

related to an Iranian-Linked Financial Institution Designated Under IEEPA, **other than through a correspondent account**

detailed above. (If this box has been selected please fill out the below information for each

Iranian-Linked Financial Institution Designated Under IEEPA).

Iranian-Linked Financial Institution Designated Under IEEPA	Identify System or Means by Which Transfer(s) of Funds Was Processed	Full Name on Account(s) (if applicable)	Account Number(s) (if applicable)	Other Applicable Identifying Information for the Transfer(s) of Funds	Approximate Value in USD of Transfer(s) of Funds Processed (other than through a Correspondent Account) Within Preceding 90 Calendar Days
1					
2					
3					
4					
5					

(Add more rows as needed.)

D. Processed one or more transfers of funds related to an IRGC-Linked Person Designated Under IEEPA: Check box to certify.

☐ Foreign Bank hereby certifies that it **has not processed** one or more transfers of funds

within the preceding 90 calendar days related to an IRGC-Linked Person Designated Under IEEPA.

☐ Foreign Bank hereby certifies that it **has processed** one or more transfers of funds within the preceding 90 calendar days

related to an IRGC-Linked Person Designated Under IEEPA. (If this box has been selected please fill out the below information for each IRGC-Linked Person Designated Under IEEPA).

IRGC-Linked Person Designated Under IEEPA	Identify System or Means by Which Transfer(s) of Funds Was Processed	Full Name on Account(s) (if applicable)	Account Number(s) (if applicable)	Other Applicable Identifying Information for the Transfer(s) of Funds	Approximate Value in USD of Transfer(s) of Funds Processed Within Preceding 90 Calendar Days
1					
2					
3					
4					
5					

(Add more rows as needed.)

E. General

Foreign Bank hereby agrees to notify in writing the Bank if Foreign Bank establishes a new Correspondent Account for an Iranian-Linked Financial Institution Designated Under IEEPA at any time within 365 calendar days from the date of this response. Foreign Bank agrees to provide such notification within 30 calendar days of such change.

Foreign Bank understands that the Bank will provide a copy of this Certification to the U.S. Department of the Treasury. Foreign Bank further understands that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____ (name of signatory), certify that I have read and understand this Certification, that the statements made in this Certification are complete and correct, and that I am authorized to execute this Certification on behalf of Foreign Bank.

[Name of Foreign Bank] _____

[Signature] _____

[Printed Name] _____

[Title] _____

Executed on this _____ day of _____, 20____.

To be completed by the Bank: _____

I, _____ (name of signatory), have read and understand this Certification; the statements made in this Certification are complete and correct, to the best of the knowledge of the Bank; and the Bank does not know, suspect, or have reason to suspect that the Certification made by Foreign Bank is incorrect. I am authorized to submit this document on behalf of the Bank.

[Name of Bank] _____

[Signature] _____

[Printed Name] _____

[Title] _____

Submitted on this _____ day of _____, 20____.

[FR Doc. 2011-10482 Filed 4-29-11; 8:45 am]

BILLING CODE 4810-35-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2009-0647; FRL-9301-1]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Section 110(a)(2) Infrastructure Requirements for 1997 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards; New Mexico Ambient Air Quality Standards; Approval of New Mexico's PSD Program; CFR Codification Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submittals from the State of New Mexico pursuant to the Clean Air Act (CAA or Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and 1997 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS

or standards). We are proposing to find that the current New Mexico State Implementation Plan (SIP) meets the following infrastructure elements for the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is also proposing to approve a November 2, 2006, SIP revision to regulation 20.2.3 of the New Mexico Administrative Code (NMAC) (*Ambient Air Quality Standards*), to remove the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). EPA is also proposing to correct an administrative oversight by converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964) to a full approval based on the November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191), at which point New Mexico fully met the condition in the conditional approval. Please note the fact that we had not formally converted the February 27, 1987 conditional approval to a full approval, yet this had no impact on New Mexico's authority to implement the PSD program. Lastly, EPA is proposing to make a number of U.S. Code of Federal Regulations (CFR) codification technical corrections to amend the description of the approved New Mexico SIP. This action is being taken under section 110 and part C of the Act.

DATES: Comments must be received on or before June 1, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2009-0647, 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.

- *E-mail:* Mr. Guy Donaldson at donaldson.guy@epa.gov. Please also send a copy by e-mail 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-2009-0647. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <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 <http://www.regulations.gov> or e-mail. The <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 e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail 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 <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 <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: New Mexico Environment Department (NMED), Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7241; fax number 214-665-6762; e-mail address medina.dayana@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" means EPA.

Table of Contents

- I. Background
 - A. What are the National Ambient Air Quality Standards?
 - B. What is a SIP?
 - C. What is the background for this rulemaking?
 - a. Section 110(a)(1) and (2)
 - b. Greenhouse Gas (GHG) Component of PSD Programs
 - D. What elements are required under Section 110(a)(2)?
- II. What action is EPA proposing?
 - A. Section 110(a)(1) and (2)
 - B. CFR Codification Technical Correction to 40 CFR 52.1620(e)
 - C. CFR Codification Technical Corrections to 40 CFR 52.1620(c) and 40 CFR 52.1640(c)(66)(i)(B)
 - D. Conversion of Our Conditional Approval of New Mexico's PSD Program to Full Approval and CFR Codification Technical Corrections to 40 CFR 52.1634(a) and 40 CFR 52.1640(c)(39)
 - E. SIP Revision to 20.2.3 NMAC
- III. How has New Mexico addressed the elements of Section 110(a)(2)?
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

I. Background

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, 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, 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. Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin.

C. What is the background for this rulemaking?

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

On July 18, 1997, we promulgated 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 NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (denoted PM_{2.5}). The annual PM_{2.5} standard was set at 15 micrograms per cubic meter (µg/m³). The 24-hour PM_{2.5} standard was set at 65 µg/m³. For more information on these standards, please see the 1997 **Federal Register** notices (62 FR 38856 and 62 FR 38652).

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 air pollution control measures, and monitoring that are designed to assure attainment and maintenance of the NAAQS. A table listing all 14 infrastructure elements is included in subsection D of section I of this proposed rulemaking.¹ Thus states were required to submit such SIPs for the

¹ 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. These requirements are: (i) 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 (ii) 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. This action also does not pertain to section 110(a)(2)(D)(i). Section 110(a)(2)(D)(i) contains four distinct requirements, or “prongs,” related to the impacts of interstate transport. The Interstate Transport 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; or (4) interfere with efforts to protect visibility in other states. EPA published a finding on April 25, 2005 (70 FR 21147) that all states had failed to submit SIPs addressing interstate transport for the 8-hour ozone and PM_{2.5} NAAQS, as required by section 110(a)(2)(D)(i). Furthermore, there is a consent decree in place for seven states in the western United States, including New Mexico, to meet the requirements of section 110(a)(2)(D)(i) with regard to the 1997 8-hour ozone and PM_{2.5} NAAQS (74 FR 64076, December 7, 2009). Under the consent decree, for each of these seven states, EPA is required to fully approve SIPs and/or promulgate FIPs that satisfy the four “prongs” of section 110(a)(2)(D)(i) by specified dates. In prior actions, we approved the New Mexico SIP submittal for (1) the “significant contribution to nonattainment prong” of section 110(a)(2)(D)(i) (75 FR 33174, June 11, 2010) and (2) the “interfere with maintenance” and “interfere with measures to prevent significant deterioration” prongs of section 110(a)(2)(D)(i) (75 FR 72588, November 26, 2010). To address the fourth prong of section 110(a)(2)(D)(i), we proposed to disapprove the New Mexico Interstate Transport SIP provisions that address the requirement that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state to protect visibility (76 FR 491, January 5, 2011). In the same rulemaking, we proposed to promulgate a FIP in order to prevent emissions from New Mexico sources from interfering with other states’ measures to protect visibility, and to implement nitrogen oxides (NO_x) and sulfur dioxide (SO₂) emission limits necessary at one source to prevent such interference and to address the requirement for best available retrofit technology (BART) for NO_x for this same source. For the 1997 ozone and PM_{2.5} NAAQS, the requirements of section 110(a)(2)(D)(i) are being addressed separately and are not included in the infrastructure SIPs.

1997 8-hour ozone and PM_{2.5} NAAQS to EPA no later than June 2000.² However, intervening litigation over the 1997 8-hour ozone and PM_{2.5} 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_{2.5} 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 received from each state as of January 7, 2008. With regard to the 1997 PM_{2.5} 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_{2.5} NAAQS by October 5, 2008.

On March 27, 2008, and October 22, 2008, we published findings concerning whether states had made the necessary 110(a)(2) submissions for the 1997 ozone (73 FR 16205) and PM_{2.5} standards (73 FR 62902). In the March 27, 2008 action, we found that New Mexico had made a submission that addressed some, but not all of the section 110(a)(2) requirements of the Act necessary to implement the 1997

² 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. This rulemaking does not address the 2008 ozone standard.

8-hour ozone NAAQS.³ In the October 22, 2008 action, we found that New Mexico had made a complete SIP submission that provides for the basic program elements specified in section 110(a)(2) of the Act necessary to implement the 1997 PM_{2.5} NAAQS.

On October 2, 2007, we issued “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” Memorandum from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards.⁴ The guidance provides that to the extent that existing SIPs for ozone and PM already meet the requirements, states need only certify that fact to us.

On December 10, 2007, the Governor of New Mexico submitted a letter certifying that NMED has evaluated the New Mexico SIP and found that the SIP satisfies the requirements of section 110(a)(1) and (2) for the 1997 8-hour ozone NAAQS. On March 3, 2008, the Governor of New Mexico submitted a letter certifying that NMED has evaluated the New Mexico SIP and found that the SIP does not satisfy all the requirements of section 110(a)(1) and (2) for the 1997 PM_{2.5} NAAQS. The March 3, 2008 letter included a table with an explanation of how the current New Mexico SIP meets most of the requirements of section 110(a)(2) for the PM_{2.5} NAAQS and also a table outlining what sections of New Mexico’s SIP need to be revised to comply with the section 110(a)(2) requirements for the PM_{2.5} NAAQS.⁵ On April 19, 2011, NMED submitted a letter clarifying its submittals to make clear that the portion of the PSD SIP that is currently not

acted upon by EPA (*i.e.*, the portions from which EPA removed its previous approval) is not part of its infrastructure submissions.⁶ These letters are in the docket for this rulemaking.

b. Greenhouse Gas (GHG) Component of PSD Programs

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today’s proposed action on the New Mexico 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,⁷ the “Johnson Memo Reconsideration,”⁸ the “Light-Duty Vehicle Rule,”⁹ and the “Tailoring Rule.”¹⁰ Taken together and in conjunction with the CAA, these actions: (1) Established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; (2) determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and (3) 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. In December 2010, EPA followed up on these actions by issuing the “PSD SIP Narrowing

Rule,”¹¹ in which EPA withdrew its previous approval of SIP PSD programs in 24 states, including New Mexico, that apply to GHG-emitting sources below the thresholds in the final Tailoring Rule. The Tailoring Rule and PSD SIP Narrowing Rule both discuss the states’ ability to provide assurances that they will have adequate resources to meet the new GHG PSD permitting requirements at statutory levels of emissions, and the PSD SIP Narrowing Rule affected EPA’s prior approval of portions of a state’s SIP that do not incorporate thresholds established under the Tailoring Rule. On November 10, 2010, New Mexico adopted revisions to the State’s PSD rules to implement the GHG thresholds established in EPA’s GHG Tailoring Rule and submitted the corresponding SIP revision to EPA on December 1, 2010. On April 14, 2011, EPA proposed approval of New Mexico’s GHG rules submitted on December 1, 2010 (76 FR 20907). EPA intends to take final action on the December 1, 2010 submittal in a separate rulemaking no later than EPA’s final action on New Mexico’s 1997 ozone and PM_{2.5} infrastructure SIP submittals. Additionally, the NMED submitted a clarification letter to EPA on April 19, 2011, clarifying that the portions of the PSD program related to greenhouse gas permitting that remained approved after the promulgation of EPA’s PSD SIP Narrowing Rule satisfy sections 110(a)(2)(C) and (J) of the Act. As we discuss further in this notice and in the TSD, New Mexico currently has adequate resources to carry out the GHG component of the currently approved PSD SIP program, which requires PSD permitting for sources emitting GHGs at or above the 75,000/100,000 tons per year (tpy) threshold specified by the Tailoring Rule.

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

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 PM_{2.5} NAAQS, provides a list of 14 essential components that States must include in their SIPs. These are listed in Table 1 below.

¹¹ “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans.” 75 FR 82536 (December 30, 2010).

³ In the March 27, 2008 action we found that New Mexico had not submitted a SIP revision that modified New Mexico’s Prevention of Significant Deterioration (PSD) SIP for the 1997 8-hour ozone NAAQS to include NO_x as an ozone precursor, which is necessary for approval of elements 110(a)(2)(C) and the PSD and visibility portion of element 110(a)(2)(J). On September 21, 2009, New Mexico submitted the necessary PSD SIP revision. We approved New Mexico’s NO_x as an ozone precursor submittal on November 26, 2010 at 75 FR 72688.

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

⁵ In New Mexico’s March 3, 2008 infrastructure SIP submittal, the State indicated that, at that time, the New Mexico SIP did not satisfy all the infrastructure requirements of section 110(a)(2) for the 1997 PM_{2.5} NAAQS. As explained in section III of this rulemaking and in the TSD, we are proposing to find that New Mexico’s current SIP now meets all the infrastructure requirements of section 110(a)(2) for the 1997 PM_{2.5} NAAQS.

⁶ The April 19, 2011 letter clarified the State’s December 10, 2007 infrastructure SIP submittal for the 1997 8-hour ozone standard; the State’s March 3, 2008 infrastructure SIP submittal for the 1997 PM_{2.5} standard; and the State’s June 12, 2009 infrastructure SIP submittal for the 2006 PM_{2.5} standard. The State’s April 19, 2011 letter is severable, as it clarifies three separate infrastructure SIP submittals. At this time, we are only proposing to take action on the State’s December 10, 2007, and March 3, 2008 submittals for the 1997 8-hour ozone and 1997 PM_{2.5} standards. We will take action on the June 12, 2009 submittal for the 2006 PM_{2.5} standard in a separate rulemaking.

⁷ “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.” 74 FR 66496 (December 15, 2009).

⁸ “Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.” 75 FR 17004 (April 2, 2010).

⁹ “Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.” 75 FR 25324 (May 7, 2010).

¹⁰ “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.” 75 FR 31514 (June 3, 2010).

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)(ii) ¹²	Interstate and international 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) ¹³	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/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)

EPA is proposing to approve the New Mexico SIP submittals that identify where and how the 14 basic infrastructure elements are in the EPA-approved SIP as specified in section 110(a)(2) of the Act. The New Mexico submittals do not include revisions to the SIP, but document how the current New Mexico SIP already includes the required infrastructure elements. In today's action, we are proposing to find that the following section 110(a)(2)

¹² Section 110(a)(2)(D)(ii) of the Act requires compliance with sections 115 and 126 of the Act, relating to international and interstate pollution abatement, respectively. Under section 126(a)(1), SIPs must require notification to nearby, affected states of "major proposed new (or modified) sources" in either of two instances: (1) when the source is subject to PSD (section 126(a)(1)(A)); or (2) when the source "may significantly contribute to levels of air pollution in excess" of the NAAQS in air quality control regions in other states (section 126(a)(1)(B)). Any new major stationary source or major modification in an attainment or unclassifiable area is subject to PSD. Therefore, in attainment or unclassifiable areas, any source that potentially falls under section 126(a)(1)(B) must also fall under (A). Thus, to the extent that section 126(a)(1)(B) provides any requirements separate from those in section 126(a)(1)(A), it does so only for major proposed new or modified sources in nonattainment areas, that is, for sources subject to nonattainment NSR. The requirements of section 126(a)(1)(B) should therefore be addressed in states with nonattainment areas through those states' nonattainment NSR programs. As explained elsewhere in this proposed rulemaking, nonattainment NSR programs are not a subject of this action, so EPA will not address the requirements of section 126(a)(1)(B) in the infrastructure SIPs.

¹³ 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).

elements are contained in the current New Mexico SIP and provide the infrastructure for implementing the 1997 ozone and PM_{2.5} standards: Emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); 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)).

B. CFR Codification Technical Correction to 40 CFR 52.1620(e)

EPA is proposing to correct a CFR codification technical error made in the table titled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP," found at 40 CFR 52.1620(e).¹⁴ EPA approved New Mexico's Air Pollution Episode Contingency Plan into the SIP on August 21, 1990 (55 FR 34013) under the SIP codification method in existence at the time. When we changed our SIP codification method for New Mexico on July 13, 1998 (63 FR 37493), we added

¹⁴ 40 CFR 52.1620 provides the Identification of Plan for New Mexico, which lists the EPA-approved provisions of the SIP for the State, as provided under section 110 of the Act, 42 U.S.C. 7410, and 40 CFR 51 to meet the NAAQS. New Mexico's EPA approved nonregulatory provisions are provided under 40 CFR 52.1620(e).

the table currently found under 40 CFR 52.1620(e), and included entries in this table for all EPA approved nonregulatory provisions in the New Mexico SIP, including those approved prior to 1998. We note that we made an error in not including the already SIP approved New Mexico Air Pollution Episode Contingency Plan when we added this table under 40 CFR 52.1620(e). We are proposing to make a CFR codification technical correction to amend the table titled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP" to include an entry for the New Mexico Air Pollution Episode Contingency Plan approved by EPA into the SIP on August 21, 1990 (55 FR 34013, 40 CFR 52.1639(a)).¹⁵ EPA is proposing to make this CFR codification technical correction because it clarifies that EPA has approved the State's air pollution episode provisions into the New Mexico SIP.

C. CFR Codification Technical Corrections to 40 CFR 52.1620(c) and 40 CFR 52.1640(c)(66)(i)(B)

EPA is also proposing to correct two CFR codification technical errors made in the table titled "EPA Approved New Mexico Regulations," found at 40 CFR 52.1620(c).¹⁶ On October 20, 1995, New Mexico adopted a recodification of the State's air quality control regulations

¹⁵ The New Mexico Air Pollution Episode Contingency Plan is applicable statewide outside of the boundaries of Bernalillo County and Indian Lands, and was adopted by New Mexico on July 7, 1988, and submitted to EPA as a SIP revision on August 19, 1988.

¹⁶ New Mexico's air quality regulations approved by EPA into the SIP, along with the State's approval/effective date of the regulations, EPA's approval date of the regulations into the SIP, and the Federal Register notice citation for approval into the SIP are provided under 40 CFR 52.1620(c).

(AQCRs).¹⁷ New Mexico submitted the recodification of, and revisions to, the SIP on January 8, 1996, and EPA approved these revisions into the SIP on September 26, 1997 (62 FR 50514). We would like to clarify that when we approved the recodification of, and revisions to, the New Mexico SIP in the September 26, 1997 rulemaking, we made a codification error in 40 CFR 52.1620(c) by incorrectly including entries in the table titled “EPA Approved New Mexico Regulations” for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC, which constitute New Mexico’s Title V permitting program and the associated permitting fees, respectively.¹⁸ The preamble of the September 26, 1997 rulemaking contains a table listing the rules submitted by New Mexico as a recodification, which EPA had reviewed and approved as a recodification to the New Mexico SIP (62 FR 50514, see pages 50516–17). This table in the preamble did not contain part 70 or part 71 of 20.2 NMAC, yet the CFR table found at 40 CFR 52.1620(c) and the New Mexico Identification of Plan at 40 CFR 52.1640(c)(66)(i)(B)¹⁹ erroneously included the two Title V regulations. The preamble of the September 26, 1997 rulemaking did not act to approve these two Title V regulations as part of the New Mexico SIP. Further, we have never taken any rulemaking action to approve parts 70 and 71 into the New Mexico SIP. Therefore, New Mexico’s Title V permitting program has always been, and continues to be outside the scope of the New Mexico SIP.²⁰ In addition, the table titled “EPA Approved New Mexico Regulations,” currently incorrectly lists the EPA approval date of the recodification of New Mexico’s regulations in the SIP to be November 25, 1997. Although the **Federal Register** citation (62 FR 50514) listed under the table is correct, the November 25, 1997

date is incorrect and should be changed to September 26, 1997. EPA is proposing to amend the table titled “EPA Approved New Mexico Regulations,” found at 40 CFR 52.1620(c), by deleting the entries for parts 70 and 71 of 20.2 NMAC and by changing the EPA approval date of the 62 FR 50514 rulemaking from the currently listed date of November 25, 1997 to the correct date of September 26, 1997. We are also proposing to amend 40 CFR 52.1640(c)(66)(i)(B) such that it reads as follows: “New Mexico Administrative Code, Title 20, Chapter 2, Parts 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 32, 33, 34, 40, 41, 60, 61, 72 (Subparts I, II and III; Subpart V, Sections 501 and 502), 73, 75, 79, and 80; adopted by the New Mexico Environmental Improvement Board on October 20, 1995, and filed with the State Records and Archives Center on October 30, 1995.” EPA is proposing to make the CFR codification technical corrections to 40 CFR 52.1640(c)(66)(i)(B) and to the table titled “EPA Approved New Mexico Regulations,” found under 40 CFR 52.1620(c), as indicated above, because it is necessary to clarify which New Mexico air quality regulations are currently approved into the New Mexico SIP and the EPA approval date of these regulations into the SIP.²¹

D. Conversion of Our Conditional Approval of New Mexico’s PSD Program to Full Approval and the CFR Codification Technical Corrections to 40 CFR 52.1634(a) and 40 CFR 52.1640(c)(39)

In reviewing the history of New Mexico’s PSD program for the purposes of the infrastructure SIP, we found that the State’s PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964). In the February 27, 1987 rulemaking, New Mexico’s PSD program was conditionally approved by EPA on the basis that (i) the State would not issue permits to sources that would require review under EPA’s stack height regulations because they would have a stack height over 65 meters or would use any other dispersion techniques, as defined at 40 CFR 51.1(hh); and (ii) as quickly as possible, the State would adopt and submit as a plan revision a regulation that is equivalent to the regulations in 40 CFR Part 51 promulgated to implement Section 123 of the Act, regarding stack heights. On May 14, 1985, the Governor of New

Mexico submitted a letter in which he committed the State not to issue PSD permits to sources that would require review under EPA’s stack height regulations because they would have stack heights over 65 meters or would use any other dispersion techniques, as defined at 40 CFR 51.1(hh).²² On April 26, 1988, New Mexico submitted as a SIP revision a new regulation on stack height requirements to satisfy the Federal requirements of 40 CFR Part 51. On November 2, 1988, EPA approved New Mexico’s stack height regulation into the SIP (53 FR 44191). Thus, condition (i) of our February 27, 1987 conditional approval of New Mexico’s PSD program was met when New Mexico complied with the Governor’s May 14, 1985 commitment letter in the interim, and condition (ii) was met when we approved New Mexico’s stack height regulations in the November 2, 1988 rulemaking. Therefore, upon our approval of New Mexico’s stack height regulations in the November 2, 1988 rulemaking, New Mexico had fully met all the conditions of EPA’s February 27, 1987 conditional approval of the State’s PSD program. However, due to an administrative oversight, EPA failed to convert the conditional approval of New Mexico’s PSD program into a full approval at that time. We note that the fact that EPA has not formally converted the conditional approval to a full approval has no impact on the State’s authority to implement the PSD program. Therefore, we now propose to convert our February 27, 1987 conditional approval of the State’s PSD program to a full approval based on our approval of the State’s stack height regulations in the November 2, 1988 rulemaking (53 FR 44191).

In accordance with our proposal to convert our February 27, 1987 conditional approval of New Mexico’s PSD program to a full approval, we intend to make codification technical corrections to 40 CFR 52.1634(a) and 40 CFR 52.1640(c)(39).²³ 40 CFR 52.1634(a) currently identifies New Mexico’s PSD program as meeting the requirements of part C of the Act for prevention of significant deterioration of air quality and as being SIP approved, but does not explain that we initially conditionally approved the State’s PSD program on February 27, 1987, and that New Mexico has since then met the conditions of our

¹⁷ In New Mexico’s 1995 adoption of the recodification of the State’s air quality regulations, the AQCRs existing at the time were renumbered and reformatted into the current NMAC, as was required by the New Mexico State Records Center.

¹⁸ After construction, a source must obtain an operating permit, also called a Title V operating permit, as this requirement comes from Title V of the Act. Most Title V permits are issued by approved State and local permitting authorities. These permits are often called part 70 permits because the regulations that establish minimum standards for State permit programs are found at 40 CFR part 70.

¹⁹ 40 CFR 52.1640 identifies the original New Mexico SIP and all revisions submitted by New Mexico that were federally approved prior to January 1, 1998.

²⁰ New Mexico’s Title V permitting program is legally not part of the SIP, but was approved by EPA on November 26, 1996 (61 FR 60032) as the State’s Title V permitting program.

²¹ Any other CFR corrections to the New Mexico SIP that may be required will be addressed in a separate future action.

²² See 40 CFR 52.1640(c)(37)(B).

²³ 40 CFR 52.1634(a) provides for New Mexico’s SIP approved PSD program. As stated elsewhere in this rulemaking, 40 CFR 52.1640(c) provides for all revisions submitted by New Mexico that were federally approved into the SIP prior to January 1, 1998. 40 CFR 52.1640(c)(39) provides for New Mexico’s SIP approved stack height regulation.

conditional approval. We are proposing to amend the paragraph at 40 CFR 52.1634(a) to read as follows: "The plan submitted by the Governor of New Mexico on February 21, 1984 (as adopted by the New Mexico Environmental Improvement Board (NMEIB) on January 13, 1984), August 19, 1988 (as revised and adopted by the NMEIB on July 8, 1988), and July 16, 1990 (as revised and adopted by the NMEIB on March 9, 1990), Air Quality Control Regulation 707—Permits, Prevention of Significant Deterioration (PSD) and its Supplemental document, is approved as meeting the requirements of part C, Clean Air Act, for preventing significant deterioration of air quality. Additionally, on November 2, 1988, EPA approved New Mexico's stack height regulation into the SIP (53 FR 44191), thereby satisfying the conditions of EPA's conditional approval of the State's PSD program on February 27, 1987 (52 FR 5964). Therefore, the conditional approval is converted to a full approval when we take final action on this CFR correction." 40 CFR 52.1640(c)(39) currently identifies New Mexico's stack height regulation submitted on April 26, 1988 as having been approved into the SIP, but does not identify that this denotes that New Mexico has fully satisfied all conditions of our February 27, 1987 conditional approval of New Mexico's PSD program. We are proposing to amend the paragraph at 40 CFR 52.1640(c)(39) to read as follows: "On April 26, 1988, the Governor of New Mexico submitted a revision to the State Implementation Plan that contained Air Quality Control Regulation No. 710—Stack Height Requirements, as adopted by the New Mexico Environmental Improvement Board on March 10, 1988. Regulation No. 710 enables the State to ensure that the degree of emission limitation required for the control of any air pollutant under its SIP is not affected by that portion of any stack height that exceeds GEP or by any other dispersion technique. With EPA's November 2, 1988, approval of the State's revision to the State Implementation Plan to include Regulation No. 710 (53 FR 44191), the State has satisfied the conditions of our February 27, 1987 conditional approval of the State's plan for preventing significant deterioration of air quality (52 FR 5964). When we take final action on this CFR correction, the conditional approval will be converted to a full approval."

We are proposing the above CFR codification technical corrections to the paragraphs at 40 CFR 52.1634(a) and 40 CFR 52.1640(c)(39) because we are

proposing to convert our February 27, 1987 conditional approval of New Mexico's PSD program to a full approval.

E. SIP Revision to 20.2.3 NMAC

In conjunction with our proposed finding that the New Mexico SIP meets the section 110(a)(1) and (2) infrastructure SIP elements listed above, we are also proposing to fully approve a severable portion of a SIP revision submitted by NMED to EPA on November 2, 2006. This portion of the submittal contains a revision to 20.2.3 NMAC (*Ambient Air Quality Standards*) and is not a requirement under the infrastructure SIPs, and therefore our proposed approval of this revision is severable from our proposed approval of New Mexico's infrastructure SIP submittals. The revision adds a new subpart 9 to 20.2.3 NMAC, including language to ensure that sources being issued a permit under the State's minor source permitting program, found at 20.2.72 NMAC (*Construction Permits*), are required to continue to address the State's ambient air quality standards in their application. The revision includes language in 20.2.3.9 NMAC that removes the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). Because New Mexico's Title V program is outside the scope of the New Mexico SIP, this revision does not constitute a relaxation of the current New Mexico SIP.²⁴ As described above in subsection C of this section, we made a codification error in 40 CFR 52.1620(c) by incorrectly including entries in the table titled "EPA Approved New Mexico Regulations" for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC, which are State regulations that have not been approved into the New Mexico SIP. As the New Mexico Title V permitting program, codified at 20.2.70 NMAC, has not been approved into the New Mexico SIP, approval of the November 2, 2006 revision to 20.2.3 NMAC is appropriate and will not constitute a relaxation of the current New Mexico SIP. The SIP revision to 20.2.3 NMAC we are proposing to approve is severable from the portions of the November 2, 2006 SIP submittal on which we are taking no action in this rulemaking. By severable, we mean that the portion of the SIP revisions we are proposing to approve can be implemented independently of the portions on which we are not acting, without affecting the stringency of the

submitted rules. EPA is not proposing to take action on any other portions of the November 2, 2006 SIP revisions in this proposed rulemaking; EPA intends to act on the other revisions in a separate rulemaking. EPA proposes to approve the portion of the November 2, 2006 revision, as indicated above, because it clarifies the permitting requirements under the New Mexico SIP.

III. How has New Mexico addressed the elements of Section 110(a)(2)?

The New Mexico submittals address the elements of Section 110(a)(2) as described below. We provide a more detailed review and analysis of the New Mexico infrastructure SIP elements in the Technical Support Document (TSD), located in the docket for this 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 8-hour ozone and PM_{2.5} standards. Those regulations are due later as part of attainment demonstrations.

The New Mexico Environmental Improvement Act, found in Chapter 74, Article 1 of the New Mexico Statutes Annotated 1978 (denoted NMSA 1978 74-1), created the NMED and the New Mexico Environmental Improvement Board (EIB). The New Mexico Air Quality Control Act codified at NMSA 1978 74-2, delegates authority to the EIB to adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act to attain and maintain NAAQS and prevent or abate air pollution. See NMSA 1978 74-2-5(B)(1). The Air Quality Control Act also designates the NMED as the State's air pollution control agency and the Environmental Improvement Act provides the NMED with enforcement authority. The SIP rule at Title 20 of the New Mexico Administrative Code (denoted as 20 NMAC) describes NMED as the State's air pollution control agency and its enforcement authority, referencing the NMSA 1978 (44 FR 21019, April 9, 1979; revised 49 FR 44101, November 2, 1984; recodified approved in 62 FR 50518, September 26, 1997).

The NMED has promulgated rules to limit and control emissions of PM, sulfur dioxide (SO₂), nitrogen oxides (NO_x) and volatile organic compounds

²⁴ See footnote 20 above.

(VOCs).²⁵ These rules include emission limits, control measures, permits, fees, and compliance schedules and are found in Title 20, chapter 2 of the NMAC²⁶ (denoted 20.2 NMAC): 20.2 NMAC parts 3, 5, 7–8, 10–22, 30–34, 40–41, 72–75, and 98–99.

In this proposed action, EPA is not proposing to approve or disapprove any existing New Mexico SIP provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility.²⁷ EPA believes that a number of states may have SSM SIP provisions that are contrary to the Act and existing EPA guidance,²⁸ 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 is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions that are contrary to the Act and existing EPA guidance (52 FR 45044, November 24, 1987),²⁹ 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 SIP which is contrary to the Act and EPA guidance to take steps to correct the deficiency as soon as possible.

A detailed list of the applicable 20.2 NMAC parts discussed above is provided in the TSD. New Mexico's SIP clearly contains enforceable emission limits and other control measures, which are in the Federally enforceable SIP. EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(A) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

²⁵ NO_x and VOCs are precursors to ozone. PM can be emitted directly and secondarily formed; the latter is the result of NO_x and SO₂ precursors combining with ammonia to form ammonium nitrate and ammonium sulfate.

²⁶ Title 20 addresses *Environmental Protection* and chapter 2 addresses *Air Quality*.

²⁷ EPA approved New Mexico's current provisions regarding excess emissions occurring during startup, shutdown, and malfunction (SSM) of operations at a facility on September 14, 2009 (74 FR 46910).

²⁸ "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 August 11, 1999.

²⁹ The section addressing exemptions and variances is found on p. 45109 of the 1987 rulemaking.

Ambient air quality monitoring/data analysis 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 NMED operates and maintains a statewide network of air quality monitors; data are collected, results are quality assured, and the data are submitted to EPA's Air Quality System³⁰ on a regular basis. New Mexico's Statewide Air Quality Surveillance Network was approved by EPA on August 6, 1981 (46 FR 40005), and consists of stations that measure ambient concentrations of the six criteria pollutants, including ozone and PM_{2.5}. The air quality surveillance network undergoes annual review by EPA. On July 7, 2010, NMED submitted its 2010 Annual Air Monitoring Network Plan (AAMNP) that included the plans for the 1997 ozone and PM_{2.5} NAAQS. EPA approved New Mexico's 2010 AAMNP on January 7, 2011.³¹ The NMED Web site provides the ozone and PM_{2.5} monitor locations, and current and historical data (<http://air.nmenv.state.nm.us/>).

In summary, New Mexico meets the requirement 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 New Mexico SIP meets the requirements of section 110(a)(2)(B) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

Program for enforcement of control measures and 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 Parts C and D, pursuant to section 110(a)(2)(C): Regarding a program for enforcement of control measures, as stated previously, the Air Quality Control Act designates the NMED as the State's air pollution control agency and the Environmental Improvement Act provides the NMED with authority to enforce the state's environmental quality rules. The NMED established rules governing emissions of the criteria pollutants and their precursors

³⁰ The Air Quality System (AQS) is EPA's repository of ambient air quality data. AQS stores data from over 10,000 monitors, 5000 of which are currently active. State, Local and Tribal agencies collect the data and submit it to AQS on a periodic basis.

³¹ A copy of our approval letter is available in the docket for this rulemaking.

throughout the State and these rules are in the Federally enforceable SIP. The rules in 20.2 NMAC parts 3, 5, 7–8, 10–22, 30–34, 40–41, 72–75, and 98–99 include allowable emission rates, compliance, control plan requirements, actual and allowable emissions, monitoring and testing requirements, recordkeeping and reporting requirements, and control schedules. These rules clarify the boundaries beyond which regulated entities in New Mexico can expect enforcement action.

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 national ambient air quality standards are achieved, including a permit program as required by Parts C and D, generally, the State is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 1997 8-hour ozone and PM_{2.5} 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 two NAAQS because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure SIP submittals are required.

PSD programs apply in areas that are meeting the NAAQS, referred to as areas in attainment, and in areas for which there is insufficient information to designate as either attainment or nonattainment, referred to as unclassifiable areas. As described in the section titled "What Action is EPA Proposing?," New Mexico's PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964). Today, we propose to convert the conditional approval to a full approval on the basis of our November 2, 1988 approval of New Mexico's April 26, 1988 submittal to include in the SIP a new regulation on stack height requirements to satisfy the Federal requirements of 40 CFR Part 51. Subsequent revisions to New Mexico's PSD program were approved into the SIP on August 21, 1990 (55 FR 34013), May 2, 1991 (56 FR 20137), October 15, 1996 (61 FR 53639), March 10, 2003 (68 FR 11316), December 24, 2003 (68 FR 74483), September 5, 2007 (72 FR 50879), and November 26, 2010 (75 FR 72688).

To meet the requirements of 110(a)(2)(C) for the 1997 ozone standard, EPA believes the State must

have updated its PSD rules to treat NO_x as a precursor for ozone (70 FR 71612). On November 26, 2010, EPA approved revisions to New Mexico's PSD SIP for the 1997 8-hour ozone NAAQS to include NO_x as an ozone precursor (75 FR 72688).

To implement section 110(a)(2)(C) for the 1997 PM_{2.5} standard, EPA believes that States should appropriately implement the interim policy for preconstruction (PSD) review as interpreted by legal rulings.³² States may follow this approach until May 16, 2011, the date by which we required states to provide revisions to their PSD regulations to implement the PM_{2.5} standard as provided under 73 FR 28321.³³ During the transition to SIP-approved PSD requirements for PM_{2.5}, New Mexico confirmed to EPA by letter that: (1) it does not use PM₁₀ as a surrogate for PM_{2.5} in its permitting programs; (2) it requires that applicants include PM_{2.5} modeling and emissions in their PSD and minor source permit applications; and (3) the record for the NMED's permitting decision includes an explanation of how PM_{2.5} emissions have been appropriately analyzed and estimated.³⁴ (See also 75 FR 52692, page 52700; 75 FR 72688, page 72694). Furthermore, the State has recently proposed to revise their rules to address PM_{2.5} in their PSD program, and expects to adopt these revisions in May 2011. The State is planning to submit these revised PSD rules to EPA as a SIP revision by May 16, 2011. EPA will act on this submission in a separate rulemaking.

New Mexico has the authority to issue permits under the SIP-approved PSD program to sources of GHG emissions (75 FR 82536, page 82536, December 30, 2010).³⁵ 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 tpy 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 of 24 states, including New Mexico, that apply PSD to GHG emission 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, December 30, 2010).

On November 10, 2010, New Mexico adopted revisions to the State's PSD rules to implement the GHG thresholds established in EPA's GHG Tailoring Rule and submitted the corresponding SIP revision to EPA on December 1, 2010. On April 14, 2011, EPA proposed approval of New Mexico's GHG rules

submitted on December 1, 2010 (76 FR 20907). EPA intends to take final action on the above proposal in a separate rulemaking no later than EPA's final action on New Mexico's 1997 ozone and PM_{2.5} infrastructure SIP submittals. We are proposing to find that the current New Mexico PSD SIP meets the requirements of section 110(a)(2)(C) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS, as long as we are able to fully approve New Mexico's GHG submittal on or before our final action on New Mexico's 1997 ozone and PM_{2.5} infrastructure SIP submittals.

Additionally, New Mexico submitted a clarification letter to EPA on April 19, 2011, clarifying that the portion of the GHG PSD program in the State's submittal under infrastructure SIP review is only the portion that remained approved after EPA's promulgation of the PSD SIP Narrowing Rule, which is the portion that regulates GHG-emitting sources with GHG emissions at or above the Tailoring Rule thresholds. Therefore, if we are unable to fully approve New Mexico's GHG submittal, in the alternative, we are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS on the basis of the State's April 19, 2011 clarification letter.

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). EPA provides states with a "broad degree of discretion" in implementing their Minor NSR programs (71 FR 48696, 48700). The "considerably less detailed" regulations for minor NSR are provided in 40 CFR 51.160 through 51.164. EPA has determined that New Mexico's Minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of all regulated air contaminants for which there is a NAAQS (20.2.72.200 NMAC). New Mexico's Minor NSR permitting requirements are found at 20.2.72 NMAC and were approved into the SIP on May 14, 1973 (38 FR 12702).³⁶ In this action, EPA is proposing to approve New Mexico's infrastructure SIP for the 1997 8-hour ozone and PM_{2.5} NAAQS with respect to the general requirement of section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any

³² "Interim Implementation of New Source Review for PM_{2.5}," Memorandum from John S. Seitz, Director of Office of Air Quality Planning and Standards, dated October 23, 1997.

³³ The **Federal Register** notice 73 FR 28321 was published May 16, 2008.

³⁴ July 23, 2010, letter from Mary Uhl, Bureau Chief, Air Quality Bureau, New Mexico Environment Department, to Thomas Diggs, Associate Director for Air Programs, EPA Region 6. This letter is in the docket for this rulemaking.

³⁵ On June 24, 2010, the State submitted a letter to EPA stating that current New Mexico rules require regulating GHGs at the existing 100/250 tpy threshold, rather than at the higher thresholds set in the Tailoring Rule because the State does not have the authority to apply the meaning of the term "subject to regulation" established in the Tailoring Rule. New Mexico also submitted a letter on September 14, 2010, in response to the proposed GHG SIP Call again confirming that EPA correctly classified New Mexico as a State with authority to apply PSD requirements to GHGs. The September 14, 2010, letter also identifies that NMED is pursuing rulemaking activity to define the terms "greenhouse gas" and "subject to regulation." These

two letters are in the docket for this rulemaking. As explained elsewhere in this rulemaking, on November 10, 2010, New Mexico adopted revisions to the State's PSD rules to implement the GHG thresholds established in EPA's GHG Tailoring Rule and submitted the corresponding SIP revision to EPA on December 1, 2010. On April 14, 2011, EPA proposed approval of New Mexico's GHG rules submitted on December 1, 2010 (76 FR 20907). EPA intends to take final action on the December 1, 2010 submittal in a separate rulemaking no later than EPA's final action on New Mexico's 1997 ozone and PM_{2.5} infrastructure SIP submittals.

³⁶ Revisions to New Mexico's minor source permitting program were most recently approved by EPA into the SIP on September 26, 1997 (62 FR 50514).

stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing Minor NSR program itself to the extent that it is 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 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 to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA is proposing to find that the current New Mexico SIP meets the requirements of section 110(a)(2)(C) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

Interstate and international transport, 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 New Mexico 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. Under section 126(a)(1)(A), SIPs must require notification to nearby, affected states of "major proposed new (or modified) sources" when the source is subject to PSD. New Mexico's SIP approved PSD program rules at 20.2.74.400 NMAC satisfy the requirements of section 126(a)(1)(A) by providing that the NMED must send notice of the proposed action on PSD permits to, among others, "any state * * * whose lands may be affected by emissions from the source or modification." The State also has no pending obligations under section 126 of the Act.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(D)(ii) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

Adequate personnel, funding, and authority, pursuant to section 110(a)(2)(E): The Department of the Environment Act provides that the secretary of the NMED "shall * * * employ and fix the compensation of those persons necessary to discharge his duties * * *" See NMSA 1978 9-7A-6(B). The NMED is also authorized to receive State appropriations to implement environmental programs. See generally, NMSA 1978 9-7A. There are Federal sources of funding for the implementation of the 1997 8-hour ozone and PM_{2.5} NAAQS, through, for example, the CAA sections 103 and 105 grant funds. The NMED receives Federal funds on an annual basis, under sections 103 and 105 of the Act, to support its air quality programs. Additionally, the State provides funds equal to 40 percent of the 105 grant fees it receives.

Fees collected for the Title V and non-Title V permit programs, and other inspections, maintenance and renewals required of other air pollution sources also provide necessary funds to help implement the State's air programs. Information on permitting fees is provided in the discussion for section 110(a)(2)(L) below. The Air Quality Control Act designates the NMED as the State air pollution control agency for all purposes under Federal legislation relating to air pollution and provides the NMED with the power "to accept, receive and administer grants or other funds or gifts from public and private agencies, including the Federal government, or from any person * * *" See NMSA 1978 74-2-5.1(F). For more detail on funding sources, please see the TSD.

The Air Quality Control Act delegates authority to the EIB to adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution. See NMSA 1978 74-2-5(B)(1). The Environmental Improvement Act provides the NMED with the power "to enforce the rules, regulations and orders promulgated by the board * * *" See NMSA 1978 74-1-6(F). The Air Quality Control Act also gives the NMED the duty to "develop and present to the environmental improvement board or the local board a plan for the regulation, control, prevention or abatement of air pollution * * *" and gives the EIB the authority to adopt such a plan. See NMSA 1978 74-2-5.1(H) and NMSA 1978 74-2-5(B)(2). Therefore, the State has demonstrated it has adequate authority under its rules and regulations to carry

out its SIP obligations with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

As discussed previously in this rulemaking with regards to section 110(a)(2)(C), on November 10, 2010, New Mexico adopted revisions to the State's PSD rules to implement the GHG thresholds established in EPA's GHG Tailoring Rule and submitted the corresponding SIP revision to EPA on December 1, 2010. EPA proposed approval of these revisions on April 14, 2011 (76 FR 20907). The GHG Tailoring Rule implemented thresholds establishing applicability of the PSD permitting program to GHG-emitting sources only if they emit GHGs in amounts above the 75,000/100,000 tpy of carbon dioxide equivalent (denoted CO₂e). Thus sources in affected states, including New Mexico, will not be subject to Federal or state requirements to obtain permits at the lower 100/250 tpy level. The Tailoring Rule thresholds 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 at the statutory levels (100/250 tpy). EPA intends to take final action on the above proposal in a separate rulemaking no later than EPA's final action on New Mexico's 1997 ozone and PM_{2.5} infrastructure SIP submittals. We are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS, as long as we are able to fully approve New Mexico's GHG submittal on or before our final action on New Mexico's 1997 ozone and PM_{2.5} infrastructure SIP submittals; or, in the alternative, we are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS on the basis of the State's April 19, 2011 clarification letter.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(E) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

Stationary source monitoring system, pursuant to section 110(a)(2)(F): New Mexico's regulations at 20.2 NMAC parts 5, 7-8, 10-20, 30-34, 40-41, and 72-74 require source monitoring for compliance, recordkeeping and reporting, and provide for enforcement with respect to all the NAAQS and their precursors. These source monitoring program requirements generate data for, among other pollutants, ozone, PM_{2.5}, and the precursors to these pollutants (VOCs, NO_x, and SO₂).

Under the New Mexico SIP rules, the NMED is required to analyze the emissions data from point, area, mobile, and biogenic (natural) sources. The NMED 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 New Mexico and EPA requirements. The State's emissions data are available on the NMED Web site (<http://www.nmenv.state.nm.us>). These rules have been approved by EPA into the SIP. A list of the rules and **Federal Register** citations are provided in the TSD.

There are two requirements that New Mexico must meet regarding emissions inventories (EIs): the EI requirement for nonattainment areas, and the requirement to submit annual EI data to EPA's National Emissions Inventory (NEI) database. Because Nonattainment NSR is outside the scope of this rulemaking, we are not addressing New Mexico's EI for nonattainment areas in this proposed action. The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states are given to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site <http://www.epa.gov/ttn/chief/eiinformation.html>. The NMED is current with their submittals to the NEI database; the 2008 data was submitted to EPA in 2010. The State's emissions data are also available on EPA's AirData Web site (<http://www.epa.gov/air/data/index.html>).³⁷

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(F) with respect to the 1997 8-hour ozone and PM_{2.5} 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 Air Quality Control Act provides the NMED with authority to address environmental emergencies, and the NMED has contingency plans to implement emergency episode provisions in the SIP. New Mexico promulgated the "Air Pollution Episode Contingency Plan for New Mexico," which includes contingency measures, and these provisions were approved into the SIP on August 21, 1990 (55 FR 34013). The criteria for ozone are based on a 1-hour average ozone level. These episode criteria and contingency measures are adequate to address ozone emergency episodes and are in the Federally approved SIP.

As explained in the section of this rulemaking titled "*What Action Is EPA Proposing?*," in this rulemaking we are also proposing to make a CFR codification technical correction to amend the table titled "*EPA Approved Nonregulatory Provisions And Quasi-Regulatory Measures In The New Mexico SIP*" under 40 CFR 52.1620(e), to include an entry for the New Mexico Air Pollution Episode Contingency Plan approved by EPA into the SIP on August 21, 1990 (see 55 FR 34013, 40 CFR 52.1639(a)). EPA is proposing to make this CFR codification technical correction because it clarifies that EPA previously approved the State's air pollution episode provisions into the New Mexico SIP.

The 2009 Infrastructure SIP Guidance for PM_{2.5} recommends that a state with at least one monitored 24-hour PM_{2.5} value exceeding 140.4 µg/m³ 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 data³⁸ for New Mexico do not exceed 140.4 µg/m³. The PM_{2.5} levels have consistently remained below this level (140.4 µg/m³), and furthermore, the State has appropriate general emergency powers to address PM_{2.5} related episodes to protect the environment and public health. Given the State's low monitored PM_{2.5} levels, EPA is proposing the State is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 PM_{2.5} standard.

Additional detail is provided in the TSD.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(G) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

Future SIP revisions, pursuant to section 110(a)(2)(H): The Air Quality Control Act provides that the EIB shall " * * * adopt, promulgate, publish, amend, and repeal regulations consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution * * *." See NMSA 1978 74–2–5(B)(1). The Environmental Improvement Act provides that the NMED shall, " * * * enforce the rules, regulations and orders promulgated by the board * * *." See NMSA 1978 74–1–6(F). In addition, the Air Quality Control Act requires the NMED to, " * * * advise, consult, contract with and cooperate with local authorities, other states, the Federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control * * *." See NMSA 1978 74–2–5.2(B). Thus, New Mexico has the authority to revise its 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, New Mexico also has the authority under the above provisions to revise its SIP in the event the EPA, pursuant to the Act, finds the SIP to be substantially inadequate to attain the NAAQS.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(H) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

*Consultation with government officials, pursuant to section 110(a)(2)(J):*³⁹ The Air Quality Control Act, as codified at NMSA 1978 74–2–6, provides that, "no regulations or emission control requirement shall be adopted until after a public hearing by the environmental improvement board or the local board" and provides that, "at the hearing, the environmental improvement board or the local board shall allow all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing." See NMSA 1978 74–2–6(B) and (D). In addition, the Air Quality Control Act provides that the NMED

³⁷ The AirData Web site provides access to air pollution data for the entire United States and produces reports and maps of air pollution data based on criteria specified by the user.

³⁸ The ozone and PM data are available through AQS. The AQS data for PM are provided in the docket for this rulemaking.

³⁹ Section 110(a)(2)(J) is divided into three segments: Consultation with government officials; public notification; and PSD and visibility protection.

shall have the power and duty to “advise, consult, contract with and cooperate with local authorities, other states, the Federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control * * *” See NMSA 1978 74–2–5.2(B). The State’s SIP approved PSD rules at 20.2.74.400 NMAC mandate that the NMED shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, and Federal Land Managers (FLM) whose lands may be affected by emissions from the source or modification. The State’s SIP approved PSD rules at 20.2.74.403 NMAC require the NMED to consult with FLMs regarding permit applications for sources impacting Class I Federal areas.⁴⁰ Furthermore, the State of New Mexico has committed in the SIP to consult continually with the FLMs on the review and implementation of the visibility program and to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.⁴¹ The State’s SIP approved Transportation Conformity rules at 20.2.99.116 and 20.2.99.124 NMAC require that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related SIPs.⁴² These rules are in the Federally-approved SIP.

EPA is proposing to find that the New Mexico SIP meets the requirements of this portion of section 110(a)(2)(j) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

Public notification if NAAQS are exceeded, pursuant to section 110(a)(2)(j): Public notification begins with the air quality forecast, which advises the public of conditions capable of exceeding the NAAQS (see 54 FR 9783). New Mexico’s provisions regarding public notification of instances or areas in which any primary NAAQS was exceeded were approved into the SIP on August 24, 1983 (48 FR 38466). In addition, the NMED air monitoring Web site provides live air

quality data for each of the monitoring stations in New Mexico.⁴³ The Web site also provides information on the health effects of ozone, particulate matter, and other criteria pollutants.

EPA is proposing to find that the New Mexico SIP meets the requirements of this portion of section 110(a)(2)(j) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

PSD and visibility protection, pursuant to 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 detailed in the subsection titled “Program for enforcement of control measures and regulation of the modification and construction of any stationary source * * * pursuant to section 110(a)(2)(C)” of this rulemaking and in the TSD, New Mexico’s PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964). New Mexico has since then met the conditions of our conditional approval, so we are proposing to convert our conditional approval into a full approval. The State’s PSD program is in the SIP (52 FR 5964, 53 FR 44191, 55 FR 43013, 56 FR 20137, 61 FR 53639, 68 FR 11316, 68 FR 74483, 72 FR 50879, and 75 FR 72688). In addition, to meet the requirements of 110(a)(2)(C) for the 1997 ozone standard, EPA believes the State must have updated its PSD rules to treat NO_x as a precursor for ozone. On November 26, 2010, EPA approved a SIP revision that modified New Mexico’s PSD SIP for the 1997 8-hour ozone standard to include NO_x as an ozone precursor (75 FR 72688). To implement section 110(a)(2)(C) for the 1997 PM_{2.5} standard, EPA believes that States should appropriately implement the interim policy for preconstruction review, as described above. During the transition to SIP-approved PSD requirements for PM_{2.5}, NMED submitted a letter to EPA clarifying that: (1) It does not use PM₁₀ as a surrogate for PM_{2.5} in its permitting programs; (2) it requires that applicants include PM_{2.5} modeling and emissions in their PSD and minor source permit applications; and (3) the record for the NMED’s permitting decision includes an explanation of how PM_{2.5} emissions have been appropriately analyzed and estimated. Furthermore, the State has recently proposed to revise their rules to address PM_{2.5} in their PSD program, and expects to adopt these revisions in May 2011. The State is planning to submit to EPA these revised PSD rules as a SIP revision by May 16, 2011. The State’s

minor source permitting requirements were approved at 38 FR 12702. The portions of the State’s PSD program related to permitting GHGs at or above the Tailoring Rule thresholds are approvable in light of the PSD SIP Narrowing Rule. As discussed above, regarding GHG permitting, EPA intends to take final action on the December 1, 2010 submittal in a separate rulemaking no later than EPA’s final action on New Mexico’s 1997 ozone and PM_{2.5} infrastructure SIP submittals. We are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS, as long as we are able to fully approve New Mexico’s GHG submittal on or before our final action on New Mexico’s 1997 ozone and PM_{2.5} infrastructure SIP submittals; or, in the alternative, we are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS on the basis of the State’s April 19, 2011 clarification letter. EPA is proposing to find that the New Mexico SIP meets the PSD requirement of section 110(a)(2)(C). A more detailed discussion is provided in subsection 110(a)(2)(C) above and in the TSD. EPA is proposing to find that the New Mexico SIP meets the requirements of this portion of section 110(a)(2)(j) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

EPA approved New Mexico’s Visibility Protection Plan and approved a Long-Term Strategy for Visibility Protection into the New Mexico SIP on January 27, 2006 (71 FR 4490). The State submitted a Regional Haze SIP to EPA on December 1, 2003. On January 15, 2009, we published a “Finding of Failure to Submit State Implementation Plans Required by the 1999 regional haze rule” (74 FR 2392). We found that New Mexico had failed to submit for our review and approval a complete SIP for improving visibility in the nation’s national parks and wilderness areas by the required date of December 17, 2007. Specifically, we found that New Mexico had failed to submit the plan elements required by 40 CFR 51.309(g),⁴⁴ and the plan element required by 40 CFR 51.309(d)(4), which requires BART for stationary source emissions of NO_x and PM under either 40 CFR 51.308(e)(1) or 51.308(e)(2).⁴⁵ On January 13, 2009, New Mexico submitted a letter to EPA,

⁴⁰ Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA section 162(a).

⁴¹ See 71 FR 4490, published January 27, 2006.

⁴² See 65 FR 14877.

⁴³ Please see <http://air.nmenv.state.nm.us/>.

⁴⁴ 40 CFR 51.309(g) concerns the reasonable progress requirements for areas other than the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report.

⁴⁵ New Mexico has the option to submit a Regional Haze SIP under either section 51.308 or section 51.309.

clarifying that they intended to submit a Regional Haze SIP revision in 2009 to address the requirements of 40 CFR 51.309(d)(4) and 40 CFR 51.309(g).⁴⁶ New Mexico has since stated that they intend to make this necessary submission in 2011. To date, the State has not made a Regional Haze SIP submission. The State proposed to adopt a Regional Haze SIP on February 28, 2011, and the public comment period will run through June 1, 2011. EPA will take action separately on New Mexico's Regional Haze SIP once the State makes this submittal. 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; and as such, visibility protection requirements are not relevant for purposes of this action. This would be the case even in the event a secondary PM_{2.5} NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. EPA is therefore proposing to find that the New Mexico SIP meets the requirements of this portion of section 110(a)(2)(j) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

Air quality modeling and submission of data, pursuant to section 110(a)(2)(k): The Air Quality Control Act authorizes NMED to "develop facts and make investigations and studies," thereby providing for the functions of environmental air quality assessment. As an example, New Mexico submitted modeling and control measures in a SIP revision to demonstrate attainment of the 1997 8-hour ozone standard.⁴⁷ The modeling and control measures in the SIP revision were approved by EPA and adopted into the SIP.

This section of the Act also requires that a SIP provide for the submission of data related to such air quality modeling to the EPA upon request. The Air Quality Control Act authorizes NMED to cooperate with the Federal government in regard to matters of common interest

in the field of air quality control, thereby allowing it to make this submission to EPA. See NMSA 1978 74-2-5.2(B).

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(K) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

Permitting fees, pursuant to section 110(a)(2)(L): The Air Quality Control Act provides the EIB with the legal authority for establishing an emission fee schedule and a construction permit fee schedule to recover the reasonable costs of acting on permit applications, implementing, and enforcing permits. See NMSA 1978 74-2-7. New Mexico's Permit Fee System was approved by EPA on July 17, 1991 (56 FR 32511). New Mexico's Permit Fee System implements a fee system for all preconstruction air permits issued by NMED. New Mexico's regulations for construction permit fees are found at 20.2.75 NMAC. The State's Title V program and associated fees legally are not part of the SIP, but were approved by EPA on November 26, 1996 (61 FR 60032) as part of the New Mexico Title V Program. EPA is reviewing the New Mexico Title V program, including the Title V fee structure, separate from this action. Because the Title V program and associated fees legally are not part of the SIP, the infrastructure SIP action we are proposing today does not preclude EPA from taking future action regarding New Mexico's Title V program.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(L) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

Consultation/participation by affected local entities, pursuant to section 110(a)(2)(M): As indicated above, the Air Quality Control Act provides that, "no regulations or emission control requirement shall be adopted until after a public hearing by the environmental improvement board or the local board" and provides that, "at the hearing, the environmental improvement board or the local board shall allow all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing." See NMSA 1978 74-2-6(B) and (D). In addition, the Air Quality Control Act provides that the NMED shall have the power and duty to "advise, consult, contract with and cooperate with local authorities, other states, the Federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control * * *" See NMSA 1978 74-2-5.2(B). New Mexico's SIP approved PSD regulations at 20.2.74.400 NMAC mandate that the

NMED shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, and FLMs whose lands may be affected by emissions from the source or modification. New Mexico's SIP approved Transportation Conformity regulations at 20.2.99.116 and 20.2.99.124 NMAC require that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related SIPs.⁴⁸

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(M) with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS.

IV. Proposed Action

We are proposing to approve the submittals provided by the State of New Mexico to demonstrate that the New Mexico SIP meets the requirements of Section 110(a)(1) and (2) of the Act for the 1997 8-hour ozone and PM_{2.5} NAAQS. We are proposing to find that the current New Mexico SIP meets the infrastructure elements 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 and international transport (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).

EPA is also proposing to make CFR codification technical corrections to amend the following:

1. The table titled "EPA Approved Nonregulatory Provisions And Quasi-

⁴⁶ January 13, 2009, letter from Bill Richardson, Governor of New Mexico, to Mayor Richard Greene, Regional Administrator, EPA Region 6. This letter is in the docket for this rulemaking.

⁴⁷ See the Attainment Demonstration for the San Juan County Early Action Compact Area, approved by EPA and adopted into the SIP on August 17, 2005 (70 FR 48285).

⁴⁸ See 65 FR 14877.

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

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

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

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

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

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

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

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: April 22, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–10569 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[GC Docket No. 10–43; FCC 11–11]

Commission’s Ex Parte Rules and Other Procedural Rules

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking

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

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

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission’s Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

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