



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2015-0850; FRL-9997-80-Region 6]**

**Air Plan Approval; New Mexico; Approval of Revised Statutes; Error Correction**

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to New Mexico's State Implementation Plan (SIP) that incorporate updates to the New Mexico statutes. EPA is also correcting its previous approval of some statute provisions to provide clarification of the approval action taken.

**DATES:** This rule is effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives such comment, the 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 No. EPA-R06-OAR-2015-0850, at <https://www.regulations.gov> or via email to [Riley.Jeffrey@epa.gov](mailto:Riley.Jeffrey@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Jeff Riley, (214) 665-8542, [Riley.Jeffrey@epa.gov](mailto:Riley.Jeffrey@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. 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:** Jeff Riley, EPA Region 6 Office, Infrastructure and Ozone Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, (214) 665-8542, [Riley.Jeffrey@epa.gov](mailto:Riley.Jeffrey@epa.gov). To inspect the hard copy materials, please schedule an appointment with Jeff Riley or Mr. Bill Deese at (214) 665-7253.

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

## **I. Background**

The background for this action is discussed in detail in our February 27, 2019 direct final rule and proposal (84 FR 6334, 84 FR 6353). In that direct final rule, we approved revisions to the

New Mexico SIP that pertain to updated statutes under New Mexico Statutes Annotated 1978 (NMSA) Chapter 74, Article 2 contained in the State's August 6, 2015 submittal to provide a demonstration of how the existing New Mexico SIP met the applicable section 110(a)(2) requirements for the revised primary annual fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) promulgated on December 14, 2012 (78 FR 3085, January 15, 2013). We also made an error correction to remove from the New Mexico SIP certain statutes under NMSA 1978 Chapter 74, Article 2 originally approved in our November 2, 1984 rulemaking (49 FR 44099).

The February 27, 2019 rule and proposal stated that if any relevant adverse comments were received by the end of the public comment period on March 29, 2019, the direct final rule would be withdrawn, and we would respond to the comments in a subsequent final action. Relevant adverse comments were received from the City of Albuquerque Environmental Health Department (EHD) and the New Mexico Environmental Department (NMED) during the comment period on NMSA sections 74-2-6, 74-2-12 and 74-2-13; therefore, that portion of the direct final rule was partially withdrawn on May 16, 2019 (84 FR 22049). In the final rules section of this issue of the **Federal Register**, EPA is taking a separate final action to address comments received relating to NMSA sections 74-2-6, 74-2-12 and 74-2-13.

EPA also received comments relating to NMSA sections 74-2-4 and 74-2-5.1, both of which EPA did not act upon in our February 27, 2019 direct final rule. Although these comments were outside the scope of that rulemaking, the comments raised valid considerations that should be addressed through this direct final rule and the companion proposal published in this issue of the Federal Register.

## **II. The EPA's Evaluation**

#### A. *NMSA section 74-2-4*

In a previous action to address parts of the State's August 6, 2015 submittal (83 FR 12493, March 22, 2018), EPA approved updates to NMSA section 74-2-4 (*Local authority*), and revised the table titled "EPA Approved New Mexico Statutes" under 40 CFR 52.1620(e) with the following comment: "Approved for State Board Composition and Conflict of Interest Provisions". In a comment on EPA's February 27, 2019 rulemaking, EHD interpreted this language to mean that only the aspects of this section pertaining to state board composition and conflict of interest provisions were approved as part of EPA's March 22, 2018 action, and the remainder of NMSA section 74-2-4 was removed from the SIP at that time. EHD further noted that NMSA section 74-2-4 must be SIP-approved in full to satisfy CAA section 110(a)(2) requirements because it authorizes creation of a local authority to assume control over air quality in a local jurisdiction (Albuquerque-Bernalillo County), using a local board, local agency, and an agency director to perform duties which would otherwise be performed by the NMED Secretary in the remainder of the state. This section specifically grants EHD authority to fulfill CAA responsibilities for Bernalillo County.

We note that this interpretation of the language under 40 CFR 52.1620(e) does not accurately represent the action taken in EPA's March 22, 2018 rulemaking. The remainder of NMSA section 74-2-4 was not removed from the SIP in this action; rather, the language was included under 40 CFR 52.1620(e) to indicate our reasoning for approving updates to the entirety of NMSA section 74-2-4 into the SIP at the time of the rulemaking. EPA acknowledges that this language is unclear as to the SIP approval status of NMSA section 74-2-4, and we are revising the language under 40 CFR 52.1620(e) to provide clarification.

#### B. *NMSA section 74-2-5.1*

As noted above, EPA did not act on NMSA section 74-2-5.1 (*Duties and powers of the department and the local agency*) in our February 27, 2019 direct final rulemaking. Additionally, this section has not been previously approved into the SIP. Comments submitted by EHD and NMED state that NMSA section 74-2-5.1 must be SIP-approved to satisfy CAA section 110(a)(2) requirements because it describes the powers of EHD and NMED to manage air quality and to implement and enforce air quality requirements, such as the powers to:

- Conduct investigations & studies, entering properties;
- Institute legal proceedings to compel compliance;
- Encourage voluntary cooperation;
- Consult on efficacy of contaminant sources, devices or controls;
- Establish small business assistance program (CAA section 507);
- Accept & administer grants (CAA section 105); and
- Classify & record air contaminant sources (emission inventories).

Further, NMSA section 74-2-5.1 authorizes EHD to develop and propose control strategies to its Air Board.

The comments submitted by EHD and NMED have provided clarification that this language confers to both agencies a broad range of necessary state authority to enforce the NAAQS that is not provided elsewhere in SIP-approved regulations and statutes. We agree that NMSA section 74-2-5.1 details the authority of EHD and NMED for enforcement of the state Air Quality Control Act (NMSA 1978 Chapter 74, Article 2). EPA will approve NMSA section 74-2-5.1 into the SIP to satisfy CAA section 110(a)(2) requirements.

### **III. Final Action**

We are approving revisions to the New Mexico SIP that pertain to updated statutes under NMSA 1978 Chapter 74, Article 2 contained in the State's August 6, 2015 submittal. We are also clarifying an action taken in our March 22, 2018 rulemaking.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no 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 relevant adverse comments are received. This rule will be effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant 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 relevant 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, the EPA's role is to approve state choices, provided 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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, 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. The 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 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 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 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 reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 13, 2019.

**Kenley McQueen,**  
*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(e), the table titled “EPA-Approved New Mexico Statutes” under “Chapter 74-Environmental Improvement” is amended by:

- a. Revising the entry for Section 74-2-4; and
- b. Adding an entry for Section 74-2-5.1 in numerical order.

The revision and addition read as follows:

**§52.1620 Identification of plan.**

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(e) \* \* \*

**EPA—APPROVED NEW MEXICO STATUTES**

State citation	Title/subject	State Approval/ effective date	EPA approval date	Comments
<b>New Mexico Statutes</b>				
* * * * *				
<b>Chapter 74—Environmental Improvement</b>				
* * * * *				

74-2-4	Local Authority	8/6/2015	3/22/2018, 83 FR 12493	Statute first approved 11/2/1984. Update approved 6/1/1999 addressed State Board Composition and Conflict of Interest Provisions.
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74-2-5.1	Duties and powers of the department and the local agency	8/6/2015	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	
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[FR Doc. 2019-17745 Filed: 8/16/2019 8:45 am; Publication Date: 8/19/2019]