion of the opportunity to comment. The public comment period for this action closed on December 31, 2012.

## **II. What Public Comments were Received?**

The Federal Register proposing approval of these SIP revisions was published on November 29, 2012, and the public comment period closed on December 31, 2012. EPA received one comment letter submitted by the NMED (hereinafter referred to as "the commenter"). The comment letter is available for review in the docket for this rulemaking. We received no adverse comments on the proposed rule from the commenter. The commenter generally expressed support of EPA's proposed approval of these SIP revisions, and raised two considerations that EPA is clarifying in its responses.

*Comment:* The commenter raised a concern about EPA's reference in its proposed action incorrectly referring to the Sunland Park, New Mexico area as being designated nonattainment for the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS). The commenter contends that this area is no longer designated as nonattainment for the 1-hour ozone NAAQS.

*Response:* EPA agrees the Sunland Park area is no longer designated nonattainment for the 1-hour ozone NAAQS.<sup>1</sup> EPA revoked the 1-hour ozone NAAQS for the Sunland Park area effective one year following the effective date of the area's designation as attainment for the 1997 8-hour ozone NAAQS – June 15, 2005.<sup>2</sup> EPA subsequently approved a maintenance plan for the 8-hour standard for the Sunland Park area under section 110(a)(1) of the CAA and 40 CFR 51.905(a)(3)(iii). Therefore, Sunland Park's prior designation under the 1-hour ozone standard is of historical interest only.<sup>3</sup> As NMED points out, EPA has determined that Sunland Park has met all of its obligations under the revoked 1-hour ozone standard. Therefore, the reference to the prior 1-hour ozone designation status of the Sunland Park area in the proposal has no effect on its current obligations.

*Comment:* The commenter states that New Mexico submitted, and EPA approved, a timely maintenance plan for the new 8-hour ozone standard for the Sunland Park area in accordance with 40 CFR 51.905(a)(3)(iii). The commenter also states that EPA has previously noted in its approval of the maintenance plan, "[t]here are no outstanding obligations under the 1-hour ozone NAAQS" for the Sunland Park area. 76 FR 28181 at 28182 (May 16, 2011). The commenter affirms that because the State's SIP-approved permitting rules are self implementing, the Prevention of Significant Deterioration (PSD) permitting requirements became applicable for the Sunland Park area upon revocation of the 1-hour ozone NAAQS.

*Response:* EPA agrees the SIP's PSD rules are self-implementing and, as a result, the PSD SIP permitting requirements are applicable to the Sunland Park area. As long as New Mexico interprets its SIP as applying PSD to Sunland Park, upon approval of the Sunland Park

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<sup>1</sup> EPA stated in the proposed action, in part: "...the only area designated nonattainment for the 1-hour ozone NAAQS is Sunland Park." 77 FR 71151, November 29, 2012.

<sup>2</sup> Codified at 70 FR 44470, April 3, 2005.

<sup>3</sup> The list of past 1-hour ozone designations in 40 CFR part 81 for Sunland Park is a historical reference only.

maintenance plan for the 1997 8-hour ozone NAAQS, the 1-hour ozone Nonattainment NSR (NNSR) permitting requirements for the Sunland Park area were no longer required. New Mexico submitted, and EPA approved, a timely maintenance plan for the 1997 8-hour ozone NAAQS for the Sunland Park area.<sup>4</sup> Consistent with this confirmation, provided in the comment letter from NMED, that the New Mexico SIP's PSD rules are self-implementing and therefore applicable to the Sunland Park area, EPA wishes to clarify its previous approval of the Sunland Park maintenance plan for the 1997 8-hour ozone NAAQS. Our previous approval did not make clear that New Mexico's PSD SIP permitting requirements are applicable to the Sunland Park area, and therefore EPA would not require the continued application of 1-hour ozone NNSR permitting requirements for the area upon approval of the maintenance plan. Consistent with the commenter's affirmation and EPA's confirmation that the New Mexico SIP's PSD rules are self-implementing, EPA clarifies that the PSD SIP permitting requirements have been applicable to the Sunland Park area from the effective date of EPA's approval of the maintenance plan.

### **III. What Final Action is EPA Taking?**

We are approving the SIP revisions to the Construction Permits regulation found in Part 72 that were submitted by New Mexico on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006, and the letter from the Secretary dated November 7, 2012. This action is being taken under section 110 of the CAA. Additionally, EPA is clarifying statements made in the proposed action and the approach it took with respect to the 1-hour ozone nonattainment NSR/PSD transition in its approval of the Sunland Park 110(a)(1) maintenance plan.

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<sup>4</sup> Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Sunland Park Section 110(A)(1) Maintenance Plan for the 1997 8-hour Ozone Standard, 76 FR 28181, May 16, 2011.

A. What are We Not Addressing in this Final Action?

EPA is only taking final action on the severable revisions to Part 72 contained in the five SIP revision submittals listed above that were submitted to us for review and incorporation into the New Mexico SIP. By severable, we mean that the portions of the SIP revision submittals relating to Part 72 can be implemented independently of the remaining portions of the submittal, without affecting the stringency of the submitted rules. In addition, the remaining portions of the submittal are not necessary for approval of the provisions addressing Part 72. The following is a list of other revisions contained in the November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006 submittals that are not being addressed in this final action:

- The November 6, 1998 submittal from New Mexico also contained revisions to correct errors in 20.2.70 NMAC – Operating Permits. Because 20.2.70 NMAC is outside the scope of the New Mexico SIP, the revisions to the Operating Permits provisions were not submitted as revisions to the state’s SIP.
- The April 11, 2002 submittal from New Mexico also contained revisions to 20.2.73 NMAC – Notice of Intent and Emissions Inventory Requirements, 20.2.74 NMAC – Permits – Prevention of Significant Deterioration, 20.2.75 NMAC – Construction Permit Fees, and 20.2.79 NMAC – Permits – Nonattainment Areas. Portions of the submittal related to Parts 73, 74, 75, and 79 have been or will be addressed in separate SIP revisions reviews and rule actions, as necessary.
- The April 11, 2002 submittal also included documentation related to an additional revision to 20.2.72 NMAC (filed with the State Records Center on February 28, 2001, effective March 30, 2001), which was submitted to EPA for informational purposes only

and was not submitted for approval under the SIP. Therefore, the February 28, 2001 state adopted revisions to Part 72 are not included in this final action.

- The April 25, 2005 submittal from New Mexico also contained revisions to 20.2.66 NMAC – Cotton Gins, 20.2.73 NMAC – Notice of Intent and Emissions Inventory Requirements, and 20.2.75 NMAC – Construction Permit Fees. Portions of the submittal related to Parts 66, 73, and 75 have been or will be addressed in separate SIP revisions reviews and rule actions, as necessary.
- The November 2, 2006 submittal from New Mexico also contained revisions to 20.2.3 NMAC – Ambient Air Quality Standards, 20.2.70 NMAC – Operating Permits, and 20.2.99 NMAC – Conformity to the State Implementation Plan of Transportation Plans, Programs and Projects. Portions of the submittal related to Parts 3, 70, and 99 have been or will be addressed in separate SIP revisions reviews and rule actions, as necessary.

#### **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 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 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, 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 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 CAA, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 26, 2013.

Samuel Coleman, P.E.,

Acting Regional Administrator, Region 6.

40 CFR part 52 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 GG – New Mexico**

2. Section 52.1620 is amended as follows:

a. The first table in paragraph (c) entitled “EPA Approved New Mexico Regulations” is amended by revising the entry for Part 72.

b. The second table in paragraph (e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” is amended by adding to the end of the table a new entry for “Letter of commitment for the New Mexico SIP for Minor NSR Public Notice.”

The revision and addition read 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
<b>New Mexico Administrative Code (NMAC) Title 20 – Environment Protection Chapter 2 – Air Quality</b>				
* * * * *				

Part 72	Construction Permits	9/6/2006	<p><b>[Insert date of <u>FR</u> publication]</b>  <b>[Insert <u>FR</u> page number where document begins]</b></p>	<p>The SIP includes NMED’s letter dated 11/7/2012, which commits the NMED Air Quality Bureau to providing notification on the NMED’s website of all second 30-day public comment periods provided for under paragraph B of 20.2.72.206. NOT in SIP: the definitions of “Accelerated review”, “Affiliate”, “Conflict of interest”, “Interested party” and “Qualified outside firm” in 20.2.72.7; subsection (B)(15) of 20.2.72.203; subsection (H) of 20.2.72.208; 20.2.72.221; 20.2.72.400-20.2.72.499; and 20.2.72.502. References to 20.2.77, 20.2.78, and 20.2.82 are approved for Part 72 only; underlying and related regulations for referred Parts NOT in SIP.</p>
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(e) \* \* \*

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EPA Approved Nonregulatory and Quasi-Regulatory Measures in the New Mexico SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * * * *				
Letter of commitment for the New Mexico SIP for Minor NSR Public Notice.	Statewide (except Bernalillo County)	11/7/2012	<b>[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]</b>	Letter dated 11/7/2012 from NMED to EPA that commits the NMED Air Quality Bureau to providing notification on the NMED's website of all second 30-day public comment periods provided for under paragraph B of 20.2.72.206.