

§ 165.T09-149 Safety Zone; Chicago River Main Branch, Chicago, IL.

(a) *Location.* The safety zone will be established on the north side of the Chicago River Main Branch, from the east side of the Wabash Ave Bridge at position 41°53.296' N and 087°37.611' W extending 515 feet along the shoreline to the east side of the Chicago Sun-Times Building, at position 41°53.347' N and 087°37.539' W extending 40 feet perpendicular to the shoreline to position 41°53.342' N and 087°37.534' W extending parallel to the shoreline to position 41°53.290' N and 087°37.607' W then back to the point of origin.

(b) *Effective period.* This regulation is effective from December 20, 2004 through March 19, 2005.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated on scene representative.

Dated: December 20, 2004.

T. W. Carter,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 04-28550 Filed 12-29-04; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52

[NM-44-1-7603a; FRL-7856-3]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Recodification and SIP Renumbering of the New Mexico Administrative Code for Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the Governor of New Mexico on May 2, 2003. The submittal revises the numbering and format of New Mexico's Albuquerque/Bernalillo County SIP and contains no substantive changes to the regulations. We are approving these revisions in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on February 28, 2005 without further notice, unless EPA receives relevant adverse comment by January 31, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal**

Register informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by File ID No. NM-44-1-7603a, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

US 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. Thomas Diggs at diggs.thomas@epa.gov. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), at 214-665-7263.

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

Hand or Courier Delivery: Mr. Thomas Diggs, 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 for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Please include the text "Public comment on File ID No. NM-44-1-7603a" 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 file without change, 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 regulations.gov or e-mail if you believe that it is CBI or otherwise protected from disclosure. [Regulations.gov](http://regulations.gov) 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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.

Official File: Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency listed below during official business hours by appointment: Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6521; fax number 214-665-7263; e-mail address paige.carrie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

Outline

- I. The State's Submittal
 - A. What Revision Did the State Submit?
 - B. What is a SIP?
- II. EPA's Evaluation
 - A. What is the Federal approval process for a SIP?
 - B. What does Federal approval of a SIP mean to me?
 - C. How is EPA Evaluating this Revision?
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. The State's Submittal
A. What Revision Did the State Submit?

On May 2, 2003, the State of New Mexico submitted revisions to the New Mexico—Albuquerque/Bernalillo County SIP. These revisions apply to

sections of the New Mexico Administrative Code (NMAC) for Albuquerque/Bernalillo County that have been reformatted and renumbered.

B. What Is a SIP?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) that EPA has established.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each federally approved SIP is designed to protect air quality. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

II. EPA's Evaluation

A. What Is the Federal Approval Process for a SIP?

When a state wants to incorporate its regulations into the federally enforceable SIP, the state must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state adopts a rule, regulation, or control strategy, the state may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive relevant adverse comments, we must address them prior to taking a final action.

Under section 110 of the Act, when we approve all state regulations and supporting information, those state regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

B. What Does Federal Approval of a SIP Mean to Me?

A state may enforce state regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

C. How Is EPA Evaluating This Revision?

The Technical Support Document (TSD) prepared for this rule provides two tables that show the current and newly reformatted versions of the NMAC. These tables allow the reviewer to cross-reference the renumbering of the NMAC. After thorough evaluation and comparison with the current SIP, we have confirmed that all sections are accounted for, the revisions are administrative in nature, limited to renumbering of existing sections and parts, and do not weaken the existing SIP.

III. Final Action

The EPA is approving the aforementioned changes to New Mexico's Albuquerque/Bernalillo County SIP because the revisions are consistent with the Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the EPA views this as a non-controversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 28, 2005 without further notice, unless EPA receives relevant adverse comment by January 31, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 28, 2005, and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission,

to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 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 February 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 16, 2004.

Richard E. Greene,
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. In § 52.1620(c), the two tables are amended as follows:

■ a. In the first table entitled "EPA Approved New Mexico Regulations," by removing the centered heading, "New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board (AQCB)," and by removing the entry for Part 03, Transportation Conformity.

■ b. By revising the second table entitled "EPA Approved Albuquerque/Bernalillo County, NN Regulations," to read as follows:

§ 52.1620 Identification of plan.

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			(c) * * *		
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EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NN REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
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Albuquerque/Bernalillo County, Air Quality Control Regulations

Regulation No. 8	Airborne Particulate Matter.	02/17/83	02/23/93, 58 FR 10970	Only Section 8.03, Soil Disturbance, in SIP.
Section 21	Permit Fees	01/23/79	04/10/80, 45 FR 24460.	

New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board

Part 1 (20.11.1 NMAC)	General Provisions	10/01/02	12/30/04 [Insert FR page where document begins].	No action taken on Sections I.2.3, II.2.4, II.7.3–7.6, II.16.5, II.18.1.B, II.19.1.A, and II.22.2.
Part 3 (20.11.3 NMAC)	Transportation Conformity.	07/01/98	07/08/99, 64 FR 36786	
Part 4 (20.11.4 NMAC)	General Conformity ...	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 5 (20.11.5 NMAC)	Visible Air Contaminants.	01/01/03	12/30/04 [Insert FR page where document begins].	
Part 6 (20.11.6 NMAC)	Emergency Action Plan.	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 7 (20.11.7 NMAC)	Variance Procedure ...	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 21 (20.11.21 NMAC)	Open Burning	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 22 (20.11.22 NMAC)	Woodburning	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 40 (20.11.40 NMAC)	Source Registration ...	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 41 (20.11.41 NMAC)	Authority to Construct	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 43 (20.11.43 NMAC)	Stack Height Requirements.	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 60 (20.11.60 NMAC)	Permitting in Non-attainment Areas.	10/01/02	12/30/04 [Insert FR page where document begins].	

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NN REGULATIONS—Continued

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
Part 61 (20.11.61 NMAC)	Prevention of Significant Deterioration.	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 63 (20.11.63 NMAC)	New Source Performance Standards for Stationary Sources.	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 64 (20.11.64 NMAC)	Emission Standards for Hazardous Air Pollutants for Stationary Sources.	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 65 (20.11.65 NMAC)	Volatile Organic Compounds.	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 66 (20.11.66 NMAC)	Process Equipment ...	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 67 (20.11.67 NMAC)	Equipment, Emissions, Limitations.	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 68 (20.11.68 NMAC)	Incinerators and Crematories.	04/01/02	12/30/04 [Insert FR page where document begins].	
Part 90 (20.11.90 NMAC)	Administration, Enforcement, and Inspection.	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 100 (20.11.100 NMAC)	Motor Vehicle Inspection—Decentralized.	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 102 (20.11.102 NMAC)	Oxygenated Fuels	10/01/02	12/30/04 [Insert FR page where document begins].	
Part 103 (20.11.103 NMAC)	Motor Vehicle Visible Emissions.	10/01/02	12/30/04 [Insert FR page where document begins].	

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[FR Doc. 04-28501 Filed 12-29-04; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 419

[CMS-1427-CN]

RIN 0938-AM75

Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2005 Payment Rates; Wage Index Tables and Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appear in the final rule with comment period published in the **Federal Register** on November 15, 2004 entitled “Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2005 Payment Rates.” In addition, it provides additional information about the calendar year 2005 wage indices for this payment system that was not published in that final rule with comment period.

DATES: *Effective Date:* This document is effective on January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Dana Burley, (410) 786-0378.

SUPPLEMENTARY INFORMATION:

I. Background

A. Corrections

In FR Doc. 04-24759 of November 15, 2004 (69 FR 65681), there were a few inadvertent technical and typographical errors that we are correcting and identifying in the “Correction of Errors” section below. The provisions in this correction are effective as if they had been included in the document published in the **Federal Register** on November 15, 2004, that is, as of January 1, 2005.

B. Wage Index

Section 1833(t)(2)(D) of the Social Security Act (the Act) requires the Secretary to determine a wage adjustment factor to adjust, for geographic wage differences, the portion of the Hospital Outpatient Prospective Payment System (OPPS) payment rate and the copayment standardized amount attributable to labor and labor-related cost. This adjustment must be made in a budget neutral manner. As we have done in prior years, we adopted the Hospital Inpatient Prospective Payment System (IPPS) wage indices and applied them to Tax Equality and Fiscal Responsibility Act (TEFRA)

hospitals that participate in the OPPS but not the IPPS.

In determining the OPPS payment rate and the copayment standardized amount, we standardize 60 percent of estimated costs (the labor-related portion of costs) for geographic area wage variation using the IPPS wage indices that are calculated prior to adjustments for reclassification to remove the effects of differences in area wage levels.

As published in the original OPPS April 7, 2000 final rule (65 FR 18545), the OPPS has consistently adopted the final IPPS wage indices for adjusting the OPPS standard payment amounts for labor market differences. In accordance with section 1886(d)(3)(E) of the Act, the IPPS wage index is updated annually. In the August 16, 2004 OPPS proposed rule (69 FR 50541), we proposed to use the corrected proposed fiscal year (FY) 2005 hospital IPPS wage index for urban areas published in the **Federal Register** on June 25, 2004 (69 FR 35919) and the proposed FY 2005 hospital IPPS wage index for rural areas published in the **Federal Register** on May 18, 2004 (69 FR 28580) to determine the wage adjustments for the OPPS payment rates and the copayment standardized amount for calendar year (CY) 2005.

On November 15, 2004, we published the final rule with comment period for the OPPS and CY 2005 payment rates (69 FR 65681). In that final rule (69 FR