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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2021-0837; FRL-10029-02-R6]

Air Plan Approval; New Mexico; Clean Air Act Requirements for Nonattainment New Source Review Permitting for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the New Mexico State Implementation Plan (SIP) submitted by the State of New Mexico on August 10, 2021, that update the New Mexico Nonattainment New Source Review (NNSR) permitting program for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on December 16, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2021-0837. All documents in the docket are listed on the <https://www.regulations.gov> website. 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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permit Section (ARPE), 214-665-2115, wiley.adina@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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 August 19, 2022, proposal (87 FR 51041). In that document we proposed to approve revisions to the New Mexico SIP adopted on July 21, 2021, that update the New Mexico NNSR permitting requirements to maintain consistency with the Federal NNSR program requirements. We also proposed to find that the New Mexico SIP includes the necessary provisions addressing CAA NNSR requirements for ozone nonattainment areas classified as Marginal.

We received two anonymous comments supporting our proposed approval. Both anonymous comments referenced the reduced overall emissions and favorable impact of the proposed rule for environmental justice purposes. The EPA appreciates the support of the commenters. We are making no changes to our proposed rule because of these comments.

II. Final Action

Pursuant to section 110 and part D of the Act, we are approving the submitted revisions to the New Mexico SIP that update the NNSR permitting requirements to maintain consistency with the Federal NNSR program requirements and address the 2015 ozone NAAQS requirements for nonattainment permitting. Specifically, we are approving the following revisions to the New Mexico SIP adopted on July 21, 2021, effective August 21, 2021:

- Revisions to 20.2.79.5 NMAC—Effective Date,
- Revisions to 20.2.79.7 NMAC—Definitions,
- Revisions to 20.2.79.9 NMAC—Documents,
- Revisions to 20.2.79.109 NMAC—Applicability,
- Revisions to 20.2.79.115 NMAC—Emission Offsets,
- Revisions to 20.2.79.119 NMAC—Tables, and
- Revisions to 20.2.79.120 NMAC—Actuals Plantwide Applicability Limits (PALs).

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the New Mexico regulations as

described in Section II of this preamble, Final Action. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.

IV. 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, the 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, 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 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).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 January 17, 2023. 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: November 8, 2022.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 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), amend the table titled “EPA Approved New Mexico Regulations” by revising the entry for “Part 79”; and
 - b. In paragraph (e), amend the table titled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” by adding an entry for “Nonattainment New Source Review Requirements for the 2015 Ozone NAAQS” at the end of the table.

The revision and addition read as follows:

§ 52.1620 Identification of plan.

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(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Part 79	Permits—Nonattainment Areas	8/21/2021	11/16/2022, [Insert Federal Register citation].	
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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
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Nonattainment New Source Review Requirements for the 2015 Ozone NAAQS.	Sunland Park portion of Doña Ana County in the El Paso-Las Cruces, TX—NM Marginal nonattainment area.	8/21/2021	11/16/2022, [Insert Federal Register citation].	