Compensation for Service-Connected Disability, and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 6, 2011, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Veterans, Vietnam.

Dated: July 12, 2011.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.317 by revising paragraph (a)(2)(i)(B)(*3*) and adding a note to paragraph (a)(2)(i)(B)(*3*) to read as follows:

§ 3.317 Compensation for certain disabilities due to undiagnosed illnesses.

(a) * * *

(2) * * *

(i) * * *

(B) * * *

(*3*) Functional gastrointestinal disorders (excluding structural gastrointestinal diseases).

Note to paragraph (a)(2)(i)(B)(*3*): Functional gastrointestinal disorders are a group of conditions characterized by chronic or recurrent symptoms that are unexplained by any structural, endoscopic, laboratory, or other objective signs of injury or disease and may be related to any part of the gastrointestinal tract. Specific functional gastrointestinal disorders include, but are not limited to, irritable bowel syndrome, functional dyspepsia, functional vomiting, functional constipation, functional bloating, functional abdominal pain syndrome, and functional dysphagia. These disorders are commonly characterized by symptoms including abdominal pain, substernal burning or pain, nausea, vomiting, altered bowel habits (including diarrhea, constipation), indigestion, bloating, postprandial fullness, and painful or difficult swallowing. Diagnosis of specific functional gastrointestinal disorders is made in accordance with established medical principles, which generally require symptom onset at least 6 months prior to diagnosis and the presence of symptoms sufficient to diagnose the specific disorder at least 3 months prior to diagnosis.

* * * * *

[FR Doc. 2011–17814 Filed 7–14–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0647; FRL–9438–7]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Section 110(a)(2) Infrastructure Requirements for 1997 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving submittals from the State of New Mexico pursuant to the Clean Air Act (CAA or Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and 1997 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or standards). We are determining that the current New Mexico State Implementation Plan (SIP) meets the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008, and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is also approving a November 2, 2006, SIP revision to regulation 20.2.3 of the New Mexico Administrative Code (NMAC) (*Ambient Air Quality Standards*), to remove the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). EPA is also converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964) to a full approval based on the November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191). Lastly, EPA is making a number of U.S. Code of Federal Regulations (CFR) codification technical corrections to amend the description of the approved New Mexico SIP. This action is being taken under section 110 and part C of the Act.

DATES: This rule is effective on August 15, 2011.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA–R06–OAR–2009–0647. All documents in the docket are listed at *http://www.regulations.gov.* 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. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (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. Please make the appointment at least two working days in advance of your visit. There is 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.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7241; fax number 214–665–6762; e-mail address *medina.dayana@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

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I. Background

The background for today's actions is discussed in detail in our May 2, 2011, proposal to approve submittals from the State of New Mexico pursuant to the CAA that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and 1997 fine particulate matter ($PM_{2.5}$) NAAQS (76 FR 24421). In it, we proposed to find that the current New Mexico SIP meets the provisions of the CAA sections 110(a)(1) and 110(a)(2) (i.e., 110(a)(2)(A)–(C), (D)(ii), (E)–(H), and (J)–(M)) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. We also proposed to approve a revision to regulation 20.2.3 NMAC (*Ambient Air Quality Standards*) into the New Mexico SIP, to remove the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program. EPA also proposed to correct an administrative oversight by converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964) to a full approval based on the November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191), at which point New Mexico fully met the condition in the conditional approval. Lastly, EPA proposed to make several CFR codification technical corrections to amend the description of the approved New Mexico SIP.

Our May 2, 2011, proposal provides a detailed description of the 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 1, 2011, and we did not receive any comments. For more information, please see our proposed rulemaking, at 76 FR 24421, the Technical Support Document, and other supporting documentation available in the electronic docket for this action at *http://www.regulations.gov* (Docket Identification No. EPA–R06–OAR–2009–0647).

II. Additional Background Information

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[1] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues. EPA notes that we did not receive comments on these issues in response to our New Mexico proposal (76 FR 24421), but because of the concern raised in the context of action on other state infrastructure SIP submissions, EPA feels it important to further clarify our proposal.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision

[1] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[2] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[3]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[4] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[5] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[6]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[7] Within this

[2] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[3] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[4] See, e.g., Id., 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[5] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air

guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [8] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [9] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [10] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[11] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[12] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[13]

Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[8] Id., at page 2.

[9] Id., at attachment A, page 1.

[10] Id., at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[11] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[12] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[13] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including

Continued

III. What action is EPA taking?

EPA is approving the New Mexico SIP submittals dated December 10, 2007, and March 3, 2008, that identify where and how the 14 basic infrastructure elements are in the EPA-approved SIP as specified in section 110(a)(2) of the Act. We are determining that the following section 110(a)(2) elements are contained in the current New Mexico SIP: emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); program for enforcement of control measures (section 110(a)(2)(C)); international and interstate pollution abatement (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

In conjunction with our determination that the New Mexico SIP meets the section 110(a)(1) and (2) infrastructure SIP elements listed above, we are also approving a severable portion of a SIP revision submitted by NMED to EPA on November 2, 2006. This portion of the submittal contains a revision to 20.2.3 NMAC (*Ambient Air Quality Standards*), adding a new subpart 9 to 20.2.3 NMAC, including language to ensure that sources being issued a permit under the State's minor source permitting program, found at 20.2.72 NMAC (*Construction Permits*), are required to continue to address the State's ambient air quality standards in their application. The revision also includes language in 20.2.3.9 NMAC that removes the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). Because New Mexico's Title V permitting program is outside the scope of the New Mexico SIP, and has not been approved by EPA into the New Mexico SIP, approval of the revision to 20.2.3 NMAC is appropriate and will not constitute a relaxation of the current New Mexico SIP. EPA is approving the portion of the November 2, 2006 submittal that revises 20.2.3 NMAC, as indicated above, because it clarifies the permitting requirements under the New Mexico SIP. The revision to 20.2.3 NMAC we are approving into the SIP is severable from the other portions of the November 2, 2006 SIP submittal. At this time, EPA is not taking action on other portions of the November 2, 2006 SIP revision submitted by NMED; EPA intends to act on the other revisions at a later time.

EPA is also correcting an administrative oversight by now converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964), to a full approval based on our November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191). Upon our approval of New Mexico's stack height regulations on November 2, 1988, New Mexico had fully met all the conditions of EPA's February 27, 1987, conditional approval of the State's PSD program. However, due to an administrative oversight, EPA failed to convert the conditional approval of New Mexico's PSD program into a full approval at that time. The fact that EPA had not formally converted the conditional approval to a full approval until now had no impact on the State's authority to implement the PSD program in the interim.

Lastly, EPA is making four CFR codification technical corrections to amend the following: (1) the table titled ''*EPA Approved New Mexico Regulations,*'' found under 40 CFR 52.1620(c), by (i) deleting entries for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC, and (ii) changing the EPA approval date for the recodification of New Mexico's air quality regulations in the SIP from the currently listed November 25, 1997 date to the correct date of September 26, 1997; (2) the table titled ''*EPA Approved Nonregulatory Provisions And Quasi-Regulatory Measures In The New Mexico SIP,*'' found under 40 CFR 52.1620(e), by including an entry for New Mexico's Air Pollution Episode Contingency Plan approved by EPA into the SIP on August 21, 1990; (3) 40 CFR 52.1634(a), by amending the paragraph such that it identifies that New Mexico has fully met all conditions of our February 27, 1987 conditional approval of New Mexico's PSD program such that our conditional approval is converted to a full approval; and (4) 40 CFR 52.1640(c)(66)(i)(B), by amending the paragraph such that it correctly identifies the State regulations submitted by the State and approved by EPA into the New Mexico SIP. We are making the above CFR corrections to make clear which New Mexico air quality regulations are currently approved into the New Mexico SIP and the EPA approval date of these regulations into the SIP.

IV. Final Action

We are approving the submittals provided by the State of New Mexico to demonstrate that the New Mexico SIP meets the following requirements of Section 110(a)(1) and (2) of the Act:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act);

Interstate Transport (110(a)(2)(D)(ii) of the Act);

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

EPA is also approving a severable revision to regulation 20.2.3 NMAC (*Ambient Air Quality Standards*), which was submitted by New Mexico on November 2, 2006. The revision to 20.2.3 NMAC removes the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). The revision also adds language to ensure that sources being issued a permit under the State's minor source permitting program, found at 20.2.72 NMAC (*Operating Permits*), are required to continue to address the State's ambient air quality standards in their application.

EPA is also formally converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964), to a full approval based on the November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191), at which point New Mexico fully met the condition in the conditional approval.

section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

Lastly, EPA is making CFR codification technical corrections to amend the following:

1. The table titled ''*EPA Approved New Mexico Regulations,''* found under 40 CFR 52.1620(c), by (i) deleting entries for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC and (ii) changing the EPA approval date for the recodification of New Mexico's air quality regulations in the SIP from the currently listed November 25, 1997 date to the correct date of September 26, 1997.

2. The table titled ''*EPA Approved Nonregulatory Provisions And Quasi-Regulatory Measures In The New Mexico SIP,''* found under 40 CFR 52.1620(e), by including an entry for New Mexico's Air Pollution Episode Contingency Plan approved by EPA into the SIP on August 21, 1990.

3. 40 CFR 52.1634(a), by amending the paragraph such that it identifies that New Mexico has fully met all conditions of our February 27, 1987 conditional approval of New Mexico's PSD program such that our conditional approval is converted to a full approval.

4. 40 CFR 52.1640(c)(66)(i)(B), by amending the paragraph such that it correctly identifies the State regulations submitted by the State and approved by EPA into the New Mexico SIP.

EPA is approving these actions in accordance with section 110 of the Act and EPA's regulations and consistent with EPA guidance.

V. 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, EPA's role is to approve state choices, provided that 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 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 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, 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 2011. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 30, 2011.

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. Section 52.1620 is amended:

■ a. In paragraph (c), under the first table entitled ''New Mexico Administrative Code (NMAC) Title 20—Environmental Protection Chapter 2—Air Quality,'' by removing the entries for Part 70 and Part 71 and by revising the entries for Part 2, Part 3, Part 5, Part 8, Part 10, Part 11 through Part 22, Part 30 through Part 34, Part 40, Part 41, Part 60, Part 61, Part 72, Part 75, and Part 80;

■ b. In paragraph (e), under the second table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures In The New Mexico SIP,'' by adding to the end of the table a new entry for ''Air Pollution Episode Contingency Plan for New Mexico'' followed by a new entry for ''Infrastructure for the 1997 Ozone and 1997 PM2.5 NAAQS''.

The amendments and additions read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environmental Protection Chapter 2—Air Quality				
* *	*	*	* *	*
Part 2	Definitions	11/30/1995	9/26/1997, 62 FR 50514	
Part 3	Ambient Air Quality Standards	9/6/2006	7/15/11, [Insert *FR* page number where document begins].	
Part 5	Source Surveillance	11/30/1995	9/26/1997, 62 FR 50514	
* *	*	*	* *	*
Part 8	Emissions Leaving New Mexico	11/30/1995	9/26/1997, 62 FR 50514	
Part 10	Woodwaste Burners	11/30/1995	9/26/1997, 62 FR 50514	
Part 11	Asphalt Process Equipment	11/30/1995	9/26/1997, 62 FR 50514	
Part 12	Cement Kilns	11/30/1995	9/26/1997, 62 FR 50514	
Part 13	Gypsum Processing Plants	11/30/1995	9/26/1997, 62 FR 50514	
Part 14	Particulate Emissions From Coal Burning Equipment.	11/30/1995	9/26/1997, 62 FR 50514	
Part 15	Pumice, Mica and Perlite Process Equipment.	11/30/1995	9/26/1997, 62 FR 50514	
Part 16	Nonferrous Smelters (New and Existing)-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 17	Nonferrous Smelters (Existing)-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 18	Oil Burning Equipment-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 19	Potash, Salt, or Sodium Sulfate Processing Equipment-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 20	Lime Manufacturing Plants-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 21	Fugitive Particulate Matter Emissions from Nonferrous Smelters.	11/30/1995	9/26/1997, 62 FR 50514	
Part 22	Fugitive Particulate Matter Emissions from Roads within the Town of Hurley.	11/30/1995	9/26/1997, 62 FR 50514	
Part 30	Kraft Mills	11/30/1995	9/26/1997, 62 FR 50514	
Part 31	Coal Burning Equipment-Sulfur Dioxide.	11/30/1995	9/26/1997, 62 FR 50514	
Part 32	Coal Burning Equipment-Nitrogen Dioxide.	11/30/1995	9/26/1997, 62 FR 50514	
Part 33	Gas Burning Equipment-Nitrogen Dioxide.	11/30/1995	9/26/1997, 62 FR 50514	
Part 34	Oil Burning Equipment-Nitrogen Dioxide.	11/30/1995	9/26/1997, 62 FR 50514	
Part 40	Sulfuric Acid Production Units-Sulfur Dioxide, Acid Mist and Visible Emissions.	11/30/1995	9/26/1997, 62 FR 50514	
Part 41	Nonferrous Smelters-Sulfur	11/30/1995	9/26/1997, 62 FR 50514	
Part 60	Open Burning	11/30/1995	9/26/1997, 62 FR 50514	
Part 61	Smoke and Visible Emissions	11/30/1995	9/26/1997, 62 FR 50514	
Part 72	Construction Permits	11/30/1995	9/26/1997, 62 FR 50514	Subparts I, II, III, and V in SIP.
* *	*	*	* *	*
Part 75	Construction Permit Fees	11/30/1995	9/26/1997, 62 FR 50514	
* *	*	*	* *	*
Part 80	Stack Heights	11/30/1995	9/26/1997, 62 FR 50514	
* *	*	*	* *	*

* * * * *

(e) * * *

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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 date/effective date	EPA approval date	Explanation
*	*	*	*	*
Air Pollution Episode Contingency Plan for New Mexico.	Statewide	7/7/1988	8/21/1990, 55 FR 34013	
Infrastructure for the 1997 Ozone and 1997 $PM_{2.5}$ NAAQS.	Statewide	12/10/2007 3/3/2008	7/15/11, [Insert *FR* page number where document begins].	Approval for 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

■ 3. Section 52.1634 is amended by revising paragraph (a) to read as follows:

§ 52.1634 Significant deterioration of air quality.

(a) The plan submitted by the Governor of New Mexico on February 21, 1984 (as adopted by the New Mexico Environmental Improvement Board (NMEIB) on January 13, 1984), August 19, 1988 (as revised and adopted by the NMEIB on July 8, 1988), and July 16, 1990 (as revised and adopted by the NMEID on March 9, 1990), Air Quality Control Regulation 707—Permits, Prevention of Significant Deterioration (PSD) and its Supplemental document, is approved as meeting the requirements of part C, Clean Air Act for preventing significant deterioration of air quality. Additionally, on November 2, 1988, EPA approved New Mexico's stack height regulation into the SIP (53 FR 44191), thereby satisfying the conditions of EPA's conditional approval of the State's PSD program on February 27, 1987 (52 FR 5964). Therefore, the conditional approval was converted to a full approval on July 15, 2011.

* * * * *

■ 4. Section 52.1640 is amended by revising paragraph (c)(66)(i)(B) to read as follows:

§ 52.1640 Original identification of plan section.

* * * * *

(c) * * *

(66) * * *

(i) * * *

(B) New Mexico Administrative Code, Title 20, Chapter 2, Parts 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 32, 33, 34, 40, 41, 60, 61, 72 (Subparts I, II and III; Subpart V, Sections 501 and 502), 73, 75, 79, and 80; adopted by the New Mexico Environmental Improvement Board on October 20, 1995, and filed with the State Records and Archives Center on October 30, 1995.

* * * * *

[FR Doc. 2011–17786 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–2011–NY1, FRL–9430–3]

Approval and Promulgation of Implementation Plans; New York; Revised Format of Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is revising the format of materials submitted by the State of New York that have been incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations and other materials affected by this format change have all been previously submitted by New York and approved by EPA as SIP revisions.

This format revision will primarily affect the ''Identification of plan'' section of regulation, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Region 2 Office. EPA is also adding a table in the ''Identification of plan'' section, which summarizes the approval actions that EPA has taken on the regulatory and non-regulatory portions of the New York SIP. The sections of regulation pertaining to provisions promulgated by EPA, and state-submitted materials not subject to IBR review, remain unchanged.

DATES: *Effective Date:* This final rule is effective on July 15, 2011.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/*Telephone number:* (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

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