

for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Judges a notice of intent to audit CPB and Covered Entities, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on CPB. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of report.* CPB and Covered Entities shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of CPB in order to remedy any factual errors and clarify any issues relating to the audit; provided that an appropriate agent or employee of CPB reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(f) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case CPB shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

#### **§ 380.36 Verification of royalty distributions.**

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the

prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Judges a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(f) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

#### **§ 380.37 Unclaimed funds.**

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective

may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: March 20, 2015.

**Jesse M. Feder,**

*Copyright Royalty Judge.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R06-OAR-2014-0270; FRL-9925-12-Region 6]

### **Approval and Promulgation of Air Quality Implementation Plans; State of New Mexico; Infrastructure SIP Requirements for the 2008 Ozone and 2010 Nitrogen Dioxide National Ambient Air Quality Standards; Interstate Transport of Fine Particulate Matter Air Pollution Affecting Visibility**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of New Mexico addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2008 National Ambient Air Quality Standards (NAAQS) for Ozone (O<sub>3</sub>) and the 2010 NAAQS for Nitrogen Dioxide (NO<sub>2</sub>), both of which require that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is also proposing to find that the State of New Mexico meets the 2006 fine particulate matter (PM<sub>2.5</sub>) NAAQS requirement pertaining to interstate transport of air pollution and visibility protection.

**DATES:** Written comments must be received on or before April 27, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R06-OAR-2014-0270, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov). Follow the online instructions.

• *Email:* Ms. Sherry Fuerst at [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov).

• *Mail or delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2014-0270. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](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 email. 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 email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email 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 information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Ms. Sherry Fuerst, (214) 665-6454,

[fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). To inspect the hard copy materials, please schedule an appointment with Ms. Fuerst or Mr. Bill Deese at (214) 665-7253.

**SUPPLEMENTARY INFORMATION:**

Throughout this document, whenever "we", "us", or "our" is used, we mean EPA.

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**I. Background**

EPA is proposing action on two SIP submissions from New Mexico that address the infrastructure requirements of CAA sections 110(a)(1) and (a)(2). The first action was submitted on August 27, 2013 for the 2008 O<sub>3</sub> NAAQS and the second was submitted on March 12, 2014, for the 2010 NO<sub>2</sub> NAAQS. Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and (a)(2) as "infrastructure SIP" submissions.

One of the SIP requirements for new or revised NAAQS is to provide adequate provisions prohibiting emissions which interfere with required measures in any other State to protect visibility (CAA 110(a)(2)(D)(i)(II)). In a June 12, 2009 SIP submittal, New Mexico stated that they had satisfied the SIP requirements of CAA 110(a) for the PM<sub>2.5</sub> NAAQS promulgated in 2006. The other portions of the June 12, 2009 SIP submittal were previously approved (January 22, 2013, 78 FR 4337, July 9, 2013, 78 FR 40966). No action was taken on the portion pertaining to CAA 110(a)(2)(D)(i)(II) and visibility protection. We received additional SIP submittals concerning visibility

protection on September 17, 2007, July 5, 2011, and November 5, 2013. On November 27, 2012, we approved the New Mexico Regional Haze SIP except for the Best Available Retrofit Technology (BART) determination for the San Juan Generating Station (SJGS) (77 FR 70693). On October 9, 2014, we approved a revision to the New Mexico Regional Haze SIP that addressed BART for SJGS, making the emission limitations federally enforceable on SJGS through our SIP approval action, and therefore because of the federally enforceable provisions for SJGS, we also were able to find that the New Mexico SIP satisfies the requirements of CAA 110(a)(2)(D)(i)(II) with respect to interstate transport of air pollution and visibility protection for the 8-hour ozone and PM<sub>2.5</sub> NAAQS (79 FR 60985) (the New Mexico Visibility Transport SIP). Even though the State's 2011 and 2013 submittals were not limited to the 1997 PM<sub>2.5</sub> NAAQS for a Visibility SIP, we overlooked the opportunity to clearly address the 110(a)(2)(D)(i)(II) requirement for visibility protection in connection with the PM<sub>2.5</sub> NAAQS promulgated in 2006 (the 2006 PM<sub>2.5</sub> NAAQS). We therefore are proposing to find that the November 27, 2012 and October 9, 2014 final SIP actions pertaining to the interstate transport requirement for visibility protection meet the requirement for the 2006 PM<sub>2.5</sub> NAAQS.

Additional information about EPA's review of the information New Mexico presented in these SIP submittals, how EPA reviews infrastructure SIPs and effects of recent Supreme Court decisions on these infrastructure SIPs can be found in the Technical Support Document, including Appendices A and B.

**II. Applicable Elements of Sections 110(a)(1) and (2) Related to the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS**

On March 27, 2008, EPA revised the primary and secondary O<sub>3</sub> NAAQS (hereafter the 2008 O<sub>3</sub> NAAQS).<sup>1</sup> The level of the primary (health-based) standard was revised to 0.075 parts per million (ppm) based on a 3-year average of the fourth-highest maximum 8-hour average concentration. EPA revised the secondary standard for O<sub>3</sub> making it identical to the revised primary standard. EPA also made a conforming change to the Air Quality Index (AQI) for O<sub>3</sub>, setting an AQI value of 100 equal

<sup>1</sup> The previous O<sub>3</sub> NAAQS were issued in 1997. They established a primary standard of 0.08 ppm not to be exceeded as determined by the 3-year average of the annual fourth-highest daily maximum 8-hour concentrations (62 FR 38856, July 18, 1997).

to 0.075 ppm, 8-hour average, and making proportional changes to the AQI values of 50, 150 and 200 measured as O<sub>3</sub> and not to be exceeded with an averaging time of a rolling 3-month period. (73 FR 16436).<sup>2</sup>

On February 9, 2010, based on its review of the air quality criteria for oxides of nitrogen and the primary national ambient air quality standard (hereafter the 2010 NO<sub>2</sub> NAAQS)<sup>3</sup> for oxides of nitrogen as measured by nitrogen dioxide (NO<sub>2</sub>), EPA made revisions to the primary NO<sub>2</sub> NAAQS in order to provide requisite protection of public health. Specifically, EPA established a new 1-hour standard at a level of 100 ppb, based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations, to supplement the existing annual standard. EPA also established requirements for an NO<sub>2</sub> monitoring network that includes monitors at locations where maximum NO<sub>2</sub> concentrations are expected to occur, including within 50 meters of major roadways, as well as monitors sited to measure the area-wide NO<sub>2</sub> concentrations that occur more broadly across communities. (75 FR 6474).<sup>4</sup>

For both the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, states have to review and revise, as appropriate, their existing SIPs to ensure that they are adequate. EPA issued guidance on September 13, 2013, addressing the infrastructure SIP elements required under sections 110(a)(1) and (2) for most the NAAQS.<sup>5</sup> EPA addresses these elements below in Section III.

### III. EPA's Evaluation of New Mexico's 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS Infrastructure Submissions

On August 27, 2013 and March 12, 2014, the state of New Mexico sent a

<sup>2</sup> Although the effective date of the **Federal Register** notice for the final rule was May 27, 2008, the rule was signed by the Administrator and publicly disseminated on March 27, 2008. Therefore, the deadline for submittal of infrastructure SIPs for the 2008 O<sub>3</sub> NAAQS was March 27, 2011.

<sup>3</sup> The previous NO<sub>2</sub> NAAQS was issued in 1996. It established a primary and secondary standards of for nitrogen dioxide (NO<sub>2</sub>) as 0.053 parts per million (ppm) (100 micrograms per meter cubed (g/m<sup>3</sup>)) annual arithmetic average. (61 FR 52852, October 8, 1996).

<sup>4</sup> Although the effective date of the **Federal Register** notice for the final rule was April 12, 2010, the rule was signed by the Administrator and publicly disseminated on February 9, 2010. Therefore, the deadline for submittal of infrastructure SIPs for the 2008 NO<sub>2</sub> NAAQS was February 9, 2013.

<sup>5</sup> "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

letter signed by the Cabinet Secretary of the New Mexico Environmental Department to EPA demonstrating how the existing New Mexico SIP met all the requirements for the 2008 O<sub>3</sub> NAAQS and the 2010 NO<sub>2</sub> NAAQS, respectively. Public notice and public hearings were provided by the State of New Mexico when developing these SIP submissions. These SIP submissions became complete by operation of law on February 27, 2014 and September 12, 2014, respectively. See CAA section 110(k)(1)(B).

EPA has an established procedure for reviewing infrastructure SIPs. A discussion of the CAA requirements and EPA's approach for reviewing infrastructure SIPs is outlined in Appendix A of the O<sub>3</sub> and NO<sub>2</sub> Technical Support Document.

(A) *Emission limits and other control measures*: The CAA Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each of the NAAQS.<sup>6</sup>

New Mexico's Environmental Improvement Act and Air Quality Control Act authorize the New Mexico Environment Department (NMED) to regulate air quality and implement air quality control regulations. Specifically, the New Mexico Air Quality Control Act delegates authority to the Environmental Improvement Board (EIB) to adopt, promulgate, publish, amend and repeal regulations consistent with the State's Air Quality Control Act to attain and maintain NAAQS and prevent or abate air pollution (NMSA 1978, Section 74-2-5(B)). The Air Quality Control Act also designates the NMED as the State's air pollution control agency, and the Environmental Improvement Act provides the NMED with enforcement authority. These statutes have been approved into the SIP (see 44 FR 21019, April 9, 1979; revised 49 FR 44101, November 2, 1984; recodified and approved in 62 FR 50518, September 26, 1997).

<sup>6</sup> The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2008 O<sub>3</sub> or NO<sub>2</sub> NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

NMED's air quality rules and standards are codified at Title 20 Environmental Protection, Chapter 2 Air Quality (Statewide) of NMAC. Numerous parts of the regulations codified into Chapter 2 necessary for implementing and enforcing the NAAQS have been adopted into the SIP. The approved SIP for New Mexico is documented at 40 CFR 52.1620, Subpart GG. The TSD for the action provides additional information on specific rules that have been adopted into the SIP.

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that the New Mexico SIP adequately addresses the requirements of section 110(a)(2)(A) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and is proposing to approve this element of the August 27, 2013 and March 12, 2014 SIP submissions.

(B) *Ambient air quality monitoring/data system*: The CAA Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and making these data available to EPA upon request.

To address this element, the Air Quality Act at NMSA 1978, section 74-2-5 provides the enabling authority necessary for the New Mexico EIB and NMED to fulfill the requirements of section 110(a)(2)(B). Along with their other duties, the NMED collects air monitoring data, quality-assures the results, and reports the data.

Historically, EPA has promulgated regulations in 40 CFR part 58 (Ambient Air Quality Surveillance), indicating the necessary data states need to collect and submit as part of their SIPs. Monitoring networks are designed to meet three basic criteria: (a) Provide timely results (b) provide results that verify compliance with the NAAQS and (c) to support research. For the 2008 O<sub>3</sub> NAAQS, EPA regulations require that states and, where appropriate, local agencies must operate O<sub>3</sub> monitoring sites for various locations depending upon area size (in terms of population and geographic characteristics) and typical peak concentrations (expressed in percentages below, or near the O<sub>3</sub> NAAQS).<sup>7</sup> For the 2010 NO<sub>2</sub> NAAQS, EPA regulations require that state and, where appropriate, local agencies must operate a minimum number of required NO<sub>2</sub> monitoring sites as described in 40

<sup>7</sup> 40 CFR part 58 Appendix D 4.1.

CFR part 58 Appendix D 4.3.1. Ambient NO<sub>2</sub> monitoring locations are broken down into two types, near-road monitoring stations and area wide locations. Both monitoring location types are based on population density. As previously stated, these requirements are contained in 40 CFR part 58 Appendix D. These requirements were last revised on October 17, 2006 as part of a comprehensive review of ambient monitoring requirements for all criteria pollutants. (See 71 FR 61236).

The New Mexico statewide air quality surveillance network was approved into the New Mexico SIP by EPA on August 6, 1981 (46 FR 40005). Furthermore, New Mexico's air quality surveillance network undergoes recurrent annual review by EPA, as required by 40 CFR 58.10. On July 15, 2013, NMED submitted its 2013 Annual Air Monitoring Network Plan (AAMNP) that included ambient monitoring for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and EPA approved the 2013 AAMNP on February 19, 2014.<sup>8</sup> In addition, NMED conducts a recurrent assessment of its monitoring network every five years, which includes an evaluation of the need to conduct ambient monitoring for O<sub>3</sub> and NO<sub>2</sub>, as required by 40 CFR 58.10(d). The most recent of these 5-year monitoring network assessments was conducted by NMED and submitted in June 2010, and was subsequently approved by EPA.<sup>9</sup> In evaluating the need to perform ambient monitoring for O<sub>3</sub> and NO<sub>2</sub> in its most recent 5-year monitoring network assessment, NMED concluded that monitors should be upgraded to newer models for both O<sub>3</sub> and NO<sub>2</sub>, which is part of their continuing routine maintenance. NMED will continue to evaluate the ambient monitoring for O<sub>3</sub> and NO<sub>2</sub> every five years when it performs its recurrent ambient monitoring network assessment.

NMED makes ambient monitoring data available for public review on its Web site, as well as on national Web sites.<sup>10</sup> The NMED Web site provides the monitor locations and posts past and current concentrations of criteria pollutants measured in the State's network of monitors.<sup>11</sup> The NMED monitors that are not certified as

meeting the federal requirements are identified as "non-regulatory" monitors.<sup>12</sup> The State submits air monitoring data to EPA on a quarterly basis and certifies the data annually.

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in New Mexico's SIP, EPA believes that these New Mexico SIPs meet the requirements of section 110(a)(2)(B) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and is proposing to approve these elements of the August 27, 2013 and March 12, 2014, SIP submissions.

*(C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources):* The CAA Section 110(a)(2)(C) requires states to include the following three elements in the SIP: (1) A program providing for enforcement of all SIP measures described in section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (*i.e.*, state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).<sup>13</sup>

*(1) Enforcement of SIP Measures.* The New Mexico statutes provide authority for the Environmental Improvement Board and the NMED to enforce the requirements of the Air Quality Act, and any regulations, permits, or final compliance orders issued under the provisions of the Act. General enforcement authority is provided by NMSA 1978, section 74-1 and NMSA 1978, section 74-2, which addresses general enforcement power; investigation and remediation agreements; civil and criminal penalties; compliance orders and emergency cease

and desist orders; civil actions; and a field citation program.

The Environmental Improvement Act, which has been approved into the SIP (49 FR 44101, 64 FR 29255), authorizes the creation of the Environmental Improvement Board (NMSA 1978, section 74-1-4); authorizes the EIB, the NMED, and its Secretary to file lawsuits, conduct investigations and enter into remediation agreements, enforce rules, regulations and orders promulgated by the EIB, and collect civil penalties (NMSA 1978, section 74-1-6); develop and enforce rules and standards related to protection of air quality (NMSA 1978, sections 74-1-7 and 74-1-8); and issue compliance orders and commence civil actions in response to violations (NMSA 1978, section 74-1-10).

Likewise, the Air Quality Control Act empowers the EIB and NMED to institute legal proceedings to compel compliance with the Air Quality Control Act and any regulations of the EIB or local air quality control agencies (NMSA 1978, section 74-2-5.1); issue compliance orders, commence civil actions, and issue field citations (NMSA 1978, section 74-2-12); assess civil penalties for violations of the Act or regulations promulgated under it or permits issued (NMSA 1978, section 74-2-12.1); conduct inspections of regulated entities (NMSA 1978, section 74-2-13); and pursue criminal prosecutions (NMSA 1978, section 74-2-14). Additional enforcement authorities and funding mechanisms are provided by the Act at NMSA 1978, section 74-2-15. These sections of the Air Quality Control Act were adopted into the SIP on November 2, 1984 (49 FR 44101).

NMED air quality standards and regulations containing specific enforcement provisions and adopted into the SIP include: 20.2.7 NMAC *Excess Emissions* (74 FR 46910) and 20.2.72 *Construction Permits* (38 FR 12702 and 62 FR 50514).

*(2) Minor New Source Review.* The CAA Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. With respect to smaller statewide minor sources Section 110(a)(2)(C) creates "a general duty on States to include a program in their SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved (70 FR 71612 and 71677)." EPA provides states with discretion in implementing their Minor NSR programs (71 FR 48696 and 48700). The "considerably less detailed" regulations for minor NSR are provided in 40 CFR

<sup>8</sup> A copy of the 2013 AAMNP and EPA's approval letter are included in the docket for this proposed rulemaking.

<sup>9</sup> A copy of the 2010 5-year ambient monitoring network assessment and EPA's approval letter are included in the docket for this proposed rulemaking.

<sup>10</sup> See <http://www.nmenv.state.nm.us/aqb/monitor/airmonitoringnetwork.html>, <http://drdasnm1.alink.com/> and <http://airnow.gov>.

<sup>11</sup> See <http://air.nmenv.state.nm.us>.

<sup>12</sup> These include for example, special purpose monitors (SPMs). Special purpose monitoring is conducted on a frequent basis for a variety of reasons: As a tool to supplement state ambient air monitoring networks to obtain information on where to locate permanent monitoring stations, to provide additional data in support of pollutant formation and transport analyses, or to assess air quality in a particular location. These studies vary in duration from being temporary sites needed only during a portion of the year to long-term air pollution studies over a large area.

<sup>13</sup> As discussed in further detail below, this infrastructure SIP rulemaking will not address the New Mexico program for provisions related to nonattainment areas, since EPA considers evaluation of these provisions to be outside the scope of infrastructure SIP actions.

51.160 through 51.164. EPA has determined that New Mexico's Minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of all regulated air contaminants for which there is a NAAQS (see 20.2.72.200 NMAC). New Mexico's Minor NSR permitting requirements are found at 20.2.72 NMAC—*Construction Permits* and were approved into the SIP on May 14, 1973 (38 FR 12702), with revisions approved on September 26, 1997 (62 FR 50514), June 13, 2012 (77 FR 35273), and March 11, 2013 (78 FR 15296).

In this action, EPA is proposing to approve New Mexico's infrastructure SIPs for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> standards with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. However, EPA is not proposing to approve or disapprove New Mexico's existing minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (e.g., 76 FR 41076–41079). EPA believes that a number of states may have Minor NSR provisions that are contrary to the existing EPA regulations for this program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing Minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

(3) *Prevention of Significant Deterioration (PSD) permit program.* New Mexico also has a program approved by EPA as meeting the requirements of Part C, relating to prevention of significant deterioration of air quality. In order to demonstrate that New Mexico has met this sub-element, this PSD program must cover requirements not just for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, but for all other regulated NSR pollutants as well.

PSD programs apply in areas that are meeting the NAAQS, referred to as areas in attainment, and in areas for which

there is insufficient information to designate as either attainment or nonattainment, referred to as unclassifiable areas. New Mexico's PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964) and fully approved on August 15, 2011 (76 FR 41698). Revisions to New Mexico's PSD program were approved into the SIP on August 21, 1990 (55 FR 34013), May 2, 1991 (56 FR 20137), October 15, 1996 (61 FR 53639), March 10, 2003 (68 FR 11316), December 24, 2003 (68 FR 74483), September 5, 2007 (72 FR 50879), November 26, 2010 (75 FR 72688), July 20, 2011 (76 FR 43149), June 13, 2012 (75 FR 72688), January 22, 2013 (78 FR 4339), and March 11, 2013 (78 FR 15296). Additionally, on June 11, 2009 and May 23, 2011, New Mexico submitted modifications to revise the state's PSD and non-attainment new source review (NNSR) permitting regulations to address the permitting requirements associated with the NAAQS for 8-hour ozone and PM<sub>2.5</sub>, respectively. EPA approved the portions of the June 11, 2009 submittal associated with implementing NO<sub>x</sub> as a precursor (75 FR 72688) as necessary to implement the 1997 ozone standard. EPA approved the May 23, 2011, revision in a **Federal Register** notice published January 22, 2013, as these elements are necessary for implementation of the PM<sub>2.5</sub> standard (78 FR 4339).

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in New Mexico's SIP, with respect to the requirements of section 110(a)(2)(C) for these NAAQS, EPA is proposing to approve these elements of the August 27, 2013 and March 12, 2014 submissions.

(D) *Interstate and international transport:* The CAA Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I), and prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II). Section 110(a)(2)(D)(i)(I) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment (Prong 1) or interfering with maintenance (Prong 2) of any NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of

any other state to prevent significant deterioration of air quality (Prong 3) or to protect visibility (Prong 4).

With respect to prongs 1 and 2, New Mexico elected to not make a submittal, consistent with a court decision that was relevant at the time (*EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7 (D.C. Cir. 2012)). This decision was later reversed by the Supreme Court (*EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014), reversing 696 F.3d 7 (D.C. Cir. 2012)). We expect that New Mexico will make a SIP submittal for prongs 1 and 2 at a later time.

With respect to prong 3, as noted above, the New Mexico PSD program contains the necessary provisions to meet the prevention of significant deterioration element as required for both the standards and has been approved by EPA into the SIP.

With respect to prong 4, as noted previously, on November 27, 2012, we approved the New Mexico Regional Haze SIP except for the BART determination for SJGS. On October 9, 2014, we approved the BART determination for SJGS and found that the New Mexico SIP satisfies the requirements of CAA 110(a)(2)(D)(i)(II) with respect to interstate transport of air pollution and visibility protection.<sup>14</sup>

Finally, § 110(a)(2)(D)(ii) regards the interstate pollution abatement requirements of section 126 and the international pollution requirements of section 115. As stated above in Section 110(a)(2)(C) of the Infrastructure SIP, New Mexico has a SIP-approved PSD program which includes provisions that satisfy the interstate pollution abatement requirements of section 126 of the CAA. Section 115 of the CAA authorizes EPA to require a state to revise its SIP under certain conditions to alleviate international transport into another country. There are no final findings under section 115 of the CAA with respect to any air pollutant generated in New Mexico. Therefore, New Mexico has no obligations under section 115. If there are future final findings under section 115 of the CAA, NMED will consult with EPA.

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure

<sup>14</sup> This prong 4 discussion pertains to the SIP submittals for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> SIP submittals. The prong 4 discussion for the 2006 PM<sub>2.5</sub> SIP submittal is below.

needed to address sections 110(a)(2)(D)(i)(II) (prongs 3 and 4), and 110(a)(2)(D)(ii) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and is proposing to approve these portions of the August 27, 2013 and March 12, 2014, submissions. We expect that at a later time New Mexico will make a SIP submittal addressing section 110(a)(2)(D)(i)(I) (prongs 1 and 2).

(E) *Adequate authority, resources, implementation, and oversight:* The CAA Section 110(a)(2)(E) requires that SIPs provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements relating to state boards, pursuant to section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

With respect to adequacy of authority, we have previously discussed New Mexico's statutory and regulatory authority to implement the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS. The Air Quality Control Act at NMSA 1978, section 74–2–5 provides the authority necessary to carry out the SIP requirements as referenced above in element A. The Act provides the NMED with broad legal authority to adopt emission standards and compliance schedules applicable to regulated entities, and to adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards. The Act also provides the board adequate legal authority to enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief. In addition, § 74–2–5.1 of the Act provides the department legal authority to enforce applicable laws, regulations, standards, and compliance schedules.

With respect to adequacy of resources, NMED asserts that it has adequate personnel to implement the SIP. The infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS describe the regulations governing the various functions of personnel within the Air Quality Bureau, including the administrative, technical support, planning, enforcement, and permitting functions of the program.

With respect to funding, the Air Quality Control Act NMSA 1978, section 74–2–7 requires NMED to

establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs and also authorizes NMED to collect additional fees necessary to cover reasonable costs associated with processing of air permit applications. The Act provides for the deposit of the fees into various subaccounts (e.g., the state's air quality permit fund for the Title V operating permit program used for Title V implementation activities; and various subaccounts for local air quality agencies). The NMED also receives funding from general revenue funds and EPA grants under, for example, sections 103 and 105 of the CAA, to finance air quality programs. EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement the SIP.

With regard to the conflict of interest provisions of Section 128 of the Act, section 110(a)(2)(E)(ii) requires that each state SIP meet the requirements of section 128, relating to representation on state boards and conflicts of interest by members of such boards. Section 128(a)(1) requires that any board or body which approves permits or enforcement orders under the CAA must have at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders under the CAA. Section 128(a)(2) requires that members of such a board or body, or the head of an agency with similar powers, adequately disclose any potential conflicts of interest.

The Environmental Improvement Act at NMSA 1978, section 74–1–4 provides that the Environmental Improvement Board contain at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the board on issues related to the Clean Air Act or Air Quality Control Act. Furthermore, pursuant to state regulations adopted by the Board, Board members are required to recuse themselves from rule-makings in which their impartiality may reasonably be questioned. (see 20.1.1.111 NMAC).

With respect to assurances that the State has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, the Environmental Improvement Act and the Air Quality Control Act designate the NMED as the primary air pollution control agency "for all purposes" of implementing the requirements of the federal Clean Air

Act and the New Mexico Air Quality Control Act.

There is one local air quality control agency that assumes jurisdiction for local administration and enforcement of Air Quality Control Act in New Mexico, the Albuquerque/Bernalillo County Air Quality Control Board, as authorized by the NMSA 1978, section 74–2–4. Pursuant to the New Mexico Air Quality Control Act, the local air quality control agency, within the boundaries of the Albuquerque/Bernalillo County area, is delegated all those functions delegated to the Environmental Improvement Board, with the exception of any functions reserved exclusively for the Environmental Improvement Board, NMSA 1978, section 74–2–4(A)(1). Further, The Air Quality Control Act, grants the local air quality control agency, within the boundaries of the Albuquerque/Bernalillo County are, the authority to perform all the duties required of NMED and exert all of the powers granted to NMED, except for those powers and duties reserved exclusively for the department, NMSA 1978, section 74–2–4(A)(2). However, the NMED and the state Environmental Improvement Board retain oversight authority in the event the local authority fails to act. EPA conducts reviews of the local program activities in conjunction with its oversight of the state program.

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure needed to address section 110(a)(2)(E) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and is proposing to approve these elements of the August 27, 2013 and March 12, 2014 submissions.

(F) *Stationary source monitoring system:* The CAA Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. Each SIP shall require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and requires that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

To address this element, the Air Quality Control Act at NMSA 1978, 74–2–5 authorizes the NMED to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. State regulations pertaining to sampling and testing are codified at 20.2.72 NMAC *Construction Permits*, 20.2.70 NMAC *Operating Permits*, and 20.2.79 NMAC *Permits—Nonattainment Areas*, and requirements for reporting of emissions inventories are codified at 20.2.73 NMAC *Notice of Intent and Emission Inventory Requirements*. In addition, rules at 20.2.5 NMAC *Source Surveillance*, establish general requirements for maintaining records and reporting emissions.

The NMED uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements. NMED makes this information available to the public (20.2.5 NMAC *Source Surveillance*). Provisions concerning the handling of confidential data and proprietary business information are included in the general provisions regulations at 20.2.1.115, *Confidential Business Information*. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources.

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure needed to address section 110(a)(2)(F) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and is proposing to approve this element of the August 27, 2013 and March 12, 2014, submissions.

*(G) Emergency authority:* The CAA Section 110(a)(2)(G) requires SIPs to provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment (comparable to the authorities provided in section 303 of the CAA), and to include contingency plans to implement such authorities as necessary.

The Air Quality Control Act provides NMED with authority to address environmental emergencies, and NMED has contingency plans to implement

emergency episode provisions in the SIP.

Upon a finding that any owner/operator is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, the New Mexico Air Quality Control Act authorizes NMED to, after a reasonable attempt to give notice, declare a state of emergency and issue without hearing an emergency special order directing the owner/operator to cease such pollution immediately (NMSA 1978, § 74–7–10).

States also need to comply with the Prevention of Air Pollution Emergency Episode requirements of 40 CFR 51, Subpart H. New Mexico promulgated the "Air Pollution Episode Contingency Plan for New Mexico," which includes contingency measures, and these provisions were approved into the SIP on August 21, 1990 (55 FR 34013). Under Subpart H, Priority III Regions are not required to have contingency plans. For ozone, Priority III Regions are those monitoring less than 195 µg/m<sup>3</sup>. The 2010–2012 ozone ambient air quality monitoring data for New Mexico does not exceed 195 µg/m<sup>3</sup>. The ozone levels have consistently remained below this level and, furthermore, the State has appropriate general emergency powers to address ozone related episodes to protect the environment and public health. Additional information regarding Section 110(a)(2)(G) can be found in the TSD.

For NO<sub>2</sub>, Priority III areas are those monitoring less than 60 ppb for an annual arithmetic mean. The 2010–2012 NO<sub>2</sub> ambient air quality monitoring data for New Mexico does not exceed the 100 ppb 1-hour primary NAAQS or the 53 ppb annual primary and secondary NAAQS nor does it exceed the 60 ppb criteria level for Priority III areas. The NO<sub>2</sub> levels have consistently remained below these levels and, furthermore, the State has appropriate general emergency powers to address NO<sub>2</sub> related episodes to protect the environment and public health.

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in New Mexico's SIP, EPA believes that the New Mexico SIP adequately addresses section 110(a)(2)(G) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and is proposing to approve these elements of the August 27, 2013 and March 12, 2014, submissions.

*(H) Future SIP revisions:* The CAA Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in

response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

New Mexico's Environmental Improvement Act and Air Quality Control Act authorize the NMED as the primary agency in the state concerned with environmental protection and enforcement of regulations, including but not limited to air quality (see NMSA 1978, section 74–1 and NMSA 1978, section 74–2). The Air Quality Control Act gives the NMED the authority to "develop and present to the Environmental Improvement Board a plan for the control, regulation, prevention or abatement of air pollution . . ." and authorizes the EIB to adopt such a plan (see NMSA 1978, section 74–2–5.1(H) and NMSA 1978, section 74–2–5(B)(2)). The Act also authorizes the New Mexico EIB to "adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act to attain and maintain the national ambient air quality standards and prevent and abate air pollution . . ." and the Environmental Improvement Act authorizes the NMED to enforce such rules, regulations and orders promulgated by the EIB (see NMSA 1978, section 74–2–5(B)(1) and NMSA 1978, section 74–1–6(F)). Furthermore, the Air Quality Control Act requires the NMED to, ". . . advise, consult, contract with and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control . . ." (see NMSA 1978, section 74–2–5.2(B)).

Thus, New Mexico has the authority to revise its SIP, as necessary, to account for revisions of the NAAQS, to adopt more effective methods of attaining the NAAQS, and to respond to EPA SIP calls. Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in New Mexico's SIP, EPA believes that New Mexico has adequate authority to address section 110(a)(2)(H) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and is proposing to approve this element of the August 27, 2013 and March 12, 2014, submissions.

*(I) Nonattainment areas:* The CAA Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable

requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted earlier, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D. Additionally, New Mexico presently does not contain any non-attainment areas for O<sub>3</sub> or NO<sub>2</sub>.

*(J) Consultation with government officials, public notification, PSD and visibility protection:* The CAA Section 110(a)(2)(J) requires SIPs to meet the applicable requirements of the following CAA provisions: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection.

(1) With respect to interagency consultation, the SIP should provide a process for consultation with general-purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager having authority over Federal land to which the SIP applies. New Mexico's Air Quality Control Act provides that "no regulations or emission control requirement shall be adopted until after a public hearing by the environmental improvement board or the local board" and that, "at the hearing, the environmental improvement board or the local board shall allow all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing" (see NMSA 1978, 74-2-6(B) and (D)). In addition, the Air Quality Control Act provides that the NMED shall have the power and duty to "advise, consult, contract with and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control . . ." (see 1978 74-2-5.2(B)). Furthermore, New Mexico's PSD rules at 20.2.74.400 NMAC mandate that the NMED shall provide for public participation and notification regarding permitting applications to any other state or local

air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and FLMs whose lands may be affected by emissions from the source or modification.

Additionally, the State's PSD rules at 20.2.74.403 NMAC require the NMED to consult with Federal Land Managers (FLMs) regarding permit applications for sources with the potential to impact Class I Federal Areas (75 FR 72688 and 72 FR 50879). Finally, the State of New Mexico has committed in the SIP to consult continually with the FLMs on the review and implementation of the visibility program, and the State recognizes the expertise of the FLMs in monitoring and new source review applicability analyses for visibility and has agreed to notify the FLMs of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application (71 FR 4490). The State's Transportation Conformity rules at 20.2.99.116 through 20.2.99.124 NMAC provide procedures for interagency consultation, resolution of conflicts, and public notification (65 FR 14873 and 75 FR 21169).

(2) With respect to the requirements for public notification in section 127 of the CAA, the infrastructure SIP should provide citations to regulations in the SIP requiring the air agency to regularly notify the public of instances or areas in which any NAAQS are exceeded; advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality. Provisions regarding public notification of instances or areas in which any primary NAAQS was exceeded were approved into the New Mexico SIP on August 24, 1983 (48 FR 38466). In addition, as discussed for infrastructure element B above, the NMED air monitoring Web site provides live air quality data for each of the monitoring stations in New Mexico.<sup>10</sup> The Web site also provides information on the health effects of ozone, particulate matter, and other criteria pollutants.

(3) Regarding the applicable requirements of part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection, as noted above under infrastructure element C, the New Mexico SIP meets the PSD requirements. With respect to the visibility component of section 110(a)(2)(J), EPA recognizes that states are subject to visibility and regional

haze program requirements under part C of the CAA, which includes sections 169A and 169B. However, when EPA establishes or revises a NAAQS, these visibility and regional haze requirements under part C do not change. Therefore, EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to infrastructure element J after the promulgation of a new or revised NAAQS.

Based upon review of the state's infrastructure SIP submission for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in New Mexico's SIP, EPA believes that New Mexico has met the applicable requirements of section 110(a)(2)(J) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS in the state and is therefore proposing to approve this element of the August 27, 2013 and March 12, 2014, submissions.

*(K) Air quality and modeling/data:* The CAA Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

The NMED has the power and duty, under the Air Quality Control Act to "develop facts and make investigations and studies," thereby providing for the functions of environmental air quality assessment (see NMSA 1978, 74-2-5). Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. For example, the air modeling and control measures submitted within the attainment demonstration for the San Juan County Early Action Compact Area, approved by EPA and adopted into the SIP on August 17, 2005 (70 FR 48285). Additionally, New Mexico has the ability to perform modeling for the primary and secondary PM<sub>2.5</sub> standards and other criteria pollutant NAAQS on a case-by-case permit basis consistent with their SIP-approved PSD rules and with EPA protocols on Air Quality Models at 40 CFR part 51, Appendix W.

This section of the CAA also requires that a SIP provide for the submission of data related to such air quality modeling to the EPA upon request. The New Mexico Air Quality Control Act authorizes and requires NMED to cooperate with the federal government and local authorities in regard to matters of common interest in the field of air quality control, thereby allowing the



agency to make such submissions to the EPA (see NMSA 1978, 74–2–5.2(B)).

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure needed to address section 110(a)(2)(K) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and is proposing to approve this element of the Aug 27, 2013 and March 12, 2014, submissions.

*(L) Permitting Fees:* The CAA Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

The Air Quality Control Act provides the EIB with the legal authority for establishing an emission fee schedule and a construction permit fee schedule to recover the reasonable costs of acting on permit applications, implementing, and enforcing permits.<sup>15</sup> New Mexico's fee schedule for construction permits is codified at 20.2.75 NMAC, *Construction Permit Fees*. These regulations implement a fee schedule for all preconstruction air permits issued by NMED and were approved by EPA into the SIP on September 16, 1991 (56 FR 32511) and November 25, 1997 (62 FR 50514).

In addition to preconstruction fees, New Mexico also requires major sources subject to the federal Title V operating permit program to pay annual operating permit fees. This operating permit fee schedule is codified at 20.2.71 NMAC, *Operating Permit Emission Fees*. Title V operating permit programs and associated fees legally are not part of the SIP, but were approved by EPA on November 26, 1996 (61 FR 60032) as part of the New Mexico Title V Program (see 40 CFR part 70, Appendix A).<sup>16</sup>

<sup>15</sup> See Environmental Improvement Act, Paragraph 4 of Subsection A of Section 74–1–8 NMSA 1978, and Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, including specifically, Paragraph 6 of Subsection B of Section 74–2–7 NMSA 1978.

<sup>16</sup> As indicated in New Mexico's 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> infrastructure SIP submissions, NEMD's operating permit fees regulation was inadvertently adopted into the SIP by EPA on November 25, 1997

EPA reviews the New Mexico Title V program, including Title V fee structure, separately from this proposed action. Because the Title V program and associated fees legally are not part of the SIP, the infrastructure SIP action we are proposing today does not preclude EPA from taking future action regarding New Mexico's Title V permitting program and associated fees.

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in New Mexico's SIP, EPA believes that the requirements of section 110(a)(2)(L) are met and is proposing to approve this element of the August 27, 2013 and March 12, 2014 submissions.

*(M) Consultation/participation by affected local entities:* The CAA Section 110(a)(2)(M) requires SIPs to provide for consultation and participation by local political subdivisions affected by the SIP.

New Mexico's Air Quality Control Act provides that, "no regulations or emission control requirement shall be adopted until after a public hearing by the environmental improvement board or the local board" and provides that, "at the hearing, the environmental improvement board or the local board shall allow all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing" (see NMSA 1978, 74–2–6(B) and (D)). In addition, the Air Quality Control Act provides that the NMED shall have the power and duty to "advise, consult, contract with and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control . . ." (see NMSA 1978, 74–2–5.2(B)). The Act also requires initiation of cooperative action between local authorities and the NMED, between one local authority and another, or among any combination of local authorities and the NMED for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions; and entering into agreements and compacts with adjoining states and Indian tribes, where appropriate. NMED has a long history of successful cooperation with the local air quality authority in Albuquerque/

(62 FR 50514). This regulation was removed from the SIP by EPA in a subsequent action on July 15, 2011 (76 FR 41698).

Bernalillo County and tribal governments.

With regard to permitting actions, New Mexico's PSD regulations at 20.2.74.400 NMAC, approved into the SIP on March 30, 1987 (52 FR 5964) and December 16, 1996 (61 FR 53642), mandate that the NMED shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, and Federal Land Managers whose lands may be affected by emissions from the source or modification. New Mexico's Transportation Conformity regulations at 20.2.99.116 and 20.2.99.124 NMAC, both approved into the SIP on April 23, 2010 (75 FR 21169), require that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related SIPs.

Based upon review of the state's infrastructure SIP submissions for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure needed to address section 110(a)(2)(M) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS and is proposing to approve this element of the August 27, 2013 and March 12, 2014 submissions.

#### **IV. EPA's Evaluation of Interstate Transport of Air Pollution and Visibility Protection for the 2006 PM<sub>2.5</sub> NAAQS in New Mexico's SIP**

One of the SIP requirements for new or revised NAAQS is to provide adequate provisions prohibiting emissions which interfere with required measures in any other State to protect visibility (CAA 110(a)(2)(D)(i)(II)). In a June 12, 2009 SIP submittal, New Mexico stated that they had satisfied the SIP requirements of CAA 110(a) for the PM<sub>2.5</sub> NAAQS promulgated in 2006. The other portions of the June 12, 2009 SIP submittal were previously approved (January 22, 2013, 78 FR 4337, July 9, 2013, 78 FR 40966). No action was taken on the portion pertaining to CAA 110(a)(2)(D)(i)(II) and visibility protection. As noted above, we approved the New Mexico Regional Haze SIP and found that the New Mexico SIP satisfies the requirements of CAA 110(a)(2)(D)(i)(II) with respect to interstate transport of air pollution and visibility protection. (November 27, 2012, 77 FR 70693 and October 9, 2014,

79 FR 60985). In our rulemaking that was finalized on October 9, 2014 we overlooked an opportunity to act on a portion of the June 12, 2009 SIP submittal pertaining to interstate transport of air pollution and visibility protection. Because New Mexico has a fully approved Regional Haze SIP and Visibility Transport SIP, we propose to approve this portion of the June 12, 2009 SIP submittal and find that New Mexico meets the CAA 110(a)(2)(D)(i)(II) visibility protection requirement for the 2006 PM<sub>2.5</sub> NAAQS.

#### V. Proposed Action

EPA is proposing to approve the August 27, 2013 and March 12, 2014, infrastructure SIP submissions from New Mexico, which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS. Specifically, EPA is proposing to approve the following infrastructure elements, or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). As discussed in applicable sections of this rulemaking, EPA is not proposing action on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, nor on the visibility protection portion of section 110(a)(2)(J). Based upon review of the state's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in New Mexico's SIP, EPA believes that New Mexico has the infrastructure in place to address all applicable required elements of sections 110(a)(1) and (2) (except otherwise noted) to ensure that the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS are implemented in the state.

We are also proposing to approve the visibility protection portion of the June 12, 2009 SIP submittal and find that the New Mexico Visibility SIP meets the CAA 110(a)(2)(D)(i)(II) requirement for the 2006 PM<sub>2.5</sub> NAAQS.

#### VI. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.4, we are proposing to incorporate by reference revisions to the New Mexico SIP regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through [www.regulation.gov](http://www.regulation.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### VII. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR3821, January 21, 2011);
- 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 CAA; 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not

impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Visibility.

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

Dated: March 13, 2015.

**Ron Curry,**

*Regional Administrator, Region 6.*

[FR Doc. 2015-06932 Filed 3-25-15; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[EPA-HQ-SFUND-2015-0136, 0137, 0138, 0139, 0140 and 0141; FRL 9924-31-OSWER]

#### National Priorities List

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

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the agency") in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add six sites to the General Superfund section of the NPL.

**DATES:** Comments regarding any of these proposed listings must be submitted (postmarked) on or before May 26, 2015.

**ADDRESSES:** Identify the appropriate docket number from the table below.