

veterinary licensing and practice requirements.

(2) The veterinarian must fully and accurately enter the following information on the VFD:

- (i) The veterinarian's name, address, and telephone number;
- (ii) The client's name, telephone number, and business or home address;
- (iii) The premises at which the animals specified in the VFD are located;
- (iv) The date of VFD issuance;
- (v) The expiration date of the VFD. This date cannot extend beyond the expiration date specified in the approval, conditional approval, or index listing, if such date is specified. In cases where the expiration date is not specified in the approval, conditional approval, or index listing, the expiration date of the VFD cannot exceed 6 months after the date of issuance;
- (vi) The name of the animal drug;
- (vii) The species and production class of animals to be fed the medicated feed;
- (viii) The approximate number of animals to be fed the medicated feed prior to the expiration date on the VFD;
- (ix) The indication for which the VFD is issued;
- (x) The level of drug in the feed and duration of use;
- (xi) The withdrawal time, special instructions, and cautionary statements necessary for use of the drug in conformance with the approval;

(xii) The number of reorders (refills) authorized, if permitted by the drug approval, conditional approval, or index listing;

(xiii) The statement: "Extralabel use (i.e., use of this VFD feed in a manner other than as directed on the labeling) is not permitted"; and

(xiv) The veterinarian's electronic or written signature.

(3) The veterinarian may, at his or her discretion, enter the following information on the VFD to more specifically identify the animals authorized to be treated/fed the medicated feed:

(i) A more specific description of the location of animals (e.g., by site, pen, barn, stall, tank, or other descriptor that the veterinarian deems appropriate);

(ii) The approximate age range of the animals;

(iii) The approximate weight range of the animals; and

(iv) Any other information the veterinarian deems appropriate to identify the animals specified in the VFD.

(4) The veterinarian must send the VFD to the feed distributor via hardcopy, fax, or electronically. If in hardcopy, the veterinarian may send the

VFD to the distributor either directly or through the client.

(5) The veterinarian must provide a copy of the VFD to the client.

(6) The veterinarian may not transmit a VFD by phone.

(c) Responsibilities of any person who distributes an animal feed containing a VFD drug:

(1) The distributor may only fill a VFD if the VFD contains the information required in § 558.6(b)(2).

(2) The distributor may only distribute an animal feed containing a VFD drug that complies with the terms of the VFD.

(3) A distributor of animal feed containing VFD drugs must notify FDA at the time it first distributes animal feed containing VFD drugs. The notification is required one time per distributor and must include the following information:

(i) The distributor's complete name and business address;

(ii) The distributor's signature or the signature of the distributor's authorized agent; and

(iii) The date the notification was signed;

(4) A distributor must submit the notification by letter or facsimile to the Food and Drug Administration, Center for Veterinary Medicine, Division of Animal Feeds (HFV-220), 7519 Standish Pl., Rockville, MD 20855, prior to beginning its first distribution.

(5) A distributor must notify the Center for Veterinary Medicine within 30 days of any change in ownership, business name, or business address.

(6) A distributor may only distribute a VFD feed to another person for further distribution if the distributor first obtains a written acknowledgment from the person to whom the feed is shipped stating that that person must not ship or move such feed to an animal production facility without a VFD, or ship such feed to another person for further distribution unless that person has provided the same written acknowledgment to the distributor's immediate supplier.

Dated: April 5, 2012.

**David Dorsey,**

*Acting Associate Commissioner for Policy and Planning.*

[FR Doc. 2012-8844 Filed 4-11-12; 11:15 am]

**BILLING CODE 4160-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2009-0648; FRL-9658-2]

#### Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County: Infrastructure and Interstate Transport Requirements for the 1997 and 2008 Ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve submittals from the Governor of New Mexico to the State Implementation Plan (SIP) for the City of Albuquerque/Bernalillo County area, pursuant to the Clean Air Act (CAA or the Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 and 2008 8-hour ozone and the 1997 and 2006 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS or standards). We are proposing to find that the current Albuquerque/Bernalillo County SIP meets the following infrastructure elements for the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are also proposing to find that the current Albuquerque/Bernalillo County SIP meets one of the four provisions of CAA section 110(a)(2)(D)(i), which addresses the requirement that emissions from sources in the area do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration (PSD) of air quality, with regard to the 1997 and 2008 ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA is also proposing to approve SIP revisions that modify the PSD SIP to include nitrogen oxides (NO<sub>x</sub>) as an ozone precursor. For purposes of the 1997 and 2006 PM<sub>2.5</sub> NAAQS, EPA is proposing to approve revisions to the Albuquerque/Bernalillo County PSD SIP that identify the PM<sub>2.5</sub> precursors and establish significant emission rates for said precursors, consistent with the federal requirements. We are also proposing to approve other revisions to the Albuquerque/Bernalillo County PSD SIP to maintain consistency with the federal PSD permitting requirements. In addition to these revisions, EPA is proposing to approve other revisions to the Albuquerque/Bernalillo County SIP

necessary to implement Ambient Air Quality Standards (AAQS). These actions are taken under section 110 and part C of the Act.

**DATES:** Comments must be received on or before May 14, 2012.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2009-0648, by one of the following methods:

- **Federal Rulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **U.S. EPA Region 6 “Contact Us” Web site:** <http://epa.gov/region6/r6comment.htm>. Please click on “6PD (Multimedia)” and select “Air” before submitting comments.

- **Email:** Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- **Fax:** Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- **Mail:** Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- **Hand or Courier Delivery:** Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, 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-2009-0648. 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:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the City of Albuquerque, Environmental Health Department—Air Quality Division, One Civic Plaza, Room 3047, Albuquerque, New Mexico 87103, telephone 505-768-1972, email address [aqd@cabq.gov](mailto:aqd@cabq.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. John Walser, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7128; fax number 214-665-6762; email address [walser.john@epa.gov](mailto:walser.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” means EPA.

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## I. Background

The Albuquerque/Bernalillo County Air Quality Control Board (AQCB) is the federally delegated air quality authority for the City of Albuquerque and Bernalillo County, New Mexico. Section 74-2-4 of the New Mexico Air Quality Control Act (AQCA) authorizes Albuquerque/Bernalillo County to locally administer and enforce the State Air Quality Control Act by providing for a local air quality control program. Thus, state law views Albuquerque/Bernalillo County and the State of New Mexico as distinct air quality control entities. Therefore, each entity is required to submit its own SIP in order to satisfy the requirements of section 110(a)(1) and (2) of the CAA and the AQCA, and to require local air pollution sources to comply with air quality standards. The AQCB is responsible for the portion of the New Mexico SIP that applies in Bernalillo County (excluding Tribal Land), which encompasses the

City of Albuquerque. As required by 40 CFR Part 51, the Governor of New Mexico has submitted SIP revisions, on behalf of the Albuquerque/Bernalillo County, under the AQCA (section 74–2–4), to satisfy the requirements of section 110(a)(2) and 110(a)(2)(D)(i) of the CAA for the Albuquerque/Bernalillo County area.<sup>1</sup> Because of Albuquerque/Bernalillo County's separate authority and SIP, it is necessary to separately address the requirements of 110(a)(2) for this portion of the State in order to ensure that the requirements are satisfied for the entire State of New Mexico.

#### A. What are the National Ambient Air Quality Standards?

Section 109 of the Act requires EPA to establish NAAQS for pollutants that “may reasonably be anticipated to endanger public health and welfare,” and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter (PM), and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

#### B. What is a SIP?

The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state (or in this case, local) air pollution control agency, to ensure that the state meets the NAAQS. The SIP is required by section 110 and other provisions of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Another important aspect of the SIP is to ensure that emissions from within the state do not have certain prohibited impacts on the ambient air in other states through

interstate transport of pollutants. This SIP requirement is specified in section 110(a)(2)(D) of the CAA. Pursuant to that section, each state's SIP must contain provisions adequate to prevent, among other things, emissions that interfere with measures required to be included in the SIP of any other state to prevent significant deterioration of air quality in any other state. Each EPA-approved SIP protects air quality primarily by addressing air pollution at its point of origin.

#### C. What is the background for this rulemaking?

Under sections 110(a)(1) and (2) of the Act, states are required to submit SIPs that provide for the implementation, maintenance, and enforcement (the infrastructure) of a new or revised NAAQS within three years following the promulgation of the NAAQS, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the specific infrastructure elements that must be incorporated into the SIPs, including for example, requirements for emission inventories, new source review (NSR), air pollution control measures, and monitoring that are designed to assure attainment and maintenance of the NAAQS. Table 1 in Section D of this rulemaking provides a list of all 14 infrastructure elements.<sup>2</sup> EPA refers to the requirements of section 110(a)(2)(A)–(C), (D)(ii), (E)–(H), and (J)–(M) as the “infrastructure” SIPs. Additionally, EPA refers to the requirements of section 110(a)(2)(D)(i) as the “interstate transport” SIPs. EPA provided separate guidance to states on each type of SIP, infrastructure and interstate transport, and these actions are on separate tracks and timelines.

#### 1. Section 110(a)(1) and (2) Infrastructure SIP Elements

On July 18, 1997, we published new and revised NAAQS for ozone (62 FR 38856) and PM (62 FR 38652). For ozone, we set an 8-hour standard of 0.08 parts per million (ppm) to replace the 1-hour standard of 0.12 ppm. For PM we set a new annual and a new 24-hour

<sup>2</sup> Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172 of the CAA. These elements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D Title I of the CAA. Therefore, this action does not cover these specific SIP elements.

NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (denoted PM<sub>2.5</sub>). The annual PM<sub>2.5</sub> standard was set at 15 micrograms per cubic meter (µg/m<sup>3</sup>). The 24-hour PM<sub>2.5</sub> standard was set at 65 µg/m<sup>3</sup>. On October 17, 2006, we published revised standards for PM (71 FR 61144). For PM<sub>2.5</sub>, the annual standard of 15 µg/m<sup>3</sup> was retained, and the 24-hour standard was revised to 35 µg/m<sup>3</sup>. For PM<sub>10</sub> the annual standard was revoked, and the 24-hour standard (150 µg/m<sup>3</sup>) was retained. On March 27, 2008, we published revised standards for ozone (73 FR 16436) of 0.75 ppm to replace the 1997 8-hour standard of 0.08 ppm. For more information on these standards, please see the 1997, 2006, and 2008 **Federal Register** notices (62 FR 38856, 62 FR 38652, 71 FR 61144, and 73 FR 16436).

Thus, states were required to submit such SIPs for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS to EPA no later than June 2000.<sup>3</sup> However, intervening litigation over the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS created uncertainty about how to proceed, and many states did not provide the required “infrastructure” SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the infrastructure requirements for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency had received from each state as of January 7,

<sup>3</sup> EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). On September 16, 2009, the EPA Administrator announced that EPA would take rulemaking action to reconsider the 2008 primary and secondary ozone NAAQS. On January 19, 2010, EPA proposed to set different primary and secondary ozone standards than those set in 2008 to provide requisite protection of public health and welfare, respectively (75 FR 2938). The final reconsidered ozone NAAQS have yet to be promulgated.

<sup>1</sup> This proposed rulemaking does not apply to Tribal Lands encompassed within the Albuquerque/Bernalillo County area.

2008. With regard to the 1997 PM<sub>2.5</sub> NAAQS, EPA entered into a consent decree with Earthjustice, which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 PM<sub>2.5</sub> NAAQS by October 5, 2008.

On March 27, 2008 and October 22, 2008, we published findings concerning whether states had made the 110(a)(2) submissions for the 1997 ozone (73 FR 16205) and PM<sub>2.5</sub> standards (73 FR 62902). In the March 27, 2008 action, we found that New Mexico (including Albuquerque/Bernalillo County) addressed all but one of the requirements of section 110(a)(2) of the Act necessary to implement the 1997 ozone NAAQS. As required by section 110(a)(2)(C) and (J), New Mexico failed to submit a SIP addressing changes to the part C Prevention of Significant Deterioration (PSD) permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO<sub>x</sub> a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21. Subsequent to this finding, the Albuquerque/Bernalillo County PSD program was revised to implement the 8-hour ozone NAAQS by adopting regulations to implement NO<sub>x</sub> as a precursor for ozone on December 22, 2005 and April 13, 2006. These revisions were submitted as SIP revisions by the Governor of New Mexico on May 24, 2006. EPA SIP-approved the December 22, 2005 PSD revisions on April 26, 2007 (72 FR 20728). In the October 22, 2008 action, we found that New Mexico (including Albuquerque/Bernalillo County) made complete submissions intended to provide for the basic program elements specified in section 110(a)(2) of the Act necessary to implement the 1997 PM<sub>2.5</sub> NAAQS.

On October 2, 2007 we issued "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards," Memorandum from William T. Harnett, Director, Air Quality Policy Division (AQPD), Office of Air Quality Planning and Standards (OAQPS).<sup>4</sup> On September 25, 2009, we issued "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS),"

<sup>4</sup>This and any other guidance documents referenced in this action are in the docket for this rulemaking.

Memorandum also from William T. Harnett, Director, AQPD, OAQPS. Each of these guidance memos addresses the SIP elements found in 110(a)(2). In each of these guidance memos, the guidance states that, to the extent that existing SIPs already meet the requirements, states need only certify that fact to us.

On December 11, 2007, EPA received a SIP submittal from Albuquerque/Bernalillo County, certifying that its portion of the New Mexico SIP includes all the requirements in section 110(a)(1) and (2) of the Act for implementation of the 1997 8-hour ozone NAAQS.

On April 7, 2008 the Governor of New Mexico submitted a certification letter addressing Albuquerque/Bernalillo County's requirements under section 110(a)(1) and (2) of the Act for implementation of the 1997 PM<sub>2.5</sub> NAAQS. The letter certified what sections of the New Mexico SIP (including Albuquerque/Bernalillo County) were met, as well as what sections needed to be revised to comply with the 110(a)(1) and (2) requirements.<sup>5</sup> The letter identified proposed revisions to the Albuquerque/Bernalillo County SIP and a timeline for finalizing the revisions.

On May 24, 2006 and August 16, 2010, the Governor of New Mexico submitted revisions to the Albuquerque/Bernalillo County portion of the New Mexico SIP to adopt and implement PSD permitting regulations to meet the federal requirements for implementation of the 2006 PM<sub>2.5</sub> NAAQS. The submissions also included revisions to the SIP to provide for NO<sub>x</sub> to be treated as a precursor to ozone formation in the preconstruction permitting program for PSD. Also in the August 16, 2010 submittal, the Governor included an Infrastructure SIP "Completeness Checklist," certifying how Albuquerque/Bernalillo County met all the requirements of section 110(a)(1) and (2) of the Act. We are proposing action on these items in today's rulemaking.

*Additional information:* EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM<sub>2.5</sub> NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those

<sup>5</sup> Specifically, the letter stated that New Mexico needed to revise its rules as follows: To include PM<sub>2.5</sub> in its definition of major sources; to include PM<sub>2.5</sub> in the definition of NAAQS and precursors of a criteria pollutant; to include significant harm levels for PM<sub>2.5</sub>; and to include NO<sub>x</sub> as a precursor for ozone.

infrastructure SIP submissions.<sup>6</sup> Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP submittals for the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS submissions from Albuquerque/Bernalillo County.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the

<sup>6</sup> See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and PM<sub>2.5</sub> NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on these infrastructure SIP submittals for Albuquerque/Bernalillo County.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for

concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission "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 that these SIPs 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 meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.<sup>7</sup> Some of the elements of section 110(a)(2) are relatively

<sup>7</sup> For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.<sup>8</sup>

Notwithstanding that section 110(a)(2) provides that "each" SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).<sup>9</sup> This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general "infrastructure SIP" for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter "interstate transport" provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.<sup>10</sup> This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section

<sup>8</sup> For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call; Final Rule," 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase "contribute significantly to nonattainment").

<sup>9</sup> See, e.g., Id., 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

<sup>10</sup> EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS. See, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards," from William T. Harnett, Director AQPD, OAQPS, to Regional Air Division Directors, Regions I–X, dated August 15, 2006.

110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.<sup>11</sup>

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.*, the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements “as applicable.” In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and PM<sub>2.5</sub> NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for

<sup>11</sup> For example, implementation of the 1997 PM<sub>2.5</sub> NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

both the 1997 8-hour ozone NAAQS and the 1997 PM<sub>2.5</sub> NAAQS.<sup>12</sup> Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the “infrastructure” elements for SIPs, which it further described as the “basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.”<sup>13</sup> As further identification of these basic structural SIP requirements, “attachment A” to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended “to constitute an interpretation of” the requirements, and was merely a “brief description of the required elements.”<sup>14</sup> EPA also stated its belief that with one exception, these requirements were “relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.”<sup>15</sup> For the one exception to that general assumption, however, *i.e.*, how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM<sub>2.5</sub> NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM<sub>2.5</sub> NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State’s submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State’s SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure

<sup>12</sup> See, “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards,” from William T. Harnett, Director AQPD, OAQPS, to Air Division Directors, Regions I–X, dated October 2, 2007 (the “2007 Guidance”).

<sup>13</sup> *Id.*, at page 2.

<sup>14</sup> *Id.*, at attachment A, page 1.

<sup>15</sup> *Id.*, at page 4. In retrospect, the concerns raised by commenters with respect to EPA’s approach to some substantive issues indicates that the statute is not so “self explanatory,” and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

SIPs for the 2006 PM<sub>2.5</sub> NAAQS.<sup>16</sup> In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS, but were germane to these SIP submissions for the 2006 PM<sub>2.5</sub> NAAQS, *e.g.*, the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and PM<sub>2.5</sub> NAAQS.

Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director’s discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director’s discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA’s 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA’s proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIP submittals for Albuquerque/Bernalillo County.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern,

<sup>16</sup> See, “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS),” from William T. Harnett, Director AQPD, OAQPS, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the “2009 Guidance”).

review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA’s 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM<sub>2.5</sub> NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a “SIP call” whenever the Agency determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.<sup>17</sup> Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.<sup>18</sup>

<sup>17</sup> EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,” 76 FR 21639 (April 18, 2011).

<sup>18</sup> EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,” 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa,

Significantly, EPA’s determination that an action on the infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director’s discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.<sup>19</sup>

## 2. Section 110(a)(2)(D)(i) Interstate Transport SIP Elements

Section 110(a)(2)(D)(i) pertains to interstate transport of certain emissions. On August 15, 2006, the EPA issued its “Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 PM<sub>2.5</sub> standards. As identified in the 2006 Guidance, the “good neighbor” provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements (prongs) related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; and (4) interfere with efforts to protect visibility in other states.

On September 12, 2007 and August 25, 2010 (dated August 16, 2010), we received SIP submissions from the

Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

<sup>19</sup> EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director’s discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director’s discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

Governor of New Mexico intended to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS. EPA approved a portion of the 2007 SIP submittal—the first prong—that pertains to preventing sources in one state from emitting pollutants in amounts that will contribute significantly to nonattainment of the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS in any other state (75 FR 68447, November 8, 2010). In today’s action, we are also addressing a portion of that submittal—the third prong—that pertains to preventing sources in Albuquerque/Bernalillo County from emitting pollutants that will interfere with measures required to prevent significant deterioration of air quality in other states. In its submission, New Mexico indicated that its current PSD NSR SIP is adequate to prevent such interference. In a separate rulemaking, EPA is taking action on the requirement regarding interference with efforts to protect visibility in other states. The remaining prong, which addresses interference with maintenance of the NAAQS in other states, will be evaluated in a separate rulemaking.

## 3. Revisions to the Albuquerque/Bernalillo County PSD SIP

Today’s rulemaking includes the review and analysis of two separate revisions to the Albuquerque/Bernalillo County SIP for PSD permitting submitted to EPA on May 24, 2006 and August 16, 2010, that include provisions to implement the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS. We note that the AQCB also provided revisions to the NNSR permitting program in the August 16, 2010 submittal. EPA is severing the August 16, 2010 revisions to the NNSR SIP from our proposed action.<sup>20</sup> The NNSR SIP is a separate permit program for nonattainment areas that functions independently from the PSD program and is authorized under Part D of the Title I of the CAA. As explained previously in section I.C.1 of this proposed rule, the Albuquerque infrastructure SIP review does not include evaluation of NNSR provisions at this time. EPA will address the NNSR SIP revisions in a separate rulemaking.

<sup>20</sup> These portions are severable. By which, we mean that the portions of the SIP revision required by EPA’s Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers rule can be implemented independently of the remaining portions of the submittal, without affecting the stringency of the submitted rules. In addition, the remaining portions of the submittal are not necessary for approval of the provisions implementing the PM<sub>2.5</sub> NAAQS.

a. Revisions To Address the 1997 and 2008 8-Hour Ozone NAAQS

On May 24, 2006 and August 16, 2010, the Governor submitted revisions to the PSD SIP that include, but are not limited to, revisions that provide for NO<sub>x</sub> to be treated as a precursor to ozone formation in the preconstruction permitting program for PSD, found at Title 20, Chapter 11, Section 61 of the New Mexico Administrative Code (20.11.61 NMAC). We are proposing to approve portions of two revisions to the PSD SIP that include revisions to 20.11.61 NMAC as submitted to EPA on May 24, 2006 and August 16, 2010 respectively, which implement the provisions for NO<sub>x</sub> as a precursor for ozone, consistent with the 1997 8-hour ozone NAAQS as published in the November 29, 2005 FRN. EPA finds that these revisions are necessary for implementation of the 1997 and 2008 ozone standard. As discussed further in our Technical Support Document (TSD), these revisions adopted by the AQCB meet the requirements of the CAA and EPA's PSD SIP rules and are consistent with EPA's policy and guidance regarding the PSD permit program.

b. Revisions To Address the 1997 and 2006 PM<sub>2.5</sub> NAAQS

To implement the PSD permitting component of section 110(a)(2)(C) for the 1997 and 2006 PM<sub>2.5</sub> standards, states were required to submit the necessary SIP revisions to EPA by May 16, 2011 under EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321, May 16, 2008; hereafter referred to as "2008 PM<sub>2.5</sub> NSR rule"). On July 14, 2010, the Albuquerque/Bernalillo County AQCB adopted revisions to the Albuquerque/Bernalillo County SIP to amend their PSD and NNSR programs to implement PM<sub>2.5</sub> NAAQS. These revisions became effective on August 30, 2010. The Governor submitted these changes to EPA as a SIP revision on August 16, 2010. As noted previously, we are proposing action on only the PSD revisions at this time. We are proposing to approve portions of the revisions to the PSD SIP at 20.11.61 NMAC submitted on August 16, 2010 that implement the provisions for PM<sub>2.5</sub> permitting, including the identification of PM<sub>2.5</sub> precursors and significant emission rates, consistent with the requirements as published in the 2008 PM<sub>2.5</sub> NSR rule to adequately implement the 1997 and 2006 NAAQS. As discussed further in our TSD, these revisions adopted by the Albuquerque/

Bernalillo County AQCB meet the requirements of the CAA and EPA's PSD SIP rules and are consistent with EPA's policy and guidance regarding the PSD permit program.

c. Revisions To Address the Greenhouse Gas (GHG) Permitting Requirements

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for today's proposed action on the Albuquerque infrastructure SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,<sup>21</sup> the "Johnson Memo Reconsideration,"<sup>22</sup> the "Light-Duty Vehicle Rule,"<sup>23</sup> and the "Tailoring Rule."<sup>24</sup> Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

On December 15, 2010, the Governor of New Mexico submitted to EPA a SIP revision that modified Albuquerque/Bernalillo County's PSD program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Albuquerque/Bernalillo County's PSD permitting requirements for their GHG emissions. The regulatory revisions that Albuquerque/Bernalillo County submitted, on December 15, 2010, incorporate the Tailoring Rule thresholds, thereby (i) assuring that, under State law, only sources at or

<sup>21</sup> "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

<sup>22</sup> "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

<sup>23</sup> "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

<sup>24</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the federally-approved SIP by clarifying that the SIP applies only to sources at or above the Tailoring Rule thresholds. EPA determined that the PSD SIP revision met the requirements of section 110 and part C of the CAA and EPA regulations regarding PSD permitting for GHGs, and EPA approved the PSD SIP revision effective January 30, 2012. (See 76 FR 81836).

d. Revisions To Maintain Consistency With the Federal PSD Requirements

In addition to the revisions submitted on May 24, 2006 and August 16, 2010 to implement the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS, Albuquerque also adopted and submitted several revisions to the general PSD program to maintain consistency with the Federal PSD requirements. It is incumbent on a permitting authority to routinely review and update the SIP to maintain consistency with the Federal requirements and submit these revisions as appropriate for review and incorporation into the state's SIP. As further explained in the TSD, EPA finds that these revisions are consistent with the Federal PSD requirements at 40 CFR 51.166 and necessary to implement the Albuquerque PSD SIP.

4. Additional Revisions to the Albuquerque/Bernalillo County SIP

On November 6, 2009, the Governor submitted a SIP revision that included among other things, updating the SIP rule entitled Ambient Air Quality Standards. We are taking this opportunity to evaluate and propose action on the Ambient Air Quality Standard SIP portion of the 2009 submission. EPA is not taking action on the other severable portions of November 2009 SIP revision submittal at this time.

*D. What elements are required under section 110(a)(2)?*

Pursuant to the October 2, 2007 EPA guidance for addressing the SIP infrastructure elements required under sections 110(a)(1) and (2) for the 1997 ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS, there are 14 essential components that must be included in the SIP. These are listed in Table 1 below.

TABLE 1—SECTION 110(a)(2) ELEMENTS REQUIRED IN SIPs

Clean Air Act citation	Brief description
Section 110(a)(2)(A) .....	Emission limits and other control measures.
Section 110(a)(2)(B) .....	Ambient air quality monitoring/data system.
Section 110(a)(2)(C) .....	Program for enforcement of control measures.
Section 110(a)(2)(D) .....	Interstate transport.
Section 110(a)(2)(E) .....	Adequate resources.
Section 110(a)(2)(F) .....	Stationary source monitoring system.
Section 110(a)(2)(G) .....	Emergency power.
Section 110(a)(2)(H) .....	Future SIP revisions.
Section 110(a)(2)(J) <sup>25</sup> .....	Consultation with government officials.
Section 110(a)(2)(J) .....	Public notification.
Section 110(a)(2)(J) .....	Prevention of significant deterioration (PSD) and visibility protection.
Section 110(a)(2)(K) .....	Air quality modeling/submitting of such data.
Section 110(a)(2)(L) .....	Permitting fees.
Section 110(a)(2)(M) .....	Consultation/participation by affected local entities.

## II. What action is EPA proposing?

### A. Section 110(a)(1) and (2)

In today's action, we are proposing to determine and approve that the following section 110(a)(2) elements are contained in the current Albuquerque/Bernalillo County SIP and provide the infrastructure for implementing the 1997 and 2008 ozone and the 1997 and 2006 PM<sub>2.5</sub> standards: Emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); the program for enforcement of control measures (section 110(a)(2)(C)); international and interstate pollution abatement (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

We are also proposing that Albuquerque/Bernalillo County has adequately addressed one of the four required prongs of CAA section 110(a)(2)(D)(i), the interstate transport prong, which requires that the SIP prohibit air emissions from sources

within a state from interfering with measures required to prevent significant deterioration of air quality in any other state. We are proposing to determine that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures to prevent significant deterioration of air quality in any other state for the 1997 and 2008 ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS (CAA section 110(a)(2)(D)(i)(II)). As noted previously, we already have found that emissions from sources within Albuquerque/Bernalillo County do not significantly contribute to nonattainment of the 1997 ozone and PM<sub>2.5</sub> standards in any other state. We are not addressing the prongs of section 110(a)(2)(D)(i) for the 1997 and 2008 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS that pertain to prohibiting air emissions with Albuquerque/Bernalillo County from: (1) Interfering with the maintenance of the relevant NAAQS in any other state and (2) interfering with the measures required to protect visibility in any other state. We also are not addressing the remaining prong for the 2008 ozone and 2006 PM<sub>2.5</sub> NAAQS that pertain to prohibiting emissions from sources within Albuquerque/Bernalillo County from significantly contributing to nonattainment in any other state. We will take action on these prongs of section 110(a)(2)(D)(i) for these particular NAAQS, which address interstate transport, in separate rulemakings.

### B. PSD Requirements

In conjunction with our proposed finding that the Albuquerque/Bernalillo County SIP meets the section 110(a)(1) and (2) infrastructure and interstate transport SIP elements listed above for the four NAAQS, we are also proposing to approve portions of two SIP revisions submitted by the Governor of New Mexico to EPA on May 24, 2006 and

August 16, 2010 to the Albuquerque PSD Permitting Program at 20.11.61 NMAC. These revisions identify NO<sub>x</sub> as a precursor to ozone, identify the precursors for PM<sub>2.5</sub> and the applicable significant emission rates for PM<sub>2.5</sub> PSD permitting, and make other necessary updates to maintain consistency with the federal PSD permitting requirements at 40 CFR 51.166 and 40 CFR Part 51, Appendix W. EPA is taking no action at this time on revisions to the Albuquerque NNSR Permitting program that were submitted to EPA on August 16, 2010. We find that the NNSR permitting program revisions can be severed from our action today on the PSD program revisions since the NNSR revisions are authorized under Title I, Part D of the CAA.

### C. Additional SIP Revisions

EPA also is proposing to approve a portion of a revision submitted on November 6, 2009 to the New Mexico SIP for Ambient Air Quality Standards, codified at 20.11.8 NMAC (Part 8). The substantive revisions submitted to Part 8 revise the local ambient air quality standards to make them consistent with the current NAAQS.

## III. How do the revisions to the Albuquerque/Bernalillo County PSD SIP meet EPA requirements?

### A. Revisions To Address the 1997 and 2008 8-Hour Ozone NAAQS

To meet the requirements of 110(a)(2)(C) for the 1997 and 2008 ozone standard, EPA believes the State must have updated its PSD rules to treat NO<sub>x</sub> as a precursor to ozone (70 FR 71612). On May 24, 2006 and August 16, 2010, the Governor of New Mexico submitted the provisions for NO<sub>x</sub> as a precursor consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 8-hour ozone NAAQS. EPA proposes to approve the May 24, 2006 and August

<sup>25</sup> Section 110(a)(2)(I) is omitted from the list. Section 110(a)(2)(I) pertains to the nonattainment planning requirements of part D, Title I of the Act. This section is not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but are due at the time the nonattainment area plan requirements are due pursuant to section 172. Thus this action does not cover section 110(a)(2)(I).

16, 2010 SIP revisions to Albuquerque/Bernalillo County's PSD permitting regulations that implement the provisions for NO<sub>x</sub> as a precursor because EPA finds these rule revisions necessary to implement the 1997 and 2008 ozone NAAQS. The Albuquerque PSD program satisfies the November 29, 2005 rule as follows. A complete analysis is provided in the TSD for this action.

1. Revising the PSD definition of *Major Stationary Source* to state that a source major for VOC or NO<sub>x</sub> will be considered major for ozone. EPA SIP-approved the revision to the *Major Stationary Source* definition at 20.11.61.7.JJ in our April 26, 2007 final action on the Albuquerque NSR Reform package, see 72 FR 20728.

2. Revising the PSD definition of *Major Modification* to state that any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for VOC or NO<sub>x</sub> shall be considered significant for ozone. Albuquerque adopted the revised definition of *Major Modification* at 20.11.61.7.HH NMAC to include NO<sub>x</sub> as an ozone precursor on April 13, 2006 and submitted to EPA on May 24, 2006.

3. Adding the emission rate for NO<sub>x</sub>, as a precursor to ozone, as 40 tpy, in the PSD definition of *Significant*. The August 16, 2010 submittal revises the definition of *Significant* at 20.11.61.7.YY NMAC and Table 2 at 20.11.61.27 NMAC to identify NO<sub>x</sub> as an ozone precursor.

4. Identifying NO<sub>x</sub> as a precursor for ozone in the definition of *Regulated NSR Pollutant*. As currently SIP-approved at 20.11.61.7.VV(1), the definition of *Regulated NSR Pollutant* identifies NO<sub>x</sub> as an ozone precursor. See EPA's April 26, 2007 approval of the Albuquerque NSR Reform package at 72 FR 20728. The August 16, 2010, revisions to the Albuquerque PSD Program revise the definition of *Regulated NSR Pollutant* to address PM<sub>2.5</sub> requirements (as discussed below) but continue to identify NO<sub>x</sub> as an ozone precursor.

5. Under the PSD requirements, allowing for an exemption with respect to ambient air quality monitoring data for a source with a net emissions increase less than 100 tpy of NO<sub>x</sub>. Albuquerque adopted and submitted revisions to 20.11.61.28 NMAC—Table 3 Significant Monitoring Concentrations on May 24, 2006 and August 16, 2010 to identify NO<sub>x</sub> as an ozone precursor and allow for the aforementioned exemption from ambient air quality monitoring.

#### B. Revisions To Address the 2008 PM<sub>2.5</sub> NSR Rule

To meet the requirements of 110(a)(2)(C) for the 1997 and 2006 PM<sub>2.5</sub> standard, EPA believes that the State must have updated its PSD rules to identify the PM<sub>2.5</sub> precursors and significant emission rates as outlined in our May 16, 2008 rulemaking. The Governor of New Mexico submitted a SIP revision on August 16, 2010 to address the requirements of the 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA proposes to approve the August 16, 2010 SIP revision to Albuquerque/Bernalillo County's PSD permitting regulations that implement the provisions for PM<sub>2.5</sub> permitting because EPA finds these rule revisions adequate and necessary to implement the 1997 and 2006 PM<sub>2.5</sub> NAAQS. The Albuquerque PSD program satisfies the May 16, 2008 rulemaking as follows. A complete analysis is provided in the TSD for this action.

1. Revising the PSD definition of *Significant* to identify the significant emission rates for PM<sub>2.5</sub> precursors. Revisions to the Albuquerque PSD SIP at 20.11.61.7.YY NMAC and 20.11.61.27 Table 2 NMAC were submitted on August 16, 2010, that identify significant emission rates for the PM<sub>2.5</sub> precursors (10 TPY of direct PM<sub>2.5</sub>, 40 TPY of SO<sub>2</sub>, 40 TPY of NO<sub>x</sub> unless demonstrated not to be a PM<sub>2.5</sub> precursor).

2. Revising the PSD definition of *Regulated NSR Pollutant* to identify the PM<sub>2.5</sub> precursors. Revisions to the Albuquerque PSD SIP at 20.11.61.7.VV NMAC submitted on August 16, 2010, revise the definition of *Regulated NSR Pollutant* to identify SO<sub>2</sub> as a PM<sub>2.5</sub> precursor in all attainment and unclassifiable areas, NO<sub>x</sub> is presumed to be a PM<sub>2.5</sub> precursor in all attainment and unclassifiable areas unless demonstrated not to be, and VOC is presumed not to be a PM<sub>2.5</sub> precursor in any attainment or unclassifiable area unless demonstrated otherwise.

3. Reserving a section in the PSD definition of *Regulated NSR Pollutant*. The August 16, 2010 revisions to the Albuquerque PSD SIP reserve a section in the definition of *Regulated NSR Pollutant* at 20.11.61.7.VV(5) NMAC.

4. Revising the PSD definition of *Regulated NSR Pollutant* to require that PM, PM<sub>2.5</sub> and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Revisions to the Albuquerque PSD SIP at 20.11.61.7.VV(6) NMAC submitted on August 16, 2010, revise the definition of

*Regulated NSR Pollutant* to include condensables.

5. Revising the PSD requirements for monitoring by providing an exemption for sources if the pollutant of interest is less than the significant monitoring concentration. The August 16, 2010 revisions at 20.11.61.18(H) NMAC satisfy this requirement.

#### C. Revisions To Address GHG Permitting Requirements

Albuquerque adopted and submitted revisions to the PSD program consistent with EPA's GHG Tailoring Rule requirements on January 10, 2011. EPA evaluated and SIP-approved these PSD provisions in a separate rulemaking on December 29, 2011, see 76 FR 81836. Our approval action found that Albuquerque has the necessary rules and resources in place to apply the PSD permit program requirements to GHG-emitting sources.

#### D. Revisions To Maintain Consistency With Federal PSD Requirements

The May 24, 2006 and August 16, 2010 revisions to the Albuquerque PSD program also included several substantive and non-substantive revisions necessary to maintain consistency with the Federal PSD requirements. The TSD for this action includes a thorough review of each of the revisions, including non-substantive revisions to update internal cross-references and reformat SIP-approved provisions. The TSD also includes an analysis of each of the substantive revisions, which include revising:

- Multiple revisions to PSD definitions at 20.11.61.7 NMAC to maintain consistency with PSD program requirements at 40 CFR 51.166. Definitions substantively revised include: "Baseline area", "Building, structure, facility or installation", "Federally Enforceable", "Regulated NSR Pollutant", "Significant", and "VOC";
- 20.11.61.11 NMAC to include provisions for "hybrid tests for projects that involve multiple types of emission units" consistent with 40 CFR 51.166(a)(7)(iv)(f);
- 20.11.61.12 NMAC to include provision for "reasonable possibility" consistent with 40 CFR 51.166(r)(6)(vi);
- 20.11.61.21 NMAC to update the public notification provisions to require that the proposed control technology and alternatives be included in the notice, pursuant to 40 CFR 51.166(q);
- 20.11.61.23 to provide more clarity to the listed sources for exclusions from increment consumption pursuant to 40 CFR 51.166(f);

- 20.11.61.26 Table 1 NMAC to exclude ethanol production facilities that produce ethanol from natural fermentation from the listed PSD major source categories pursuant to 40 CFR 51.166(b)(1)(i)(a); and
- 20.11.61.27 Table 2 NMAC to include significant emission rates for municipal solid waste landfills pursuant to 40 CFR 51.166(b)(23)(i).

#### IV. How has Albuquerque/Bernalillo County addressed the elements of section 110(a)(2)?

The Albuquerque/Bernalillo County submittals address the elements of Section 110(a)(2) as described below. We provide a more detailed review and analysis of the Albuquerque/Bernalillo County infrastructure SIP elements in the TSD, located in the docket for this proposed rulemaking.

*Enforceable emission limits and other control measures, pursuant to section 110(a)(2)(A):* Section 110(a)(2)(A) requires that all measures and other elements in the SIP be enforceable. This provision does not require the submittal of regulations or emission limits developed specifically for attaining the 1997 and 2008 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. Those regulations are due later as part of attainment demonstrations. Additionally, as explained earlier (see footnote 2), EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1).

Enacted in 1967, the New Mexico Air Quality Control Act (AQCA) provided for the establishment of the Albuquerque-Bernalillo County AQCB as a joint local authority, acting on behalf of both the County of Bernalillo and the City of Albuquerque. Within the exterior boundary of Bernalillo County, the AQCB is authorized to adopt, promulgate, publish, amend and repeal regulations consistent with the New Mexico Air Quality Control Act, and to maintain national ambient air quality standards and prevent or abate air pollution, including regulations prescribing air standards, within Bernalillo County. Through the City of Albuquerque's Department of Environmental Health, the Albuquerque Air Quality Division (AQD) serves as the administrative agency for the AQCB. The AQD is authorized to administer and enforce the provisions of the New Mexico Air Quality Control Act within the boundary of Bernalillo County. The AQCB has promulgated rules to limit and control emissions of, among other things, PM, sulfur compounds

(including SO<sub>2</sub>), nitrogen compounds (including NO<sub>x</sub>), and VOCs.<sup>26</sup> These rules include emission limits, control measures, permits, and compliance schedules and are found in 20.11 NMAC (e.g., 20.11.5 Visible Air Contaminants, 20.11.20 Fugitive Dust Control, 20.11.21 Open Burning, 20.11.22 Wood Burning, 20.11.65 Volatile Organic Compounds, 20.11.66 Process Equipment, 20.11.67 Equipment, Emissions, Limitations, 20.11.67.14 Coal Burning Equipment—Nitrogen Dioxide, 20.11.67.15 Coal Burning Equipment—Sulfur Dioxide, 20.11.67.17 Oil Burning Equipment—Nitrogen Dioxide, 20.11.67.19 Oil Burning Equipment—Sulfur Dioxide, 20.11.68 Incinerators and Crematories, and 20.11.60 NNSR NMAC and 20.11.61 PSD NMAC).

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. However, EPA previously approved provisions with regard to excess emissions as part of the Albuquerque/Bernalillo County SIP (20.11.49 NMAC) on February 4, 2010. See 75 FR 5698. EPA believes that a number of states may have SSM SIP provisions which are contrary to the Act and inconsistent with existing EPA guidance,<sup>27</sup> and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible. Similarly, in this proposed action EPA does not include a review of, and also does not propose to take any action to approve or disapprove, any existing SIP rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions that are contrary to the Act and not consistent with existing EPA guidance (52 FR 45044, November 24, 1987)<sup>28</sup> and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision in its

<sup>26</sup> NO<sub>x</sub> and VOCs are precursors to ozone. PM can be emitted directly and secondarily formed; the latter is the result of NO<sub>x</sub> and SO<sub>2</sub> precursors combining with ammonia to form ammonium nitrate and ammonium sulfate.

<sup>27</sup> "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, dated September 20, 1999.

<sup>28</sup> The section addressing exemptions and variances is found on p. 45109 of the 1987 rulemaking.

SIP that is contrary to the Act and inconsistent with EPA guidance to take steps to correct the deficiency as soon as possible.

A detailed list of the applicable rules at 20.11 NMAC is provided in the TSD. The Albuquerque/Bernalillo County SIP contains enforceable emission limits and other control measures, which are in the federally enforceable SIP. EPA is proposing to determine that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(A) of the Act with respect to the 1997 and 2008 ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Ambient air quality monitoring/data system, pursuant to section 110(a)(2)(B):* Section 110(a)(2)(B) requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. The AQD operates and maintains a network of air quality monitors throughout Bernalillo County; data are collected, results are quality assured and the data are submitted to EPA's Air Quality System<sup>29</sup> on a quarterly basis. The air quality surveillance network undergoes annual review by EPA. EPA evaluated Albuquerque's 2011 Annual Monitoring Network Plan (AAMNP) and approved it on January 13, 2012.<sup>30</sup> The AQD's AAMNP addresses each of the criteria pollutants, including 8-hour ozone and PM<sub>2.5</sub> and thus allows the AQD to measure the Albuquerque/Bernalillo County air quality for compliance with the 1997 and 2008 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> standards.

The AQD's air quality surveillance network consists of nine stations that measure ambient concentrations of the criteria pollutants for which standards have been established in 40 CFR Part 50 (46 FR 2655), including ozone and PM<sub>2.5</sub>. The AQD works closely with EPA Region 6 and the New Mexico Air Quality Bureau to ensure that its monitoring network meets the requirements for monitoring networks at 40 CFR part 58 Appendix D. The AQD's Web site ([www.cabq.gov/airquality](http://www.cabq.gov/airquality)) and EPA's AirNow Web site ([www.airnow.gov](http://www.airnow.gov)) contain up-to-date information about air quality monitoring, including a description of the network, information about

<sup>29</sup> The Air Quality System (AQS) is EPA's repository of ambient air quality data. AQS stores data from over 10,000 monitors, 5,000 of which are currently active. State, Local and Tribal agencies collect the data and submit it to AQS on a periodic basis.

<sup>30</sup> A copy of EPA's evaluation and approval is in the docket for this rulemaking.

monitoring of ozone and PM<sub>2.5</sub>, and the daily Air Quality Index (AQI).

In summary, Albuquerque/Bernalillo County meets the requirements to establish, operate, and maintain an ambient air monitoring network, collect and analyze the monitoring data, and make the data available to EPA upon request. EPA is proposing to find that the current Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(B) of the Act for the 1997 and 2008 ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Program for enforcement of control measures and regulation of the modification and construction of stationary sources, including a permit program, pursuant to section 110(a)(2)(C):* The New Mexico Air Quality Control Act provides the AQCB with enforcement authority and Albuquerque/Bernalillo County has an EPA-approved air permitting program SIP for both major and minor sources. The administrative proceedings for enforcement actions, including administrative compliance orders and determination of penalty, are provided in 20.11.90 NMAC (75 FR 5698, February 4, 2010). The rules at Title 20, Chapter 11 of NMAC address allowable emission rates, compliance, control technology requirements, control schedules, monitoring and testing requirements, and reporting and recordkeeping requirements. These clarify the boundaries beyond which regulated entities in Albuquerque/Bernalillo County can expect enforcement action.

Bernalillo County Ordinance 94-5, also known as the Joint Air Quality Control Board Ordinance,<sup>31</sup> provides the AQD with authority to enforce permitting provisions, and provides for assessment of administrative enforcement actions and administrative penalties for violations of those permit terms and conditions, and injunctive relief (Bernalillo County Ordinance 94-5, Sections 9-18). The Albuquerque/Bernalillo County AQCB and AQD have the necessary legal authority and jurisdiction to adopt and implement requirements for measuring and monitoring air emissions and to require owners and operators of sources to make

<sup>31</sup> EPA approved Bernalillo County Ordinance 88-45 into the Albuquerque/Bernalillo County SIP in a June 1, 1999 rulemaking (64 FR 29235). Albuquerque/Bernalillo County has since amended the ordinance and re-codified it as Bernalillo County Ordinance 94-5. EPA will act on this amended ordinance in a future rulemaking. For purposes of the I-SIP discussion, we will cite to the current ordinance. The Joint Air Quality Control Board Ordinance 94-5 is also cited as legal authority in 20.11.1.3 NMAC, which is SIP-approved.

and maintain records of the emissions. Therefore, the Albuquerque/Bernalillo County AQCB and AQD have the requisite legal authority to implement and enforce the minor and major permit revision procedures in accordance with the requirements of the CAA.

To meet the requirement for having a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required by part C and part D of the CAA, generally, the State is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 1997 and 2008 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS. We are not evaluating nonattainment-related provisions, such as the nonattainment NSR program required by part D in 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for these four NAAQS because these submittals are required beyond the date (three years from NAAQS promulgation) that section 110 infrastructure submittals are required.

PSD programs apply in areas that are meeting the NAAQS, referred to as attainment areas, or in areas that are unclassifiable, referred to as unclassifiable/attainment areas. PSD applies to new major sources and major modifications at existing sources. The Albuquerque/Bernalillo County PSD SIP program, found at 20.11.61 NMAC, was initially approved into the SIP on December 21, 1993, effective January 20, 1994 at 58 FR 67330. Subsequent revisions to the Albuquerque/Bernalillo County PSD SIP program were adopted by the AQCB on December 14, 2005, submitted May 24, 2006, and approved into the SIP on April 26, 2007 at 72 FR 20728. The AQD has the authority to issue PSD permits and enforce them under the approved PSD SIP, while the AQCB has appellate authority over the permitting.<sup>32</sup>

Additionally, as explained in sections II.B and III of this notice, EPA is proposing to approve revisions to the PSD program that were adopted by the AQCB on April 13, 2006 and July 14,

<sup>32</sup> Under the Bernalillo County Joint Air Quality Control Board Ordinance, the AQD "shall administer and enforce the provisions of the Air Quality Control Act," while the AQCB "shall adopt, promulgate, publish, amend and repeal regulations." Moreover, Any person who participated in a permitting action before the [AQD] and who is adversely affected by such permitting action may file a petition for hearing before the board." See Ordinance 88-45, Sections 7(A)-(H).

2010, submitted May 24, 2006 and August 16, 2010, respectively.

*PSD Permitting for Sources that are Major for Ozone Precursors:* To implement section 110(a)(2)(C) for the 1997 and 2008 ozone NAAQS, a state must have updated its PSD rules to address NO<sub>x</sub> as an ozone precursor (70 FR 71612). On May 24, 2006 and August 16, 2010, the Governor submitted the provisions for NO<sub>x</sub> as a precursor, consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 ozone NAAQS (70 FR 71612) as part of its revisions to 20.11.61 NMAC. Based on our review and analysis of the May 24, 2006 and August 16, 2010 submittals, EPA is proposing to approve the following revisions to the Albuquerque/Bernalillo County PSD SIP as necessary to implement the provision for NO<sub>x</sub> as a precursor to ozone consistent with 70 FR 71612: revisions to 20.11.61.7.HH *Major Modification* adopted April 13, 2006 and submitted May 24, 2006, revisions to 20.11.61.7.YY *Significant*, and 20.11.61.27 Table 2—*Significant Emission Rates* adopted July 14, 2010 and submitted August 16, 2010; revisions to 20.11.61.7.VV *Regulated New Source Review Pollutant* adopted July 12, 2010 and submitted August 16, 2010; and revisions to 20.11.61.28 Table 3—*Significant Monitoring Concentrations* adopted on April 13, 2006 and July 14, 2010 and submitted on May 24, 2006 and August 16, 2010, respectively. Please see sections II.B and III of this notice and the TSD accompanying this rulemaking for additional information about how the May 24, 2006 and August 16, 2010 PSD SIP revisions satisfy section 110(a)(2)(C) for the 1997 and 2008 8-hour ozone NAAQS.

*PM<sub>2.5</sub> PSD Permitting:* To implement the PSD permitting component of section 110(a)(2)(C) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, states were required to submit the necessary SIP revisions to EPA by May 16, 2011 under EPA's 2008 PM<sub>2.5</sub> NSR rule. On July 14, 2010 the AQCB adopted these revisions effective August 30, 2010. On August 16, 2010, the Governor submitted necessary revisions to the Albuquerque/Bernalillo County SIP to amend the PSD program to meet the 1997 and 2006 PM<sub>2.5</sub> NAAQS implementation requirements. EPA is proposing to approve the following revisions to the Albuquerque/Bernalillo County PSD SIP adopted on July 14, 2010 and submitted on August 16, 2010 in today's action: revisions to 20.11.61.7.YY *Significant* and 20.11.61.27 Table 2—*Significant Emission Rates*; revisions to 20.11.61.7.VV *Regulated NSR Pollutant*; and revisions to 20.11.61.18(H)—

Monitoring Requirements Air Quality Analysis. Please see sections II.B and III of this notice and the accompanying TSD for more information on our approval of revisions to the PSD Program for PM<sub>2.5</sub> permitting.

**GHG PSD Permitting:** The Tailoring Rule established thresholds that phase in the applicability of PSD requirements to GHG sources, starting with the largest GHG emitters, and were designed to relieve the overwhelming administrative burdens and costs associated with the dramatic increase in permitting burden that would have resulted from applying PSD requirements to GHG emission increases at or above only the mass-based statutory thresholds of 100/250 tons per year generally applicable to all PSD-regulated pollutants starting on January 2, 2011. However, EPA recognized that even after it finalized the Tailoring Rule, many SIPs with approved PSD programs would, until they were revised, continue to apply PSD at the statutory thresholds, even though the States would not have sufficient resources to implement the PSD program at those levels. EPA consequently implemented its “PSD SIP Narrowing Rule” and narrowed its approval of those provisions of previously approved SIPs that apply PSD to GHG emissions increases from sources emitting GHGs below the Tailoring Rule thresholds (75 FR 82536, December 30, 2010). Through the PSD SIP Narrowing Rule, EPA withdrew its previous approvals of those programs to the extent the SIPs apply PSD to increases in GHG emissions from GHG-emitting sources below the Tailoring Rule thresholds. The portions of the PSD programs regulating GHGs from GHG-emitting sources with emission increases at or above the Tailoring Rule thresholds remained approved. The effect of EPA narrowing its approval in this manner is that the provisions of previously approved SIPs that apply PSD to GHG emissions increases from sources emitting GHGs below the Tailoring Rule thresholds have the status of having been submitted by the State but not yet acted upon by EPA (75 FR 82536).

On December 15, 2010, the Governor submitted a revision to the SIP to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for GHG emissions. The PSD SIP revision to address GHGs was approved by the EPA on December 29, 2011 (76 FR 81836). Thus, the GHG emission thresholds for PSD applicability set forth in EPA’s Tailoring Rule, ensuring that smaller

GHG sources emitting less than these thresholds are not subject to section 110 of the CAA were approved.

**Minor Source Permitting:** 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, 71677). This duty is often referred to as “minor NSR.” EPA provides states with a “broad degree of discretion” in implementing their minor NSR programs (71 FR 48696, 48700, August 21, 2006). The “considerably less detailed” regulations for minor NSR are provided in 40 CFR 51.160 through 51.164. We have determined that the Albuquerque/Bernalillo County minor NSR regulations at 20.11.41 NMAC approved as part of the SIP pursuant to section 110(a)(2)(C) regulate emissions of ozone and its precursors and PM. Albuquerque/Bernalillo County and EPA have relied upon the Albuquerque/Bernalillo County SIP-approved existing minor NSR program to ensure that new and modified sources not captured by the major NNSR or PSD permitting programs do not interfere with attainment and maintenance of the NAAQS.

It is important to stress that EPA is not proposing to approve or disapprove the Albuquerque/Bernalillo County existing minor NSR SIP program itself to the extent that it may be inconsistent with EPA’s regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR SIP programs with EPA’s regulatory provisions for the 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 in order to give the states an appropriate level of flexibility to design programs that meet their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

Based on the above, we are proposing to find that the current Albuquerque/Bernalillo County PSD SIP meets section 110(a)(2)(C) with respect to the 1997 and 2008 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Interstate transport, pursuant to section 110(a)(2)(D):* Section 110(a)(2)(D) has two components, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii).

Section 110(a)(2)(D)(i) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

*PSD and interstate transport, pursuant to section 110(a)(2)(D)(i):* One of the four prongs in section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other state’s required measures to prevent significant deterioration of its air quality. This is the only element of 110(a)(2)(D)(i) on which EPA is proposing action in this rulemaking. EPA’s 2006 Guidance made recommendations for SIP submissions to meet this requirement with respect to both the 1997 8-hour ozone NAAQS and the 1997 PM<sub>2.5</sub> NAAQS.

The 2006 Guidance states that the PSD permitting program is the primary measure that each state must include to prevent interference with any other state’s required measures to prevent significant deterioration of its air quality in accordance with section 110(a)(2)(D)(i)(II).

As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the Albuquerque/Bernalillo County PSD program is in the SIP and meets the basic requirements for implementing the ozone and PM<sub>2.5</sub> NAAQS. We are proposing to approve the portion of the submission from August 16, 2010 that has adequately addressed section 110(a)(2)(D)(i)(II) of the CAA, for the element that requires that the SIP prohibit air pollutant emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state.

Consistent with EPA’s November 29, 2005 Phase 2 rule for the 1997 8-hour ozone NAAQS, the State submitted SIP revisions to modify its PSD provisions to address NO<sub>x</sub> as an ozone precursor. Also consistent with EPA’s 2008 PM<sub>2.5</sub> NSR rule, the State submitted SIP revisions to modify its PSD provisions to adequately implement the 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA is approving these revisions and they have been discussed previously in this notice. EPA believes that the PSD revision for the

1997 8-hour ozone NAAQS that makes NO<sub>x</sub> a precursor for ozone for PSD purposes, and the PSD revisions to implement the EPA's 2008 PM<sub>2.5</sub> NSR SIP rule, taken together with the PSD SIP and the interstate transport SIP, satisfy the requirements of the third element of section 110(a)(2)(D)(i) for the 1997 and 2008 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS, *i.e.*, there will be no interference with any other state's required PSD measures.

We are proposing to determine that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures required to prevent significant deterioration of air quality for the 1997 and 2008 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS in any other state. This rulemaking action is being taken under section 110(a) of the CAA.

In a prior action, EPA approved Albuquerque/Bernalillo County SIP revisions that addressed the requirements of section 110(a)(2)(D)(i)(I) of the CAA that emissions from sources in Albuquerque/Bernalillo County do not significantly contribute to nonattainment of the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS in any other state (75 FR 68447). The final rule was effective December 8, 2010. The SIP revision demonstrated that air pollutant emissions from sources within Albuquerque/Bernalillo County do not significantly contribute to nonattainment of the relevant NAAQS in any other state for those pollutants. The remaining three elements of section 110(a)(2)(D)(i): (1) Do not significantly contribute to nonattainment of the relevant NAAQS in any other state for the 2008 ozone NAAQS and the 2006 PM<sub>2.5</sub> NAAQS; (2) interference with the maintenance of the NAAQS in any other state for all four NAAQS; (3) interference with measures required to protect visibility in any other state will be evaluated and addressed in future rulemakings.

*Interstate and international pollution abatement, pursuant to section 110(a)(2)(D)(ii):* Section 110(a)(2)(D)(ii) of the Act requires compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Section 115(a) addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. Pursuant to section 115, the Administrator has neither received nor issued a formal notification that emissions from Albuquerque/Bernalillo County are endangering public health or welfare in a foreign country. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such

sources. Albuquerque/Bernalillo County also has no pending obligations under section 126 of the Act.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(D)(ii) of the Act for the 1997 and 2008 ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Adequate personnel, funding, and authority, pursuant to section 110(a)(2)(E):* As stated previously, the Albuquerque/Bernalillo County AQCB is the federally delegated air quality authority for Albuquerque and Bernalillo County, New Mexico. The New Mexico Air Quality Control Act (AQCA, section 74-2-4) authorizes Albuquerque/Bernalillo County to locally administer and implement the State Air Quality Control Act by providing for a local air quality control program. Thus, state law views Albuquerque/Bernalillo County and the remainder of the State of New Mexico as distinct air quality control entities. The AQCA also provides for the establishment of the Albuquerque/Bernalillo County AQCB as a joint local authority, acting on behalf of both the County of Bernalillo and the City of Albuquerque. Within the boundary of Bernalillo County, the AQCB is authorized to adopt, promulgate, publish, amend and repeal regulations consistent with the New Mexico Air Quality Control Act, and to maintain national ambient air quality standards and prevent or abate air pollution, including regulations prescribing air standards, within Bernalillo County (with the exception of tribal lands).

Through the City of Albuquerque's Department of Environmental Health, the Albuquerque Air Quality Division (AQD) serves as the administrative agency for the AQCB. The AQD is authorized to administer and enforce the provisions of the New Mexico Air Quality Control Act within the boundary of Bernalillo County.

The City of Albuquerque and Bernalillo County Ordinances approved into the SIP on June 1, 1999 provide assurances that Albuquerque/Bernalillo County has the adequate personnel and funding to carry out their SIP.<sup>33</sup> The August 16, 2010 Albuquerque/Bernalillo County SIP submittal from the Governor includes a discussion of funding and personnel resources for carrying out the programs of the SIP for demonstrating attainment of 1997 and 2006 PM<sub>2.5</sub> and 1997 and 2008 ozone NAAQS. The submittals state that budgets are approved annually by the Albuquerque City Council, and that the annual

budgeting process provides a periodic update that enables the AQD to adjust funding and personnel needs to carry out air programs to meet the CAA. The Bernalillo County Joint Air Quality Ordinance authorizes the AQCB to adopt rules, pursuant to AQCA section 74-2-7, for establishing fees, to review and act on permit applications; amend and review permits; conduct inspections of facilities; and enforce the rules and orders of permits. Fees collected pursuant to this ordinance are then deposited into a fund created by section 74-2-16 of the AQCA, which must be used by the municipality or county only for the purpose of paying the reasonable costs of, among other things, reviewing and acting on permit applications, implementing and enforcing rules of the permit, air monitoring, air modeling, preparing guidance, and preparing emission inventories.

Additionally, there are federal sources of funding for the implementation of the 1997 and 2008 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS through, for example, the CAA sections 103 and 105 grant funds. The AQD receives federal funds on an annual basis, under sections 103 and 105 of the Act, to support its air quality programs. The AQD has authority to collect fees for Title V and non-Title V permit applications, revisions, renewals and inspections pursuant to New Mexico AQCA, New Mexico Statutes Annotated (NMSA) 1978 Sections 74-2-4, 74-2-5 and 74-2-7, the Bernalillo County Ordinance 94-5 Sections 3, 4 and 7, and the revised ordinances of Albuquerque 1994, Section 9-5-1-3, Section 9-5-1-4 and Section 9-5-1-7. For example, New Mexico AQCA Section 74-2-7(B)(7) requires by regulation a schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 Amendments to the Federal Clean Air Act. The SIP-approved regulation that addresses permit fees, AQCB Air Quality Control Regulation Section 21—Permit Fees (April 10, 1980 at 45 FR 24460) was repealed and replaced by the Albuquerque/Bernalillo County AQCB rule effective July 1, 2001 and recodified as 20.11.2 NMAC. It was submitted as a SIP revision on May 24, 2011. We have proposed to approve the revisions that repeal and replace the existing SIP rule but have not finalized our action (November 4, 2011, 76 FR 68385). A detailed list of the applicable sections of the NMAC is provided in the TSD. More specific information on permitting fees is provided in the discussion for 110(a)(2)(L) below and in the TSD.

<sup>33</sup> See 64 FR 29235.

Section 110(a)(2)(E)(ii) requires that states comply with section 128. Section 128 requires: (1) That the majority of members of the state body which approves permits or enforcement orders do not derive any significant portion of their income from entities subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. On June 1, 1999, the EPA approved into the SIP the AQCB Ordinances and provisions of the ACQA that pertain to financial disclosures, conflicts of interest, code of conduct and ethical conduct for the Executive Director and classified employees of the agency (64 FR 29235). The EPA action, effective August 2, 1999, approved the SIP revisions for Board composition and conflict of interest disclosure requirements submitted by the Governor for Albuquerque/Bernalillo County. These include public interest requirements and safeguards against conflict of interest and are codified in the City of Albuquerque Ordinances, 2–6–1–3(A)(4), 9–5–1–3(B)(4), 9–5–1–3(E) and County Ordinance 94–5, Section (3)(E) Joint Air Quality Control Board Ordinance. For example, County Ordinance 94–5 Section (3)(E) states:

Any member of the Board who has a conflict of interest regarding a matter before the Board shall disqualify himself or herself from the discussion and shall abstain from the vote on such matter. A conflict of interest means any interest which may yield, directly or indirectly any monetary or other material benefit to the Board member or the member's spouse or minor child.<sup>34</sup>

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(E) of the Act for the 1997 and 2008 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Stationary source monitoring system, pursuant to section 110(a)(2)(F):* Rules that require stationary sources to monitor for compliance, provide recordkeeping and reporting, and provide for enforcement of ozone, PM<sub>2.5</sub>, and precursors to these pollutants (SO<sub>2</sub>, ammonia, VOCs and NO<sub>x</sub>), consistent with the requirements of 40 CFR part 51, subpart K have been approved into the Albuquerque/Bernalillo County SIP and codified at 20.11.1 NMAC (General Provisions, 70 FR 41963, July 21, 2005), 20.11.5 NMAC (Visible Air Contaminants, 69 FR 78312, Dec. 30, 2004), 20.11.40 NMAC (Source

Registration, 69 FR 78312), 20.11.49 NMAC (Excess Emissions, 75 FR 5698, Feb. 4, 2010), 20.11.66 NMAC (Process Equipment, 69 FR 78312), 20.11.67 NMAC (Equipment, Emissions, Limitations, 69 FR 78312), and 20.11.90 NMAC (Source Surveillance, 75 FR 5698). Requirements in 20.11.47 NMAC (Emission Inventory Requirements) provide for the reporting of emission inventories on a schedule consistent with EPA regulations at 40 CFR 51.211, subpart K—Source Surveillance. 20.11.42 NMAC, Operating Permits, encompasses the Title V operating permit program for facilities within Bernalillo County. The Title V program is a delegated program and does not reside in the SIP.<sup>35</sup>

Under the Albuquerque/Bernalillo County SIP rules, the AQD is required to analyze the emissions data from point, area, mobile, and biogenic (natural) sources. The AQD uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with Albuquerque/Bernalillo County and EPA requirements. Additionally, the AQD air quality inspectors compare source emissions to emission limitations and standards pursuant to 20.11.90.6 NMAC. Emissions data are available electronically: <http://www.epa.gov/ttn/chief/eiinformation.html>. These rules are in the federally-approved SIP. A comprehensive list of the chapters and **Federal Register** citations is provided in the TSD.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(F) for the 1997 and 2008 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Emergency power, pursuant to section 110(a)(2)(G):* Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. The AQCB and AQD are empowered by the New Mexico Air Quality Control Act to respond to air pollution episodes and other air quality emergencies, and the AQCB adopted contingency plans to implement emergency episode provisions in the SIP. The Air Pollution Episode Contingency Plan for Bernalillo

County was approved into the SIP on August 12, 1991 (56 FR 38073, effective October 11, 1991). The Albuquerque/Bernalillo County Air Pollution Episode Contingency Plan (Plan) addresses all the necessary requirements for a Priority 1 region (defined in 40 CFR 51.150).

First, the Plan includes significant harm levels for sulfur dioxide, particulate matter, carbon monoxide, ozone, and nitrogen dioxide as per 40 CFR 51.151. Second, the Plan adequately addresses all requirements for contingency plans outlined in 40 CFR 51.152. Three stages of episode criteria as per 40 CFR 51.152(a)(1) and 40 CFR 51, appendix L, are set forth: air pollution alert, air pollution warning, and air pollution emergency. Prior to reaching the first episode stage, an air Stagnation Advisory will be in effect. This is initiated when the AQD is notified by the National Weather Service (NWS) that air stagnation conditions will persist for a period of 36 hours or more within the Middle Rio Grande portion of New Mexico (includes Bernalillo County). The Episode Criteria Table on page 3 of the Plan shows alert, warning, emergency, and significant harm levels for each of the pollutants. The Plan also provides for public announcement of, and specifies adequate emission control actions to be taken at, each episode stage (40 CFR 51.152(a)(2) and 40 CFR 51.152(a)(3)). Finally, the Plan sufficiently addresses the requirements of 51.152(b)(1–3) concerning prompt acquisition of forecasts of atmospheric stagnation conditions including updates, source compliance inspections, and communication procedures.

The criteria for ozone are based on a 1-hour average ozone level. These episode criteria and contingency measures are adequate to address 8-hour ozone emergency episodes and are in the federally approved SIP. The Albuquerque/Bernalillo County Plan provides for the pollutants specified under 40 CFR 51.150, including particulate matter, and is consistent with the provisions of 40 CFR 51.151 and 152, and Appendix L to Part 51.

The 2009 Infrastructure SIP Guidance for PM<sub>2.5</sub> recommends that a state with at least one monitored 24-hour PM<sub>2.5</sub> value exceeding 140.4 µg/m<sup>3</sup> since 2006 establish an emergency episode plan and contingency measures to be implemented should such level be exceeded again. The 2006–2010 ambient air quality monitoring data for Albuquerque/Bernalillo County do not exceed 140.4 µg/m<sup>3</sup>. The PM<sub>2.5</sub> levels have consistently remained below this level (140.4 µg/m<sup>3</sup>), and furthermore, the AQCB has appropriate general

<sup>34</sup> As explained in greater detail in footnote 31, Bernalillo County Ordinance 94–5 amended Ordinance 88–45, which is in the Albuquerque/Bernalillo County SIP. EPA will act on Bernalillo County Ordinance 94–5 in a future rulemaking.

<sup>35</sup> EPA approved the Albuquerque/Bernalillo County Title V program (20.11.42 NMAC, Operating Permits) on November 26, 1996 (61 FR 60032, effective January 27, 1997) and subsequent revisions on September 8, 2004 (69 FR 54244, effective November 8, 2004).

emergency powers to address PM<sub>2.5</sub> related episodes to protect the environment and public health. Given Albuquerque/Bernalillo County's monitored PM<sub>2.5</sub> levels, EPA is proposing that Albuquerque/Bernalillo County is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 and 2006 PM<sub>2.5</sub> standards. Additional detail is provided in the TSD.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(G) for the 1997 and 2008 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Future SIP revisions, pursuant to section 110(a)(2)(H):* The New Mexico AQCA directs the AQD to prepare and develop the SIP and provides the AQD with the authority to carry out other duties, requirements and responsibilities necessary for the implementation and fulfillment of the requirements of the CAA. The New Mexico AQCA (section 74–2–4) delegates authority to AQCB to adopt, promulgate, publish, amend and repeal regulations consistent with the AQCA to attain and maintain NAAQS and prevent or abate air pollution. Thus, the AQCB has the authority (AQCA Section 74–2–5.1) to revise the SIP from time to time as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. Furthermore, the AQCB also has the authority under these New Mexico AQCA provisions to revise the SIP in the event the EPA, pursuant to the federal CAA, finds the SIP to be substantially inadequate to attain the NAAQS.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(H) for the 1997 and 2008 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Consultation with government officials, pursuant to section 110(a)(2)(J):*<sup>36</sup> The New Mexico AQCA (section 74–2–5—Duties and Powers of the Local Board) and Air Quality Control Board Ordinances gives the AQD and AQCB authority to advise, consult, contract and cooperate with municipalities, counties, other states, the federal government and other interested persons or groups in regards

<sup>36</sup> Section 110(a)(2)(J) is divided into three segments: consultation with government officials; public notification; and PSD and visibility protection.

to matters of common interest in the field of air quality control. The County Ordinance 94–5 “establishes powers and duties of the Board for providing for the adoption, administration and enforcement of the regulations; providing for variances; providing for permits; providing for special regulations consistent with Federal and State requirements for prevention of significant deterioration, new source performance standards, national emissions standards for hazardous air pollutants and providing for operating permits and fees as required by the 1990 Amendments to the Federal CAA.” Additionally, 20.11.82 NMAC—Rulemaking Procedures standardizes the procedures used in rulemaking proceedings before the AQCB, including public notice. These rules and regulations comply with the requirements of section 121 of the CAA that requires that states provide a satisfactory process of consultation with general purpose local governments. Furthermore, Bernalillo County Ordinance 94–5 states that any regulations adopted by the AQCB must include, among other things, any information that the AQD deems necessary; specification of public notice; comment period and public period; provisions requiring notice to the New Mexico Environment Department for permitting sources that emit 100 or more tpy of any regulated air contaminant; and provisions that require notice to, and review by, EPA. These rules comply with the requirements of CAA section 121.

Therefore, EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets this portion of the section 110(a)(2)(J) requirements for the 1997 and 2008 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Public notification if NAAQS are exceeded, pursuant to section 110(a)(2)(J):* Public notification begins with the air quality forecasts, which advise the public of conditions capable of exceeding the 8-hour ozone and PM<sub>2.5</sub> NAAQS. The air quality forecasts for Albuquerque/Bernalillo County can be found on the City of Albuquerque<sup>37</sup> Web site at [www.cabq.gov/airquality](http://www.cabq.gov/airquality) and are updated hourly. Ozone forecasts are made daily during the ozone season for the Bernalillo County. The ozone forecasts are made, in most cases, a day in advance local time and are valid for

the next day. Ozone readings/warnings and the daily air quality index for the area are generated automatically, and sent to the all persons that have signed up on the City of Albuquerque Web site ([www.cabq.gov/airquality/enviroflash.html](http://www.cabq.gov/airquality/enviroflash.html)) to receive email updates, which includes the public, various stakeholders and government officials. This Air Quality Notification System is a service through airnow.gov and is called EnviroFlash. EnviroFlash is a system that sends emails about daily air quality forecasts. The message is the same air quality information that the local radio or television stations provide, plus suggested safety measures when air quality levels are unhealthy. Additionally, the air quality index is available via telephone by calling the AQD. Public notice is governed by the New Mexico AQCA (section 74–2–6) and 20.11.82 NMAC—Rulemaking Procedures Air Quality Control Board.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets this portion of the section 110(a)(2)(J) requirements for the 1997 and 2008 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*PSD and visibility protection, section 110(a)(2)(J):* This portion of section 110(a)(2)(J) in part requires that a state's SIP meet the applicable requirements of section 110(a)(2)(C) as relating to PSD programs. As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the Albuquerque/Bernalillo County's PSD program is in the SIP (12/21/93 at 58 FR 67330 and 4/26/07 at 72 FR 20728). In addition to the approved program and to meet the requirements of 110(a)(2)(C) and 110(a)(2)(D)(i) for 1997 and 2008 ozone standard, EPA believes Albuquerque/Bernalillo County must have updated its PSD rules to treat NO<sub>x</sub> as a precursor for ozone. Thus, we are proposing to approve the SIP revisions (submitted May 24, 2006 and August 16, 2010) to implement NO<sub>x</sub> as a precursor to ozone. To implement section 110(a)(2)(C) for the 1997 and 2006 PM<sub>2.5</sub> standard, states must provide a SIP revision due May 16, 2011 under EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321). The AQCB adopted rules on July 14, 2010 to meet this requirement and the Governor submitted them on August 16, 2010 for approval as a SIP revision. We discuss our proposal to approve these revisions and the revisions implementing NO<sub>x</sub> as a precursor to ozone in further detail in this rulemaking and in the TSD.

The most recent New Mexico SIP revision of the Albuquerque/Bernalillo

<sup>37</sup> As discussed earlier in this proposed action, the Albuquerque Air Quality Division is a part of the City of Albuquerque's Department of Environmental Health. The AQD serves as the administrative agency for the Bernalillo County Air Quality Control Board, which encompasses the City of Albuquerque.

County Regional Haze program, which addresses the visibility transport prong for Albuquerque/Bernalillo County, was submitted to EPA on July 28, 2011. We are evaluating this submittal and will be proposing action on the Regional Haze submittal in Spring of 2012. With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation “triggered” under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary PM<sub>2.5</sub> NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the visibility protection requirements of section 110(a)(2)(J) for the 1997 and 2008 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Air quality and modeling and submission of data, pursuant to section 110(a)(2)(K):* The New Mexico Air Quality Control Act charges the AQCB and AQD with preparing and implementing the SIP, which includes modeling to inform decisions on nonattainment area boundaries and demonstrate effectiveness of SIP control strategies.

The AQD's air quality modeling work complies with EPA's guidance on the use of models in attainment demonstrations for the 8-hour ozone standard and uses EPA's latest draft final guidance for modeling PM<sub>2.5</sub> consistent with the air quality modeling requirements in 40 CFR 52.21(l) and (m). EPA Region 6 and AQD modeling staff have communicated on numerous occasions regarding modeling for Bernalillo County. Additionally, 20.11.61 NMAC Prevention of Significant Deterioration requires approval of permits consistent with the modeling requirements of 40 CFR 51.21(l) and (m). As stated in the August 16, 2010 SIP submittal, the AQD commits to continue to use air quality models in accordance with EPA's currently approved modeling guidance and protocols and the continued submittal of data and modeling results to EPA.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(K) for the 1997 and 2008 8-

hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Permitting fees, section 110(a)(2)(L):* The AQD has authority to collect fees for Title V<sup>38</sup> and non-Title V permit applications, revisions, renewals and inspections pursuant to New Mexico AQCA, New Mexico Statutes Annotated (NMSA) 1978 Sections 74-2-4, 74-2-5 and 74-2-7, the Bernalillo County Ordinance 94-5—Joint Air Quality Control Board Sections 3, 4 and 7, and the revised ordinances of Albuquerque 1994, Section 9-5-1-3, Section 9-5-1-4 and Section 9-5-1-7. For example, New Mexico AQCA Section 74-2-7(B)(7) requires by regulation a schedule of emission fees consistent with the Title V provisions of Section 502(b)(3) of the CAA. The SIP-approved regulation that addresses permit fees, AQCB Air Quality Control Regulation Section 21—Permit Fees (April 10, 1980 at 45 FR 24460) was repealed and replaced by the more stringent and broader in scope Albuquerque/Bernalillo County AQCB rule effective July 1, 2001 and recodified as 20.11.2 NMAC. It was submitted as a SIP revision on May 24, 2011. We have proposed to approve the revisions that repeal and replace the existing SIP rule but have not finalized our action (November 4, 2011, 76 FR 68385). A detailed list of the applicable sections of the NMAC is provided in the TSD.

The submitted revision that we have proposed to approve addresses fees for reviewing and acting on specific permit applications received by the AQCD; fees to partially offset the administrative costs of permit-related administrative hearings; funding for small business stationary sources; and fees to cover administrative expenses. The comment period on the proposal closed on December 5, 2011. No comments were received.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(L) for the 1997 and 2008 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Consultation/participation by affected local entities, section 110(a)(2)(M):* New Mexico is divided in two air authorities, Albuquerque/Bernalillo County and State of New Mexico covering the remaining counties. Each authority is responsible for controlling air pollution

<sup>38</sup> Albuquerque/Bernalillo County has an federally-approved Title V fee program in place. EPA approved Albuquerque/Bernalillo County's Title V fee program as part of its Title V Operating Permit Program on November 26, 1996. See 61 FR 60032. EPA approved revisions to the Albuquerque/Bernalillo County Title V fee program on September 8, 2004. See 69 FR 54244.

emitted by stationary sources within its respective jurisdiction. The AQD, consistent with regulations adopted by the AQCB, consults with and provides liaison to the New Mexico Environment Department's Air Quality Bureau and provides frequent and regular communication and consultation with their management and staff. Section 5(B)(4) of the AQCA authorizes the AQD to advise, consult, contract and cooperate with municipalities, counties, other states, the federal government and other interested persons or groups in regards to matters of common interest in the field of air quality control. The AQCB is required to conduct public hearings and to solicit testimony from the public when plans or rules are proposed to be adopted by the AQCB for inclusion into the SIP. Consultation and public involvement are also required by 20.11.3 NMAC, Transportation Conformity (75 FR 20922, April 22, 2010). For example, Subsection (F) Public Consultation Procedures of 20.11.3.105 NMAC, requires “affected agencies making conformity determinations on transportation plans, programs and projects shall establish a proactive public involvement process that provides opportunity for public review and comments \* \* \*” EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(M) for the 1997 and 2008 8-hour ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

## V. Additional Revisions to the Albuquerque/Bernalillo County SIP

EPA is also proposing to approve a portion of a SIP submission that addresses Ambient Air Quality Standards.

*Ambient Air Quality Standards:* The provisions for ambient air quality standards are addressed at 20.11.8 NMAC, or Part 8 of the Albuquerque/Bernalillo County SIP. This provision was approved into the SIP on May 31, 2006 (71 FR 30805). This provision incorporates by reference the state ambient air quality standards and summarizes the local ambient air quality standards that are identical to the NAAQS, which are codified at 40 CFR Part 50.4 et seq. On November 6, 2009, the Governor of New Mexico submitted a revision to the New Mexico SIP that included among other things, Ambient Air Quality Standards, codified at 20.11.8 NMAC (Part 8). The substantive revisions submitted to Part 8 again revise the local ambient air quality standards to make them consistent with the current NAAQS. Specifically, the standards for carbon monoxide (CO), ozone (O<sub>3</sub>), sulfur

dioxide ( $\text{SO}_2$ ),  $\text{PM}_{2.5}$ ,  $\text{PM}_{10}$  and lead (Pb) were revised to reflect the new standards for those pollutants. Non-substantive revisions are editorial in nature with the replacement of terms and other clarifications or typographical corrections. We are proposing to approve the severable portion of the November 6, 2009 SIP revision submittal that revises Part 8, because it will ensure that the Albuquerque/Bernalillo County SIP contains standards that are consistent with the latest Federally-promulgated NAAQS. Appendix A of the TSD for this rulemaking provides more detail regarding the specific revisions.

## VI. Proposed Action

We are proposing to approve the submittals provided to demonstrate that the Albuquerque/Bernalillo County SIP meets the infrastructure elements for the 1997 and 2008 ozone and 1997 and 2006  $\text{PM}_{2.5}$  NAAQS listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act);

Interstate transport, pursuant to section 110(a)(2)(D)(ii) of the Act;

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

We are also proposing to approve the portion of the Albuquerque/Bernalillo County SIP revision submittal that addresses the requirement of section (110)(a)(2)(D)(i)(II) of the Act that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures required in the SIP of any other state under part C of the Act regarding PSD for the 1997 and 2008 8-hour ozone and 1997 and 2006  $\text{PM}_{2.5}$  NAAQS.

We are proposing to approve Albuquerque/Bernalillo County PSD SIP provisions to 20.11.61 NMAC submitted

May 24, 2006 and August 16, 2010. These SIP revisions address  $\text{NO}_x$  as a precursor for ozone, consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 ozone NAAQS (70 FR 71612). These revisions also identify the precursors for  $\text{PM}_{2.5}$  and significant emission rates necessary for  $\text{PM}_{2.5}$  PSD permitting, consistent with the 1997 and 2006  $\text{PM}_{2.5}$  NAAQS (73 FR 28321, May 16, 2008). Additionally, the May 24, 2006 and August 16, 2010 submittals make numerous other changes necessary to maintain consistency with the federal PSD permitting requirements. Specifically, we are proposing to approve revisions to 20.11.61.7, 20.11.61.28, and 20.11.61.29 NMAC submitted on May 24, 2006. We are also proposing to approve revisions to 20.11.61.1, 20.11.61.2, 20.11.61.7, 20.11.61.11, 20.11.61.12, 20.11.61.14, 20.11.61.15, 20.11.61.16, 20.11.61.17, 20.11.61.18, 20.11.61.19, 20.11.61.20, 20.11.61.23, 20.11.61.24, 20.11.61.25, 20.11.61.26, 20.11.61.27, 20.11.61.28, 20.11.61.29, 20.11.61.30, and 20.11.61.31 NMAC submitted on August 16, 2010.

We are also proposing to approve SIP revisions from November 6, 2009 pertaining to updating Part 8 Ambient Air Quality Standards (20.11.8 NMAC). EPA is proposing to approve these revisions pursuant to section 110 of the CAA. These revisions improve the Albuquerque/Bernalillo County SIP and update 20.11.8 NMAC to add new standards and revise existing NAAQS in 20.11.8 NMAC to be consistent with 40 CFR Part 50—National Primary and Secondary Ambient Air Quality Standards.

## VII. 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, 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 beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

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

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

Dated: March 30, 2012.

**Samuel Coleman,**

*Acting Regional Administrator, Region 6.*

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