



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2018-0706; FRL-9998-72-Region 6]**

### **Air Plan Approval; New Mexico; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards and Repeal of State Regulations for Total Suspended Particulate**

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) infrastructure certifications from the State of New Mexico and Albuquerque-Bernalillo County to address CAA section 110(a)(1) and (2) requirements for the 2015 ozone (O<sub>3</sub>) National Ambient Air Quality Standards (NAAQS). The submittals address how the existing SIP provides for the implementation, maintenance, and enforcement of the 2015 O<sub>3</sub> NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the New Mexico SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS. The EPA is also approving a SIP revision for the repeal of the New Mexico Ambient Air Quality Standards (NMAAQs) for total suspended particulate (TSP) in the New Mexico regulations incorporated into the SIP.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2018-0706. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g.,

Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karolina Ruan Lei, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, TX 75270, (214) 665-7346, [ruan-lei.karolina@epa.gov](mailto:ruan-lei.karolina@epa.gov). To inspect the hard copy materials, please schedule an appointment with Ms. Karolina Ruan Lei or Mr. Bill Deese at (214) 665-7253.

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

## **I. Background**

The background for this action is discussed in detail in our proposal published on April 18, 2019 (84 FR 16226). In that notice we proposed to approve the November 1, 2018, and September 24, 2018, i-SIP certifications submitted by the State of New Mexico and Albuquerque-Bernalillo County, respectively. The November 1, 2018, and September 24, 2018, submittals addressed the implementation, maintenance, and enforcement of the 2015 O<sub>3</sub> NAAQS in New Mexico, including two of the four interstate transport requirements (CAA section 110(a)(2)(D)(i)(II)). We also proposed to approve a SIP revision submitted on November 16, 2018, by the State of New Mexico that pertains to the repeal of the air quality standards for TSP in New Mexico. The November 16, 2018, submittal included a demonstration that the repeal of the TSP NMAAQs will not interfere with the attainment and maintenance of the NAAQS or any other CAA requirement.

We received comments on the April 18, 2019, proposal from two commenters on the infrastructure portion of the action. One commenter was anonymous and submitted adverse comments on several elements of the New Mexico i-SIPs. The other commenter was the City of Albuquerque Environmental Health Department (EHD), who submitted a comment letter to correct certain statements made in the proposal. We did not receive any comments regarding the repeal of the TSP NMAAQs. Our response to the comments is provided in the section below.

## **II. Response to Comments**

*Comment:* The commenter stated that the EPA should disapprove the current infrastructure SIP as it relates to prevention of significant deterioration (PSD) elements. The current approved version of the New Mexico regulation does not require ammonia as a precursor to fine particulate matter (PM<sub>2.5</sub>) evaluations. The commenter stated that the EPA claims the State and County have a "comprehensive" program, but the approved regulation does not include ammonia as a precursor. The commenter stated that New Mexico must update its permitting programs for both the State and the counties.

*Response:* The EPA disagrees with the comment. The EPA's minimum requirements for a state PSD program at 40 CFR 51.166 do not regulate ammonia as either a precursor or a presumed precursor for PM<sub>2.5</sub> for PSD permitting. Regulated precursors for PM<sub>2.5</sub> for PSD permitting are defined at 40 CFR 51.166(b)(49)(i)(b)(2) and (3) as sulfur dioxide and nitrogen oxides, respectively.<sup>1</sup> The State of New Mexico and Albuquerque-Bernalillo County PSD programs were SIP-approved for the regulation of PM<sub>2.5</sub> and its precursors on January 22, 2013,

---

<sup>1</sup> It should also be noted that 40 CFR 51.166(b)(49)(i)(b)(3) provides that a state may overcome the presumption that nitrogen oxides (NO<sub>x</sub>) is a regulated precursor if it demonstrates NO<sub>x</sub> emissions from sources in a particular area do not significantly contribute to that area's ambient PM<sub>2.5</sub> concentrations. The PSD requirements also include a presumption that volatile organic compounds are not precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area unless found to be a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations. See 40 CFR 51.166(b)(49)(i)(b)(4).

and September 19, 2012, respectively (78 FR 4339 and 77 FR 58032). The New Mexico State and County SIP-approved PSD programs are comprehensive PSD programs that cover all regulated pollutants, including PM<sub>2.5</sub> and its applicable precursors.

*Comment:* The commenter stated that New Mexico's permitting program requires ambient air quality modeling to be performed "as specified in EPA's Guideline on Air Quality Models (EPA-450/2-78-027R, July 1986), its revisions, or any superseding document, and approved by the Department." The commenter stated that this text in the regulation restricts the State from requiring the most up-to-date modeling as required in 40 CFR part 52, Appendix W, which is not a "superseding document", as it is a regulation promulgated by the EPA and not a document.

The commenter also stated that the State's rule appears to give the State inappropriate director's discretion in the use of what air quality modeling is used as the language "and approved by the department" appears to allow the department to disregard EPA-required modeling if the department does not approve of it. The commenter stated that director's discretion was outlawed by the Courts in *NRDC v. EPA* in 2013 and was affirmed by the EPA in its startup, shutdown, and malfunction SIP call. The commenter additionally stated that this modeling problem should also require the EPA to disapprove Element K as well, since that also has to do with modeling.

*Response:* The EPA disagrees with the commenter that the text in the New Mexico regulation, which the commenter cited from 20.2.74.305 of the New Mexico Administrative Code (NMAC), restricts the State from requiring the most up-to-date modeling. The EPA notes that the commenter likely meant to refer to 40 CFR part 51 rather than 40 CFR part 52 as there is no Appendix W in 40 CFR part 52, and the EPA's *Guideline on Air Quality Models* is codified at 40 CFR part 51, Appendix W.

The general definition of the term “document” can mean any written, printed, or electronic material that provides information or conveys thoughts or ideas. Any regulation in the CFR is considered a document. The EPA’s *Guideline on Air Quality Models* (40 CFR part 51, Appendix W) also refers to itself as a document at several instances throughout its text. The most recent version of the *Guideline on Air Quality Models* is therefore a “superseding document” to the July 1986 *Guideline on Air Quality Models* cited in the New Mexico regulations at 20.2.74.305 NMAC.

Additionally, the text in the New Mexico regulations at 20.2.74.305 NMAC also includes any “revisions” to the EPA’s *Guideline on Air Quality Models*. The January 17, 2017, final rule for the most recent update to Appendix W is titled “Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter” and contains a description of the action in the summary, which states that “[i]n this action, the Environmental Protection Agency (EPA) promulgates revisions to the *Guideline on Air Quality Models*” (82 FR 5182). The January 17, 2017, final rule also describes in the background section the past revisions of the *Guideline on Air Quality Models* (*Id.*). Therefore, the most recent version of the *Guideline on Air Quality Models* is clearly a “revision” to older versions, including the July 1986 version cited in the New Mexico regulation, of the EPA’s *Guideline on Air Quality Models*.

The EPA also disagrees with the commenter that the provisions at 20.2.74.305 NMAC provide inappropriate director’s discretion to the State of New Mexico. This provision clearly requires that modeling be conducted pursuant to the latest version of the EPA’s *Guideline on Air Quality Models*. According to 20.2.74.305 NMAC, “[a]ny substitution or modification of a model must be approved by the Department”, and “[n]otification shall be given by the

Department of such a substitution or modification and the opportunity for public comment provided for in fulfilling the public notice requirements in subsection B of 20.2.74.400 NMAC”. Additionally, 20.2.74.305 NMAC states that the New Mexico Environment Department (NMED) “will seek EPA approval of such substitutions or modifications”. The provisions at 20.2.74.305 NMAC, the EPA’s regulations at 40 CFR 51.166(l) and the *Guideline on Air Quality Models* itself provide that alternative models, modeling scenarios, or model substitutions may be used if approved by the EPA. The New Mexico rule requires an additional approval from the state air director in addition to the EPA before an applicant can use such an alternative model or model substitution for permitting.

The New Mexico regulations at 20.2.74.305 NMAC, therefore, do not restrict the State from requiring the most recent modeling for permitting as required by 40 CFR 51.166(l) nor do they provide inappropriate director’s discretion to the State of New Mexico.

*Comment:* The commenter asked, with respect to adequate funding, whether the EPA has done a full accounting of the department's finances. The commenter also asked how the EPA can be sure that New Mexico is collecting the correct amount in fees from major title V sources to adequately fund the department and stated that there is no accounting or financial evaluation in the docket that proves New Mexico or the County is adequately funded. The commenter also asked if they are supposed to take the State's word at face value.

*Response:* A “full accounting of the NMED’s finances” is not required. Section 110(a)(2) does not require a specific quantitative metric or methodology for determining adequate resources. Section 110(a)(2)(E) requires that the state provide necessary assurances that the state will have adequate funding under state law to carry out the SIP. As mentioned in our TSD for the proposal, to address adequate funding, the NMED and the EHD have the resources necessary to

carry out the SIP, which are provided through general funds, permit fees, and the CAA section 103 and 105 grant processes. NMSA 1978, § 74-2-5.1(F) provides the NMED and the EHD 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. NMSA 1978, § 74-2-7 authorizes and requires the State and County to adopt regulations to include for the collection of permit fees.

The State of New Mexico's Permit Fee System implements a fee system for all preconstruction air permits issued by the NMED and can be found at 20.2.75 NMAC, *Construction Permit Fees*. The provisions in 20.2.75 NMAC were most recently approved by the EPA on March 29, 2012 (77 FR 18923). In the March 29, 2012, final rule, the EPA found that the rule and revisions to 20.2.75 NMAC met the applicable fee-related requirements in section 110(a)(2) of the CAA (77 FR 18923). Under the provisions of 20.2.75 NMAC, the NMED assesses fees when an owner or operator applies for a notice of intent, a permit to construct or modify a source, or a revision to a construction permit. Additionally, annual fees are assessed for sources that have been issued a permit under 20.2.72 NMAC, *Construction Permits*.

Albuquerque-Bernalillo County's provisions for permit fees are codified in 20.11.2 NMAC, *Fees*, and 20.11.41, *Construction Permits*, which were most recently approved by the EPA on May 24, 2012, and June 29, 2017, respectively (77 FR 30900 and 82 FR 29421). The EPA found that the submitted rules and revisions to 20.11.2 NMAC met the applicable fee-related requirements of section 110(a)(2) of the CAA (76 FR 68385, November 4, 2011; 77 FR 30900, May 24, 2012). Under the provisions of 20.11.2 NMAC, the EHD assesses fees when an owner or operator applies for an air permit, air permit renewal, or air permit amendment. Annual fees are also assessed for sources with existing source registrations or permits.

The State of New Mexico and Albuquerque-Bernalillo County each concluded in their i-SIP submittals that they do not anticipate a need for additional resources to implement their respective plans for the 2015 O<sub>3</sub> NAAQS beyond those which have been utilized for the preparation of said plans, plan revisions submitted to the EPA, and other current programmatic demands.

Additionally, section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority to cover the cost of reviewing, approving, implementing and enforcing a permit. Section 110(a)(2) falls under title I of the CAA and governs the implementation, maintenance, and enforcement of the NAAQS, in this instance 2015 O<sub>3</sub>, through the federally approved SIP. Section 110 and 40 CFR part 51 also provide mechanisms for programmatic remedies with respect to the SIP. Furthermore, title I addresses minor and major new source review SIP preconstruction permits. The title V program, by contrast, governs operating permits and is addressed by CAA sections 502 through 507. Any evaluation of the title V program and any consequent programmatic remedies must be done pursuant to CAA section 502 and 40 CFR part 70. The scope of this action is limited to determining whether the New Mexico SIP meets certain infrastructure requirements of CAA 110(a)(2) with respect to the 2015 O<sub>3</sub> NAAQS. The State of New Mexico and Albuquerque-Bernalillo County's title V programs are not part of the New Mexico SIP but were approved by the EPA on November 26, 1996 (61 FR 60032). Title V fees are separate from title I fees. As mentioned earlier in this action, title V is subject to evaluation under different statutory and regulatory mechanisms provided for outside the SIP parameters for evaluation under CAA section 110 and 40 CFR part 51. Therefore, the part of the comment that questions whether New

Mexico collected the correct amount in fees from major title V sources (Element L) to adequately fund the department is irrelevant to the approval of Element E.

As described in our proposal, TSD, and previously in this response, the EPA's evaluation and approval of adequate resources for the State of New Mexico and Albuquerque-Bernalillo County are based upon various sources of funding, state statutes and rules pursuant to section 110(a)(2). The EPA has not identified sufficient information to support the necessary finding for disapproval with regard to adequate funding. Also, the commenter has not identified any flaws or specific program deficiencies in the State's or County's accounting or fee system, or description of why we would question such. The EPA noted no significant deficiencies, thus indicating that both the State of New Mexico and Albuquerque-Bernalillo County have sufficient resources to implement their respective SIPs. Therefore, the EPA is approving Element E for the State of New Mexico and Albuquerque-Bernalillo County for meeting infrastructure requirements for the 2015 O<sub>3</sub> NAAQS.

*Comment:* The commenter stated that in Table 1 of the proposed action, the EPA notes that Element J as it pertains to visibility is "not germane to infrastructure SIPs". The commenter stated that this statement is incorrect as Element J is a necessary element that needs to be addressed in each and every SIP.

*Response:* The EPA disagrees with the commenter that the visibility sub-element of Element J needs to be addressed in these infrastructure SIPs from the State of New Mexico and Albuquerque-Bernalillo County for the 2015 O<sub>3</sub> NAAQS. Under 40 CFR part 51 subpart P, implementing the visibility requirements of CAA title I, part C, states are subject to requirements for reasonably attributable visibility impairment, new source review for possible impacts on air quality related values in Class I areas, and regional haze planning. These include timeframes for

SIP submittals related to visibility requirements. *See, e.g.*, 40 CFR 51.308(b) (establishing a deadline for initial SIPs to meet regional haze requirements of December 17, 2007). As the EPA recognized in the 2013 Infrastructure SIP Guidance, generally speaking, when the EPA establishes or revises a NAAQS, the visibility requirements under part C of title I of the Clean Air Act do not change. *See* Guidance at pages 54-55.<sup>2</sup> There are no new visibility protection requirements under part C as a result of the revised NAAQS here. Therefore, there are no newly applicable visibility protection obligations pursuant to Element J applicable in or to New Mexico, and this sub-element is therefore not being addressed in this action. We note that the State of New Mexico and Albuquerque-Bernalillo County each currently have a fully approved SIP under subpart P, addressing best available retrofit technology (BART) and reasonable progress requirements as part of their long-term strategy for improving visibility during the first planning period. For the State of New Mexico, see 77 FR 70693 (November 27, 2012) and 79 FR 60985 (October 9, 2014) for the final approval of the State’s regional haze SIP, and see 82 FR 27127 (June 14, 2017) for the final approval of the State’s five-year progress report. For Albuquerque-Bernalillo County, see 77 FR 71119 (November 29, 2012) for the final approval of the County’s regional haze SIP, and see 82 FR 58347 (December 12, 2017) for the final approval of the County’s five-year progress report. New Mexico and other states are in the process of developing SIPs for the second planning period, which are due to the EPA on July 31, 2021. *See* Final Rule, Protection of Visibility: Amendments to Requirements for State Plans, 82 FR 3078 (January 10, 2017).

---

<sup>2</sup> “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)”. Memorandum from Stephen D. Page, U.S. EPA, Office of Air Quality Planning and Standards. September 13, 2013.

*Comment:* The commenter stated that the EPA should also issue a federal plan for the interstate transport elements, as these elements were due in October 2018, and it is now (at the time the comment was submitted) seven months late, and both the EPA and New Mexico have stated that the State does not have an interstate transport submission (section 110(a)(2)(D)(i)(I)) prepared by stating "as a sufficient basis for a submittal addressing these requirements does not yet exist". The commenter stated that since the EPA is formally recognizing in the proposed notice that the State has not made a submission for the interstate transport elements, this should be considered a finding of failure to submit, and finalization of this regulation should start a 24-month clock for the EPA to issue a federal implementation plan.

*Response:* In this action, the EPA is only evaluating whether the SIP submissions under review have met the statutory requirements they purport to address. Whether or not the State of New Mexico or Albuquerque-Bernalillo County have otherwise made a timely submission addressing the interstate transport elements (section 110(a)(2)(D)(i)(I)) for the 2015 O<sub>3</sub> NAAQS infrastructure requirements is outside the scope of this rulemaking because the EPA is not addressing these elements in this action. The EPA interprets its authority under CAA section 110(k) as affording the Agency the discretion to approve, disapprove, or conditionally approve, individual elements of the New Mexico infrastructure and transport SIP submissions for the 2015 O<sub>3</sub> NAAQS. The EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from other infrastructure SIP elements and interprets section 110(k) as allowing it to act on individual severable elements or requirements in a SIP submission. In short, the EPA has the discretion under CAA section 110(k) to act upon the various individual elements of a state's infrastructure SIP submission, separately or together, as appropriate. Here, the EPA has focused its evaluation on the individual infrastructure SIP

elements addressed in the SIP submissions under review. The EPA will evaluate whether it is necessary to issue a separate notice to formally address the requirements of section 110(a)(2)(D)(i)(I) in the future.

*Comment:* We received one comment from the City of Albuquerque Environmental Health Department (EHD) stating that the EPA incorrectly made two statements which misstate New Mexico law in the April 18, 2019, proposal. The EHD provided proposed corrections to the two statements and clarified the EHD's authority under New Mexico law as well as the EHD's relation to the New Mexico Environmental Improvement Board (EIB) and the Albuquerque and Bernalillo County Joint Air Quality Control Board (Air Board).

The EHD stated that the first incorrect statement is: "The AQCA [New Mexico Air Quality Control Act] and Ordinances [Albuquerque and Bernalillo County Joint Air Quality Control Board Ordinances] also state that the EHD is the administrative agency for the EIB and give the EHD authority to enforce air quality regulations." The EHD stated that the statement would be correct if changed to: "The AQCA and Ordinances also state that the EHD is the administrative agency for the *Air Board* and give the EHD authority to enforce the *Air Board's* air quality regulations."

The EHD stated that the second incorrect statement is: "[T]he AQCA provides authority for the NMED and the EHD to enforce the requirements of the AQCA and any regulations of the EIB, permits, or final compliance orders." The EHD stated that the statement would be correct if changed to: "[T]he AQCA provides authority for the NMED and the EHD to enforce the requirements of the AQCA and, *within their respective jurisdiction, any applicable* regulations, or permits, or final compliance orders *each agency (NMED and EHD) has issued.*"

*Response:* The EPA agrees with the EHD’s corrected statements of its authority under New Mexico law.

**III. Final Action**

We are approving the November 1, 2018, and September 24, 2018, i-SIP submittals pertaining to the implementation, maintenance, and enforcement of the 2015 O<sub>3</sub> NAAQS, including two of the transport sub-elements (CAA section 110(a)(2)(D)(i)(II)), in the State of New Mexico and Albuquerque-Bernalillo County. Table 1 below outlines the final action EPA is taking on specific infrastructure elements.

*Table 1- Final Action on New Mexico Infrastructure SIP Submittals for the 2015 O<sub>3</sub> NAAQS*

Element	2015 O <sub>3</sub>
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data systems	A
(C)(i): Enforcement of SIP measures	A
(C)(ii):PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Prohibit emissions to other states which will (1) significantly contribute to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS	NA
(D)(i)(II): Prohibit emissions to other states which will (3) interfere with PSD requirements or (4) interfere with visibility protection	A
(D)(ii): Interstate and international pollution abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table:  
A - Approved;  
+ - Not germane to infrastructure SIPs;  
NA - No action.

We are also approving the November 16, 2018, submittal which consists of a revision to 20.2.3 NMAC (Ambient Air Quality Standards) . The approved SIP revision removes section 109 (Total Suspended Particulates) from 20.2.3 NMAC, as the EPA found that such a revision will not adversely affect the attainment of applicable CAA requirements.

#### **IV. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of a revision to 20.2.3 NMAC. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information)”. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.

#### **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, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping  
requirements.

Dated: August 28, 2019.

**Kenley McQueen,**  
*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart GG – New Mexico**

2. Section 52.1620 is amended:

a. In paragraph (c), under the first table titled “EPA Approved New Mexico Regulations,” by revising the entry for Part 3;

b. In paragraph (e), under the second table titled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP,” by adding an entry at the end for “Infrastructure for the 2015 Ozone NAAQS”.

The revision and addition read as follows:

**§52.1620 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA APPROVED NEW MEXICO REGULATIONS**

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
* * * * *				
Part 3	Ambient Air Quality Standards	11/16/2018	<b>[Insert date of publication in the Federal Register],</b> <b>[Insert Federal Register citation]</b>	

\* \* \* \* \*

\* \* \* \*

(e) \* \* \*

**EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * * * *				
Infrastructure for the 2015 Ozone NAAQS	Statewide	9/24/2018, 11/1/2018	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	SIPs adopted by NMED and City of Albuquerque. Does not address CAA section 110(a)(2)(D)(i) (I).

[FR Doc. 2019-19500 Filed: 9/17/2019 8:45 am; Publication Date: 9/18/2019]