

*Regulatory Measures In The New Mexico SIP,*” found under 40 CFR 52.1620(e), by including an entry for New Mexico’s already SIP approved Air Pollution Episode Contingency Plan.

2. The table titled “*EPA Approved New Mexico Regulations,*” found under 40 CFR 52.1620(c), by (i) deleting entries for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC and (ii) correcting the currently listed EPA approval date for the recodification of New Mexico’s air quality regulations in the SIP.

3. 40 CFR 52.1640(c)(66)(i)(B), by amending the paragraph such that it correctly identifies the State regulations submitted by the State and approved by EPA into the New Mexico SIP.

4. 40 CFR 52.1634(a) and 40 CFR 52.1640(c)(39), by amending each paragraph such that it identifies that New Mexico has fully met all conditions of our February 27, 1987 conditional approval of New Mexico’s PSD program such that our conditional approval is converted to a full approval.

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

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

EPA is proposing these actions in accordance with section 110 and part C of the Act and EPA’s regulations and is consistent with EPA guidance.

## V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet

the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 22, 2011.

**Al Armendariz,**

*Regional Administrator, Region 6.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0 and 1

[GC Docket No. 10–43; FCC 11–11]

### Commission’s Ex Parte Rules and Other Procedural Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Further notice of proposed rulemaking

**SUMMARY:** In this document the Commission seeks comment on amending the rules to require that notices of *ex parte* discussions disclose real parties-in-interest. The change was proposed because the existing rules do not enable interested parties to know whose interests are being represented when a contact is made. By requiring the disclosure of this information the proposed amendment would increase transparency and openness in Commission proceedings. The FNPRM was adopted in conjunction with a Report and Order amending the *ex parte* rules, which is published elsewhere in this **Federal Register**.

**DATES:** Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 16, 2011 and reply comments on or before July 18, 2011. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before July 1, 2011.

**ADDRESSES:** You may submit comments, identified by GC Docket No. 10–43, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission’s Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the

FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Office of the Secretary, a copy of any

comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Leslie F. Smith, Federal Communications Commission, Room 1-C216, 445 12th Street, SW, Washington, DC 20554, or send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov). and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or via fax at (202) 395-5167.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Joel Kaufman, Chief, Administrative Law Division, Office of General Counsel, (202) 418-1758 or [joel.kaufman@fcc.gov](mailto:joel.kaufman@fcc.gov). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Leslie F. Smith, (202) 418-0217 or [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

In this FNPRM adopted February 1, 2011 and released February 2, 2011, the Commission seeks comment on requiring anyone making an *ex parte* presentation to disclose the identity of any real party in interest to the issues discussed. At times a party making an *ex parte* contact may be representing the interests of another undisclosed party, or the presenter's interest in the proceeding may not be entirely clear. The Commission found that a disclosure requirement that addresses these problems without imposing undue burdens on the disclosing party, or requiring duplicative filing of generally-available information, would serve the public interest. The FNPRM solicits comment on what type of disclosure rule would balance those two interests, and how it should be applied. Comment is sought on the suitability of using existing judicial disclosure rules, such as Supreme Court Rules 29.6 and 37.6, or Rule 26.1 of the Rules for the U.S. Court of Appeals for the DC Circuit. Comment is also sought on the possible use of the Lobbying Disclosure Act as a model. Comment is requested on the range of proceedings to which new disclosure rules should apply, and whether disclosure requirements should apply to trade associations and non-profit entities. Finally, the Commission asks a number of logistical questions regarding disclosure. Comment is sought on whether disclosure should be required when the information to be disclosed can be found in existing Commission records or on the party's Web site. If reliance were to be placed on information already in the Commission's records, how would the Commission ensure its information is up-to-date and easily accessible? Comment is requested on whether the Commission should create a single electronically accessible source for all disclosure statements, and how often filers should be required to update this information.

*Regulatory Flexibility Act.* Our proposed action does not require notice and comment, and therefore falls outside the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 605(b), and requires no initial or final regulatory flexibility analysis under Section 604 of that Act, 5 U.S.C. 604. We nevertheless note that we anticipate that the alternatives proposed in the FNPRM will not have a significant economic impact on a substantial number of small entities or impose significant costs on parties to Commission proceedings. We will, however, send a copy of the FNPRM to the Chief Counsel of Advocacy of the Small Business Administration.

*Initial Paperwork Reduction Act of 1995 Analysis.* This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due July 1, 2011.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060-0430.

*Title:* Section 1.1206, Permit-but-Disclose Proceedings.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Individuals or households; Business or other for-profits; Not-for-profit institutions; Federal Government; and State, local or tribal governments.

*Number of Respondents and Responses:* 11,500 respondents; 34,500 responses.

*Estimated time per Response:* 45 minutes (0.75 hours).

*Obligation to Respond:* Required to obtain or retain benefits.

*Frequency of Response:* On-occasion reporting requirements; Third party disclosure.

*Total Annual Burden:* 25,875 hours.

*Total Annual Cost:* None.

*Privacy Act Impact Assessment:* No impacts.

*Nature and Extent of Confidentiality:* The Commission is not requesting that respondents submit confidential information; however, consistent with the Commission's rules on confidential treatment of submissions, under 47 CFR 0.459, a presenter may request confidential treatment of *ex parte* presentations. In addition, the Commission will permit parties to remove metadata containing confidential or privileged information, and the Commission will also not require parties to file electronically *ex parte* notices that contain confidential information. The Commission will, however, require a redacted version to be filed electronically at the same time the paper filing is submitted, and that the redacted version must be machine-readable whenever technically possible.

*Needs and Uses:* The Commission's rules, under 47 CFR 1.1206, require that a public record be made of *ex parte* presentations (*i.e.*, written presentations not served on all parties to the proceeding or oral presentations as to which all parties have not been given notice and an opportunity to be present) to decision-making personnel in "permit-but-disclose" proceedings, such as notice-and-comment rulemakings and declaratory ruling proceedings. Persons making such presentations must file two copies of written presentations and two copies of memoranda reflecting new data or arguments in oral presentations no later than the next business day after the presentation; alternatively, in proceedings in which electronic filing is permitted, a copy may be filed electronically.

On February 2, 2011, the FCC released a *Report and Order and Further Notice of Proposed Rulemaking*, CG Docket Number 10-43, FCC 11-11, which amends and reforms the Commission's rules on *ex parte* presentations (47 CFR 1.1206(b)(2)) made in the course of Commission rulemakings and other permit-but-disclose proceedings. The modifications to the existing rules adopted in this Report and Order address these problems by requiring that parties file more descriptive summaries

of their *ex parte* contacts, by ensuring that other parties and the public have an adequate opportunity to review and respond to information submitted *ex parte*, and by improving the FCC's oversight and enforcement of the *ex parte* rules. The modified *ex parte* rules provide as follows: (1) *Ex parte* notices will be required for all oral *ex parte* presentations in permit-but-disclose proceedings, not just for those presentations that involve new information or arguments not already in the record; (2) If an oral *ex parte* presentation is limited to material already in the written record, the notice must contain either a succinct summary of the matters discussed or a citation to the page or paragraph number in the party's written submission(s) where the matters discussed can be found; (3) Notices for all *ex parte* presentations must include the name of the person(s) who made the *ex parte* presentation as well as a list of all persons attending or otherwise participating in the meeting at which the presentation was made; (4) Notices of *ex parte* presentations made outside the Sunshine period must be filed within two business days of the presentation; (5) The Sunshine period will begin on the day (including business days, weekends, and holidays) after issuance of the Sunshine notice, rather than when the Sunshine Agenda is issued (as the current rules provide); (6) If an *ex parte* presentation is made on the day the Sunshine notice is released, an *ex parte* notice must be submitted by the next business day, and any reply would be due by the following business day. If a permissible *ex parte* presentation is made during the Sunshine period (under an exception to the Sunshine period prohibition), the *ex parte* notice is due by the end of the same day on which the presentation was made, and any reply would need to be filed by the next business day. Any reply must be in writing and limited to the issues raised in the *ex parte* notice to which the reply is directed; (7) Commissioners and agency staff may continue to request *ex parte* presentations during the Sunshine period, but these presentations should be limited to the specific information required by the Commission; (8) *Ex parte* notices must be submitted electronically in machine-readable format. PDF images created by scanning a paper document may not be submitted, except in cases in which a word-processing version of the document is not available. Confidential information may continue to be submitted by paper filing, but a redacted version must be filed electronically at

the same time the paper filing is submitted. An exception to the electronic filing requirement will be made in cases in which the filing party claims hardship. The basis for the hardship claim must be substantiated in the *ex parte* filing; (9) To facilitate stricter enforcement of the *ex parte* rules, the Enforcement Bureau is authorized to levy forfeitures for *ex parte* rule violations; (10) Copies of electronically filed *ex parte* notices must also be sent electronically to all staff and Commissioners present at the *ex parte* meeting so as to enable them to review the notices for accuracy and completeness. Filers may be asked to submit corrections or further information as necessary for compliance with the rules. Where staff believes there are instances of substantial or repeated violations of the *ex parte* rules, staff should report such to the General Counsel; and (11) Minor conforming and clarifying rule changes proposed in the Notice are adopted. The only change entailing increased information collection is the requirement that parties making permissible *ex parte* presentations in restricted proceedings must file an *ex parte* notice.

The information is used by parties to permit-but-disclose proceedings, including interested members of the public, to respond to the arguments made and data offered in the presentations. The responses may then be used by the Commission in its decision-making. The availability of the *ex parte* materials ensures that the Commission's decisional processes are fair, impartial, and comport with the concept of due process in that all interested parties can know of and respond to the arguments made to the decision-making officials.

Currently, persons making *ex parte* presentations have no obligation to disclose whether the person making the presentation represents a real party-in-interest whose identity has not been disclosed. In this FNPRM, the Commission proposed to require the disclosure of the identity of real parties-in-interest, which would further the goal of openness and transparency in the Commission decision making process.

**Statutory Authority:** 47 U.S.C. 154(i), 154(j), and 303(r).

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

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