

# Rules and Regulations

Federal Register

Vol. 75, No. 28

Thursday, February 11, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2006-0569; FRL-9112-1]

#### Approval of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Governor of New Mexico on May 24, 2006. The revisions address Title 20 of the New Mexico Administrative Code, Chapter 11, Part 102 (denoted 20.11.102 NMAC), which apply to oxygenated fuels in the Albuquerque/Bernalillo County area. The revisions include editorial and substantive changes that clarify the requirements under 20.11.102 NMAC. We are approving these revisions in accordance with the requirements of section 110 of the Clean Air Act (the Act).

**DATES:** The Direct final rule will be effective April 12, 2010 without further notice unless EPA receives adverse comments by March 15, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit comments, identified by Docket ID number EPA-R06-OAR-2006-0569, by one of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
- *U.S. EPA Region 6 "Contact Us" Web site:* <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- *E-mail:* Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by email to the persons listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7242.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Please include the text "Public comment on Docket ID number EPA-R06-OAR-2006-0569" in the subject line of the first page of your comments. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail that you consider to be CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your

comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://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 in <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. 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 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.

The State submittal is also available for public inspection (during official business hours by appointment) at the City of Albuquerque, Environmental Health Department, One Civic Plaza, Albuquerque, New Mexico 87102.

**FOR FURTHER INFORMATION CONTACT:** Inquiries on this rulemaking should be directed to Ms. Carrie Paige, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6521; fax number 214-665-7263; e-mail address [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov) or Mr. Bill Deese, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7253; fax number 214-665-7263; e-mail address [deese.william@epa.gov](mailto:deese.william@epa.gov).

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

## Outline

- I. What Action Is EPA Taking?
- II. Background
- III. Summary of Changes to the New Mexico SIP
- IV. Final Action
- V. Statutory and Executive Order Reviews

### I. What Action Is EPA Taking?

Today we are approving revisions to the New Mexico SIP, submitted by the Governor of New Mexico on May 24, 2006. The revisions address 20.11.102 NMAC, which apply to the Oxygenated Fuels program in the Albuquerque/Bernalillo County area. The revisions include editorial and substantive changes that clarify the requirements under 20.11.102 NMAC; the deletion of an obsolete procedures manual and references to it; and the addition of language from the deleted procedures manual to address inventory, recordkeeping, sampling and analysis procedures, and enforcement. We are approving these revisions in accordance with the requirements of section 110 of the Act.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant 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 April 12, 2010 without further notice unless we receive relevant adverse comment by March 15, 2010. 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 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.

### II. Background

The SIP is a set of air pollution regulations, control strategies, and technical analyses developed by the state to ensure that the state meets the National Ambient Air Quality Standards

(NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The SIP is required by Section 110 of the Act and can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

The Albuquerque/Bernalillo County area was designated as a moderate nonattainment area for carbon monoxide (CO) on November 6, 1991 (see 56 FR 56694). As a moderate nonattainment area for CO, the area had to meet several new requirements, one of which was to implement an oxygenated fuels (oxyfuels) program, to reduce emissions of CO in automobile exhaust. The Albuquerque/Bernalillo County area oxyfuels program was submitted by the state and subsequently approved by EPA on November 29, 1993 (58 FR 62535). On April 14, 1995, the Governor of New Mexico submitted a request to EPA to redesignate to attainment the Albuquerque/Bernalillo County CO nonattainment area, which we approved on June 13, 1996 (61 FR 29970). On July 21, 2005,<sup>1</sup> we approved revisions to the New Mexico SIP pertaining to the second 10-year carbon monoxide (CO) maintenance plan for the Albuquerque/Bernalillo County area, including revisions to 20.11.102 NMAC, which address the oxyfuels program.

The May 24, 2006 submittal incorporates additional revisions to 20.11.102 NMAC. The rules in this submittal were promulgated in compliance with the NM Air Quality Control Act and Albuquerque/Bernalillo County Air Quality Control Board (AQCB) ordinances, published in the New Mexico Register, the official state publication for rulemaking actions, and submitted in accordance with the requirements in 40 CFR part 51. For more detail, see the 2006 submittal in the docket for this rulemaking and our Technical Support Document (TSD), also in the docket.

### III. Summary of Changes to the New Mexico SIP

#### A. 20.11.102.2, Scope

Revisions to this section include nonsubstantive revisions and the inclusion of language that excepts Indian lands from the scope of the rule. This exception is appropriate as neither

the City of Albuquerque nor Bernalillo County have jurisdiction over Indian lands.

#### B. 20.11.102.3, Statutory Authority

Revisions to this section include clarifying edits and corrections to references to state and county rules that provide authority to adopt rules. These revisions are not substantive and update statutory and regulatory authority provisions.

#### C. 20.11.102.7, Definitions

Revisions to this section include clarifying edits, inserting the correct formula for the molecular composition of ethanol, and removing a reference to the oxygenated fuels procedures manual. Two definitions were added: “Vehicle pollution management division” (VPMD) and “Winter pollution season.” These revisions delete obsolete references, identify the department responsible for administering 20.11.102 NMAC, and identify the beginning and end dates for the annual winter pollution season.

#### D. 20.11.102.9, Savings Clause

Revisions to this section include clarifying edits and removing references to the oxygenated fuels procedures manual. These revisions delete obsolete references and are not substantive.

#### E. 20.11.102.10, Severability

Revisions to this section provide clarification and are not substantive.

#### F. 20.11.102.11, Documents

Revisions to this section provide clarification and are not substantive.

#### G. 20.11.102.12, Oxygenated Fuels

Revisions to this section include clarifying edits, identify the annual program duration as the winter pollution season, and delete a reference to methyl tertiary butyl ether (MTBE) as an oxygenate approved for use in the oxygenated fuels program. The removal of MTBE is not a weakening of the SIP, because the rule still specifies blending ethanol. This revision merely removes one of the choices available to comply with the rule.

Revisions to this section also add the headings of inventory, recordkeeping, sampling, analysis, and enforcement, and delete redundant text. The language inserted under each of these headings is taken from the old oxygenated fuels procedures manual; references to the procedures manual are being removed from the SIP in today’s action. The 2006 revisions also add labeling provided by the VPMD, rather than the retail facility, which provides for a standardized and

<sup>1</sup> See 70 FR 41963.

consistent labeling protocol. References to appropriate American Society for Testing and Materials (ASTM) methods are provided under the heading for analysis. A range of fines and schedule of corrective actions, including closure, is added under the heading for enforcement.

The revisions to 20.11.102.12 NMAC provide more specificity to the rules, thus strengthen the SIP.

#### H. 20.11.102.13, *Oxygenated Fuels Procedures Manual*

The 2006 revisions to 20.11.102.13 NMAC revoke the entire section. Language relevant to inventory, recordkeeping, sampling, analysis, and enforcement was taken from the old procedures manual and inserted into the SIP; see paragraph (G) above. By deleting references to the procedures manual and incorporating the specific headings and text into the SIP, the SIP becomes more comprehensive and straightforward.

#### I. 20.11.102.14, *Contingency Measure*

The current SIP provides for an increase in the minimum oxygen content of the fuel, should the area violate the CO NAAQS. The 2006 revisions delete this language and provide for an increase in the minimum oxygen content of the fuel, should the area exceed 85 percent of the CO NAAQS. Should the contingency measure be triggered, the oxygen content by weight will be increased from 2.7 percent to 3.0 percent. These revisions to 20.11.102.14 NMAC strengthen the SIP.

### IV. Final Action

We are approving revisions to the New Mexico SIP submitted to EPA on May 24, 2006, which address 20.11.102 NMAC and apply to oxygenated fuels in the Albuquerque/Bernalillo County area. The revisions include editorial and substantive changes that clarify and strengthen 20.11.102 NMAC, sections 2, 3, 7, and 9–14. The revisions are consistent with the Act and EPA policy.

### V. 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 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 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 (Pub. L. 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 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 April 12, 2010. 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 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: January 15, 2010.

**Al Armendariz**,  
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(c) entitled, “EPA Approved Albuquerque/Bernalillo County, NM Regulations,” is amended by revising the entry for part 102 to read as follows:

#### § 52.1620 Identification of plan.

*	*	*	*	*
(c)	*	*	*	
*	*	*	*	*

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
*	*	*	*	*
<b>New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board</b>				
*	*	*	*	*
Part 102 (20.11.102 NMAC)	Oxygenated Fuels .....	12/11/2005	2/11/2010 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010-2792 Filed 2-10-10; 8:45 am]  
 BILLING CODE 6560-50-P

**LEGAL SERVICES CORPORATION**  
**45 CFR Parts 1609, 1610, and 1642**

**Attorneys' Fees; Fee-Generating Cases; Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity**

**AGENCY:** Legal Services Corporation.  
**ACTION:** Interim final rule and request for comments.

**SUMMARY:** LSC is repealing its regulatory prohibition on the claiming of, and the collection and retention of attorneys' fees pursuant to Federal and State law permitting or requiring the awarding of such fees. This action is taken in accordance with the elimination on the statutory prohibition on attorneys' fees in LSC's FY 2010 appropriation legislation. LSC is also moving provisions on accounting for and use of attorneys' fees and acceptance of reimbursements from clients from Part 1642 (which is being eliminated) to Part 1609 of LSC's regulations. LSC is also making technical changes to Part 1609 and Part 1610 of its regulations to remove cross references to the obsolete statutory and regulatory citations.

**DATES:** This Interim Final Rule is effective March 15, 2010. Comments on this Interim Final Rule are due on March 15, 2010.

**ADDRESSES:** Written comments may be submitted by mail, fax or e-mail to Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202-295-1624 (ph); 202-337-6519 (fax); [mcohan@lsc.gov](mailto:mcohan@lsc.gov).

**FOR FURTHER INFORMATION CONTACT:** Mattie Cohan, Senior Assistant General Counsel, 202-295-1624 (ph); [mcohan@lsc.gov](mailto:mcohan@lsc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

LSC's FY 1996 appropriation legislation provided that none of the funds appropriated in that Act could be used to provide financial assistance to any person or entity (which may be referred to in this section as a recipient) that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees. Section 504(a)(13), Public Law 104-134, 110 Stat. 1321 (April 26, 1996). Since appropriations legislation expires with the end of the Fiscal Year to which it applies, for the statutory restriction on attorneys' fees to remain in place by statute, it needed to be, and was, carried forth in each subsequent appropriation law by reference. See, e.g., Consolidated Appropriations Act, 2009, Public Law 111-8, 123 Stat. 524 (March 11, 2009).

LSC adopted regulations found in 1996 and 1997 which implemented the statutory attorneys' fees restriction. 45 CFR part 1642; 61 FR 45762 (August 29, 1996); 62 FR 25862 (May 12, 1997). The attorneys' fees regulation restates the basic prohibition on claiming or collecting and retaining attorneys' fees, providing that except as permitted by § 1642.4 (providing exceptions cases filed prior to the prohibition and for cases undertaken by private attorneys providing pro bono services in connection with a recipient's private attorney involvement program), no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. 46 CFR 1642.3. The regulation provides further

guidance to recipients by, among other things, providing a regulatory definition of attorneys' fees; setting forth rules for the applicability of the restriction to private attorneys providing legal assistance to a recipient's private attorney involvement program; and providing express authority to recipients to accept reimbursements of costs from a client. The regulation also sets forth rules for the accounting for and use of those attorneys' fees which recipients are not prohibited from claiming, collecting or retaining.

On December 16, 2009 President Obama signed the Consolidated Appropriations Act of 2010 into law. Public Law 111-117. This act provides LSC's appropriation for FY 2010. Like its predecessors, this law incorporates the various restrictions first imposed by the FY 1996 legislation by reference. However, section 533 of that same law also provides that Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Pub. L. 104-134) is amended by striking paragraph (13). Taken together, these provisions serve to incorporate by reference all of the restrictions in section 504 of the FY 1996 law, except for paragraph (a)(13), which contained the restriction on attorneys' fees. As such, there is no current statutory restriction on LSC providing the money FY 2010 appropriated to it to any recipient which claims, or collects and retains attorneys' fees.

The current law lifts the statutory restriction, but does not affirmatively provide recipients the right to claim or collect and retain attorneys' fees, nor does it prohibit LSC from restricting a recipient's ability to claim or collect and retain attorneys' fees. As such, in accordance with LSC inherent regulatory authority, the regulation