



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2018-0705; FRL-10007-85-Region 6]**

### **Air Plan Approval; New Mexico; Interstate Transport Requirements for the 2008 Ozone NAAQS**

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Clean Air Act, (CAA or Act), the Environmental Protection Agency (EPA) is approving State Implementations Plan (SIP) revisions submitted by the State of New Mexico and the City of Albuquerque-Bernalillo County that address interstate transport for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The EPA is approving the submissions as meeting the requirement that the New Mexico SIP contain adequate provisions to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

**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-2018-0705. All documents in the docket are listed on the <https://www.regulations.gov> Web site. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Sherry Fuerst, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6454, [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). Out of an abundance of

caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19.

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

## **I. Background**

The background for this action is discussed in detail in EPA’s December 3, 2019 proposal (84 FR 66098). In that document, we proposed approval of SIP revisions that address the interstate transport of air pollution requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. The SIP revisions were submitted by the state of New Mexico and the City of Albuquerque-Bernalillo County on October 10, 2018 and October 4, 2018, respectively. In today’s action, we are approving the transport SIP for the 2008 ozone NAAQS.

## **II. Response to Comments**

We received one comment on the proposed rulemaking. The full text of the comment is available for review in the docket for this rulemaking. The comment was submitted by the Sierra Club (on behalf of itself and the Center for Biological Diversity). To best address the comment, we have broken the comment down into two parts (Comment 1 and Comment 2). We have responded to both parts of the comment below and provided a more detailed response in the Response to Comment Technical Support Document included in our docket.

*Comment #1:* The commenters assert that oil and gas emissions in New Mexico are not fairly represented in EPA modeling and therefore both air quality at downwind receptors and the impact of New Mexico's contribution to projected nonattainment and maintenance areas in other states are underestimated. The commenter points to increased production particularly in the Permian Basin as evidence that EPA’s emissions estimates are too low.

*Response #1:* EPA disagrees with the claims made by the commenters that the oil and gas exploration and production sector (Oil and Gas E&P) emissions in New Mexico are not adequately represented in EPA modeling. EPA and states go to great lengths to ensure that emission inventories and emission projections are of the highest quality. The efforts to provide for quality assurance, quality control and public input for the emission inventories that were utilized in the modeling for these SIP revisions are described in detail in the Response to Comments Technical Support Document for this action. Our review of the total 2017 projected Oil and Gas E&P emissions utilized in the 2017 Future Year modeling, more recent Oil and Gas E&P emissions projections, and the 2014 National Emission Inventory (NEI) of Oil and Gas E&P emissions in New Mexico indicate that the 2017 projected emissions used in the 2017 Future Year modeling were overstated rather than understated as characterized by the reviewer. This overestimation of the projected emissions inventory could have also resulted in an overestimation by the air quality model of the downwind impact of emissions from New Mexico's Oil and Gas E&P to other states in the 2017 Future Year modeling. Thus, contrary to the commenters' concern, EPA's estimate of New Mexico's 2017 modeled impacts on other states is likely conservative and supports EPA's conclusion that impacts from emissions originating in New Mexico on other states are below 0.75 parts per billion (ppb) in 2019-2020.

EPA agrees that there has been increase in Oil and Gas E&P activity in New Mexico since 2011. Emissions associated with the sector, however, do not have a linear relationship with exploration and production related activities. As Oil and Gas E&P have grown in New Mexico, there have been, and continue to be, simultaneous improvements in emission reduction technology and new regulatory control requirements. These two competing factors were considered in emissions projection used in EPA's 2017 and 2023 modeling pertaining to

interstate transport. Selected source categories reflect reductions in volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) that occur at reciprocating internal combustion engines (RICE) due to controls from both the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). The upgrades in emissions technology necessary to comply with these rules generally bring co-benefits of reductions in VOCs and NO<sub>x</sub> emissions. The areas in New Mexico which experienced a growth in the Oil and Gas E&P such as the Permian Basin tend to use newer equipment that meets the lower RICE NESHAP and RICE NSPS requirements. Other NO<sub>x</sub> emitters in Oil and Gas E&P are also subject to regulations and emission control technologies which are being installed over time. *See* Response to Comment Technical Support Document for this action for further explanation.

Projection of emissions is a stepwise process starting with a base year emissions level, followed by application of factors for retirement, growth and controls. EPA developed the 2017 emission projections of Oil and Gas E&P based on information available in 2014-2015. The emission projection from 2011 to 2017 used in the modeling for the SIP revision shows that if the emissions were not subject to controls, the emissions from Oil and Gas E&P in New Mexico would have increased 28.5%. However, emission control technologies implemented between 2011 and 2017 reduced projected 2017 emissions by 21.4%. As a result, the net projected NO<sub>x</sub> emission rate from Oil and Gas E&P for 2017 increased only 7.1% despite the activity growth in the sector.

A stepwise emission projections process was also completed in 2016-2017 when developing the 2023 modeling emissions for Oil and Gas E&P inventory. Like when developing the 2017 emission projections, EPA used the most recent data in development of the 2023 modeling emission inventory, therefore there were differences in growth projections between the 2017

model inventory and 2023 model emission inventories, (like updated growth projections for 2023 model emission inventory). The emission projection from 2011 to 2023 used in EPA's modeling shows that if the emissions were not subject to controls, the emissions from Oil and Gas E&P operations in New Mexico would have increased 27.8%. However, closures in New Mexico Oil and Gas E&P reduced the 2023 projected emissions increase by 2.8%. Emission control technologies implemented between 2011 and 2023 also reduced projected 2023 emissions by 23.2%. As a result, the net projected New Mexico Oil and Gas E&P NO<sub>x</sub> emissions for 2023 were projected to increase only 1.8% (27.8% - 2.8% - 23.2%) from 2011 emission levels despite the projected activity growth in the sector.

EPA used appropriate techniques and the most recently available data to estimate both base and projection year inventories for the Oil and Gas E&P sector in the 2017 and 2023 modeling. This supports the conclusion that it is appropriate to rely on EPA's assessment of the 2017 and 2023 modeling to conclude that New Mexico's impact on all identified downwind receptors is below the 1 percent threshold of 0.75 ppb in 2019-2020 and therefore that New Mexico will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states. A complete discussion of our evaluation is included in the Response to Comment Technical Support Document, which can be found in the docket for this action.

*Comment #2:* The commenters state that they have not reviewed other inventory contributions but that the 2017 and 2023 emission projections from 2011 for other source categories (non-Oil and Gas E&P emissions) are likely not correct. The commenters then state that EPA should update its inventory using 2017 actual emissions data and use 2017 actuals to project 2023 air quality, including a potential range of emissions scenarios for 2023.

*Response #2:* EPA disagrees with the commenters' claim that the 2017 and 2023 future year emission projections for other source categories are also incorrect. The commenters have not provided a reason to doubt the accuracy of the inventories and projections for these other sectors, nor have they provided information to support the claim. Therefore, EPA continues to believe that the methodologies used by EPA to calculate 2017 and 2023 future year projections are appropriate. For further explanation on how these inventories and projections are assessed, please see the more detailed response for Comment #1 in the Response to Comment Technical Support Document, which can be found in the docket for this action.

In response to the commenters' suggestion that EPA should update its 2017 inventory with actual emissions, and include a range of emissions projections for 2023, EPA again disagrees. The 2017 NEI emissions for non-point Oil and Gas E&P emission sources were not yet available at the time EPA conducted the 2023 modeling, but nonetheless the commenter has not indicated how or whether the use of the 2017 data would be likely to change EPA's assessment of New Mexico's impact on downwind receptors.

We do note, as explained in further detail below, it is also not reasonable to redo projections to 2023 and remodel impacts as part of the review of the New Mexico SIP. Redevelopment of emission inventories and performing photochemical grid modeling with source apportionment would take at least one to two years and significant resources. Such an effort is not a reasonable expectation without any indication that the use of 2017 data in its modeling is likely to lead to a different conclusion with respect to New Mexico's SIP. New Mexico utilized recent EPA modeling in developing its SIP submittals and we utilized even more recent analyses that were released in 2017 and 2018 to support our proposed approval action. As discussed above we used the most recent EIA AEO data at the time the emission inventories were generated. The

commenter has not provided any information to support its conclusion that EPA would need to perform new modeling to support its approval of New Mexico's SIP, nor have the commenters provided any such updated modeling data. Therefore, EPA continues to believe that its analysis of the available data indicates that New Mexico will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

### **III. Final Action**

We are (1) determining that New Mexico and the City of Albuquerque-Bernalillo County have met their obligation under CAA section 110(a)(2)(D)(i)(I) because New Mexico will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state and (2) approving the October 10, 2018 New Mexico and October 4, 2018 City of Albuquerque-Bernalillo County SIP revisions for the 2008 ozone NAAQS interstate transport requirements of CAA 110(a)(2)(D)(i)(I).

### **IV. 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, Nitrogen oxides, Ozone.

Dated: April 16, 2020.

**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. In § 52.1620, the table in paragraph (e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” is amended by adding an entry at the end of the table for “Interstate Transport for the 2008 Ozone NAAQS” to read as follows:

**§52.1620 Identification of plan**

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(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 date	EPA approval date	Explanation
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Interstate Transport for the 2008 ozone NAAQS	Statewide	10/10/2018 10/4/2018	<b>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	SIPs adopted by: NMED and City of Albuquerque -Bernalillo County. Addresses CAA section 110(a)(2)(D)( i)(I)
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[FR Doc. 2020-08518 Filed: 5/1/2020 8:45 am; Publication Date: 5/4/2020]