

## Environment

We have analyzed this temporary rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this temporary rule is categorically excluded from further environmental documentation because this rule creates a security zone. An “Environmental Analysis Check List” and “Categorical Exclusion Determination” are available in the docket where indicated under ADDRESSES.

### List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.  
\* \* \* \* \*

■ 1. Add temporary § 165.T14–160 to read as follows:

#### § 165.T14–160 Security Zone; Nawiliwili Harbor, Kauai, HI.

(a) *Location.* The following land areas, and water areas from the surface of the water to the ocean floor, is a security zone that is activated as described in paragraph (b) of this section, and enforced subject to the provisions of paragraph (c) of this section: All waters of Nawiliwili Harbor, Kauai, shoreward of the Nawiliwili Harbor COLREGS DEMARCATION LINE (See 33 CFR 80.1450), excluding the waters west of a line running from the southeastern most point of the breakwater of Nawiliwili Small Boat Harbor due south to the south shore of the harbor, and excluding the waters from Kalapaki Beach south to a line extending from the western most point of Kukii Point due west to the Harbor Jetty. The land of the Jetty south of Nawiliwili Park including

Waapa Road is included within the security zone.

(b) *Activation.* The zone described in paragraph (a) of this section will be activated for enforcement 60 minutes before the Hawaii Super Ferry’s arrival into the zone and remain activated for 10 minutes after the Hawaii Super Ferry’s departure from the zone. The activation of the zone for enforcement will be announced by marine information broadcast, and by a red flag, illuminated between sunset and sunrise, displayed from the Pier One and the Harbor Facility Entrance on Jetty Road.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry by persons or vessels into the security zones created by this section and activated as described in paragraph (b) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. Operation of any type of vessel, including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, within the security zone is prohibited. Under authority of 50 U.S.C. 192, if a vessel is found to be operating within the security zone without permission of the Captain of the Port, Honolulu, and refuses to leave, the vessel is subject to seizure and forfeiture.

(2) All persons and vessels permitted in the security zone must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard and other persons permitted by law to enforce this regulation. Upon being hailed by an authorized vessel or law enforcement officer using siren, radio, flashing light, loudhailer, voice command, or other means, the operator of a vessel must proceed as directed.

(3) If authorized passage through the security zone, a vessel must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. While underway with permission of the Captain of the Port or his or her designated representatives, no person or vessel is allowed within 100 yards of the Hawaii Super Ferry when it is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(4) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained

by draft to remain within the security zone in order to ensure navigational safety.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other person permitted by law, may enforce the regulations in this section.

Dated: August 31, 2007.

**Sally Brice-O’Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.*

[FR Doc. 07–4357 Filed 8–31–07; 2:16 pm]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R06–OAR–2005–NM–0006; FRL–8463–3]

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

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving revisions to the New Mexico State Implementation Plan (SIP) that were submitted to EPA on April 11, 2002, and December 29, 2005. The 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 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 approving these revisions pursuant to section 110, part C, and part D of the Federal Clean Air Act (Act).

**DATES:** This rule is effective on October 5, 2007.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA–R06–OAR–2005–NM–0006. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly

available, e.g., Confidential Business information or other information the disclosure of which 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 [www.regulations.gov](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 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. 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.

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 Taking?
- II. Statutory and Executive Order Reviews

**I. What Action Is EPA Taking?**

The EPA is taking final action to approve the SIP revisions that the Governor of New Mexico submitted on December 29, 2005. This 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.” EPA finds that the changes meet section 110, part C, and part D of the Act.

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. Since the non-substantive changes do not change the regulatory requirements, EPA finds they meet section 110(l), part C and part D of the Act. Please see the Technical Support Document for further information.

The EPA is also approving 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. Although the definition of “complete” is removed from New Mexico’s rules, other provisions in the rules address the criteria that a permit application must include in order to be administratively complete. These provisions meet Federal requirements. While New Mexico’s rules governing the procedures for determining administrative completeness and for public participation have been revised, these rules also meet Federal requirements. Therefore, the removal of the definition of “complete” and the revisions to administrative completeness and public participation for PSD and NNSR permits meet section 110(l), part C, and part D of the Act. The EPA will take appropriate action on the remaining provisions of the April 11, 2002, submittal in a separate action.

On June 20, 2007 (72 FR 33933), we published our proposed approval of this SIP revision. The proposal provided detailed information about the New Mexico SIP revision that we are approving today. The proposal also provided a detailed analysis of EPA’s rationale for approving the New Mexico SIP revisions. In the proposal, we provided opportunity for public comment on the proposed action. The comment period for this proposed rulemaking ended July 20, 2007. We received no comments, adverse or otherwise, on the proposed rulemaking. We are therefore finalizing our proposed

approval without changes. For more details on this submittal, please refer to the proposed rulemaking and to the Technical Support Document, which is in the docket for this action.

**II. 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 (Pub. L. 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, 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 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. 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 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 approves 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 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. 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 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 October 5, 2007. 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 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.

Dated: August 23, 2007.

**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. The first table in § 52.1620(c) entitled "EPA Approved New Mexico Regulations" is amended by revising the entries for part 74 and part 79 to 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 | Explanation                                    |
|--|--|--------------------------------|-------------------|--|
| <b>New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality</b> |  |                                |                   |  |
| Part 74  | Permits—Prevention of Significant Deterioration. | 12/06/05                       | 09/05/07          | [Insert FR page number where document begins]. |
| Part 79  | Permits—Nonattainment Areas                      | 12/06/05                       | 09/05/07          | Insert FR page number where document begins].  |

\* \* \* \* \*

[FR Doc. E7-17514 Filed 9-4-07; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Parts 3000, 3100, 3150, 3200, 3500, 3580, 3600, 3730, 3810, and 3830****[WO-610-4111-02-24 1A]****RIN 1004-AD95****Minerals Management: Adjustment of Cost Recovery Fees****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Bureau of Land Management (BLM) mineral resources regulations to update some fees that cover the BLM's cost of processing certain documents relating to its mineral programs and some filing fees for mineral-related documents. These updates include fees for actions such as lease applications, name changes, corporate mergers, lease consolidations, and lease reinstatements. The fee changes are the BLM's continued response to recommendations made by the Department of the Interior's Office of Inspector General in a 1988 report. This report was part of a 1980s Presidential initiative, which called for all Federal agencies to charge appropriate user fees for agency services, consistent with the law. This final rule also makes some editorial corrections to the rule.

**DATES:** This final rule is effective October 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Tim Spisak, Chief, Division of Fluid Minerals, 202-452-5061, or Cynthia Ellis, Regulatory Affairs Specialist, (202) 452-5012. Persons who use a telecommunications device for the deaf (TDD) may leave a message with the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

**ADDRESSES:** You may send inquiries or suggestions to Director (630), Bureau of Land Management, MS-LS 401, 1849 C Street, NW., Washington, DC 20240; Attention: RIN 1004-AD95.

**SUPPLEMENTARY INFORMATION:****Background**

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal

Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and also establishing the method it would use to adjust those fees and service charges.

At 43 CFR 3000.12(a), the rule provides that the BLM will annually adjust fees established in Subchapter C according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD-GDP), which is published quarterly by the U.S. Department of Commerce. (See also 43 CFR 3000.10.) Because the fee recalculations are simply based on a mathematical formula, we have changed the fees in a final rule without providing opportunity for notice and comment. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The public had opportunity to comment on this procedure during the comment period on the cost recovery rule, and this new rule simply administers the procedure set forth in those regulations. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary, and that the rule may be effective less than 30 days after publication.

**Discussion of Final Rule**

Because the 2005 cost recovery final rule did not become effective until November 7, 2005, there was not a full calendar year between the effective date and the October 1 deadline the following year for updating the fees. See 43 CFR 3000.12(a). The BLM therefore decided to issue this first fee update rule in 2007, to be effective on October 1, 2007. The fees in the 2005 rule reflect adjustments using the Implicit Price Deflator for 4th Quarter 2004. See 70 FR 58857. The fee updates that will be effective each October 1 will be based on the Implicit Price Deflator for the 4th Quarter of the preceding calendar year. This first fee update, based on the Implicit Price Deflator for 4th Quarter 2006, thus reflects inflation over eight calendar quarters. Future adjustments will reflect inflation over four calendar quarters.

While preparing this rule, we found that in compiling the fee table at 43 CFR 3000.12 for the 2005 final rule (70 FR 58854), we overlooked some already-existing filing fees. The following

sections contain fees that should be reflected in the fee table:<sup>1</sup>

- In subpart 3150: sections 3152.1 (application for oil and gas geophysical exploration permit (Alaska))<sup>2</sup> (\$25) and 3152.3 (renewal of exploration permit (Alaska)) (\$25)
- In subpart 3273: sections 3273.15 (site license application) (\$50) and 3273.26 (assignment or transfer of site license) (\$50)
- In part 3500: sections 3510.12(b) (lease modifications or fringe acreage leases) (\$25); 3512.12, 3512.13(a)(6)(iii), 3512.16(b), and 3512.17(b) (assignments, subleases, or transfer of operating rights) (\$25); 3512.19 (transfer of overriding royalty) (\$25); and 3516.15 (use permits) (\$25)
- In part 3580: sections 3583.3 (Shasta and Trinity hardrock leases) (\$25) and 3586.2 (renewal of existing sand and gravel leases in Nevada) (\$25)
- In Group 3700: section 3736.2(b) (notice of protest of placer mining operations) (\$10)
- In Group 3800: sections 3816.2 (application to open lands to location) (\$10) and 3830.21(h) (recording a notice of intent to locate mining claims on Stockraising Homestead Act lands) (\$25)

In this final rule, we moved these fees to the fee table at 43 CFR 3000.12 and included a reference to the fee table in the relevant section of the rule text. This is an administrative revision for the convenience of the reader and has no substantive effect.

We also revised sections 3211.10(a) and 3504.10, which address fees in parts 3200 and 3500, respectively, to reflect the relocation of the fees to the table at 43 CFR 3000.12. In section 3211.10(a), we added to the list the filing fees noted above. In section 3504.10, instead of separate paragraphs for filing fees and processing fees, new paragraph (a)

<sup>1</sup> This rule will not include in the fee table at 43 CFR 3000.12 the \$10 filing fee for requesting publication of notice of Leasing Act filing found at 43 CFR 3742.3-1(b)(4). The BLM is in the process of drafting a proposed rule that would, among other things, propose to remove this fee. The document to which this fee pertains relates to mining claims located in 1954 and earlier; no document of this type has been filed with the BLM in recent decades. If any such document were filed, the BLM would address it under a different part.

<sup>2</sup> Section 365 of the Energy Policy Act of 2005 (Pub. L. 109-58) directed in subsection (j) that "the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations." In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854-58855. However, the \$25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition.