

regulations, experience has shown that the previous, as well as the current, regulation could not, in fact, be given full effect because the cost of computer searches could not be fully ascertained and because of the difficulties in determining the salary costs attributable to individuals doing manual searches, particularly at overseas posts where Foreign Service Nationals have a different and more frequently changing pay scale. By using average salary costs of the categories of individuals involved in a search (i.e., clerical, professional, executive) instead of the actual salary of each such individual, the proposed revision will permit computer calculation of the fees that should be as accurate as the current method and should not result in any substantial increase or diminution of search fees charged or collected.

#### Regulatory Findings

*Administrative Procedure Act.* The Department is publishing this rule as a proposed rule. Public comments are invited for a period of 90 days following this document's publication in the **Federal Register**.

*Regulatory Flexibility Act.* The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that this rule will not have significant economic impact on a substantial number of small entities.

*Unfunded Mandates Act of 1995.* This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996.* This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

*Executive Order 12866.* The Department does not consider this rule to be a "significant regulatory action" under Executive Order (E.O.) 12866, section 3(f), Regulatory Planning and

Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

*Executive Order 13132.* This regulation will 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

*Paperwork Reduction Act.* This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### List Subjects in 22 CFR Part 171

Administrative practice and procedure, fees for searches in Freedom of Information Act cases.

For the reasons set forth in the preamble, 22 CFR part 171 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for part 171 continues to read as follows:

**Authority:** 22 U.S.C. 552, 552a; Ethics in Government Act of 1978, Pub. L. 95-521, 92 Stat. 1824, as amended; E.O. 12958, as amended, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 171.14 is amended by adding a new paragraph (a)(3) to read as follows:

#### § 171.14 Fees to be charged—general.

\* \* \* \* \*

(a) \* \* \*

(3) For both manual and computer searches, the Department shall charge the estimated direct cost of each search based on the average current salary rates of the categories of personnel doing the searches. Further information on search fees is available by clicking on "FOIA" at the Department's Web site at [http://](http://www.state.gov)

[www.state.gov](http://www.state.gov) or directly at the FOIA home page at <http://foia.state.gov>.

\* \* \* \* \*

Dated: June 15, 2007.

**Lee Lohman,**

*Deputy Assistant Secretary, Department of State.*

[FR Doc. E7-11944 Filed 6-19-07; 8:45 am]

**BILLING CODE 4710-24-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2005-NM-0006; FRL-8328-8]

### Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Prevention of Significant Deterioration and New Source Review

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the New Mexico State Implementation Plan (SIP) that were submitted to EPA on April 11, 2002, and December 29, 2005. The proposed revisions modify New Mexico's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations in the SIP to address changes to the Federal PSD and NNSR regulations, which were promulgated by EPA on December 31, 2002 and reconsidered with minor changes on November 7, 2003 (collectively, these two Federal actions are called the "2002 New Source Review (NSR) Reform Rules"). The proposed revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits (PALs), and recordkeeping and reporting requirements. EPA is proposing to approve these revisions pursuant to section 110, parts C and D of the Federal Clean Air Act (Act).

**DATES:** Comments must be received on or before July 20, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R06-OAR-2005-NM-0006 by one of the following methods:

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

- *E-mail:* Mr. Stanley M. Spruiell at [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).
- *Fax:* Mr. Stanley M. Spruiell, Air Permits Section (6PD-R), at fax number (214) 665-7263.
- *Mail:* Mr. Stanley M. Spruiell, Air Permits Section (6PD-), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- *Hand or Courier Delivery:* Mr. Stanley M. Spruiell, Air Permits Section (6PD-R), 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:* Direct your comments to Docket ID Number EPA-R06-OAR-2005-NM-0006. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. 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 and any form of encryption and should be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other

material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), 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 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours by appointment at the New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley M. Spruiell, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7212; fax number (214) 665-7263; e-mail address [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, any reference to "we," "us," or "our" shall mean EPA.

#### **Outline**

- I. What Action Is EPA Proposing?
- II. What Is the Background for This Action?
- III. What Is EPA's Analysis of New Mexico's NSR Rule Revisions?
- IV. Does Approval of New Mexico NSR Rule Revisions Interfere With Attainment, Reasonable Further Progress, or Any Other Applicable Requirement of the Act?
- V. What Action Is EPA Taking Today?
- VI. Statutory and Executive Order Reviews

#### **I. What Action Is EPA Proposing?**

On April 11, 2002, and December 29, 2005, New Mexico submitted revisions to the New Mexico SIP. The submittal consists of revisions to two regulations that are already part of the New Mexico SIP. The affected regulations are 20.2.74 New Mexico Administrative Code (NMAC) (Permits—Prevention of Significant Deterioration) and 20.2.79

NMAC (Permits—Nonattainment Areas). The revisions will update New Mexico's PSD and NNSR regulations to make them consistent with changes to the Federal NSR regulations published on December 31, 2002 (67 FR 80186) and November 7, 2003 (68 FR 63021). These EPA rulemakings are collectively referred to as the "2002 NSR Reform Rules."

This SIP revision also includes other non-substantive changes to New Mexico's PSD and NNSR rules needed to update the regulatory citations, make clarifying revisions to the regulatory text, and correct typographical errors. These non-substantive changes do not change the regulatory requirements. Please see the Technical Support Document (TSD) for further information.

The EPA is also proposing to approve portions of the SIP submittal dated April 11, 2002. This action only approves the following provisions of the April 11, 2002, SIP submittal:

- The removal of the definition of "complete" currently in Paragraph O of 20.2.74.7 NMAC; and
- Revisions to 20.2.74.400 NMAC and 20.2.79 NMAC which relate to the requirements for public notice and public participation for PSD and NNSR permits.

The EPA is only addressing two provisions of the April 11, 2002, SIP submittal in this action because these provisions are the only provisions in the submittal that address PSD and NNSR. The EPA will take appropriate action on the remaining provisions of the April 11, 2002, submittal in a separate action.

#### **II. What Is the Background for This Action?**

On December 31, 2002, EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act's PSD and NNSR programs. See 67 FR 80186. On November 7, 2003, EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. See 68 FR 63021. In the November 7th final action, EPA added the definition of "replacement unit," and clarified issues regarding PALs. The purpose of today's action is to propose approval of New Mexico's SIP submittal, which includes revisions to the NNSR and PSD SIP rules.

The 2002 NSR Reform Rules are part of EPA's implementation of parts C and D of Title I of the Act, 42 U.S.C. 7470-7515, addressing major sources and major modifications. Part C of Title I of the Act, 42 U.S.C. 7470-7492, is the PSD program, which applies in areas that meet the National Ambient Air

Quality Standards (NAAQS)—“attainment areas”—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—“unclassifiable areas.” Part D of Title I of the Act, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of one or more of the NAAQS—“nonattainment areas.” EPA regulations implementing the NNSR and PSD programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and appendix S of part 51.

The Act’s NSR programs are preconstruction review and permitting programs that apply to new and modified stationary sources of air pollutants regulated under the Act. These programs include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the Act, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, each State must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of stationary sources of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. The rules: (1) Provide a new method for determining baseline actual emissions in the NNSR and PSD programs; (2) adopt for the NNSR and PSD programs an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with PALs to avoid having a significant emissions increase that triggers the requirements of the NNSR and PSD programs; (4) provide a new applicability provision in the NNSR and PSD programs for emissions units that are designated clean units; and (5) exclude pollution control projects from the NNSR and PSD program definitions of “physical change

or change in the method of operation.” For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002) and <http://www.epa.gov/nsr>.

After the 2002 NSR Reform Rules were finalized and became effective (March 3, 2003), various petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA’s 1980 NSR Rules (45 FR 5276, August 7, 1980). On June 24, 2005, the D.C. Circuit Court of Appeals issued a decision on the challenges to the 2002 NSR Reform Rules. See *New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005) *rehearing en banc denied* (December 9, 2005). The Court vacated portions of the Rules pertaining to clean units and pollution control projects; remanded a portion of the Rules regarding recordkeeping, e.g., 40 CFR 51.165(a)(6) and 40 CFR 51.166(r)(6); and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. The EPA has not yet responded to the Court’s remand regarding the recordkeeping provisions. Today’s action is consistent with the decision of the D.C. Circuit Court of Appeals because New Mexico’s submittal does not include any portions of the 2002 NSR Reform Rules that were vacated.

The 2002 NSR Reform Rules require that no later than January 2, 2006, State agencies adopt and submit revisions to their SIP permitting programs to implement the minimum program elements of the 2002 NSR Reform Rules. See 40 CFR 51.166(a)(6)(i) (requiring State agencies to adopt and submit PSD SIP revisions within three years after new amendments are published in the **Federal Register**). State agencies may meet the requirements of 40 CFR part 51 and the 2002 NSR Reform Rules with different but equivalent regulations. If, however, a State decides not to implement any of the new applicability provisions, that State must demonstrate that its existing program is at least as stringent as the Federal program. As discussed in further detail below, EPA believes the revisions contained in this submittal are approvable for inclusion into the New Mexico SIP.

### III. What Is EPA’s Analysis of New Mexico’s NSR Rule Revisions?

New Mexico currently has an EPA-approved NSR program for new and modified sources, including a minor NSR preconstruction permit program, an NNSR preconstruction permit program, and a PSD preconstruction permit program. Today, EPA is proposing to approve revisions to New Mexico’s existing NNSR and PSD

regulations in the SIP. These proposed revisions were submitted to EPA on December 29, 2005. Copies of the revised rules, as well as the TSD, can be obtained from the Docket, as discussed in the “Docket” section above. A discussion of the specific New Mexico rule changes that are proposed for inclusion in the SIP is included in the TSD and summarized below.

New Mexico’s regulation 20.2.74 NMAC (Permits—Prevention of Significant Deterioration) contains the preconstruction review program that provides for the prevention of significant deterioration of ambient air quality as required under part C of Title I of the Act. The program applies to major stationary sources or modifications constructed or installed in areas designated as attainment or unclassifiable with respect to the NAAQS.

New Mexico’s permitting requirements for major sources in or impacting upon non-attainment areas are set forth at 20.2.79 NMAC (Permitting—Nonattainment Areas). The current New Mexico NNSR program applies to the construction of any new major stationary source or major modification of air pollution in a nonattainment area, as required by part D of Title I of the Act. To receive approval to construct, a source that is subject to this regulation must show that it will not cause a net increase in pollution or create a delay in meeting the NAAQS and that it will install and use control technology that achieves the lowest achievable emission rate.

These revisions to 20.2.74 NMAC and 20.2.79 NMAC update the existing provisions to be consistent with the Federal 2002 NSR Reform Rules. These revisions address baseline actual emissions, actual-to-projected-actual applicability tests, and PALs. The revisions included in New Mexico’s NNSR and PSD programs are substantively the same as the 2002 NSR Reform Rules. As part of EPA’s review of New Mexico’s regulations, EPA performed a line-by-line review of the proposed revisions and determined that the proposed revisions are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for NSR set forth at 40 CFR 51.165 and 51.166. This review is contained in the TSD for this action. The New Mexico rules that EPA reviewed do not incorporate the portions of the Federal rules that were vacated by the D.C. Circuit Court of Appeals, such as the clean unit provisions and the pollution control projects exclusion.

The revised New Mexico rules include the recordkeeping provisions set forth in the Federal rules at 40 CFR 51.165(a)(6) and 51.166(r)(6). However, New Mexico chose to exclude the phrase "reasonable possibility." In the Federal rule, this phrase limits the recordkeeping provisions to modifications at facilities that use the actual-to-future-actual methodology to calculate emissions changes, where there is a "reasonable possibility" that the modifications will result in a significant emissions increase. Therefore, by leaving out the phrase "reasonable possibility" from Subsection E of 20.2.74.300 NMAC and Subsection E of 20.2.79.199 NMAC, the NMED rules require all modifications that use the actual-to-future-actual methodology to meet the recordkeeping requirements. As noted earlier, EPA has not yet responded to the D.C. Circuit Court of Appeals remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules. As a result, EPA's final decision with regard to the remand may require EPA to take further action on this portion of NMED's rules. At present, however, NMED's recordkeeping provisions are at least as stringent as the Federal requirements, and are therefore approvable.

In the April 11, 2002, submittal, New Mexico revised the definitions by removing the definition of "complete" from Paragraph O of 20.2.74.7 NMAC. The current SIP contained this definition of "complete" to meet the requirements of 40 CFR 51.166(b)(22). Although the definition of "complete" is removed from 20.2.74.7 NMAC, other provisions in 20.2.74 NMAC address the criteria that a permit application must address in order to be administratively complete. Specifically, 20.2.74.301 NMAC and 20.2.74.400 NMAC include each of the elements that an application for a PSD permit must contain in order to be administratively complete. These provisions include and meet the requirements of 40 CFR 51.166(n). Thus the New Mexico rules contain provisions that ensure that PSD permit applications are administratively complete as required by the Federal rules.

The April 11, 2002, submittal also includes revisions to 20.2.74.400 NMAC and 20.2.79.118 NMAC, which include the schedules and procedures to determine completeness of PSD and NNSR permit applications and the requirements for public participation and notice. The provisions were revised to provide that the New Mexico Environment Department (NMED) will review a permit application and determine whether it is administratively

complete within 30 days after receipt of the application. If the application is administratively complete, the NMED will notify the applicant of this finding by certified mail. If the application is administratively incomplete, the NMED will inform the applicant of such finding by certified mail and state the additional information or points of clarifications that are necessary to deem the application administratively complete. When the NMED receives additional information or clarification, it will promptly review such information and determine whether the application is administratively complete. The procedures for determining administrative completeness and for public participation meet the requirements of 40 CFR 51.161 and 40 CFR 51.166(q) which specifies the public participation requirements for PSD permits.

The April 11, 2002, submittal also revised 20.2.74.400 NMAC to include a cross-reference to 20.2.72 NMAC. Specifically, 20.2.74.400 NMAC provides that in order for a PSD permit application to be administratively complete, it must meet 20.2.74.301 NMAC and 20.2.72 NMAC. 20.2.74.301 NMAC includes the source information specified in 40 CFR 51.166(n) and is not substantively changed in this action. Under 20.2.72 NMAC, requirements of a complete application are identified in Paragraph A of 20.2.72.203 NMAC. The cross-reference to Paragraph A of 20.2.72.203 NMAC contains the elements for a complete application which has non-substantive changes to the current SIP. It also contains additional criteria that are in addition to the completeness elements that a permit application must contain in order to be administratively complete. Accordingly, New Mexico retains the minimum requirements for determining whether an application is complete that meets the Federal requirements. The TSD contains a detailed discussion of these completeness provisions.

#### **IV. Does Approval of New Mexico's Rule Revisions Interfere With Attainment, Reasonable Further Progress, or Any Other Applicable Requirement of the Act?**

The Act provides in Section 110(l) that:

Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revisions would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in

section 171), or any other applicable requirement of the Act.

Because, as discussed above and in the TSD, the revisions to the New Mexico NNSR and PSD programs are substantively the same as the 2002 NSR Reform Rules, without including any vacated provisions, we conclude that these rules do not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. See 67 FR 80186 and 68 FR 63021 for EPA's detailed explanation of the legal basis for the 2002 NSR Reform Rules.

#### **V. What Action Is EPA Taking Today?**

For the reasons discussed above, EPA is proposing to approve the changes made in the two rules, 20.2.74 NMAC (Permits—Prevention of Significant Deterioration) and 20.2.79 NMAC (Permits—Nonattainment Areas) as revised in the following SIP submittals:

- The portion of the SIP revisions submitted April 11, 2002, which revise 20.2.74 NMAC and 20.2.79 NMAC; and
- The NSR Reform provisions submitted December 29, 2005.

#### **VI. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, the relationship between the Federal Government and Indian tribes, or 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, the relationship between the national government and the States, or 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 proposes to approve 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. The EPA interprets Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it would approve a State program. Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Because this rule merely proposes to approve a State rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations. In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the 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 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 proposed 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.*).

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 11, 2007.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. E7-11942 Filed 6-19-07; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2006-0956; FRL-8328-9]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Dayton-Springfield Area to Attainment for Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to make a determination under the Clean Air Act (CAA) that the nonattainment area of Dayton-Springfield, Ohio (Clark, Green, Miami, and Montgomery Counties) has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on complete, quality-assured ambient air quality monitoring data for the 2004-2006 seasons that demonstrate that the 8-hour ozone NAAQS have been attained in the area. EPA is also proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS through 2018 in the area.

EPA is proposing to approve a request from the State of Ohio to redesignate the Dayton-Springfield area to attainment of the 8-hour ozone NAAQS. The Ohio Environmental Protection Agency (OEPA) submitted this request on November 6, 2006 and supplemented it on November 29, 2006, December 4, 2006, December 13, 2006, January 11, 2007, March 9, 2007, March 27, 2007, and May 31, 2007. EPA is also proposing to approve the State's 2005 and 2018 Motor Vehicle Emission Budgets (MVEBs) for the Dayton-Springfield area.

**DATES:** Comments must be received on or before July 20, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0956, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax*: (312) 886-5824.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2006-0956. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov)