comments. Therefore, the public comment period will be extended until April 19, 2023.

Signed at Washington, DC.

Christopher J. Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2023–04322 Filed 3–6–23; 8:45 am]

BILLING CODE 4510–CK–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0927; FRL–10657–01–R6]

Determination of Attainment by the Attainment Date But For International Emissions for the 2015 Ozone National Ambient Air Quality Standard; El Paso-Las Cruces, Texas-New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or ''Agency'') is proposing to determine that the El Paso-Las Cruces, Texas-New Mexico nonattainment area would have attained the 2015 ozone national ambient air quality standard (NAAQS) by the August 3, 2021 ''Marginal'' area attainment date, but for emissions emanating from outside the United States. If we finalize this action as proposed, the El Paso-Las Cruces, Texas-New Mexico ozone nonattainment area would no longer be subject to the Clean Air Act (CAA) requirements pertaining to reclassification upon failure to attain and therefore would remain classified as a Marginal nonattainment area for the 2015 ozone NAAQS. This action, if finalized as proposed, will discharge the EPA's statutory obligation to determine whether the El Paso-Las Cruces, Texas-New Mexico ozone nonattainment area attained the NAAQS by the attainment date.

DATES: Written comments must be received on or before April 6, 2023.

ADDRESSES: Submit your comments, identified by Docket No. [EPA–R06–OAR–2022–0927], at *https://www.regulations.gov* or via email to *fuerst.sherry@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Sherry Fuerst, (214)665–6252, *fuerst.sherry@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, EPA Region 6 Office, AR–SI, 214–665–6465, *fuerst.sherry@epa.gov.* We encourage the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

A. 2015 Ozone National Ambient Air Quality Standard and Area Designations

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-road and non-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paint operations. Scientific evidence indicates that adverse public health effects occur following exposure to ground-level ozone pollution. Exposure to ozone can harm the respiratory system (the upper airways and lungs), can aggravate asthma and other lung diseases, and is linked to premature death from respiratory causes. People most at risk from breathing air containing ozone include people with asthma, children, older adults and people who are active outdoors, especially outdoor workers.[1]

Under CAA section 109, the EPA promulgates NAAQS (or ''standards'') for pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979, 1997, and 2008.[2] On October 26, 2015, the EPA revised the NAAQS for ozone to establish a new 8-hour standard.[3] In that action, the EPA promulgated identical revised primary and secondary ozone standards designed to protect public health and welfare that specified an 8-hour ozone level of 0.070 parts per million (ppm, 70 ppb).[4] Specifically, the standard requires that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (*i.e.,* the design value) may not exceed 0.070 ppm.[5] When the design value does not exceed 0.070 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS.[6]

Section 107(d) of the CAA provides that when the EPA promulgates a new or revised NAAQS, the Agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or is contributing to air

[1] EPA Fact Sheet—Ozone and Health, available at *https://www.epa.gov/sites/default/files/2016-04/documents/20151001healthfs.pdf* and in the docket for this action.

[2] 44 FR 8202 (February 8, 1979), 62 FR 38856 (July 18, 1997), and 73 FR 16436 (March 27, 2008).

[3] 80 FR 65452

[4] Because the 2015 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as ''the 2015 ozone NAAQS'' or as ''the standard.''

[5] A design value is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The design value for the 2015 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The design value is calculated for each air quality monitor in an area and the area's design value is the highest design value among the individual monitoring sites in the area. Because the design value is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31 of the year prior to the attainment date (*i.e.,* December 31, 2020, in the case of the El Paso Las Cruces Texas- New Mexico Marginal nonattainment area for the 2015 ozone NAAQS). As such, the EPA's proposed determination is based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2018, 2019, and 2020.

[6] The data handling convention in 40 CFR 50 Appendix U dictates that concentrations shall be reported in ''ppm'' to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.071 ppm is greater than 0.070 ppm and would exceed the standard, but a design value of 0.0709 is truncated to 0.070 and attains the 2015 ozone NAAQS.

quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Title I of the CAA, Part D, Subpart 2 governs the classification, state planning, and emissions control requirements for any area designated as nonattainment for a revised primary ozone NAAQS. Specifically, CAA section 181(a)(1) requires the EPA to further classify each ozone nonattainment area at the time of designation, based on the extent of the area's exceedance of the NAAQS. Classifications for ozone nonattainment areas range from ''Marginal'' to ''Extreme''. CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted in the EPA's implementing regulations at 40 Code of Federal Regulations (CFR) sections 51.1308 through 51.1317, also establishes the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements and by which nonattainment areas must attain the 2015 ozone NAAQS.

Effective on August 3, 2018, the EPA designated 52 areas throughout the country, including the ''Sunland Park Area,'' a portion of Doña Ana County, New Mexico, nonattainment for the 2015 ozone NAAQS.[7] With the initial designation action, EPA classified the Sunland Park Area as Marginal by operation of law. Effective December 30, 2021, the EPA expanded the boundary of the existing Sunland Park nonattainment area to include El Paso County, TX creating the El Paso-Las Cruces, Texas-New Mexico multi-state nonattainment area. The Marginal area classification remained with the inclusion of the revised nonattainment boundary.

B. Clean Air Act Requirements for Marginal Ozone Nonattainment Areas

Marginal nonattainment areas must address the following requirements in their SIP submission: the baseline emissions inventory, source emissions statements, and nonattainment new source review program requirements. The New Mexico Environment Department (NMED) has provided SIP submittals to the EPA addressing these requirements for the Sunland Park portion of the nonattainment area and the EPA has approved the SIP submittals.[8] On December 7, 2022, the Texas Commission on Environmental Quality (TCEQ) submitted to EPA a SIP to address the El Paso County portion of the marginal nonattainment area requirements, specifically the emission inventory, emission statement and new source review program requirements.

Transportation and general conformity apply within the El Paso-Las Cruces, Texas-New Mexico multi-state nonattainment area under section 176(c) of the CAA and the federal regulations for transportation conformity (40 CFR 93 subpart A) and general federal actions (40 CFR 93 subpart B). This action, if finalized, would not affect the applicability of these regulations within the El Paso-Las Cruces, Texas-New Mexico nonattainment area.

As described in the 2015 Ozone NAAQS Implementation Rule, CAA section 182(a) does not require states to implement reasonably available control measures (RACM) or reasonably available control technology (RACT) in Marginal ozone nonattainment areas, and nothing in section 179B alters the statutory requirements with respect to RACM/RACT obligations in subpart 2.[9]

C. Requirement for Determination of Attainment of the 2015 Ozone NAAQS

CAA section 181(b)(2)(A) requires that within 6 months following the applicable attainment date, the EPA shall determine whether an ozone nonattainment area attained the standard based on the area's design value as of the attainment date. If the EPA determines that an area failed to attain, CAA section 181(b)(2)(A) requires the area to be reclassified by operation of law to the higher of: (1) the next higher classification for the area or (2) the classification applicable to the area's design value as of the determination of failure to attain.[10] CAA section 181(b)(2)(B) requires the EPA to publish the determination of failure to attain and accompanying reclassification in the **Federal Register** no later than 6 months after the attainment date, which in the case of the El Paso-Las Cruces, Texas-New Mexico nonattainment area was February 3, 2022.

The EPA's proposed determination that the El Paso-Las Cruces, Texas-New Mexico nonattainment area would have attained the 2015 ozone standard but for international emissions is based in part upon data that have been collected and quality-assured by NMED and TCEQ in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS) database.[11]

The El Paso-Las Cruces, Texas-New Mexico Marginal nonattainment area's attainment date was August 3, 2021. Because the design value is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31st of the year prior to the attainment date. For the El Paso-Las Cruces Texas-New Mexico Marginal nonattainment area, attainment must occur by December 31, 2020 based on complete data from 2018–2020. Ambient air quality monitoring data must meet the data completeness requirements in Appendix U.[12] The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness. The EPA's proposed action for the El Paso-Las Cruces, Texas-New Mexico nonattainment area is based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2018, 2019, and 2020. The design value for this period is 78 ppb, indicating that the El Paso-Las Cruces, Texas-New Mexico nonattainment area was not in attainment of the 2015 ozone NAAQS on its August 3, 2021 attainment date.

D. International Transport and Requirements for Clean Air Act Section 179B

Anthropogenic emissions sources outside of the U.S. can affect to varying degrees the ability of some air agencies to attain and maintain the 2015 ozone NAAQS in areas within their jurisdiction. CAA section 179B(b) provides that where a state

[7] 83 FR 25776 (June 4, 2018). The EPA later designated the San Antonio area as a 2015 ozone NAAQS nonattainment area effective September 24, 2018. 83 FR 35136 (July 25, 2018).

[8] 87 FR 12592, March 7, 2022.

[9] 83 FR 62998, 63010 (December 6, 2018).

[10] If the EPA were to determine that the El Paso-Las Cruces, Texas-New Mexico multi-state nonattainment area failed to attain by the attainment date, it would be classified to the next highest classification of Moderate. The reclassified area would then be subject to the Moderate area requirement to attain the 2015 ozone NAAQS as expeditiously as practicable, but not later than August 3, 2024.

[11] The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data are used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for non-attainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the website at *https://www.epa.gov/aqs.*

[12] 40 CFR part 50, Appendix U section 4(b).

demonstrates to the Administrator's satisfaction that an ozone nonattainment area would have attained the NAAQS by the applicable attainment date but for emissions emanating from outside the United States (U.S.), that area shall not be subject to the mandatory reclassification provisions of CAA section 181(b)(2).

CAA section 179B provides the EPA with authority to consider impacts from international emissions in two contexts: (1) a ''prospective'' state demonstration submitted as part of an attainment plan, which the EPA considers when determining whether the SIP adequately demonstrates that a nonattainment area will attain the NAAQS by its future attainment date (CAA section 179B(a)); or (2) a ''retrospective'' state demonstration, which the EPA considers after the attainment date in determining whether a nonattainment area would have attained the NAAQS by the attainment date (CAA section 179B(b)). Since the attainment date for the multistate area has already passed, both New Mexico and Texas have submitted a retrospective 179B demonstration.

CAA section 179B(b) provides that, ''any State that establishes to the satisfaction of the Administrator that . . . such State *would have attained* the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside of the United States,'' [13] shall not be subject to reclassification to a higher classification by operation of law, as required in CAA section 181(b)(2).[14] The EPA refers to demonstrations developed under CAA section 179B(b) as ''retrospective'' demonstrations because they involve analyses of past air quality (*e.g.,* air quality data from the years evaluated for determining whether an area attained by the attainment date). Thus, an EPA-approved retrospective demonstration provides relief from reclassification that would have resulted from the EPA determining that the area failed to attain the NAAQS by the relevant attainment date.

The 2015 Ozone NAAQS Implementation Rule provided guidance on how the EPA planned to implement section 179B. In the preamble to the rule, the EPA confirmed that: (1) only areas classified Moderate and higher must show that they have implemented RACM/RACT; (2) CAA section 179B demonstrations are not geographically limited to nonattainment areas adjoining an international border; and (3) a state demonstration prepared under CAA section 179B can consider emissions emanating from sources in North America (*i.e.,* Canada or Mexico) or sources on other continents.[15] In the preamble to that rule, the EPA encouraged air agencies to consult with the appropriate EPA regional office to determine technical requirements for the CAA section 179B demonstrations. In addition, the EPA noted its development of supplementary technical information and guidance to assist air agencies in preparing demonstrations that meet the requirements of CAA section 179B.

The EPA issued more detailed guidance regarding CAA section 179B on December 18, 2020, that includes recommendations to assist state, local, and tribal air agencies that intend to develop a CAA section 179B demonstration (''179B Guidance'').[16] The 179B Guidance describes and provides examples of the kinds of information and analyses that the EPA recommends air agencies consider for inclusion in a CAA section 179B demonstration.

In the 179B Guidance, the EPA confirmed that while approval of a CAA section 179B demonstration provides specific forms of regulatory relief for air agencies, the EPA's approval does not relieve air agencies from obligations to meet the remaining applicable planning or emission reduction requirements in the CAA. It also does not provide a basis either for excluding air monitoring data influenced by international transport from regulatory determinations related to attainment and nonattainment, or for redesignating an area to attainment. The 179B demonstration is subject to a public notice and comment process before the EPA makes a final determination on the adequacy of the demonstration. EPA may consider a 179B demonstration when taking action to determine whether the area attained by the attainment date and is subject to reclassification.

Because the wording in CAA section 179B(b) is in the past tense, it is reasonable for the EPA to conclude that such demonstrations should be retrospective in nature. In other words, the demonstration should include analyses showing that the air quality data on specific days in the time period used to assess attainment were affected by international emissions to an extent that prevented the area from attaining the standard by the attainment date.[17] By definition, states can only make such a demonstration after air quality data collected pursuant to federal reference or equivalent monitoring methods are certified and indicate that the area failed to attain by the attainment date. Where the EPA approves a state's CAA section 179B(b) retrospective demonstration, the area retains its nonattainment designation and is still subject to all applicable requirements for the area's current classification but is not subject to the applicable requirements for any higher classification.[18] [19]

The EPA recognizes that the relationship between certain NAAQS exceedances and associated international transport is clearer in some cases than in others. The following characteristics would suggest the need for a more detailed demonstration with additional evidence: (1) affected monitors are not located near an international border; (2) specific international sources and/or their contributing emissions are not identified or are difficult to identify; (3) exceedances on internationally influenced days are in the range of typical exceedances attributable to local sources; and (4) exceedances occurred in association with other processes and sources of pollutants, or on days where meteorological conditions were conducive to local pollutant formation (*e.g.,* for ozone, clear skies and elevated temperatures).

Given the extensive number of technical factors and meteorological conditions that can affect international transport of air pollution, the EPA evaluates CAA section 179B demonstrations based on the weight of evidence of all information and analyses provided by an air agency. The appropriate level of supporting

[13] CAA Section 179B(b) (emphasis added).

[14] The EPA's longstanding view is that CAA section 179B(b) contains an erroneous reference to section 181(a)(2), for ozone nonattainment areas. See ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, 13569, footnote 41 (April 16, 1992).

[15] 83 FR 62998, 63009.

[16] Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions'' issued on December 18, 2020; available at: *https://www.epa.gov/sites/default/files/2020-12/documents/final_caa_179b_guidance_december_2020_with_disclaimer_ogc.pdf.* The EPA also issued a notice of availability in the **Federal Register** on January 7, 2021 (86 FR 1107).

[17] 179B Guidance, 15–16.

[18] ID at 3.

[19] As noted in our 179B Guidance, an air agency with a Marginal ozone nonattainment area that is affected by international emissions may wish to evaluate whether implementing emission reduction measures on domestic sources in the nonattainment area can bring the area into attainment because, until the area attains the NAAQS and the EPA approves an air agency submission addressing the redesignation criteria of CAA section 107(d)(3)(E), the area will continue to be subject to nonattainment area requirements, including nonattainment new source review. Id. at 17.

documentation will vary on a case-by-case basis depending on the nature and severity of international influence as well as the factors identified above. The EPA considers and qualitatively weighs all evidence based on its relevance to CAA section 179B and the nature of international contributions as described in the demonstration's conceptual model. Every demonstration should include fact-specific analyses tailored to the nonattainment area in question. When a CAA section 179B demonstration shows that international contributions are larger than domestic contributions, the weight of evidence will be more compelling than if the demonstration shows domestic contributions exceeding international contributions. In contrast, when a CAA section 179B demonstration shows that international emissions have a lower contribution to ozone concentrations than domestic emissions and/or international transport is not significantly different on local exceedance days compared to non-exceedance days, then the weight of evidence would not support approval of a 179B demonstration.

In evaluating a CAA section 179B demonstration, the EPA also considers what measures an air agency has implemented to control local emissions. At a minimum, states are still subject to all requirements applicable to the area based on its nonattainment classification. For the EPA to approve a state's CAA section 179B retrospective demonstration, the weight of evidence should show the area could not attain with on-the-books measures and potential reductions associated with the controls required to be implemented by the attainment date but for international emissions. Because CAA section 179B does not relieve an air agency of its planning or control obligations, the air agency should show that it has implemented all required emissions controls at the local level as part of its demonstration.

II. El Paso-Las Cruces, Texas-New Mexico Ozone Determination of Attainment ''But For'' International Emissions

A. El Paso-Las Cruces, Texas-New Mexico Nonattainment Area

The El Paso-Las Cruces, Texas-New Mexico nonattainment Area for the 2015 ozone standard is a multistate area that is located in the Paso del Norte (PdN) airshed.[20] The nonattainment area encompasses over 1,000 square miles in southeastern New Mexico and West Texas. Its population is estimated to be approximately 885,000 people.[21]

B. Ozone Monitoring Sites in El Paso-Las Cruces, Texas-New Mexico Nonattainment Area

There are currently two ozone monitors in the New Mexico portion of the nonattainment area: Santa Teresa and Desert View monitors. There are six ozone monitors in the Texas portion of the nonattainment area: El Paso UTEP, El Paso Chamizal, Skyline Park, Ivanhoe, Socorro Hueco, and Ascarate Park monitors. As shown in Table 2, the maximum 2020 design value for the nonattainment area based on certified monitoring data is 78 ppb at the Desert View Monitor. The EPA also notes that 2021 design values for the nonattainment area, based on certified monitoring data, are 80 ppb at the Desert View, New Mexico monitoring location; 75 ppb at the Santa Teresa, New Mexico monitoring location; 75 ppb at the El Paso-UTEP, Texas monitoring location; and 71 ppb at the El Paso Chamizal, Texas monitoring location indicating that both the Texas and New Mexico portions continue to fail to meet the standard.

Tables 1 and 2 of this document list the 2016–2021 annual fourth highest daily maximum hour average (''4th max'') and design values for the multistate area's ozone monitors. The Desert View, Santa Teresa, El Paso-UTEP, and El Paso Chamizal monitors are all within a mile of the border.

TABLE 1—2015 OZONE NAAQS: 2016–2021 YEARLY 4TH MAX, EL PASO-LAS CRUCES, TEXAS-NEW MEXICO NONATTAINMENT AREA OZONE MONITORS[22]

Site name	AQS site ID	Distance from border (miles)	4th Max (ppb)					
			2016	2017	2018	2019	2020	2021
New Mexico:								
Santa Teresa	35–013–0022	0.3	69	77	76	75	72	79
Desert View	35–013–0021	0.8	70	73	81	77	77	86
Texas:								
El Paso UTEP	48–141–0037	0.7	71	74	76	75	79	73
El Paso Chamizal	48–141–0044	0.1	65	72	78	73	72	69
Skyline Park	48–141–0058	9.5	66	75	77	72	71	68
Ivanhoe	48–141–0029	5	61	63	74	70	68	64
Socorro Hueco	48–141–0057	2.4	64	62	70	67	74	71
Ascarate Park	48–141–0055	0.1	66	67	75	64	69	56

TABLE 2—2015 OZONE NAAQS DESIGN VALUES EL PASO-LAS CRUCES, TEXAS-NEW MEXICO NONATTAINMENT AREA OZONE MONITORS[23]

Site name	AQS site ID	Design value (ppb)					
		2016	2017	2018	2019	2020	2021
New Mexico:							
Santa Teresa	35–013–0022	68	72	74	76	74	75
Desert View	35–013–0021	72	72	74	77	78	80
Texas:							
El Paso UTEP	48–141–0037	70	71	73	75	76	75

[20] Paso del Norte airshed consists of City of Sunland Park New Mexico, the City of El Paso, Texas and Municipio de Juárez, Mexico.

[21] U.S. Census Bureau, Population Estimates, July 1, 2021, (V2021) *https://www.census.gov/quickfacts/fact/table/elpasocounty texas,sunlandparkcitynewmexico,US/PST045221* accessed November 2, 2022.

[22] AQS Design Value Report.

[23] AQS Design Value Report.

TABLE 2—2015 OZONE NAAQS DESIGN VALUES EL PASO-LAS CRUCES, TEXAS-NEW MEXICO NONATTAINMENT AREA OZONE MONITORS [23]—Continued

Site name	AQS site ID	Design value (ppb)					
		2016	2017	2018	2019	2020	2021
El Paso Chamizal	48–141–0044	67	69	71	74	74	71
Skyline Park	48–141–0058	68	70	72	74	73	70
Ivanhoe	48–141–0029	62	63	66	69	70	67
Socorro Hueco	48–141–0057	66	65	65	66	70	70
Ascarate Park	48–141–0055	64	65	69	68	69	NA

C. Summary of the States' Submissions

On June 3, 2021, NMED submitted its ''Clean Air Act 179B Demonstration Sunland Park Ozone Nonattainment Area''. On February 28, 2022, TCEQ submitted ''Federal Clean Air Act El Paso County 179B Demonstration: El Paso-Las Cruces, Texas-New Mexico Nonattainment Area Final Report''. Collectively the agencies demonstrations evaluated whether, and the extent to which, ambient ozone levels in the El Paso-Las Cruces, Texas-New Mexico nonattainment area would be affected by emissions emanating from Municipio de Juárez, Mexico. As recommended in our guidance, these evaluations included an analysis of conceptual models of ozone formation in the nonattainment area and topographic conditions that influence ozone formation; an analysis of the ozone design value trends in the nonattainment area from 2016 to 2021; emissions inventory analysis comparing ozone precursor emissions in Doña Ana County, New Mexico and El Paso County, Texas to those in Municipio de Juárez, Mexico; ambient observational analyses of back-trajectories examining days in the nonattainment area; wind analysis evaluating wind direction on high ozone days; and photochemical air quality modeling exercises and evaluations estimating the contribution of cross-border, northern Mexico emissions to ozone design values in the nonattainment area.

1. Conceptual Models

NMED and TCEQ provided conceptual models describing ozone formation in the nonattainment area and topographical features of the binational, tristate airshed known as the Paso del Norte (PdN) airshed which consists of the City of Sunland Park, New Mexico; the City of El Paso, Texas; and the Municipio de Juárez, Mexico. The Rio Grande flows through the PdN generally from northwest to southeast along the Mesilla Valley and serves as the international border between Texas and Mexico. The PdN is a bowl shaped airshed that sits south of the Mesilla Valley and is saddled by the Franklin Mountains to the north in Texas and the Sierra de Juárez to the south in Mexico with Mount Cristo Rey sitting between them. The Franklin Mountains rise more than 3,280 ft above the valley floor and are approximately 14.4 miles long and 3.1 miles wide, separating the western third of El Paso from the eastern two-thirds of the city. The Franklin Mountain Range and Sierra De Juárez combined act as a funnel facilitating the southeast directional airflow movement while Mount Cristo Rey acts as a barrier, facilitating efficient mixing.

The climate of the PdN airshed is hot and arid with an average of less than nine inches of precipitation per year, 306 days of sunshine per year, and 15.4 days of daily high temperatures of 100 °F and above, which are conducive to ozone formation. Over 45 years of July wind data obtained from the El Paso Airport indicates that the wind direction predominates from the southeast with wind speeds of 5 meter per second or less.[24] Calm winds create a high potential for the production of ozone.

2. Design Value

The states provided trends in the ozone design values, number of days with maximum daily 8-hour ozone values greater than 70 ppb, and precursor emissions for 2011–2020. The precursor emissions in both states have declined while the design values have risen despite the drop in precursor emissions. This is discussed in greater detail in the Technical Support Document (TSD).

3. Emission Analysis for El Paso-Las Cruces, Texas-New Mexico Nonattainment Area

New Mexico and Texas provided tables of 2016 ozone precursor emissions (combined and shown in Table 3 of this document).[25] The Municipio de Juárez NO_X emissions are 2.5 times larger than El Paso County emissions and 4.5 times larger than Doña Ana County emissions. Generally, the Municipio de Juárez VOC emissions are 3 times larger than El Paso County emissions, 6 times larger than Doña Ana County emissions, and 39 times larger than Sunland Park emissions. As a reminder, Sunland Park is the only portion of Doña Ana County, New Mexico included in the nonattainment area.

TABLE 3—ANTHROPOGENIC EMISSION EVALUATION OF THE NONATTAINMENT AREA PREPARED BY NEW MEXICO AND TEXAS

Jurisdiction	NO_X (tpy)	Percent	VOC (tpy)	Percent
Municipio de Juárez, Mexico	39,744	64	33,363	67
Doña Ana County, NM	8,652	12.8	5,945	8.3
Sunland Park, NM	999	1.4	280	0.4
El Paso County, TX	14,640	23	11,166	22

[24] Demonstrations; Texas: 5–6; New Mexico: 5–7.

[25] TCEQ's Demonstration, page 14; NMED's Demonstration, page 17.

4. Ambient Observational Analysis—Back Trajectories

TCEQ's and NMED's demonstrations include an analysis of back trajectories created using the National Oceanic and Atmospheric Administration's (NOAA) Hybrid Single Particle Lagrangian Integrated Trajectory (HYSPLIT) model.[26] The analyses include trajectories for each exceedance day in 2016–2020 (Texas) and 2019–2020 (New Mexico) when the daily maximum eight-hour average ozone level was above 70 ppb at the El Paso UTEP, El Paso Chamizal, and Skyline Park monitors (Texas) and the Desert View monitor (New Mexico).

The TCEQ demonstration applied the HYSPLIT model using the READY (Real-time Environmental Applications and Display sYstem) application on the NOAA Air Resources Laboratory web server to trace the path of air parcels prior to arriving to El Paso County monitors on ozone exceedance days. For each ozone exceedance day at the El Paso UTEP, El Paso Chamizal, and Skyline Park monitors from 2016 through 2020 (a total of 93 site-days), the TCEQ generated eight 72-hour back trajectories, one trajectory arriving at each of the eight hours comprising the maximum daily average 8-hour ozone (MDA8) averaging period at a given monitor. The TCEQ reviewed the HYSPLIT back trajectories to determine whether at least 75% of the air parcels for that exceedance day traveled through Mexico. From this evaluation, TCEQ noted that exceedance days involved international contributions at the El Paso UTEP monitor 85% of the days, at El Paso Chamizal monitor 85% of the days, and at the Skyline Park monitor 61% of the days.

NMED's demonstration ran the back-trajectory HYSPLIT model for 72 hours using the North American Mesoscale Forecast System (NAMS) on the exceedance days and the corresponding number of non-exceedance days from 2019 through 2020. A total of eight trajectories were initiated one for each hour of the exceeding 8 hour average with a starting height of 100 meters above ground level. NMED then conducted a HYSPLIT back-trajectory test to determine an adjusted design value that would result from excluding internationally influenced exceedance dates. This approach does not quantify the international contribution, but simply assumes that days with clear transport linkages have sufficiently large international contributions that they would meet a ''but for'' test. Removing these dates from the data set affects the determination of the 4th annual maximum 8-hour average and the design value calculation for the Desert View monitoring site. For each exceedance date from 2016 to 2020, NMED reviewed the HYSPLIT back-trajectory to determine if 75% of the air parcels traveled through Municipio de Juárez airspace.[27] When the results indicated more than 75% of the air parcels traveled through Municipio de Juárez airspace, NMED concluded that the ozone maximum daily eight-hour average concentration was influenced by international emissions. The dates resulting in less than 75% of the air parcels that did not travel through Municipio de Juárez would remain on the list of exceedance dates to determine the adjusted fourth annual maximum 8-hour average and then to calculate the adjusted design value. New Mexico's results show that 80% of the exceedances are influenced by international emissions using this method. In this adjustment analysis only nine of the 46 original exceedances remained with six dates in 2018, one date in 2019, and two dates in 2020 included in the adjusted design value calculation.

5. Wind Evaluation

Both NMED and TCEQ conducted wind analysis. Both states presented summaries of wind patterns associated with a range of observed ozone concentrations, graphically depicting ozone pollution roses which show the frequency distribution of ozone concentration separately for each direction from which the wind is blowing. NMED and TCEQ both presented ozone pollution roses for non-exceedance days (MDA8 ozone less than 71 ppb) and exceedance days (MDA8 ozone greater than or equal to 71 ppb) from April through September 2016–2020 for the monitors closest to the Mexico border. Both NMED and TCEQ concluded that the highest hourly ozone concentration is associated with wind directions from Mexico. Figures of these analyses may be found in the TSD supporting this action and located in the docket.

In addition to the ozone pollution roses by wind direction discussed above, TCEQ also conducted a wind cluster analysis for El Paso County using data from the El Paso UTEP, El Paso Chamizal, and Skyline Park monitors. The cluster analysis relied on hourly resultant wind direction and wind speed obtained from the TCEQ's Texas Air Monitoring Information System (TAMIS) database and corresponding ozone values at each monitor obtained from the EPA Air Data website (*https://www.epa.gov/outdoor-air-quality-data*). Using this data, the analysis classified days in April through September 2011 through 2020 based on their similarity in terms of daily wind patterns, grouping days together with similar afternoon wind direction (because peak ozone typically occurs during afternoon hours). From these analyses, TCEQ concluded that a significant portion of exceedances days at each monitoring site occurred when wind blew from Municipio de Juárez. More information about TCEQ's ozone cluster analysis, including figures, may be found in the Technical Support Document for this document, located in the docket. NMED did not conduct an ozone cluster analysis.

6. Photochemical Modeling To Quantify International Contribution

As part of their demonstrations, NMED and TCEQ evaluated three models:

(1) *Southern New Mexico Ozone Study:* Contracted by NMED in 2016 to help understand the cause of high ozone values in Doña Ana County, New Mexico, with a 2011 base year and 2025 analytic year.

(2) *New Mexico Ozone Attainment Initiative:* Contracted by NMED in 2020 to help understand the impact of the Oil and Gas Sector emission on ozone values in New Mexico, with a 2014 base year and 2028 analytic year.

(3) *Final Revised Cross-State Air Pollution Rule Update:* Contracted by EPA in 2020 to determine impacts of transport of ozone and ozone precursors on downwind areas across the U.S. with a 2016 base year and 2021, 2023 and 2028 analytic years.

The methods used by each study are well documented in separate technical support documents and summarized in the TSD for this action which is located in the docket and summarized in both submissions.[28] The states compared the source apportionment studies generated by these models and found that the three models show that the ozone concentrations in the nonattainment area are significantly impacted by

[26] Demonstration; Texas: page 23, New Mexico: page 15 and Appendix A.

[27] 179B Guidance, 34.

[28] EPA, 2021. Environmental Protection Agency. Cross-State Air Pollution Rule 2016 Update. Office of Air Quality Planning and Standards, Research Triangle Park, NC. January 2021. *https://www.epa.gov/csapr/revised-cross-state-air-pollution-rule-update.*

WRAP, 2016. Southern New Mexico Ozone Study (SNMOS). Western Regional Air Partnership. November 2016. *https://www.wrapair2.org/SNMOS.aspx.* WRAP, 020. Ozone Attainment Initiative (OAI). Western Regional Air Partnership (May 2020). *https://www.wrapair2.org/nmoai.aspx.*

emissions from Mexico. These models show international contribution range from an estimated low of 4.11 ppb at the Chaparral, New Mexico monitor by the Southern New Mexico Ozone study to an estimated high of 17.79 ppb at the Skyline Park monitor by the Revised CASPR Update model.

D. EPA Review of the States' Submissions

Based on the Agency's review of the submissions described in section C, the EPA is proposing to find that Texas and New Mexico have successfully demonstrated that the El Paso-Las Cruces, Texas-New Mexico nonattainment area would have attained the 2015 ozone NAAQS but for emissions emanating from outside of the United States, consistent with CAA section 179B(b). This action discharges its statutory obligation under CAA section 181(b)(2) to determine whether the El Paso-Las Cruces, Texas-New Mexico nonattainment area attained the 2015 ozone NAAQS. Our rationale supporting the proposed approval of the State's 179B(b) demonstration and determination is summarized below. The full rationale is included in the TSD provided in the docket for this rulemaking.

NMED and TCEQ each provided a conceptual model describing the meteorology and topography of the area, an evaluation of ozone precursor emissions, and an analysis of ozone trends at monitors in the nonattainment area. We find that the following evidence supports the proposition that the Municipio de Juárez, Mexico emissions have a substantial influence on the El Paso-Las Cruces, Texas-New Mexico nonattainment area ozone levels: the topography and meteorology of the PdN area results in a single, shared multistate, binational airshed; Municipio de Juárez, Mexico ozone precursor emissions are much larger (currently approximately two and a half times greater) than El Paso-Las Cruces, Texas-New Mexico nonattainment area emissions; and ozone concentration trends in the nonattainment area have shown a steady increase despite the permanent and steady decrease of ozone precursor emissions at sources within the nonattainment boundary which is likely attributable to conditions in Mexico.

NMED ran the HYSPLIT model to generate 8-hour back-trajectories for each of the eight hours contributing to each 2019–2020 daily maximum 8-hour average ozone exceedance (greater than 70 ppb) at the Desert View monitor at 100 m altitude; TCEQ ran the HYSPLIT model to generate 8-hour back-trajectories for each of the eight hours contributing to each 2016–2020 exceedance day at the El Paso UTEP, El Paso Chamizal and Skyline Park monitors. As recommended in the 179B Guidance, the states flagged days that had at least 6 of the 8 hours originating from or traversing through Mexico as having likely influence from emissions emanating from Mexico.[29] New Mexico's results show that 80% of the exceedance days at the Desert View monitor are influenced by international emissions using this method. TCEQ noted that exceedance days involved international contributions at the El Paso UTEP monitor 85% of the days, at El Paso Chamizal monitor on 85% of the days, and at the Skyline Park monitor on 61% of the days. We conclude that the analysis of the 8-hour back trajectories passing over Municipio de Juárez, Mexico supports the conclusion that there is a direct international source-receptor relationship between Municipio de Juárez, Mexico and El Paso-Las Cruces, Texas-New Mexico nonattainment area on 2019–2020 (New Mexico) and 2016–2020 (Texas) exceedance days.

NMED and TCEQ also recalculated the 2020 design value excluding the days over 70 ppb identified to have been influenced by transport from Mexico, using a revised 4th high MDA8 ozone concentration for each year. The EPA notes that this method of recalculating the design value to exclude days which have international contributions doesn't contemplate whether the exceedance day is also affected by domestic emissions. In other words, a simple back-trajectory analysis merely identifies whether air parcels passed through an area prior to reaching a monitor but does not quantify or specify the amount of contribution. Therefore, a simple recalculation of the design value excluding days with influence from Mexico is not a conclusive ''but for'' analysis. However, the EPA agrees that the state's 8-hour back trajectory analysis in conjunction with the other lines of evidence shows that there is consistent, direct transport from the high-emissions Municipio de Juárez, Mexico on high ozone days to El Paso-Las Cruces, Texas-New Mexico nonattainment area monitors.

NMED and TCEQ followed the approaches described in the 179B Guidance using a photochemical modeling approach to quantify international emissions emanating from Municipio de Juárez, Mexico to the El Paso-Las Cruces, Texas-New Mexico nonattainment area ozone. The available modeling also supports our conclusion that the El Paso-Las Cruces, Texas-New Mexico multi-state nonattainment area would have attained the 2015 ozone NAAQS but for emissions from Mexico. As previously discussed, NMED and TCEQ used the model results to estimate the impact of cross-border, northern Mexico emissions on air quality. The results of this estimate were applied to the average of the 2016 and 2020 ozone design values at monitors in El Paso-Las Cruces, Texas-New Mexico nonattainment area and indicate near-source Mexico emissions contribute approximately of 4.11 ppb at the Chaparral, New Mexico monitor as modeled in the Southern New Mexico Ozone study to an estimated high of 17.79 ppb at the Skyline Park monitor modeled in the Revised CASPAR Update study. The EPA notes that the analyses here conservatively evaluate only cross-border emissions from northern Mexico and do not evaluate effects of international emissions from other parts of Mexico or elsewhere. Due to differences in each model (such as base year, date of emission inventory, year model conducted, and analytic year) the results, are not identical. Taken together, the analyses do support conclusions drawn by NMED and TCEQ, that ozone values in the nonattainment area are impacted by emissions from Mexico. The EPA analyzed the results of the modeling studies and found that they do support the states' conclusions and our determination that the area would have attained the NAAQS but for international contributions.

As discussed in the TSD, the EPA has performed additional analysis of its 2020 Ozone Policy Assessment (''2020 PA'') modeling[30] to provide broad U.S. and international source attribution for 2015 ozone NAAQS nonattainment areas in the year 2016.[31] The 2020 PA modeling predicts that the international anthropogenic ozone contribution to Doña Ana County, New Mexico[32] on the top 10 model days is 20.1 ppb, the second largest international anthropogenic contribution of any

[29] 179B Guidance, 34.

[30] U.S. EPA. (2020). Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (No. EPA–452/R–20–001). Research Triangle Park, NC: United States Environmental Protection Agency. Retrieved from *https://www.epa.gov/sites/production/files/2020-05/documents/o3-final_pa-05-29-20compressed.pdf.*

[31] Memorandum dated December 10, 2021, from Barron Henderson and Heather Simon (EPA, OAQPS), Subject: ''Designated Area Source Attribution Results Related to the National Determination of Attainment by the Attainment date (DAAD) Action.''

[32] This study evaluated ozone nonattainment areas that were designated before 2020. El Paso

nonattainment area in the country. In contrast to the modeling contracted by NMED, which quantifies only the small portion of the international contribution from near-source anthropogenic emissions in northern Mexico, the EPA's modeling quantifies impacts from all international anthropogenic emissions sources. This additional modeling indicates that international anthropogenic emissions have a significant impact on ozone in the El Paso-Las Cruces, Texas-New Mexico nonattainment area, and that emissions from northern Mexico, while having a substantial effect, are only a portion of the total contribution from all international anthropogenic sources to the El Paso-Las Cruces, Texas-New Mexico nonattainment area ozone design values. The analyses presented in this proposed action all support the conclusion that Mexican anthropogenic emissions are a major factor contributing to ozone exceedances in the El Paso-Las Cruces, Texas-New Mexico nonattainment area.

In conclusion, NMED's and TCEQ's retrospective 179B(b) demonstration includes multiple lines of evidence consistent with the types of analyses recommended in our 179B Guidance.[33] These analyses appropriately focus on 2018, 2019, and 2020, which are the key years for demonstrating attainment for a Marginal nonattainment area for the 2015 ozone NAAQS. We agree that each line of evidence supports the conclusion that the 2020 ozone design values at all monitoring sites in the El Paso-Las Cruces, Texas-New Mexico nonattainment area would be at or below 70 ppb but for the influence of Mexican emissions. NMED's and TCEQ's analyses focus on the influence of international contributions from the bordering Municipio de Juárez, Mexico near-by northern Mexico contributions. Ozone is both a local and regional problem. Contributions from sources in Mexico much farther away from the El Paso-Las Cruces, Texas-New Mexico nonattainment area than Municipio de Juárez also contribute to the nonattainment area; as such, EPA views the states each state's analysis to be a conservative approach to analyzing ''international contributions.'' Based on the evaluation of these analyses as a whole, the EPA finds that the El Paso-Las Cruces, Texas-New Mexico nonattainment area would have attained the 2015 ozone NAAQS by the August 3, 2021 attainment date but for emissions emanating from Mexico.

[33] 179B Guidance, Section 6.

III. Environmental Justice Considerations

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs federal government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

To identify environmental burdens and susceptible populations in underserved communities in the El Paso-Las Cruces, Texas-New Mexico nonattainment area and to better understand the context of our proposed approval of NMED's and TCEQ's 179B(b) demonstrations on these communities, we conducted a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[34] Our screening-level analysis indicates that communities affected by this proposed action score above the national average for the EJSCREEN ''Demographic Index,'' which is the average of an area's percent minority and percent low income populations, *i.e.,* the two demographic indicators explicitly named in Executive Order 12898.[35] Communities in this area also score above the national average for the ''linguistically isolated population,'' and ''population with less than high school education'' indicators. Additionally, these communities score above the national average for numerous EJ Index indicators, including the $PM_{2.5}$ EJ index and the respiratory hazard EJ Index. We also looked at ozone design values for the 2018–2020 period as an indicator of potential ozone pollution exposure.[36] The Desert View (NM), Santa Teresa (NM), El Paso UTEP (TX), El Paso Chamizal (TX) and Skyline Park (TX) monitors score above the national average design value for this period.[37]

As discussed in the EPA's EJ technical guidance, people of color and low-income populations, such as those in the El Paso-Las Cruces, Texas-New Mexico nonattainment area, often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[38] Underserved communities may have a compromised ability to cope with or recover from such exposures due to a range of physical, chemical, biological, social, and cultural factors.[39] In addition to the demographic and environmental indicators identified in our screening level analysis, the proximity of underserved communities to the border with Mexico and the resulting exposure to levels of ozone that exceed the

[34] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at *https://www.epa.gov/ejscreen/what-ejscreen.* The EPA used EJSCREEN to obtain environmental and demographic indicators representing the El Paso County, Texas and Doña Ana County, New Mexico, specifically targeting the areas closest to the nonattainment monitors, which are located adjacent to the border with Mexico and measures the highest levels of ozone in the nonattainment area, where the overwhelming majority of the population resides. These indicators are included in EJSCREEN reports that are available in the rulemaking docket for this action.

[35] EJSCREEN reports environmental indicators (*e.g.,* air toxics cancer risk, Pb paint exposure, and traffic proximity and volume) and demographic indicators (*e.g.,* people of color, low income, and linguistically isolated populations). The score for a particular indicator measures how the community of interest compares with the state, the EPA region, or the national average. For example, if a given location is at the 95th percentile nationwide, this means that only five percent of the US population has a higher value than the average person in the location being analyzed. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, ''EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation,'' Section 2 (September 2019).

[36] The ozone metric in EJSCREEN represents the summer seasonal average of daily maximum 8-hour concentrations (parts per billion, ppb) and was not used in our EJ analyses because it does not represent summertime peak ozone concentrations, which are instead represented here by the design value (DV) metric. Ozone DVs are the basis of the attainment determination in this proposed action, and in this case, we consider it a more informative indicator of pollution burden relative to the El Paso-Las Cruces, Texas-New Mexico nonattainment area and the U.S. as a whole.

[37] The 2020 ozone design value for the Desert View (78 ppb) is in the 94th percentile, Santa Teresa (74 ppb) is in the 89th percentile, El Paso UTEP (76 ppb) is in the 92nd percentile, El Paso Chamizal (74 ppb) is in the 89th percentile, and Skyline Park (73 ppb) is in the 87th percentile among 2020 ozone design values nationally. The percentiles were calculated using data available at *https://www.epa.gov/system/files/documents/2022-05/O3_DesignValues_2019_2021_FINAL_05_25_22.xlsx,* Table 6. Site Trend, column T (''2018–2020 Design Value (ppm)'').

[38] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4 (June 2016).

[39] Id. section 4.1.

NAAQS contributes to the potential EJ concerns faced by communities in the El Paso-Las Cruces, Texas-New Mexico nonattainment area.

If finalized, this proposed action to approve New Mexico's and Texas's demonstrations that the El Paso-Las Cruces, Texas-New Mexico nonattainment area would have attained the standard by the statutory attainment date, but for emissions emanating from Mexico, would result in the area retaining its Marginal classification. The area will retain its designation as nonattainment and continue to implement nonattainment new source review, but will not be reclassified as ''Moderate'' and the States will not be required to submit a plan demonstrating attainment or to adopt additional control measures, consistent with CAA section 179B(b).[40] As a result, the EPA will not be requiring the States to impose additional control measures for purposes of the 2015 ozone NAAQS that could serve to reduce ozone exposure in the area, even if they would not result in actual attainment of the NAAQS due to the influx of ozone and its precursors from Mexico.

In addition, the EPA notes that there are other efforts underway to reduce environmental burden along the U.S-Mexico border, including at the El Paso-Las Cruces, Texas-New Mexico nonattainment area. The United States and Mexico have long recognized the environmental challenges in the border region and share the goal of protecting the environment and public health in the U.S.-Mexico border region. The two nations have been working together outside the framework of the SIP process to make progress towards those goals.

The U.S.-Mexico Environmental Program (''Border 2025'') is a five-year (2021–2025) binational effort designed ''to protect the environment and public health in the U.S.-Mexico border region, consistent with the principles of sustainable development.''[41] Border 2025 is the latest of a series of cooperative efforts implemented under the 1983 La Paz Agreement. It builds on previous binational efforts (*i.e.,* the Border 2012 and Border 2020 Environmental Programs), emphasizing regional, bottom-up approaches for decision making, priority setting, and project implementation to address the environmental and public health problems in the border region. As in the previous two border programs, Border 2025 encourages meaningful participation from communities and local stakeholders and establishes guiding principles that will support the mission statement, ensure consistency among all aspects of the Border 2025 Program, and continue successful elements of previous binational environmental programs.

Border 2025 sets out four strategic goals, including the reduction of air pollution and the improvement of water quality, to address environmental and public health challenges in the border region. Within the goals are specific objectives that identify actions that will be taken in support of the program's mission. The goals and objectives were determined binationally between the EPA and the Ministry of Environment and Natural Resources of Mexico (SEMARNAT) to address ongoing environmental challenges and considered input from state and tribal partners. The Joint Advisory Committee (JAC) is a binational committee made up of private citizens, private sector representatives, university officials, federal, state, and local government officials, and non-governmental environmental and public health organizations. The JAC is charged with the development and recommendation of air quality improvement projects and programs to the Air Work Group established under the 1983 U.S.-Mexico La Paz Agreement. The JAC serves as the local community-based organization overseeing the process to achieve cleaner air for the Paso del Norte region and air group under the Border 2020 Program.

The air agencies did not evaluate environmental justice considerations as part of their SIP submittals; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples. We acknowledge that the El Paso-Las Cruces, Texas-New Mexico nonattainment area includes minority and low-income populations that could be affected by this action.

The EPA believes it is important to recognize those potential effects even when taking actions under a statutory provision like 179B that, in this case, largely constrains the Agency from considering such effects in its final decision. As discussed in Section I.B. of this document, each State has met the requirements for ozone nonattainment areas classified as Marginal. Moreover, the EPA continues to work in to reduce disproportionate health, environmental, economic, and climate change impacts in the El Paso-Las Cruces, Texas-New Mexico nonattainment area, including those described in this section above.

IV. Proposed Action

For the reasons discussed in this document, we are proposing to determine, consistent with our evaluation of the ''Clean Air Act Section 179B Demonstration Sunland Park Ozone Nonattainment Area'' and the ''Federal Clean Air Act El Paso County § 179B Demonstration: El Paso-Las Cruces, Texas-New Mexico Nonattainment Area Final Report'', that the El Paso-Las Cruces, Texas-New Mexico multi-state nonattainment area would have attained the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, but for emissions emanating from outside the United States. If finalized, the EPA's obligation under section 181(b)(2)(A) to determine whether the area attained by its attainment date will no longer apply and the area will not be reclassified. The area will remain designated nonattainment and thus New Mexico and Texas will both continue to comply with applicable requirements for a Marginal ozone nonattainment area.

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal until April 6, 2023 and will consider comments before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements

[40] In light of the overall health and clean air objectives of the CAA, the EPA encourages the States to continue to evaluate and, where feasible, implement measures that would further reduce emissions and contribute to improved air quality in the El Paso-Las Cruces, Texas-New Mexico Nonattainment area.

[41] ''Border 2025: United States—Mexico Environmental Program,'' included in this docket and accessible at *https://www.epa.gov/sites/default/files/2021-05/documents/final_us_mx_border_2025_final_may_6.pdf.*

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 FR 3821, 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).

In addition, 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, and Ozone.

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

Dated: February 28, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–04634 Filed 3–6–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R03–OAR–2022–0166; FRL–10673–01–R3]

Air Plan Approval; Pennsylvania; Revisions To Plan Approval and Operating Permit Fees Rule and Title V Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve both a state implementation plan (SIP) revision and title V operating permits program revision submitted by the Pennsylvania Departmental of Environmental Protection (PADEP) on behalf of the Commonwealth of Pennsylvania. The SIP revision pertains to Pennsylvania's existing plan approval and operating permit program fee rules. The revision increases existing plan approval application and operating permit fees. The title V operating permit program revision amends the title V operating permit program fee schedules that fund the Pennsylvania title V operating permit program.

DATES: Written comments must be received on or before April 6, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2022–0166 at *www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 JFK Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2339. Mr. He can also be reached via electronic mail at *He.Yongtian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 20, 2021, PADEP submitted a revision to both Pennsylvania's SIP and its title V operating permit program approval codified in 40 CFR part 70 appendix A (relating to approval status of state and local operating permits programs). Additionally, on January 3, 2023, PADEP submitted a letter clarifying which portions of the submittal were intended to be SIP revisions, and which were intended to be revisions to Pennsylvania's title V operating permit program. The submittal consists of revisions amending 25 Pennsylvania (PA) Code Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees). The revisions increase existing plan approval application and operating permit fees. They also implement new fees for requests for determination, which is a process PADEP conducts when a source requests the PADEP to determine whether certain permitting requirements are applicable to the specific source, or the source is exempt from these requirements. Pennsylvania indicates that these revisions are necessary to ensure that fees are sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the Clean Air Act (42 U.S.C.A. section 7661a(b)) and section 6.3 of the Air Pollution Control Act (35 Pennsylvania Statute section 4006.3). The documents associated with PADEP submission can be found at *https://www.regulations.gov,* Docket ID No. EPA–R03–OAR–2022–0166.

A. SIP Revision

Section 110(a)(2)(L) of the Clean Air Act (CAA) requires SIPs to include requirements that the owner or operator of each major stationary source pay to the permitting authority, as a condition of any permit required by the CAA, fees sufficient to cover reasonable costs of acting on the permit as well as