



This document is scheduled to be published in the Federal Register on 06/11/2015 and available online at <http://federalregister.gov/a/2015-13954>, and on [FDsys.gov](http://FDsys.gov)

6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2011-0821; FRL-9928-80-Region 6]**

**Approval and Promulgation of Air Quality Implementation Plans;**

**State of New Mexico; Infrastructure Requirements for the 2008 Lead National Ambient**

**Air Quality Standard and Repeal of Cement Kilns Rule**

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

**ACTION:** Final rule.

**SUMMARY:** Under the Federal Clean Air Act (CAA), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submittal from the State of New Mexico pertaining to the implementation, maintenance, and enforcement of the 2008 National Ambient Air Quality Standards (NAAQS or standards) for Lead (Pb). EPA is also approving a revision to the New Mexico SIP that removes a repealed state-wide cement kilns rule from the SIP.

**DATES:** This final rule is effective on **[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-2011-0821. 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 Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Sherry Fuerst, (214) 665-6454, [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov) (Pb SIP); or Alan Shar, (214) 665-6691, [shar.alan@epa.gov](mailto:shar.alan@epa.gov) (cement kilns SIP revision).

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

## **I. Background**

The background for this action is discussed in detail in our December 11, 2014, proposal (79 FR 73512). In that rulemaking action, we proposed to approve (1) a September 9, 2011, SIP submittal from the State of New Mexico pertaining to the implementation, maintenance and enforcement of the 2008 Pb NAAQS and (2) a July 31, 2014, SIP submittal removing from the SIP the repealed New Mexico cement kilns rule. The public comment period for the December 11, 2014, proposal (79 FR 73512) expired on January 12, 2015, and we did not receive any comments concerning our proposal. Therefore, we are finalizing our proposed action.

## II. Final Action

We are approving the September 9, 2011, SIP submittal pertaining to implementation, maintenance, and enforcement of the 2008 Pb NAAQS. We are also approving the July 31, 2014, SIP submittal which removes the repealed New Mexico cement kilns rule (NMAC 20.2.12 - *Cement Kilns*).

## III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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 AFTER DATE OF PUBLICATION 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 purpose 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, Lead, Reporting and recordkeeping requirements.

Dated: May 27, 2015.

**Ron Curry,**  
*Regional Administrator, Region 6.*

Therefore, 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:

a. In paragraph (c), the first table titled “EPA Approved New Mexico Regulations” is amended by removing the entry “Part 12, Cement Kilns”; and

b. In paragraph (e), the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” is amended by adding an entry at the end of the table for “Infrastructure and Transport for the 2008 Pb NAAQS”.

The addition reads as follows:

**§52.1620 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS 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
* * * * *				

Infrastructure and Transport for the 2008 Pb NAAQS	Statewide (except Bernalillo County)	9/9/2011	<b><u>[Insert the date of publication in the Federal Register]</u></b> <b><u>[Insert Federal Register citation]</u></b>	
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[FR Doc. 2015-13954 Filed: 6/10/2015 08:45 am; Publication Date: 6/11/2015]