

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 9, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 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 V—Maryland**

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for the Attainment Demonstration and the Early

Action Plan for the Washington County, Maryland Ozone Early Action Compact Area at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA APPROVED NONREGULATORY AND QUASI-REGULATORY MATERIAL**

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Attainment Demonstration and Early Action Plan for the Washington County Ozone Early Action Compact Area.	Washington County .....	12/20/04, 2/28/05	8/17/05 [Insert page number where the document begins].	

[FR Doc. 05-16291 Filed 8-16-05; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R06-OAR-2005-NM-0002; FRL-7954-5]

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico; San Juan County Early Action Compact Area**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Governor of New Mexico on December 16, 2004. The revisions will incorporate the Early Action Compact (EAC) Clean Air Action Plan (CAAP) into the New Mexico SIP. EPA is approving the photochemical modeling in support of the attainment demonstration for the 8-hour ozone standard within the San Juan County EAC area. These actions strengthen the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act), and will result in emission reductions needed to help ensure continued attainment and maintenance of the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone.

**DATES:** This final rule is effective on September 16, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R06-OAR-2005-NM-0002. All documents in the docket are listed in the RME index

at <http://docket.epa.gov/rmepub/>; once in the system, select “quick search,” then type in the appropriate RME docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information the disclosure of which 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 in RME 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 15 cents 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 submittal is 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, 2048 Galisteo, Santa Fe, New Mexico 87505.

**FOR FURTHER INFORMATION CONTACT:** Carrie Paige, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross

Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever “we,” “our,” and “us” is used, we mean EPA.

**Outline**

- I. Background
- II. What Action Is EPA Taking?
- III. What Comments Did EPA Receive on the May 4, 2005 Proposed Rulemaking for the San Juan County EAC Area?
- IV. Final Action
- V. Statutory and Executive Order Reviews

**I. Background**

On May 4, 2005, EPA proposed approval of the San Juan County EAC area’s Clean Air Action Plan (CAAP), the photochemical modeling in support of the attainment demonstration and related control measures as revisions to the SIP submitted to EPA by the State of New Mexico. The proposal provides a detailed description of these revisions and the rationale for EPA’s proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on June 3, 2005. See the Technical Support Document (TSD) or our proposed rulemaking at 70 FR 23075 for more information. Two comments, one of which is adverse, were received on EPA’s proposed approval of the San Juan County EAC area’s CAAP and 8-hour ozone attainment demonstration for the EAC area.

**II. What Action Is EPA Taking?**

Today we are approving revisions to the New Mexico SIP under sections 110 and 116 of the Act. The revisions demonstrate continued attainment and

maintenance of the 8-hour ozone standard within the San Juan County EAC area. The revisions include the San Juan County EAC CAAP, photochemical modeling and related control measures. The intent of the SIP revisions is to reduce ozone pollution and thereby maintain the 8-hour ozone standard.

### III. What Comments Did EPA Receive on the May 4, 2005 Proposed Rulemaking for San Juan County?

We received two comment letters on the May 4, 2005 proposed rulemaking for San Juan County.

*Comment:* One letter indicated that EPA provided an incorrect Web site for information and reports on ozone in San Juan County. The correct internet address is <http://www.nmenv.state.nm.us/aqb/ozonetf/index.html>. Additional information can be found at <http://www.nmenv.state.nm.us/aqb/projects/ozone.html>.

*Response:* Our proposed rulemaking and TSD incorrectly referred to this Web site as <http://www.nmenv.state.nm.us/ozonetf>. We appreciate the correction and will also amend the TSD to reflect the correct internet address.

*Comment:* One letter provided both supportive and adverse discourse, commending the State of New Mexico for steps it has taken to improve air quality. The commenter opposes approval of the SIP revision because, should the area experience a violation of the 8-hour standard, the SIP revision (1) provides for the deferment of the area's nonattainment designation to as late as December 31, 2007, and (2) relieves the area of its obligations under Title I, Part D of the Act. The commenter contends that EPA does not have the legal authority to defer the effective date of an area's nonattainment designation nor to relieve areas of the obligations of Part D of Title I of the Act when areas are violating the standard and designated nonattainment.

*Response:* We appreciate the support expressed towards the State of New Mexico and towards the efforts made to ensure that the citizens in the San Juan County EAC area continue to breathe clean air. We continue to believe that the EAC program, as designed, gives San Juan County the flexibility to develop their own approach to maintaining the 8-hour ozone standard and believe San Juan County is serious in their commitment to control emissions from local sources. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizen groups, San Juan County is implementing regional cooperation in

solving air quality problems that affect the health and welfare of its citizens. People living in the San Juan County EAC area will realize reductions in pollution levels and enjoy the health benefits of cleaner air sooner than might otherwise occur.

In the April 2004 designation rule (69 FR 23858), the San Juan County EAC area was designated as attainment for the 8-hour ozone NAAQS. The commenter incorrectly asserts that this SIP revision provides for deferment of the designation of the area as nonattainment should the area experience a violation of the 8-hour ozone standard. Nor does EPA's approval of this SIP alter the applicability of the redesignation provision of the Act should the San Juan County EAC area experience a violation of the 8-hour ozone NAAQS in the future. Section 107(d)(3)(A) provides that EPA may redesignate an area "on the basis of air quality data, planning and control considerations, or any other air quality-related considerations." Should the San Juan County EAC area experience a violation of the 8-hour ozone NAAQS in the future, EPA would consider these statutory factors in determining whether to redesignate the area to nonattainment for the 8-hour ozone NAAQS. The commenter is also incorrect that this SIP approval relieves the San Juan County EAC area of the requirements of Part D of Title I of the Act. These provisions apply to areas designated nonattainment. Because the San Juan County EAC area is designated attainment for the 8-hour ozone NAAQS, these provisions do not apply in the San Juan County EAC area.

### IV. Final Action

EPA is approving the attainment demonstration, its related control measures, and the San Juan County EAC CAAP, and we are incorporating these revisions into the New Mexico SIP. We have determined that the voluntary control measures included in the attainment demonstration are surplus and are Federally enforceable once approved into the SIP. The modeling of ozone and ozone precursor emissions from sources in the San Juan County EAC area demonstrate that the area will continue to attain the 8-hour ozone NAAQS through December 31, 2007 and maintain that standard through 2012. We have reviewed the CAAP and the attainment and maintenance demonstration and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol.

### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Although Executive Order 13175 does not apply to this rule, tribal officials, through their participation in the Four Corners Ozone Task Force, have been active in the development of this rule. This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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 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. section 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 October 17, 2005. 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 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 10, 2005.

**Lawrence E. Starfield**,  
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. The second table in § 52.1620(e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures in the New Mexico SIP" is amended by adding a new entry, immediately following the last entry in the table, to read 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 nonattainmentdate area	State submittal/effec-tive date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Clean Air Action Plan and 8-hour ozone stand-ard attainment demonstration for the San Juan County EAC area.	San Juan County .....	12/16/04	8/17/05 [Insert <b>Federal Register</b> page num-ber where document begins].	.....

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R03-OAR-2005-WV-0001; FRL-7954-3]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Attainment Demonstration for the Eastern Panhandle Region Ozone Early Action Compact Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to the West Virginia State Implementation Plan (SIP). This

revision consists of an Early Action Compact (EAC) Plan that will enable the Eastern Panhandle Region Ozone EAC Area to demonstrate attainment and maintenance of the 8-hour ozone national ambient air quality (NAAQS) standard. This action is being taken under the Clean Air Act (CAA or Act).

**DATES:** This final rule is effective on September 16, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03-OAR-2005-WV-0001. All documents in the docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available,

*i.e.*, confidential business information (CBI) 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 in RME or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012