List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 28, 2014.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–29128 Filed 12–10–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0821; FRL–9920–35–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; State of New Mexico; Infrastructure SIP Requirements for the 2008 Lead National Ambient Air Quality Standard and Repeal of Cement Kilns Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of New Mexico addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2008 National Ambient Air Quality Standards (NAAQS) for Lead (Pb), which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Additionally, we are proposing to approve a revision to the New Mexico SIP that repeals an existing state-wide cement kilns rule.

DATES: Written comments must be received on or before January 12, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R06–OAR–2011–0821, by one of the following methods:

- *www.regulations.gov.* Follow the online instructions.
- *Email:* Mr. Terry Johnson at *johnson.terry@epa.gov.*
- *Mail or delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. 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–2011–0821. 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 files 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.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Johnson, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–2154; fax number 214–665–6762; email address *johnson.terry@epamail.epa.gov* for information concerning the infrastructure SIP submittal for the 2008 Pb NAAQS, or Mr. Alan Shar, telephone (214) 665–6691, email address *shar.alan@epa.gov* for information concerning the revision to the SIP to repeal the cement kilns rule.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background

EPA is proposing action on a September 9, 2011 SIP submission from New Mexico that addresses the infrastructure requirements of CAA sections 110(a)(1) and (a)(2) for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). 42 U.S.C. Sec. 7410(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and

enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and (a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of Title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

We are also proposing to approve revisions to New Mexico Administrative Code (NMAC), Title 20 Environmental Protection, Chapter 2 Air Quality (Statewide), Part 12 Cement Kilns (NMAC 20.2.12—*Cement Kilns*) rule submitted to EPA by the New Mexico Environment Department (NMED) through a letter dated July 31, 2014. This SIP revision repeals the existing cement kilns rule in effect.

The existing NMAC 20.2.12—*Cement Kilns* rule was part of the original New Mexico SIP, and last approved by EPA on September 26, 1997 (62 FR 50518). See also 40 CFR 52.1620(c)(66).

II. Applicable Elements of Sections 110(a)(1) and (2) Related to the 2008 Pb NAAQS

On October 15, 2008, EPA revised the primary and secondary Pb NAAQS (hereafter the 2008 Pb NAAQS).[1] The level of the primary (health-based) standard was revised to 0.15 micrograms per cubic meter (μg/m3), measured as total suspended particles (TSP) and not to be exceeded with an averaging time of a rolling 3-month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard (73 FR 66964).[2]

For the 2008 Pb NAAQS, states typically have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. Nevertheless, pursuant to section 110(a)(1), states have to review and revise, as appropriate, their existing SIPs to ensure that they are adequate to address the 2008 Pb NAAQS. To assist states in meeting this statutory requirement, EPA issued guidance on October 14, 2011, addressing the infrastructure SIP elements required under sections 110(a)(1) and (2) for the 2008 Pb NAAQS.[2] EPA will address these elements below under the following headings: (A) Emission limits and other control measures; (B) Ambient air quality monitoring/data system; (C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources); (D) Interstate and international transport; (E) Adequate authority, resources, implementation, and oversight; (F) Stationary source monitoring system; (G) Emergency authority; (H) Future SIP revisions; (I) Nonattainment areas; (j) Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection; (K) Air quality and modeling/data; (L) Permitting fees; and (M) Consultation/participation by affected local entities.

III. EPA's Approach to the Review of Infrastructure SIP Submissions

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[3] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[4] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[5] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA

[1] The previous Pb NAAQS were issued in 1978. They established a primary standard of 1.5 μg/m3 not to be exceeded with an averaging time of discrete calendar quarters (43 FR 46246, October 5, 1978).

[2] Although the effective date of the **Federal Register** notice for the final rule was January 12, 2009, the rule was signed by the Administrator and publicly disseminated on October 15, 2008. Therefore, the deadline for submittal of infrastructure SIPs for the 2008 Pb NAAQS was October 15, 2011.

[3] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[4] See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[5] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[6] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[7]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[8]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[9] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[10] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[11] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an

[6] See, *e.g.,* ''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,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[7] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[8] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[9] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[10] ''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, September 13, 2013.

[11] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including GHGs. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction 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 may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) 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''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[12] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[13] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to

[12] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[13] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[14] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[15]

IV. EPA's Evaluation of New Mexico's 2008 Pb NAAQS Infrastructure Submission

On September 9, 2011, the State of New Mexico, by letter from the Governor of New Mexico, submitted a SIP revision to address the infrastructure SIP requirements for the 2008 Pb NAAQS. The SIP submission offers a demonstration that New Mexico's existing SIP satisfies all infrastructure SIP elements required by section 110(a)(2) of the CAA for the 2008 Pb NAAQS. Public notice and a public hearing were provided by the State of New Mexico when developing this SIP submission. This SIP submission became complete by operation of law on March 9, 2012. See CAA section 110(k)(1)(B). EPA has reviewed New Mexico's infrastructure SIP submission and the relevant statutory and regulatory authorities and provisions referenced in that submission or referenced in New Mexico's SIP. Below is EPA's evaluation of how the State addressed the applicable elements of section 110(a)(2) for the 2008 Pb NAAQS. For additional information on our evaluation of the State's infrastructure SIP submittal, please refer to the Technical Support Document in the rulemaking docket.

A. Emission Limits and Other Control Measures

The CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each of the NAAQS.[16]

New Mexico's Environmental Improvement Act and Air Quality Control Act authorize the New Mexico Environment Department (NMED) to regulate air quality and implement air quality control regulations. Specifically, the New Mexico Air Quality Control Act delegates authority to the Environmental Improvement Board (EIB) to adopt, promulgate, publish, amend and repeal regulations consistent with the State's Air Quality Control Act to attain and maintain NAAQS and prevent or abate air pollution (see New Mexico Statutes Annotated (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. These statutes have been approved into the SIP (see 44 FR 21019, April 9, 1979; revised 49 FR 44101, November 2, 1984; re-codified and approved in 62 FR 50518, September 26, 1997).

NMED's air quality rules and standards are codified at Title 20 Environmental Protection, Chapter 2 Air Quality (Statewide) of the NMAC. Numerous parts of the regulations codified into Chapter 2 necessary for implementing and enforcing the NAAQS have been adopted into the SIP. These include Part 1 *General Provisions* (75 FR 48860), Part 2 *Definitions* (62 FR 50514), Part 3 *Ambient Air Quality Standards* (76 FR 41698), Part 5 *Source Surveillance* (62 FR 50514), Part 7 *Excess Emissions* (74 FR 46910), and Part 8 *Emissions Leaving New Mexico* (62 FR 50514). Collectively these regulations identify the Air Quality Bureau's powers and responsibilities, define air quality standards, authorize monitoring, sampling and testing for emissions, and regulate interstate transport of emissions originating in New Mexico. The regulations and standards in Parts 10–61 pertain to emissions of certain pollutants from specific emission sources, activities and locales, and last full approval of these regulations into the SIP was made on September 26, 1997 (62 FR 50514). Permitting requirements, emissions reporting, and fees are regulated by Parts 72 Construction Permits (62 FR 50514), Part 73 Notice of Intent and Emissions Inventory Requirements (75 FR 48860), Part 74 Permits—Prevention of Significant Deterioration (76 FR 43149), Part 75 Construction Permit Fees (77 FR 18923), Part 79 Permits—Nonattainment Areas (72 FR 50879), and Part 80 Stack Heights (62 FR 50514). EPA's NAAQS, including the 2008 Pb NAAQS, are adopted by reference into these permitting regulations. Conformity requirements and transportation-related emissions are regulated under Part 99 Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects (65 FR 14873 and 75 FR 21169).

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that the New Mexico SIP adequately addresses the requirements of section 110(a)(2)(A) for the 2008 Pb NAAQS and is proposing to approve this element of the September 9, 2011, SIP submission.

B. Ambient Air Quality Monitoring/Data System

The CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and making these data available to EPA upon request.

To address this element, the Air Quality Control Act at Section NMSA 1978, section 74–2–5 provides the enabling authority necessary for the New Mexico EIB and NMED to fulfill the requirements of section 110(a)(2)(B). The Air Quality Bureau (AQB) within NMED implements these requirements. Along with their other duties, the AQB collects air monitoring data, quality-assures the results, and reports the data.

Historically, EPA has promulgated regulations in 40 CFR 58 (Ambient Air Quality Surveillance), indicating the necessary data states need to collect and submit as part of their SIPs. For the 2008 Pb NAAQS, EPA regulations require that ambient monitoring be conducted in every urban area with National Core (''NCore'') monitoring sites and with populations equal to or exceeding 500,000 people, and that ''source-oriented'' monitoring be conducted in the vicinity of any stationary point sources that emit Pb in amounts exceeding 1,000 pounds per year.

The New Mexico statewide air quality surveillance network was approved into the New Mexico SIP by EPA on August 6, 1981 (46 FR 40005). Furthermore, New Mexico's air quality surveillance network undergoes recurrent annual review by EPA, as required by 40 CFR 58.10. On July 15, 2013, NMED

[15] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

[16] The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2008 Pb NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

submitted its 2013 Annual Air Monitoring Network Plan (AAMNP) that included ambient monitoring for the 2008 Pb NAAQS, and EPA approved the 2013 AAMNP on February 19, 2014.[17] In addition, NMED conducts a recurrent assessment of its monitoring network every five years, which includes an evaluation of the need to conduct ambient monitoring for Pb, as required by 40 CFR 58.10(d). The most recent of these 5-year monitoring network assessments was conducted by NMED and submitted in June 2010, and was subsequently approved by EPA.[18] In evaluating the need to perform ambient monitoring for Pb in its most recent 5-year monitoring network assessment, NMED concluded that no ambient monitoring network for Pb was necessary because there are no urban areas with populations equal to or exceeding 500,000 people within its area of jurisdiction [19] and because there are no stationary point sources anywhere within New Mexico or in close proximity to its borders that emit Pb in quantities exceeding 1,000 pounds per year. We have verified through the National Emission Inventory System that no stationary sources exist within New Mexico that emit Pb in quantities equal to or exceeding 1,000 pounds per year,[20] and through review of the most recently available census data we have confirmed that there are no metropolitan areas with populations of 500,000 or more people within NMED's area of jurisdiction. NMED will continue to evaluate the need to conduct ambient monitoring for Pb every five years when it performs its recurrent ambient monitoring network assessment.

The AQB makes NMED's ambient monitoring data available for public review on its Web site.[21] The NMED Web site provides the monitor locations and posts past and current concentrations of criteria pollutants measured in the State's network of monitors.[22] The NMED monitors that are not certified as meeting the federal requirements are identified as ''non-regulatory'' monitors.[23] The State submits air monitoring data to EPA on a quarterly basis and certifies the data annually.

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that the New Mexico SIP meets the requirements of section 110(a)(2)(B) for the 2008 Pb NAAQS and is proposing to approve this element of the September 9, 2011 submission.

C. Program for Enforcement of Control Measures (PSD, New Source Review for Nonattainment Areas, and Construction and Modification of All Stationary Sources

The CAA section 110(a)(2)(C) requires states to include the following three elements in the SIP: (1) A program providing for enforcement of all SIP measures described in section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (*i.e.,* state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).[24]

1. Enforcement of SIP Measures

With respect to enforcement of requirements of the SIP, the New Mexico statutes provide authority for the Environmental Improvement Board and the NMED to enforce the requirements of the Air Quality Control Act, and any regulations, permits, or final compliance orders issued under the provisions of the Act. General enforcement authority is provided by NMSA 1978 74–1 and NMSA 1978 74–2, which address general enforcement power; investigation and remediation agreements; civil and criminal penalties; compliance orders and emergency cease and desist orders; civil actions; a field citation program.

The Environmental Improvement Act, which has been approved into the SIP (49 FR 44101; 64 FR 29255), authorizes the creation of the Environmental Improvement Board (NMSA 1978, section 74–1–4); authorizes the EIB, the NMED, and its Secretary to file lawsuits, conduct investigations and enter into remediation agreements, enforce rules, regulations and orders promulgated by the EIB, and collect civil penalties (NMSA 1978, section 74–1–6); develop and enforce rules and standards related to protection of air quality (NMSA 1978, sections 74–1–7 and 74–1–8); and issue compliance orders and commence civil actions in response to violations (NMSA 1978, section 74–1–10).

Likewise, the Air Quality Control Act empowers the EIB and NMED to institute legal proceedings to compel compliance with the Air Quality Control Act and any regulations of the EIB or local air quality control agencies (NMSA 1978, section 74–2–5.1); issue compliance orders, commence civil actions, and issue field citations (NMSA1978, section 74–2–12); assess civil penalties for violations of the Act or regulations promulgated under it or permits issued (NMSA 1978, section 74–2–12.1); conduct inspections of regulated entities (NMSA 1978, section 74–2–13); and pursue criminal prosecutions (NMSA 1978, section 74–2–14). Additional enforcement authorities and funding mechanisms are provided by the Act at NMSA 1978, section 74–2–15. These sections of the Air Quality Control Act were adopted into the SIP on November 2, 1984 (49 FR 44101).

NMED air quality standards and regulations containing specific enforcement provisions and adopted into the SIP include: 20.2.7 NMAC *Excess Emissions* (74 FR 46910) and 20.2.72 NMAC *Construction Permits* (38 FR 12702 and 62 FR 50514).

2. Minor New Source Review

Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. With respect to smaller statewide minor sources 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

[17] A copy of the 2013 AAMNP and EPA's approval letter are included in the docket for this proposed rulemaking.

[18] A copy of the 2010 5-year ambient monitoring network assessment and EPA's approval letter are included in the docket for this proposed rulemaking.

[19] The Albuquerque metropolitan area, centered on the city of Albuquerque in Bernalillo County, contains more than 500,000 people, but Bernalillo County is not within the jurisdiction of NMED. The local air quality district for Albuquerque and Bernalillo County is responsible for conducting ambient Pb monitoring for the Albuquerque area.

[20] An inventory of stationary sources located in New Mexico that emit Pb, based on the 2011 triennial NEI, is included in the Technical Support Document, available in the docket for this proposed rulemaking.

[21] See *http://www.nmenv.state.nm.us/aqb/monitor/airmonitoringnetwork.html.*

[22] See *http://air.nmenv.state.nm.us.*

[23] These include for example, special purpose monitors (SPMs). Special purpose monitoring is conducted on a frequent basis for a variety of reasons: As a tool to supplement state ambient air monitoring networks to obtain information on where to locate permanent monitoring stations, to provide additional data in support of pollutant formation and transport analyses, or to assess air quality in a particular location. These studies vary in duration from being temporary sites needed only during a portion of the year to long-term air pollution studies over a large area.

[24] As discussed in further detail below, this infrastructure SIP rulemaking will not address the New Mexico program for provisions related to nonattainment areas, since EPA considers evaluation of these provisions to be outside the scope of infrastructure SIP actions.

necessary to assure that the NAAQS are achieved'' (70 FR 71612 and 71677). EPA provides states with discretion in implementing their Minor NSR programs (71 FR 48696 and 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 (see 20.2.72.200 NMAC). New Mexico's Minor NSR permitting requirements are found at 20.2.72 NMAC—*Construction Permits* and were approved into the SIP on May 14, 1973 (38 FR 12702), with revisions approved on September 26, 1997 (62 FR 50514), June 13, 2012 (77 FR 35273), and March 11, 2013 (78 FR 15296).

In this action, EPA is proposing to approve New Mexico's infrastructure SIP for the 2008 Pb standard with respect to the general requirement in 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. However, EPA is not proposing to approve or disapprove New Mexico's existing Minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (*e.g.,* 76 FR 41076–41079). 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.

3. Prevention of Significant Deterioration (PSD) Permit Program

New Mexico also has a program approved by EPA as meeting the requirements of part C, relating to prevention of significant deterioration of air quality. In order to demonstrate that New Mexico has met this sub-element, this PSD program must cover requirements not just for the 2008 Pb NAAQS, but for all other regulated NSR pollutants as well.

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). 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 approved the May 23, 2011, revision in a **Federal Register** notice signed January 22, 2013, as these elements are necessary for implementation of the $PM_{2.5}$ standard (78 FR 4339).

The 2008 Pb NAAQs are substantially lower than the previous Pb NAAQs, and this may require EPA to revise the PSD applicability thresholds in the future, with regard to Pb emissions. However, at this time EPA has not proposed to amend the PSD regulations with regard to the 2008 Pb NAAQS. We do, however, recognize that certain provisions of these regulations still may need to be evaluated and potentially revised in light of the revised Pb standard, particularly with regards to applicability thresholds for increases in emissions resulting from the construction of new sources or modifications to existing sources.

With respect to the infrastructure elements contained in section 110(a)(2)(C) and (J), EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. New Mexico has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. (see Utility Air Regulatory Group v. Environmental Protection Agency, 134 S.Ct. 2427) The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

EPA has previously approved New Mexico SIP revisions submitted to align

the State's PSD program rules for GHGs with federal requirements (76 FR 43149). At present, EPA has determined the New Mexico SIP is sufficient to satisfy the infrastructure elements of sections 110(a)(2)(C), (D)(i)(II), and (J) with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved New Mexico PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy the infrastructure elements of sections 110(a)(2)(C), (D)(i)(II), and (J). The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed approval of New Mexico's infrastructure SIP as to the requirements of the infrastructure elements of sections 110(a)(2)(C), (D)(i)(II), and (J).

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, with respect to the requirements of section 110(a)(2)(C) for the 2008 Pb NAAQS, EPA is proposing to approve this element of the September 9, 2011, submission.

D. Interstate and International Transport

The CAA section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I), and prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II). Section 110(a)(2)(D)(i)(I) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of any NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality or to protect visibility.

With respect to prongs 1 and 2, the physical properties of Pb, which is very dense, prevent Pb emissions from experiencing a significant degree of travel in the ambient air. No complex chemistry is needed to form Pb or Pb compounds in the ambient air; therefore, ambient concentrations of Pb are typically highest near Pb sources. More specifically, there is a sharp decrease in ambient Pb concentrations as the distance from the source increases. According to EPA's report entitled *Our Nation's Air: Status and Trends Through 2010,* Pb concentrations that are not near a source of Pb are approximately 8 times less than the typical concentrations near the source.[25] For these reasons, EPA believes that the requirements of prongs 1 and 2 can be satisfied through a state's assessment as to whether a lead source located within its state in close proximity to a state border has emissions that contribute significantly to the nonattainment in or interfere with maintenance of the NAAQS in the neighboring state.

There are no areas within the State of New Mexico that are designated as nonattainment with respect to the 2008 Pb NAAQS, and there are no significant sources of Pb emissions within the State that emit Pb in amounts equal to or exceeding 0.5 tons per year, and no sources of Pb emissions within two miles of a neighboring state line. Total Pb emissions within New Mexico (including Albuquerque/Bernalillo County, which is outside NMED's jurisdiction) in 2011 were less than two tons, and most of the Pb-emitting sources within the State are general aviation airports where aviation gasoline containing tetra-ethyl lead is still in use. Therefore, we deem that New Mexico has presumptively satisfied the requirements of prongs 1 and 2.

With respect to the PSD requirements of section 110(a)(2)(D)(i)(II)—prong 3, we note that New Mexico's satisfaction of the applicable infrastructure SIP PSD requirements for attainment/unclassifiable areas with regards to the 2008 Pb NAAQS have been detailed in the section addressing section 110(a)(2)(C). For sources not subject to PSD for any one of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS, New Mexico has adopted the nonattainment new source review (NNSR) provisions required for the 2008 Pb NAAQS and other NAAQS at 20.2.79 NMAC—*Permits—Nonattainment Areas.*

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II)—prong 4, significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source and most, if not all, stationary sources of Pb emissions are located at sufficient distances from Class I areas such that visibility impacts would be negligible. Although Pb can be a component of coarse and fine particles, Pb generally comprises only a small fraction of coarse and fine particles. A recent agency study conducted to evaluate the extent that Pb could impact visibility concluded that Pb-related visibility impacts at Class I areas were found to be insignificant (*e.g.,* less than 0.10%).[26]

Section 110(a)(2)(D)(ii) also requires that the SIP ensure compliance with the applicable requirements of sections 126 and 115 of the CAA, relating to interstate and international pollution abatement, respectively. Section 126(a) of the CAA requires new or modified sources to notify neighboring states of potential impacts from sources within the State. New Mexico regulations require that affected states receive notice prior to the commencement of any construction or significant modification of a major source. New Mexico's rule concerning PSD construction permits at 20.2.74 NMAC—*Permits—Prevention of Significant Deterioration* requires that the review of all PSD permit applications follows the procedures of 20.2.74.400 NMAC—*Public Participation and Notification* and 20.2.74.403 NMAC—*Additional Requirements for Sources Impacting Class I Federal Areas,* which require the permitting authority to provide neighboring states, tribal authorities, and Federal Land Managers of affected Class I Areas with copies of PSD permit applications received by the department and to issue a preliminary determination for public comment, with notification to affected states, tribal authorities, and Federal Land Managers of affected Class I Areas on or before the time notice is provided to the public. In addition, no source or sources located in New Mexico have been identified by EPA as having any interstate impacts under section 126 in any pending actions relating to any air pollutant.

Section 115 of the CAA authorizes EPA to require a state to revise its SIP

[25] *http://www.epa.gov/airtrends/2011/report/fullreport.pdf*

[26] Analysis by Mark Schmidt, OAQPS, ''Ambient Pb's Contribution to Class I Area Visibility Impairment,'' June 17, 2011.

under certain conditions to alleviate international transport into another country. There are no final findings under section 115 of the CAA against New Mexico with respect to any air pollutant. Thus, the State's SIP does not need to include any provisions to meet the requirements of section 115.

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure needed to address sections 110(a)(2)(D)(i)(I) and (II)—prongs 1 through 4, and 110(a)(2)(D)(ii) for the 2008 Pb NAAQS and is proposing to approve this element of the September 9, 2011, submission.

E. Adequate Authority, Resources, Implementation, and Oversight

The CAA section 110(a)(2)(E) requires that SIPs provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements that the state comply with the requirements relating to state boards, pursuant to section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

Section 110(a)(2)(E)(i) requires states to establish that they have adequate personnel, funding and authority to implement the NAAQS. With respect to adequacy of authority, we have previously discussed New Mexico's statutory and regulatory authority to implement the 2008 Pb NAAQS, primarily in the discussion of section 110(a)(2)(A) above.

With respect to adequacy of resources, NMED asserts that it has adequate personnel to implement the SIP. The infrastructure SIP submission for the 2008 Pb NAAQS describes the regulations governing the various functions of personnel within the Air Quality Bureau, including the administrative, technical support, planning, enforcement, and permitting functions of the program.

With respect to funding, the Air Quality Control Act at NMSA 1978, section 74–2–7 requires NMED to establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs and also authorizes NMED to collect additional fees necessary to cover reasonable costs associated with processing of air permit applications. The Air Quality Control Act provides for the deposit of the fees into various subaccounts (*e.g.,* the State's air quality permit fund for the Title V operating permit program used for Title V implementation activities; and various subaccounts for local air quality agencies). NMED also receives funding from general revenue funds and EPA grants under, for example, sections 103 and 105 of the CAA, to finance air quality programs. EPA conducts periodic program reviews to ensure that the State has adequate resources and funding to, among other things, implement the SIP.

With respect to authority, the Air Quality Control Act at NMSA 1978, section 74–2–5 provides the authority necessary to carry out the SIP requirements as referenced above in element A. The Air Quality Control Act provides the NMED with broad legal authority to adopt emission standards and compliance schedules applicable to regulated entities, and to adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards. The Act also provides the board adequate legal authority to enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief. In addition, section 74–2–5.1 of the Act provides the department legal authority to enforce applicable laws, regulations, standards, and compliance schedules.

With regard to the conflict of interest provisions of section 128 of the CAA, section 110(a)(2)(E)(ii) requires that each state SIP meet the requirements of section 128, relating to representation on state boards and conflicts of interest by members of such boards. Section 128(a)(1) requires that any board or body which approves permits or enforcement orders under the CAA must have at least a majority of members who represent the public interest and do not derive any ''significant portion'' of their income from persons subject to permits and enforcement orders under the CAA. Section 128(a)(2) requires that members of such a board or body, or the head of an agency with similar powers, adequately disclose any potential conflicts of interest.

The Environmental Improvement Act at NMSA 1978, section 74–1–4 provides that the Environmental Improvement Board contain at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the board on issues related to the Clean Air Act or Air Quality Control Act. Furthermore, pursuant to State regulations adopted by the Board, Board members are required to recuse themselves from rule-makings in which their impartiality may reasonably be questioned. (see 20.1.1.111 NMAC).

With respect to assurances that the State has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, the Environmental Improvement Act and the Air Quality Control Act designate the NMED as the primary air pollution control agency ''for all purposes'' of implementing the requirements of the federal Clean Air Act and the New Mexico Air Quality Control Act.

There is one local air quality control agency that assumes jurisdiction for local administration and enforcement of the Air Quality Control Act in New Mexico, the Albuquerque/Bernalillo County Air Quality Control Board, as authorized by NMSA 1978, section 74–2–4. Pursuant to the New Mexico Air Quality Control Act, the local air quality control agency, within the boundaries of the Albuquerque/Bernalillo County area, is delegated all those functions delegated to the Environmental Improvement Board, with the exception of any functions reserved exclusively for the Environmental Improvement Board, NMSA 1978, section 74–2–4(A)(1). Further, The Air Quality Control Act, grants the local air quality control agency, within the boundaries of the Albuquerque/Bernalillo County area, the authority to perform all the duties required of NMED and exert all of the powers granted to NMED, except for those powers and duties reserved exclusively for the department, NMSA 1978, section 74–2–4(A)(2). However, the NMED and the State Environmental Improvement Board retain oversight authority in the event the local authority fails to act. EPA conducts reviews of the local program activities in conjunction with its oversight of the State program.

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure needed to address section 110(a)(2)(E) for the 2008 Pb NAAQS and is proposing to approve this element of the September 9, 2011 submission.

F. Stationary Source Monitoring System

The CAA section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. Each SIP shall require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and requires that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

To address this element, the Air Quality Control Act at NMSA 1978, section 4–2–5 authorizes the NMED to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. State regulations pertaining to sampling and testing are codified at 20.2.72 NMAC *Construction Permits,* 20.2.70 NMAC *Operating Permits,* and 20.2.79 NMAC *Permits—Nonattainment Areas,* and requirements for reporting of emissions inventories are codified at 20.2.73 NMAC *Notice of Intent and Emission Inventory Requirements.* In addition, rules at 20.2.5 NMAC *Source Surveillance,* establish general requirements for maintaining records and reporting emissions.

The NMED uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements. NMED makes this information available to the public (20.2.5 NMAC *Source Surveillance*). Provisions concerning the handling of confidential data and proprietary business information are included in the general provisions regulations at 20.2.1.115 NMAC, *Confidential Business Information.* These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources.

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure needed to address CAA section 110(a)(2)(F) for the 2008 Pb NAAQS and is proposing to approve this element of the September 9, 2011, submission.

G. Emergency Authority

The CAA section 110(a)(2)(G) requires SIPs to provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment (comparable to the authorities provided in section 303 of the CAA), and to include contingency plans to implement such authorities as necessary.

In its submittal for the 2008 Pb NAAQS, the State of New Mexico emphasizes that there are currently no significant sources of Pb emissions within the State or in close enough proximity to the State borders that would have the potential to impact communities in New Mexico. Nevertheless, the State indicates that the Air Quality Control Act provides adequate authority to constrain any sources of Pb emissions, as necessary, in the unlikely event that an emergency situation should arise. Under the Air Quality Control Act at NMSA 1978, section 74–2–10, *Emergency Powers of the Secretary and the Director,* the Secretary and Director of NMED are empowered to bring suit to immediately restrain a facility causing emissions that present an imminent and substantial endangerment to public health, welfare, or the environment. Alternatively, the Air Quality Control Act authorizes the NMED Secretary and Director to issue orders necessary to protect the public health or welfare, or the environment, and then bring suit against contributing sources within 24 hours. If the NMED brings an action within that time, the order is effective for another 48 hours or for such longer period as may be authorized by the court pending litigation.

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in that submission or referenced in New Mexico's SIP, EPA believes that the New Mexico SIP adequately addresses section 110(a)(2)(G) for the 2008 Pb NAAQS and is proposing to approve this element of the September 9, 2011, submission.

H. Future SIP Revisions

The CAA section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

New Mexico's Environmental Improvement Act and Air Quality Control Act authorize the NMED as the primary agency in the State concerned with environmental protection and enforcement of regulations, including but not limited to air quality (see NMSA 1978, sections 74–1 and 74–2). The Air Quality Control Act gives the NMED the authority to ''develop and present to the Environmental Improvement Board a plan for the control, regulation, prevention or abatement of air pollution . . . ,'' and authorizes the EIB to adopt such a plan (see NMSA 1978, sections 74–2–5.1(H) and 74–2–5(B)(2)). The Environmental Improvement Act also authorizes the New Mexico EIB to ''adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act to attain and maintain the national ambient air quality standards and prevent and abate air pollution . . .'' and the Environmental Improvement Act authorizes the NMED to enforce such rules, regulations and orders promulgated by the EIB (see NMSA 1978, sections 74–2–5(B)(1) and 74–1–6(F)). Furthermore, 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, section 74–2–5.2(B)).

Thus, New Mexico has the authority to revise its SIP, as necessary, to account for revisions of the NAAQS, to adopt more effective methods of attaining the NAAQS, and to respond to EPA SIP calls. Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that New Mexico has adequate authority to address section 110(a)(2)(H) for the 2008 Pb NAAQS and is proposing to approve this element of the September 9, 2011, submission.

I. Nonattainment Areas

The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted earlier, EPA does not expect infrastructure SIP submissions to

address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

J. Consultation With Government Officials, Public Notification, PSD and Visibility Protection

The CAA section 110(a)(2)(J) requires SIPs to meet the applicable requirements of the following CAA provisions: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection.

(1) With respect to interagency consultation, the SIP should provide a process for consultation with general-purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager having authority over Federal land to which the SIP applies. New Mexico's 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 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, sections 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, section 74–2–5.2(B)). Furthermore, New Mexico's 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, tribal authorities, and Federal Land Managers (FLMs) whose lands may be affected by emissions from the source or modification. Additionally, the State's PSD rules at 20.2.74.403 NMAC require the NMED to consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas (75 FR 72688 and 72 FR 50879). Finally, 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 the State recognizes the expertise of the FLMs in monitoring and new source review applicability analyses for visibility and has agreed to notify the FMLs of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application (71 FR 4490). The State's Transportation Conformity rules at 20.2.99.116 through 20.2.99.124 NMAC provide procedures for interagency consultation, resolution of conflicts, and public notification (65 FR 14873 and 75 FR 21169).

(2) With respect to the requirements for public notification in section 127, the infrastructure SIP should provide citations to regulations in the SIP requiring the air agency to regularly notify the public of instances or areas in which any NAAQS are exceeded; advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality. Provisions regarding public notification of instances or areas in which any primary NAAQS was exceeded were approved into the New Mexico SIP on August 24, 1983 (48 FR 38466). In addition, as discussed for infrastructure element B above, the NMED air monitoring Web site provides live air quality data for each of the monitoring stations in New Mexico.[27] The Web site also provides information on the health effects of ozone, particulate matter, and other criteria pollutants. Because no significant sources of Pb emissions are located within the State or in proximity to its borders, we do not anticipate that any circumstances of short-term exceedances or violations of the 2008 Pb NAAQS will occur in New Mexico.

(3) Regarding the applicable requirements of part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection, as noted above under infrastructure element C, the New Mexico SIP meets the PSD requirements. With respect to the visibility component of section 110(a)(2)(J), EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA, which includes sections 169A and 169B. However, when EPA establishes or revises a NAAQS, these visibility and regional haze requirements under part C do not change. Therefore, EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to infrastructure element J after the promulgation of a new or revised NAAQS.

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that New Mexico has met the applicable requirements of section 110(a)(2)(J) for the 2008 Pb NAAQS in the State and is therefore proposing to approve this element of the September 9, 2011, submission.

K. Air Quality and Modeling/Data

The CAA section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

The NMED has the power and duty, under the Air Quality Control Act to ''develop facts and make investigations and studies,'' thereby providing for the functions of environmental air quality assessment (see NMSA 1978, section 74–2–5). Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. For example, the air modeling and control measures submitted within the attainment demonstration for the San Juan County Early Action Compact Area, approved by EPA and adopted into the SIP on August 17, 2005 (70 FR 48285). Additionally, New Mexico has the ability to perform modeling for the primary and secondary $PM_{2.5}$ standards and other criteria pollutant NAAQS on a case-by-case permit basis consistent with their SIP-approved PSD rules and with EPA protocols on Air Quality Models at 40 CFR part 51, Appendix W.

This section of the CAA also requires that a SIP provide for the submission of data related to such air quality modeling to the EPA upon request. The New Mexico Air Quality Control Act authorizes and requires NMED to

[27] See *http://www.nmenv.state.nm.us/aqb/monitor/airmonitoringnetwork.html.*

cooperate with the federal government and local authorities in regard to matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA (see NMSA 1978, section 74–2–5.2(B)).

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure needed to address section 110(a)(2)(K) for the 2008 Pb NAAQS and is proposing to approve this element of the September 9, 2011, submission.

L. Permitting Fees

The CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

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.[28] New Mexico's fee schedule for construction permits is codified at 20.2.75 NMAC, *Construction Permit Fees.* These regulations implement a fee schedule for all preconstruction air permits issued by NMED and were approved by EPA into the SIP on September 16, 1991 (56 FR 32511) and November 25, 1997 (62 FR 50514).

In addition to preconstruction fees, New Mexico also requires major sources subject to the federal Title V operating permit program to pay annual operating permit fees. This operating permit fee schedule is codified at 20.2.71 NMAC, *Operating Permit Emission Fees.* Title V operating permit programs 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 (see 40 CFR part 70, Appendix A).[29] EPA reviews the New Mexico Title V program, including Title V fee structure, separately from this proposed action. Because the Title V program and associated fees legally are not part of the SIP, the infrastructure SIP action we are proposing today does not preclude EPA from taking future action regarding New Mexico's Title V permitting program and associated fees.

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that the requirements of section 110(a)(2)(L) are met and is proposing to approve this element of the September 9, 2011, submission.

M. Consultation/Participation by Affected Local Entities

The CAA section 110(a)(2)(M) requires SIPs to provide for consultation and participation by local political subdivisions affected by the SIP.

As described under the section addressing the requirements of element 110(a)(2)(J) above, regarding consultation with government officials and public notification, New Mexico's 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, section 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, section 74–2–5.2(B)). The Act also requires initiation of cooperative action between local authorities and the NMED, between one local authority and another, or among any combination of local authorities and the NMED for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions; and entering into agreements and compacts with adjoining states and Indian tribes, where appropriate. NMED has a long history of successful cooperation with the local air quality authority in Albuquerque/Bernalillo County and tribal governments.

With regard to permitting actions, New Mexico's PSD regulations at 20.2.74.400 NMAC, approved into the SIP on March 30, 1987 (52 FR 5964) and December 16, 1996 (61 FR 53642), 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 whose lands may be affected by emissions from the source or modification. New Mexico's Transportation Conformity regulations at 20.2.99.116 and 20.2.99.124 NMAC, both approved into the SIP on April 23, 2010 (75 FR 21169), 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.

Based upon review of the State's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, EPA believes that New Mexico has the adequate infrastructure needed to address section 110(a)(2)(M) for the 2008 Pb NAAQS and is proposing to approve this element of the September 9, 2011 submission.

V. EPA's Evaluation of New Mexico's SIP Revision Repealing the Cement Kilns Rule

A. What is EPA's evaluation of the submittal?

As a part of NMED's initiative to enhance and stream line its permitting process a State report entitled ''Improving Environmental Permitting'' recommended repeal of NMAC 20.2.12—*Cement Kilns.* There are no cement kilns in NMED's jurisdictional area. There is a cement plant in New Mexico, but that plant is located in Bernalillo County, New Mexico which is not within NMED's area of jurisdiction. The current EPA-approved NMAC 20.2.12—*Cement Kilns* rule only regulates PM emissions from a kiln measured in terms of mass per volume

[28] See Environmental Improvement Act, Paragraph 4 of Subsection A of Section 74–1–8 NMSA 1978, and Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, including specifically, Paragraph 6 of Subsection B of Section 74–2–7 NMSA 1978.

[29] As indicated in New Mexico's 2008 Pb infrastructure SIP submission, NEMD's operating permit fees regulation was inadvertently adopted into the SIP by EPA on November 25, 1997 (62 FR 50514). This regulation was removed from the SIP by EPA in a subsequent action on July 15, 2011 (76 FR 41698).

of exhaust gas (230 mg/m3). See section 108 of the repealed rule in the Technical Support Document (20.2.12.108 NMAC). Demonstrating compliance with this emission limit is less practical than demonstrating compliance with the comparable New Source Performance Standard (NSPS) because it is not clinker-production based, and it also lacks utility because no such source exists in NMED's area of jurisdiction. In other words, the current EPA-approved NMAC 20.2.12—*Cement Kilns* rule is outdated in format and superfluous.

Should a cement kiln locate within NMED's jurisdiction in the future, that source will be subject to new source review and New Source Performance Standard (NSPS) requirements. See 40 CFR 60, Subpart F. In addition, hazardous air pollutants from a cement kiln would be subject to National Emission Standards for Hazardous Air Pollutants (NESHAP), contained in 40 CFR 61; and Maximum Achievable Control Technology (MACT) standards contained in 40 CFR 63. See appendix A of the Technical Support Document prepared in conjunction with this rulemaking action. These emission standards and control requirements are more current, practical, and stringent than the existing NMAC 20.2.12—*Cement Kilns* rule emission limitation.

B. Does this submittal comply with section 110(l) of the Act?

Section 110(l) of the Act requires that a SIP revision submitted to EPA be adopted after reasonable notice and public hearing. Section 110(l) also requires that we not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Records contained in the submittal show that State has complied with public hearing and reasonable notice requirements of the SIP. See Exhibit 9 of the submittal.

Furthermore; in support of its submittal to repeal NMAC 20.2.12—*Cement Kilns* rule the State provides the following factors: (a) Repeal of NMAC 20.2.12—*Cement Kilns* rule will benefit the State by removing potentially confusing and ambiguous provisions from the SIP and air permitting process; (b) the emission limits in NMAC 20.2.12—*Cement Kilns* rule are based on mass of particulate matter in the volume of stack gas, whereas, the NSPS emission limits are based on mass of PM per ton of clinker produced; (c) in addition to limiting emissions from the cement kilns, the NSPS limits emissions from the grinding, cooling and materials handling operations in the cement manufacturing process; (d) the method for demonstrating compliance with the PM emission limitation in section NMAC 20.2.12.108 is more complex and difficult than the corresponding NSPS requires; (e) currently, there are no cement manufacturing facilities under the jurisdiction of the NMED, and they do not anticipate any new kilns to be built in the near future (negative declaration). New Mexico substantiated this factor through consultation with the Air Quality Bureau's permitting staff, searching its database of facilities, the United States Geological Survey, and trade publications. See Exhibit 8 of the submittal.

In the unlikely event of a new cement plant locating in the area, then that source will be subject to existing, more stringent, appropriate federal requirements.

We have reviewed the above factors, and agree with the State's determination. The repeal of NMAC 20.2.12—*Cement Kilns* rule does not result in an increase in the amount of PM emissions. We are proposing a finding that section 110(l) has been complied with because there will be no SIP relaxation. Therefore, we are proposing to approve repeal of NMAC 20.2.12—*Cement Kilns* rule from the New Mexico SIP.

VI. Proposed Action

EPA is proposing to fully approve the September 9, 2011, infrastructure SIP submission from New Mexico, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 Pb NAAQS. Specifically, EPA is proposing to approve the following infrastructure elements, or portions thereof: Sections 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). As discussed in applicable sections of this rulemaking, EPA is not proposing action on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, nor on the visibility protection portion of section 110(a)(2)(J). Based upon review of the State's infrastructure SIP submission and relevant statutory and regulatory authorities and provisions referenced in this submission or referenced in New Mexico's SIP, EPA believes that New Mexico has the infrastructure in place to address all applicable required elements of sections 110(a)(1) and (2) (except otherwise noted) to ensure that the 2008 Pb NAAQS are implemented in the State. We are hereby soliciting comment on this proposed action. Final rulemaking will occur after consideration of any comments.

Additionally, we are proposing to approve the July 31, 2014, SIP revision repealing New Mexico Administrative Code (NMAC), Title 20 Environmental Protection, Chapter 2 Air Quality (Statewide), Part 12 Cement Kilns (NMAC 20.2.12—*Cement Kilns*) rule from the New Mexico SIP.

VII. 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 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).

EPA is not proposing to approve this infrastructure SIP certification and repeal of the cement kilns rule 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, this proposed approval does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, Lead, and Reporting and recordkeeping requirements.

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

Dated: November 24, 2014.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2014–29091 Filed 12–10–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: EPA–R10–OAR–2014–0808; FRL–9919–88–Region 10]

Approval and Promulgation of Air Quality Implementation Plans; Washington; Redesignation to Attainment for the Tacoma-Pierce County Nonattainment Area and Approval of Associated Maintenance Plan for the 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to redesignate to attainment the entire Tacoma-Pierce County nonattainment area (hereafter ''the Tacoma area'' or ''the area'') for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The EPA is also proposing to approve as a revision to the Washington State Implementation Plan (SIP), the associated maintenance plan that provides for continued compliance of the 2006 24-hour $PM_{2.5}$ NAAQS. Additionally, the EPA is proposing to approve the 2017 and 2026 motor vehicle emissions budgets included in Washington's maintenance plan for $PM_{2.5}$ and nitrogen oxides (NO_X). In the course of proposing to approve redesignation of the Tacoma area, the EPA addresses a number of additional issues, including the effects of a January 4, 2013 decision by the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court) to remand to the EPA two final rules implementing the 1997 $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before January 12, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2014–0808, by any of the following methods:

A. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

B. *Mail:* Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

C. *Email: R10-Public_Comments@epa.gov.*

D. *Hand Delivery:* EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2014–0808. The 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 the disclosure of which 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 the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information the disclosure of which 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 in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov,* or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, it is intended to refer to the EPA.

Table of Contents

I. Background

The first air quality standards for $PM_{2.5}$ were established on July 16, 1997 (62 FR 38652, July 18, 1997). The EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a three-year average of annual mean $PM_{2.5}$ concentrations (the 1997 annual $PM_{2.5}$ standard). In the same rulemaking action, the EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006 (71 FR 61144), the EPA retained the annual average standard at 15 $\mu g/m^3$, but revised the 24-hour standard to 35 $\mu g/m^3$, based again on the three-year average of the 98th percentile of 24-hour