4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

§ 275.206(3)–3T [Amended]

2. In § 275.206(3)–3T, amend paragraph (d) by removing the words ''December 31, 2012'' and adding in their place ''December 31, 2014''.

By the Commission.

Dated: October 9, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–25116 Filed 10–11–12; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0710; FRL–9740–4]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the submittal from the State of New Mexico pursuant to the Clean Air Act (CAA or Act) that addresses the infrastructure elements specified in the CAA necessary to implement, maintain, and enforce the 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS or standard). We are proposing to find that the current New Mexico State Implementation Plan (SIP) meets the infrastructure elements for the 2006 $PM_{2.5}$ NAAQS. We are also proposing to find that the current New Mexico SIP meets the CAA requirement which addresses the requirement that emissions from sources in the area do not interfere with prevention of significant deterioration (PSD) measures required in the SIP of any other state, with regard to the 2006 $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before November 13, 2012.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2009–0710, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2009–0710. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* 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, 1301 Siler Road, Building B, Santa Fe, New Mexico 87507, telephone 505–476–4300.

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

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

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I. Background

A. What is the background for this rulemaking?

On October 17, 2006, we published revised standards for PM (71 FR 61144). For $PM_{2.5}$, the annual standard of 15 μg/m³ was retained, and the 24-hour standard was revised to 35 μg/m³. For PM_{10} the annual standard was revoked, and the 24-hour standard (150 μg/m³) was retained.

Under sections 110(a)(1) and (2) of the Act, states are required to submit SIPs [1] 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 B of section I of this proposed rulemaking. Thus states were required to submit such SIPs for the 2006 $PM_{2.5}$ NAAQS to EPA no later than September 21, 2009.

On September 25, 2009, we issued ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' Memorandum also from William T. Harnett, Director, AQPD, OAQPS. Each of these guidance memos addresses the SIP elements found in 110(a)(2). The guidance states that, to the extent that existing SIPs already meet the requirements, states need only certify that fact to us.

On June 12, 2009, the Governor of New Mexico submitted a letter certifying that NMED has evaluated the New Mexico SIP and found that the SIP does satisfy all the requirements of section 110(a)(1) and (2) for the 2006 $PM_{2.5}$ NAAQS. The June 12, 2009 submittal included a table with an explanation of how the current New Mexico SIP meets the requirements of section 110(a)(2) for the 2006 $PM_{2.5}$ NAAQS. On July 15, 2011, we found that New Mexico's current SIP met all the requirements of section 110(a)(2) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS (see 76 FR 41698). For detailed information concerning the background for our previous approval, please see Docket I.D. No. EPA–R06–OAR–2009–0647 for that rulemaking.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's proposed action either approving, disapproving, or approving in part and disapproving in part New Mexico's 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), and section 110(a)(2)(D)(i) interstate transport requirements, by September 30, 2012.

In today's action, we are proposing to approve New Mexico's 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), and section 110(a)(2)(D)(i) interstate transport requirements. This action is not approving any specific rule, but rather proposing that New Mexico's already approved SIP, meets certain CAA requirements.

Additional information: This rulemaking will not cover four substantive issues that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); (iii) existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule'' (67 FR 80186, December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's July 13, 2011, final rule entitled, ''Infrastructure SIP Requirements for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' in the section entitled, ''What is the scope of this final rulemaking?'' (see 76 FR 41076).

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

Section 110(a) of the Clean Air Act (Act) requires that each state adopt and submit to EPA, within 3 years (or such shorter time period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the implementation, maintenance, and enforcement of such NAAQS. EPA refers to these specific submissions as ''infrastructure'' SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS.

Pursuant to the September 25, 2009, EPA guidance for addressing the SIP infrastructure elements required under sections 110(a)(1) and (2) for the 2006 $PM_{2.5}$ NAAQS, there are 14 essential structural elements that that must be included in the SIP. These are listed in Table 1 below.

[1] State Implementation Plans only apply on State lands and do not apply in Indian Country.

[2] 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.

[3] 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).

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) [2]	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) [3]	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.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment New Source Review (NSR)), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

II. The State's Submittal

New Mexico certified that the New Mexico SIP contains provisions that ensure the 2006 $PM_{2.5}$ NAAQS are implemented, maintained, and enforced in New Mexico. On June 12, 2009, the Governor of New Mexico submitted to EPA the Clean Air Act Section 110(a)(1) and (2) requirements in the current New Mexico SIP that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 2006 $PM_{2.5}$ NAAQS. The June 12, 2009 submittal included a cover letter from the Governor of New Mexico to the EPA Region 6 Regional Administrator, an executive summary discussion, and a SIP matrix listing New Mexico's compliance with state regulations and each section 110(a)(2) infrastructure element for $PM_{2.5}$.

We are proposing to approve the June 12, 2009 submittal since it addresses the infrastructure SIP requirements for the 2006 $PM_{2.5}$ NAAQS. A copy of the submittal can be found in the electronic docket for this action (Docket ID No. EPA–R06–OAR–2009–0710).

III. EPA's Evaluation

The New Mexico submittal addresses the elements of Section 110(a)(2) as described below. We provide additional background information and a more detailed review and analysis of the New Mexico infrastructure SIP elements in the Technical Support Document (TSD), located in the electronic docket for this proposed rulemaking.

Enforceable emission limits and other control measures, pursuant to section 110(a)(2)(A): Section 110(a)(2)(A) requires that all measures and other elements in the SIP be enforceable. This provision does not require the submittal of regulations or emission limits developed specifically for attaining the 2006 $PM_{2.5}$ 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 New Mexico Environment Department (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; recodification approved in 62 FR 50518, September 26, 1997).

The NMED has promulgated rules to limit and control emissions of fine particulate matter ($PM_{2.5}$), sulfur dioxide (SO_2), nitrogen oxides (NO_X) and volatile organic compounds (VOCs).[4] These rules include emission limits, control measures, permits, fees, and compliance schedules and are found in Title 20, chapter 2 of the NMAC [5] (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.[6] EPA believes that a number of states may have SSM SIP provisions that are contrary to the Act and existing EPA guidance,[7] 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

[4] 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 SO_2 precursors combining with ammonia to form ammonium nitrate and ammonium sulfate.

[5] Title 20 addresses *Environmental Protection* and chapter 2 addresses *Air Quality.*

[6] 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).

[7] ''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.

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),[8] 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 2006 $PM_{2.5}$ NAAQS.

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 System[9] 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 $PM_{2.5}$. The air quality surveillance network undergoes annual review by EPA. On July 7, 2011, NMED submitted its 2011 Annual Air Monitoring Network Plan (AAMNP) that included the plans for the 2006 $PM_{2.5}$ NAAQS. EPA approved New Mexico's 2011 AAMNP on January 13, 2012.[10] The NMED Web site provides the $PM_{2.5}$ 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 2006 $PM_{2.5}$ 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 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 of the CAA, generally, the State is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 2006 $PM_{2.5}$ NAAQS. We are not evaluating nonattainment-related provisions, such as the Nonattainment NSR (NNSR) 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 this 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. New Mexico's PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964) and fully approved on August 15, 2011 (76 FR 41698). In addition, revisions to New Mexico's PSD program were approved into the SIP on August 21, 1990 (55 FR 34013), May 2, 1991 (56 FR 20137), October 15, 1996 (61 FR 53639), March 10, 2003 (68 FR 11316), December 24, 2003 (68 FR 74483), September 5, 2007 (72 FR 50879), November 26, 2010 (75 FR 72688) and July 20, 2011 (76 FR 43149). Additionally, on June 11, 2009 and May 23, 2011, New Mexico submitted to EPA SIP revisions that revise the state's PSD and NNSR permitting regulations to address the permitting requirements associated with the NAAQS for 8-hour ozone and $PM_{2.5}$, respectively. EPA approved the portions of the June 11, 2009 submittal associated with implementing NO_X as a precursor (75 FR 72688) as necessary to implement the 1997 ozone standard. EPA has proposed approval of the May 23, 2011 revision in a **Federal Register** notice signed on September 28, 2012, as these elements are necessary for implementation of the $PM_{2.5}$ standard. Specific details regarding our proposed approval of these submittals is available in a separate rulemaking and can be found in the Docket ID EPA–R06–OAR–2011–0033.

$PM_{2.5}$ PSD Permitting: To implement the PSD permitting component of section 110(a)(2)(C) for the 2006 $PM_{2.5}$ NAAQS, states were required to submit the necessary SIP revisions to EPA by May 16, 2011 and July 20, 2012 pursuant to EPA's NSR $PM_{2.5}$ Rule finalized May 16, 2008 (73 FR 28321) and EPA's $PM_{2.5}$ Increment—Significant Impact Levels (SILs)—Significant Monitoring Concentrations (SMC) Rule (75 FR 64864) finalized October 20, 2010, respectively. On May 23, 2011, the Governor submitted necessary revisions to the New Mexico SIP to amend the PSD program to meet the 2006 $PM_{2.5}$ NAAQS implementation requirements. To address the requirements of EPA's May 16, 2008 NSR $PM_{2.5}$ Rule, New Mexico adopted rule revisions to establish (1) The requirement for NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) significant emission rates for direct $PM_{2.5}$ and precursor pollutants (SO_2 and NO_X) and (3) the requirement that condensable PM be addressed in enforceable PM, PM_{10} and $PM_{2.5}$ emission limits included in PSD permits. To address the requirements of EPA's October 20, 2010 $PM_{2.5}$ PSD Increment—SILs—SMC Rule, New

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

[9] 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.

[10] A copy of our approval letter is available in the docket for this rulemaking.

Mexico updated its PSD rules to establish the allowable $PM_{2.5}$ increments,[11] and the optional screening tools called significant impact levels (SILs), and significant monitoring concentrations (SMCs).

In a separate rulemaking, EPA proposes to approve the May 23, 2011 SIP revisions to New Mexico's PSD permitting regulations that implement the provisions for $PM_{2.5}$ permitting because EPA found those rule revisions adequate and necessary to implement the 2006 $PM_{2.5}$ NAAQS. We have proposed the New Mexico PSD program satisfies both the May 16, 2008 (73 FR 28321) and October 20, 2010 $PM_{2.5}$ PSD rulemakings (75 FR 64864, effective December 20, 2010) and a complete analysis is provided in the TSD for the proposed action signed on September 28, 2012.

GHG PSD Permitting: New Mexico has the authority to issue permits under the SIP-approved PSD program to sources of GHG emissions (75 FR 82536, December 30, 2010).[12] 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). On August 19, 2011, EPA approved New Mexico's GHG rules submitted on December 1, 2010 (see 76 FR 43149 dated July 20, 2011).

Minor Source Permitting: Section 110(a)(2)(C) creates ''a general duty on States to include a program in their SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved'' (70 FR 71612, 71677). 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).[13] In this action, EPA is proposing to approve New Mexico's infrastructure SIP for the 2006 $PM_{2.5}$ 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 stationary source as necessary to assure that the NAAQS are achieved.

It is important to stress that 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.

Based on the above, we are proposing to find that the current New Mexico SIP meets the requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

Interstate transport, pursuant to section 110(a)(2)(D): Section 110(a)(2)(D) has two components, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. Section 110(a)(2)(D)(ii) requires

[11] Under section 165(a)(3) of the Act, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility ''will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant * * *.'' The ''maximum allowable increase'' of an air pollutant that is allowed to occur above the applicable baseline concentration for that pollutant is known as the PSD increment. New Mexico revised their PSD program (20.2.74 NMAC) to include the allowable PSD increments. For example, for Class II areas, the allowable $PM_{2.5}$ PSD increment is 4 $\mu g/m^3$ annual arithmetic mean, and 9 $\mu g/m^3$ 24-hour maximum, as outlined in Table 4 of 20.2.74.504 NMAC.

[12] 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 approved the December 1, 2010 submittal on August 19, 2011 (76 FR 43149).

[13] 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).

SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

PSD and interstate transport, pursuant to section 110(a)(2)(D)(i): One of the four elements (or prongs) in section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. This is the only element of 110(a)(2)(D)(i) on which EPA is proposing action in this rulemaking. EPA's 2009 Guidance made recommendations for SIP submissions to meet this requirement with respect to the 2006 $PM_{2.5}$ NAAQS.

The 2009 Guidance states that the PSD permitting program is the primary measure that each state must include to prevent interference with any other state's required measures to prevent significant deterioration of its air quality in accordance with section 110(a)(2)(D)(i)(II).

As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the New Mexico PSD program has been approved into the SIP. New Mexico has provided necessary revisions to its PSD program to implement the $PM_{2.5}$ standards and EPA has proposed approval of these revisions. Therefore, EPA is proposing that the New Mexico SIP meets the basic requirements for implementing the 2006 $PM_{2.5}$ NAAQS. We are proposing to find the SIP has adequately addressed section 110(a)(2)(D)(i)(II) of the CAA, for the element that requires that the SIP prohibit air pollutant emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state.

The remaining three elements of section 110(a)(2)(D)(i): (1) Do not significantly contribute to nonattainment of the relevant NAAQS in any other state for the 2006 $PM_{2.5}$ NAAQS; (2) interference with the maintenance of the NAAQS in any other state; (3) interference with measures required to protect visibility in any other state will be evaluated and addressed in future rulemakings.

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 2006 $PM_{2.5}$ 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 2006 $PM_{2.5}$ 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 2006 $PM_{2.5}$ NAAQS.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(E) with respect to the 2006 $PM_{2.5}$ 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 SO_2).

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 2010 data for larger sources was submitted to EPA in 2011. The State's emissions data are also available on EPA's AirData Web site (*http://www.epa.gov/air/data/index.html*).[14]

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(F) with respect to the 2006 $PM_{2.5}$ 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 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/m^3 since 2006 establish an emergency episode plan and contingency measures to be implemented should such level be exceeded again. The 2006–2011 ambient air quality monitoring data[15] for New Mexico do not exceed 140.4 μg/m^3. The $PM_{2.5}$ levels have consistently remained below this level (140.4 μg/m^3), 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 2006 $PM_{2.5}$ 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 2006 $PM_{2.5}$ 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 2006 $PM_{2.5}$ NAAQS.

Consultation with government officials, pursuant to section 110(a)(2)(J):[16] 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 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.[17] 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.[18] 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

[14] 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.

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

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

[17] 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).

[18] See 71 FR 4490, January 27, 2006.

transportation-related SIPs.[19] 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 2006 $PM_{2.5}$ 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.[20] 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 2006 $PM_{2.5}$ 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 converted our conditional approval into a full approval effective August 15, 2011 (76 FR 41698). 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). Furthermore, the State revised their rules to address $PM_{2.5}$ in their PSD program, and submitted those SIP revisions on May 23, 2011 to address the permitting requirements for direct $PM_{2.5}$ emissions and its precursors as promulgated by EPA on May 16, 2008 and adopting the $PM_{2.5}$ increment, significant impact levels (SILs), and significant monitoring concentrations (SMCs) as promulgated by EPA on October 20, 2010 (75 FR 64864). The State's minor source permitting requirements were approved at 38 FR 12702.

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),[21] 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).[22] On January 13, 2009, New Mexico submitted a letter to EPA, clarifying that they intended to submit a Regional Haze (RH) SIP revision in 2009 to address the requirements of 40 CFR 51.309(d)(4) and 40 CFR 51.309(g).[23]

On September 17, 2007, New Mexico submitted a SIP revision addressing the ''good neighbor'' requirement of section 110(a)(2)(D)(i) of the CAA for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. On August 22, 2011, EPA disapproved the New Mexico Interstate Transport SIP provisions that address the requirement of 110(a)(2)(D)(II) that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. EPA found that New Mexico sources, except the San Juan Generating Station, are sufficiently controlled to eliminate interference with the visibility programs of other states. Therefore, EPA finalized a Federal Implementation Plan (FIP) for New Mexico to address emissions from one source: The San Juan Generating Station (SJGS) coal-fired power plant (76 FR 52388, effective September 21, 2011). The FIP addresses the RH Best Available Retrofit Technology (BART) requirements for NO_X for the SJGS. In that action, EPA found that the other New Mexico pollution sources are adequately controlled to eliminate interference with the clean air visibility programs of other states.

On July 5, 2011, New Mexico submitted a revised Regional Haze (RH) SIP to the EPA. EPA has reviewed the submittal and proposed approval of the submittal, except for the submitted nitrogen oxides NO_X Best Available Retrofit Technology (BART) determination for the San Juan Generating Station, on June 15, 2012 (77 FR 36044).

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 2006 $PM_{2.5}$ 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 has the ability to perform modeling for the primary and secondary $PM_{2.5}$ standards on a case-by-case permit basis consistent with their SIP-approved PSD rules and consistent with EPA guidance and 40 CFR part 51, Appendix W, Guideline on Air Quality Models.

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

[19] See 65 FR 14877.

[20] Please see *http://air.nmenv.state.nm.us/.*

[21] 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.

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

[23] 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.

section 110(a)(2)(K) with respect to the 2006 $PM_{2.5}$ 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 proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(L) with respect to the 2006 $PM_{2.5}$ 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.[24]

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(M) with respect to the 2006 $PM_{2.5}$ NAAQS.

IV. Proposed Action

We are proposing to approve the submittal 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 2006 $PM_{2.5}$ 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).

We are also proposing to approve the portion of the New Mexico submittal that addresses the requirement of section (110)(a)(2)(D)(i)(II) of the Act that emissions from sources in New Mexico do not interfere with measures required in the SIP of any other state under part C of the Act regarding PSD for the 2006 $PM_{2.5}$ NAAQS.

EPA is proposing these actions in accordance with section 110 and part C of the Act and EPA's regulations and consistent with EPA guidance. EPA's proposed approval does not extend to areas within Indian country as defined in 18 U.S.C. 1151. EPA, or eligible Indian tribes, as appropriate, will retain jurisdiction and responsibilities under the Clean Air Act, Section 110 within Indian country.

[24] See 65 FR 14877.

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: September 28, 2012.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2012–25158 Filed 10–11–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0019(b); FRL–9741–1]

Approval and Promulgation of Implementation Plans; North Carolina Portion of the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone Nonattainment Area; Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan revisions, submitted by the North Carolina Department of Environment and Natural Resources, on June 15, 2007, and November 30, 2009, to address the reasonable further progress (RFP) plan requirements for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the North Carolina portion of the bi-state Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area. The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the ''bi-state Charlotte Area'') is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina. EPA is also providing the status of its adequacy determination for the motor vehicle emissions budgets (MVEB) for volatile organic compounds and nitrogen oxides that were included in North Carolina's RFP plan. Further, EPA is proposing to approve these MVEB. This proposed action is being taken pursuant to section 110 of the Clean Air Act. EPA will take action on South Carolina's RFP plan for its portion of the bi-state Charlotte Area, in a separate action. In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revisions as a direct final rule without prior proposal because the Agency views these submittals as noncontroversial and anticipates no adverse comments.

DATES: Written comments must be received on or before November 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0019 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2010–0019,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9061. Ms. Waterson can be reached via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 12, 2008, EPA issued a revised ozone NAAQS. *See* 73 FR 16436. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS. Requirements for the North Carolina portion of the bi-state Charlotte Area under the 2008 ozone NAAQS will be addressed in the future. For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval of the RFP plan requirements for the 1997 8-hour ozone NAAQS is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on the matters being proposed for approval into the North Carolina SIP today should do so at this time.

Dated: October 2, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–25188 Filed 10–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0033; FRL–9740–5]

Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the New Mexico SIP to update the New Mexico NNSR and PSD SIP permitting programs consistent with federal requirements. EPA proposes to find that these revisions to the New Mexico SIP meet the Federal Clean Air Act (the Act or CAA) and EPA regulations, and are consistent with EPA policies. New Mexico submitted the PSD and NNSR SIP permitting revisions in two SIP submittals on June 11, 2009, and May 23, 2011. EPA is proposing this action under section 110 and parts C and D of the Act.

DATES: Comments must be received on or before November 13, 2012.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–