

**§ 52.220 Identification of plan.**

- \* \* \* \* \*
- (c) \* \* \*
- (164) \* \* \*
- (i) \* \* \*
- (C) \* \* \*
- (4) Rule 74.11 adopted on April 9, 1985.
- \* \* \* \* \*
- (249) \* \* \*
- (i) \* \* \*
- (B) Kern County Air Pollution Control District.
- (J) Rule 425.2 adopted on October 13, 1994 and amended on July 10, 1997.
- \* \* \* \* \*
- (254) \* \* \*
- (i) \* \* \*
- (C) \* \* \*
- (4) Rule 342 amended on April 17, 1997.
- \* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[NM-35-1-7428; FRL-6441-3]

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico Update to Materials Incorporated by Reference****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** The EPA is updating the materials submitted by New Mexico that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office.

**EFFECTIVE DATE:** This action is effective September 24, 1999.**ADDRESSES:** The SIP materials, which are incorporated by reference into 40 CFR part 52, are available for inspection at the following locations:

Environmental Protection Agency,  
Region 6, 1445 Ross Avenue, Suite  
700, Dallas, Texas 75202-2733;  
Office of Air and Radiation, Docket and  
Information Center (Air Docket), EPA,  
401 M Street, SW, Room M1500,  
Washington, DC 20460; and

Office of the Federal Register, 800 North  
Capitol Street, NW, Suite 700,  
Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Mr.  
Paul Scoggins at the above Region 6  
address or at (214)-665-7354.

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On July 13, 1998, EPA published a document in the **Federal Register** (63 FR 37493) beginning the new IBR procedure for New Mexico. In this document EPA is doing the first update to the material being IBRed. On September 9, 1998, (63 FR 48106), EPA published a final rule conditionally approving a revision to the New Mexico SIP that contained regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993 (58 FR 63214). On June 1, 1999 (64 FR 29235), EPA published a direct final approval document approving revisions to the New Mexico SIP of Board composition and conflict of interest disclosure requirements for the State of New Mexico and for Albuquerque/Bernalillo County, NM. The rule became effective August 2, 1999. In both documents EPA also updated the Identification of plan section for the Code of Federal Regulations.

In this document EPA is updating the SIP compilation that is incorporated by reference. Table (d) is being added to identify permitted sources in the SIP and table (e) is being revised to include more identification of plan information that was not included in the original July 13, 1998, **Federal Register** document.

The EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in

the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is unnecessary and contrary to the public interest since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

**Administrative Requirements****A. Executive Order (E.O.) 12866**

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

**B. Executive Order 12875**

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

**C. Executive Order 13045**

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation.

This action is not subject to E.O. 13045 because it approves a state rule implementing a previously promulgated health or safety-based Federal standard, and preserves the existing level of pollution control for the affected areas.

#### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small

entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### H. Petitions for Judicial Review

The EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the New Mexico SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 2, 1999.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

#### PART 52—[AMENDED]

1. The authority for 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 by:

- A. Revising paragraph (b);
- B. Adding paragraph (d); and
- C. Adding a new table at the end of paragraph (e).

The revisions and additions read as follows:

#### § 52.1620 Identification of plan.

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1999, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1

CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1999, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in

the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 1999.

(3) Copies of the materials incorporated by reference may be inspected at the Region 6 EPA Office at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202-2733; the EPA, Air and

Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460; or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

\* \* \* \* \*

(d) EPA-approved State Source-specific requirements.

#### EPA-APPROVED NEW MEXICO SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State approval/effective date	EPA approval date	Explanation
None .....	.....	.....	.....	.....

(e) \* \* \*

#### 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
State Attorney Generals Opinion.	Statewide .....	09/04/72 .....	04/09/79, 44 FR 21020 .....	Ref 52.1640(c)(4).
Revisions to New Source Review and Source Surveillance.	Statewide .....	01/03/73 .....	04/09/79, 44 FR 21020 .....	Ref 52.1640(c)(5).
Clarification of State permit and Source Surveillance.	Statewide .....	01/18/73 .....	04/09/79, 44 FR 21020 .....	Ref 52.1640(c)(6).
Revision for Attainment of Standards.	PM in Albuquerque, Grant, Eddy and Lea counties; Ozone in Albuquerque; SO <sub>2</sub> in San Juan and Grant counties; and CO in Las Cruces, Farmington, and Santa Fe counties.	01/23/79 .....	04/10/80, 45 FR 24468 and 03/26/81, 46 FR 18694.	Ref 52.1640(c)(11).
Ordinance for Motor Vehicle Emission I/M program.	Albuquerque .....	07/02/79 .....	04/10/80, 45 FR 24468 .....	Ref 52.1640(c)(12).
TSP Plan, RFP, and Transportation Commitments.	Albuquerque .....	08/02/79 .....	04/10/80, 45 FR 24468 .....	Ref 52.1640(c)(13).
Schedule for Albuquerque TSP plan, revising permit regulations, and extension request.	Albuquerque and Grant county.	09/25/79 .....	04/10/80, 45 FR 24468 .....	Ref 52.1640(c)(14).
CO Strategies .....	Farmington and Santa Fe counties.	01/23/79 .....	04/10/80, 45 FR 24468 .....	Ref 52.1640(c)(15).
Compliance schedules for several industries.	Eddy, Lea, and Grant counties.	07/25/79 .....	12/24/80, 45 FR 85006 .....	Ref 52.1640(c)(16).
Revision for attainment of CO standard.	Bernalillo county .....	03/17/80 .....	03/26/81, 46 FR 18694 .....	Ref 52.1640(c)(17).
Commitment to not issue permits to stationary sources.	Nonattainment areas .....	05/20/80 .....	03/26/81, 46 FR 18694 .....	Ref 52.1640(c)(18).
Commitment to submit I/M enforcement plan.	Albuquerque, Bernalillo county.	10/10/80 .....	03/26/81, 46 FR 18694 .....	Ref 52.1640(c)(19).
Revision to ambient monitoring plan.	Statewide .....	12/12/79 .....	08/06/81, 46 FR 40006 .....	Ref 52.1640(c)(20).
Variance to regulation 506 for Phelps Dodge Corp.	Hidalgo Smelter in Playas, NM.	02/04/80 .....	08/19/81, 46 FR 42065 .....	Ref 52.1640(c)(21).
Revised SO <sub>2</sub> control strategy.	San Juan county .....	02/12/81 .....	08/27/81, 46 FR 43153 .....	Ref 52.1640(c)(22).
Memorandum of understanding between the State and Arizona Public Service Company.	Statewide .....	04/16/81 .....	08/27/81, 46 FR 43153 .....	Ref 52.1640(c)(22).
Compliance schedule for units 4 and 5 of the Arizona Public Service.	Four Corners Power plant	03/31/80 .....	03/30/82, 47 FR 13339 .....	Ref 52.1640(c)(23).

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP—  
Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Explanation
Variance to regulation 603 for units 3, 4, and 5 of the Arizona Public Service.	Four Corners Power plant	07/31/80 .....	03/30/82, 47 FR 13339 .....	Ref 52.1640(c)(25).
New Mexico plan for Lead	Statewide .....	05/19/80 .....	05/05/82, 47 FR 19334 and 08/14/84, 49 FR 32184.	Ref 52.1640(c)(27).
Revision to SO <sub>2</sub> control strategy.	Grant county .....	05/12/81 and 08/13/81 .....	05/05/82, 47 FR 19333 .....	Ref 52.1640(c)(28).
Intergovernmental Consultation program.	N/A .....	03/28/80 .....	03/08/84, 49 FR 08610 .....	Ref 52.1640(c)(31).
Public Information and Participation program.	Statewide .....	12/20/79 .....	08/24/83, 48 FR 38467 .....	Ref 52.1640(c)(33).
Revision for attainment of CO standard.	Bernalillo county .....	06/28/82 and 01/26/83 .....	07/01/83, 48 FR 30366 .....	Ref 52.1640(c)(34).
Variance to regulation 603.B for units 3, 4, and 5 of the Arizona Public Service.	Four Corners Power Plant	02/04/87, 10/26/87, and 02/16/88.	10/27/89, 54 FR 43814 .....	Ref 52.1640(c)(38).
Revision to SIP for moderate PM <sub>10</sub> nonattainment areas.	Anthony area; Dona Ana county.	11/08/91 .....	09/09/93, 58 FR 47383 .....	Ref 52.1640(c)(50).
Narrative plan addressing CO nonattainment areas.	Albuquerque, Bernalillo county.	11/05/92 .....	11/29/93, 58 FR 62535 .....	Ref 52.1640(c)(52).
CO contingency measures and proposed Clean Fuel Vehicle fleet demonstration.	Albuquerque, Bernalillo county.	11/12/93 .....	05/05/94, 59 FR 23167 .....	Ref 52.1640(c)(57).
Update to supplement to control air pollution.	Bernalillo county .....	11/09/94 .....	06/24/96, 61 FR 32339 .....	Ref 52.1640(c)(61).
Revision approving request for redesignation, a vehicle I/M program, and required maintenance plan.	Albuquerque, Bernalillo nonattainment area.	05/11/95 .....	06/13/96, 61 FR 29970 .....	Ref 52.1640(c)(63).

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[CO-001-0034a; FRL-6441-6]

**Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Longmont Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes**

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

**ACTION:** Direct final rule.

**SUMMARY:** On August 19, 1998, the Governor of Colorado submitted a request to redesignate the Longmont "moderate" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. In this action, EPA is approving the

Longmont CO redesignation request and the maintenance plan.

**DATES:** This direct final rule is effective on November 23, 1999 without further notice, unless EPA receives adverse comments by October 25, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202-2466; and, United States Environmental Protection Agency, Air and Radiation Docket and

Information Center, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Colorado Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado, 80246-1530.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466. Telephone number: (303) 312-6479.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we", "us", or "our" are used, we mean the Environmental Protection Agency.

**I. What Is the Purpose of This Action?**

In this action, we are approving a change in the legal designation of the Longmont area from nonattainment for CO to attainment, and we're approving the maintenance plan that is designed to keep the area in attainment for CO for the next 16 years.