

**ALBUQUERQUE - BERNALILLO COUNTY  
PROPOSED INFRASTRUCTURE CERTIFICATION  
FOR THE 2015 OZONE (O<sub>3</sub>)  
REVISED NATIONAL AMBIENT AIR QUALITY STANDARD**

**City of Albuquerque Environmental Health Department  
Air Quality Program**

**Submitted to the U.S. Environmental Protection Agency  
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**DRAFT**

## **ACKNOWLEDGEMENTS IN THE PREPARATION OF THIS DOCUMENT**

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## LIST OF ABBREVIATIONS AND ACRONYMS

AAMNP	Annual Air Monitoring Network Plan
AQCA	New Mexico Air Quality Control Act (also referred to as “Air Act”)
AQCB	Air Quality Control Board (also referred to as “Air Board” or “Board”)
AQP	Air Quality Program
AQS	Air Quality System
CAA	Clean Air Act
CFR	Code of Federal Regulations
EHD	Albuquerque Environmental Health Department
EPA	Environmental Protection Agency
Fed. Reg.	Federal Register
GHG	Greenhouse gasses
iSIP	Infrastructure State Implementation Plan
NAAQS	National Ambient Air Quality Standards
NEI	National Emissions Inventory
NMSA 1978	New Mexico Statutes Annotated 1978
NOx	Oxides of Nitrogen
NM	New Mexico
NMAC	New Mexico Administrative Code
NMSA	New Mexico Statutes Annotated
NSR	New Source Review
O <sub>3</sub>	Ozone
ppm	Parts per Million
PSD	Prevention of Significant Deterioration
ROA	Revised Ordinances of the City of Albuquerque
SIP	State Implementation Plan
SLEIS	State and Local Emissions Inventory System
VOC(s)	Volatile Organic Compound(s)

## Introduction

A State Implementation Plan (SIP) identifies how the state will attain and maintain the primary and secondary National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA). The SIP contains statutes, regulations, source-specific requirements, non-regulatory items such as plans and inventories and, in some cases, additional requirements promulgated by the U.S. Environmental Protection Agency (EPA). The initial SIPs for states were approved by EPA in 1972.<sup>1</sup> A state may revise its SIP with EPA approval as necessary. The federally enforceable SIP for New Mexico (including Albuquerque and Bernalillo County) is compiled in 40 C.F.R. Part 52, Subpart GG, Subsections 1620-1640.

Sections 110(a)(1) and 110(a)(2) of the CAA require that, within three years of EPA promulgation of a new or revised NAAQS, each State must submit a plan known as an “infrastructure SIP” (iSIP). “Infrastructure,” in this context, means the programs, policies, activities, resources and authority by which the state will attain, maintain, and enforce the new NAAQS. The iSIP certification describes these elements in detail.<sup>2</sup> Section 110(a)(1) of the CAA addresses the timing requirement for the submissions of any iSIP elements, while Section 110(a)(2) lists the required elements that comprise the iSIP.

On October 26, 2015, the Administrator of the U.S. Environmental Protection Agency, Gina McCarthy, promulgated a new NAAQS for ozone ( $O_3$ ) [referred to in this document as the “2015  $O_3$  NAAQS”], effective December 28, 2015.<sup>3</sup> Based on its review of the air quality criteria and the NAAQS for  $O_3$ , EPA made revisions to the primary and secondary  $O_3$  NAAQS in order to provide the requisite protection of public health and welfare.<sup>4</sup> Specifically, EPA revised the primary (health based) standard from 0.075 ppm to 0.070 ppm to provide increased public health protection against health effects associated with long- and short-term exposures, such as reduced lung function, increased respiratory symptoms and pulmonary inflammation; effects that contribute to emergency department visits or hospital admissions; and mortality.<sup>5</sup> The EPA is retaining the indicator ( $O_3$ ), averaging time (8-hour) and form (annual fourth-highest daily maximum, averaged over 3 years) of the existing standard. This action provides increased protection for children, older adults, and people with asthma or other lung diseases, and other at-risk populations.<sup>6</sup> The EPA is also revising the level of the secondary standard to 0.070 ppm to provide increased protection against vegetation-related effects on public welfare. The EPA is retaining the indicator ( $O_3$ ), averaging time (8-hour), and form (annual fourth-highest daily maximum, averaged over 3 years) of the existing secondary standard.<sup>7</sup>

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<sup>1</sup> 37 Fed. Reg. 10,842-10,906 (May 31, 1972)

<sup>2</sup> More information on the SIP process is available at *SIP Status Reports*, EPA, **Error! Hyperlink reference not valid.** <http://epa.gov/air-quality-implementation-plans/sip-status-reports> (last visited February 28, 2018).

<sup>3</sup> 80 Fed. Reg. 65,292 (Oct. 26, 2015).

<sup>4</sup> 80 Fed. Reg. at 65,294.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Based on ambient monitoring data for Albuquerque and Bernalillo County from 2013 through 2015, EPA designated the Albuquerque - Bernalillo County area as “Attainment/Unclassifiable” under the 2015 primary and secondary O<sub>3</sub> NAAQS.<sup>8</sup> As stated by EPA, “areas designated ‘Attainment/Unclassifiable’ are not measuring or contributing to a violation of the standards.”<sup>9</sup> Albuquerque - Bernalillo County will continue to provide ambient air quality monitoring data to EPA as required under the Clean Air Act and its implementing regulations.<sup>10</sup>

Albuquerque-Bernalillo County has not yet incorporated the 2015 O<sub>3</sub> NAAQS into the regulations implementing the CAA.<sup>11</sup> It plans to do so in a future rule-making. Until that time, the NAAQS as codified in the Code of Federal Regulations can be implemented and maintained in Albuquerque and Bernalillo County.<sup>12</sup>

The main body of this document, below, outlines the requirements of Sections 110(a)(2)(A) through (M) of the CAA [codified at U.S.C. 42 § 7410, *State Implementation Plans For National Primary And Secondary Ambient Air Quality Standards*] and addresses how Albuquerque-Bernalillo County, New Mexico will implement, maintain and enforce the 2015 O<sub>3</sub> NAAQS, using existing programs and legal authorities.

Legislative authority for Albuquerque-Bernalillo County’s air quality program is codified in the New Mexico Air Quality Control Act (Air Act), Chapter 74, *Environmental Improvement*, Article 2, *Air Pollution*, of the New Mexico Statutes Annotated 1978 (NMSA 1978). Section 4 of this statute authorizes the creation of a “local authority” by a New Mexico county or municipality meeting certain criteria if the county or municipality adopts an ordinance providing for the local administration and enforcement of the Air Act. Albuquerque and Bernalillo County meet these statutory criteria as a joint local authority. The City of Albuquerque and Bernalillo County each adopted parallel ordinances by which they accepted the authority delegated by the Air Act, established the Joint Air Quality Control Board (Air Board), and specified that the Air Board shall adopt regulations consistent with the Air Act and shall adopt a plan for the regulation, control, prevention or abatement of air pollution throughout Bernalillo County. These parallel ordinances provide that the Albuquerque Environmental Health Department (EHD) is the administrative agency of the Air Board. The Air Quality Program is part of the Environmental Health Department. The Albuquerque and Bernalillo County ordinances are codified at Revised Ordinances of

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<sup>8</sup> 82 Fed. Reg. 54,263 (Nov. 16, 2017).

<sup>9</sup> Letter from Anne L. Imdal, Administrator of EPA Region 6, to Susana Martinez, Governor of New Mexico, December 20, 2017 (designating Albuquerque - Bernalillo County as “Attainment/Unclassifiable” for purposes of 2015 O<sub>3</sub> NAAQS).

<sup>10</sup> For more details on EPA’s air quality designation process, see the Federal Register publication of EPA’s initial round of designations under the 2015 O<sub>3</sub> NAAQS, 82 Fed. Reg. 54,232 - 54,235 and 54,263 (Nov. 16, 2017).

<sup>11</sup> 20.11.8 NMAC, *Ambient Air Quality Standards*.

<sup>12</sup> The codification of the New Mexico State Implementation Plan in the Code of Federal Regulations cites the following: “[a] letter dated May 25, 1988, from the NMEID General Counsel to EPA’s Region 6 Air Programs Chief indicating that the State of New Mexico has sufficient authority to enforce the NAAQS without adopting the Federal NAAQS as State standards.” 40 CFR § 52.1640(c)(41)(ii)(A).

the City of Albuquerque (ROA) Sections 9-5-1 to -99 and Bernalillo County Code of Ordinances (Bern. Code.) Ch. 30, Art. II, Sections 30-31 to -47.<sup>13</sup>

At the time of submittal of this iSIP certification to EPA, Albuquerque – Bernalillo County has already submitted the following proposed SIP revisions to EPA and is awaiting EPA action.

- Proposed revisions to 20.11.49 NMAC, *Excess Emissions*, in response to EPA finding of substantial inadequacy under the Clean Air Act for startup, shutdown, and malfunction SIP provisions of 45 state and local jurisdictions.<sup>14</sup>
- Proposed revisions to 20.11.41 NMAC, *Construction Permits*, in response to EPA conditional approval of a 2013 SIP submittal to EPA.<sup>15</sup>
- New regulation proposed for incorporation into the SIP, 20.11.39 NMAC, *Permit Waivers and Air Quality Notifications for Certain Source Categories*, along with a related amendment to 20.11.41 NMAC, *Construction Permits*. This amendment to 20.11.41 NMAC is unrelated to the SIP submittal listed above in response to EPA conditional approval of 20.11.41 NMAC.<sup>16</sup>

In addition, Albuquerque – Bernalillo County has submitted to EPA a request to update its delegated authority to implement and enforce New Source Performance Standards under Section 111 of the CAA and National Emissions Standards for Hazardous Air Pollutants under Section 112 of the EPA.<sup>17</sup>

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<sup>13</sup> This infrastructure SIP uses the terms “Air Quality Program” and “EHD” as a shorthand reference for the longer term “City of Albuquerque, Environmental Health Department, Air Quality Program.” In all instances of such usage, the terms “Air Quality Program” and “EHD” refer to the organizational unit within the Environmental Health Department (i.e. the “air agency,” “Department,” or “EHD”, 20.11.1.7 NMAC, *General Provisions*; or the “local agency”, NMSA 1978 § 74-2-5.1) that carries out air quality regulation duties and powers of the Department under the legal authorities discussed in the above paragraph.

<sup>14</sup> Letter from Butch Tongate, New Mexico Environment Secretary, to Ron Curry, EPA Region 6 Administrator (October 17, 2016) (submitting proposed SIP revisions for 20.11.49 NMAC to EPA). *See also* 80 Fed. Reg. 33,840 (June 12, 2015) (EPA finding of substantial inadequacy for 20.11.49 NMAC SIP provisions and SIP elements of other jurisdictions).

<sup>15</sup> Letter from Butch Tongate, New Mexico Environment Secretary, to Ron Curry, EPA Region 6 Administrator (January 18, 2018) (responding to EPA conditional approval of 20.11.41 NMAC). For EPA conditional approval of 20.11.41 NMAC, see 82 Fed. Reg. 29,421 (June 29, 2018).

<sup>16</sup> Letter from Butch Tongate, New Mexico Environment Secretary, to Ron Curry, EPA Region 6 Administrator (January 18, 2018) (proposing SIP revision in form of new 20.11.39 NMAC and related amendment to 20.11.41 NMAC, both unrelated to the submittal responding to EPA conditional approval of 20.11.41 NMAC on June 29, 2018).

<sup>17</sup> Letter from Mary Lou Leonard, EHD Director, to Ron Curry, EPA Region 6 Administrator (May 24, 2017) (requesting update to delegated authority under CAA §§ 111 and 112). This letter noted that on April 12, 2017, the Air Board adopted amendments to 20.11.63 NMAC, *New Source Performance Standards* and 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants*. With certain exceptions specified in the regulations, these amendments incorporated by reference federal standards under CAA § 111 as codified at 40 CFR, Part 60, as of January 23, 2017 and under CAA § 112 as codified at 40 CFR, Parts 61 and 63. 20.11.63 NMAC and 20.11.64 NMAC are incorporated into the New Mexico SIP as codified at 40 CFR § 52.1620.

The above submittals are discussed as appropriate in the main body of this document.

Albuquerque – Bernalillo County submits this document to EPA as certification that its previous SIP submittals meet the infrastructure requirements of Section 110(a)(1) and (2) of the CAA as they relate to the 2015 ozone NAAQS. EPA has either approved these previous submittals or is reviewing them for potential approval. Thus, this submittal does not provide any new legal authorities for proposed inclusion in the SIP.

### **Albuquerque-Bernalillo County 110(a)(2) Required SIP Elements for Ozone**

The table below displays requirements in specific sections of the Clean Air Act and then describes how Albuquerque – Bernalillo County meets those requirements.

<b>SECTION 110(a)(2)(A)<sup>18</sup></b>	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions or emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.
<p><u>Control measures generally.</u> Albuquerque – Bernalillo County’s existing air quality regulatory structure provides for sufficient control measures to implement and enforce the 2015 O<sub>3</sub> NAAQS. Albuquerque-Bernalillo County’s enforceable emission limitations and other control measures are authorized by the Air Act, NMSA 1978, §§ 74-2-1 to -17, together with the Albuquerque Joint Air Quality Control Board Ordinance, ROA §§ 9-5-1-1 to -99 and the parallel Bernalillo County Joint Air Quality Control Board Ordinance, §§ 30-31 to -47 [collectively referred to as the “Air Act and Ordinances”]. The Air Act and Ordinances authorized creation of the Albuquerque-Bernalillo County Joint Air Quality Control Board and the Air Quality Program of the City of Albuquerque Environmental Health Department.<sup>19</sup> The Air Act and Ordinances empower the Air Board to adopt, promulgate, publish, amend and repeal regulations consistent with the Air Act to attain and maintain NAAQS and prevent or abate air pollution.<sup>20</sup> The Air Act and Ordinances also serve as the legal basis for establishment of the City of Albuquerque Environmental Health Department as the air pollution control agency for Albuquerque-Bernalillo County and administrative agency of the Air Board, with authority to enforce the air quality regulations of the Board.<sup>21</sup></p> <p>The City of Albuquerque and Bernalillo County adopted parallel ordinances by which they accepted the authority delegated by the Air Act, established the Air Board, and specified that the board shall adopt regulations consistent with the Air Act and adopt a plan for the regulation, control, prevention or</p>	

<sup>18</sup> This iSIP report is divided into “elements,” each addressing requirements under a specific provision of the CAA. This element addresses the requirements of CAA § 110(a)(2)(A), and thus may be referred to as “Element A” of the iSIP. Other portions of this iSIP use the same naming convention for individual iSIP elements.

<sup>19</sup> NMSA 1978 § 74-2-4; ROA §§ 9-5-1-3 to -4; Bern. Code §§ 30-32 to -33.

<sup>20</sup> NMSA 1978 § 74-2-5; ROA § 9-5-1-4; Bern. Code § 30-33.

<sup>21</sup> NMSA 1978, § 74-2-5.1; ROA § 9-5-1-5; Bern. Code § 30-34.

abatement of air pollution.<sup>22</sup> For additional discussion of these ordinances and their role in satisfying EPA requirements for the New Mexico SIP, see Element E(ii) of this iSIP certification.

The regulations authorized by the Air Act and Ordinances and duly adopted by the Air Board are codified at 20.11 New Mexico Administrative Code (NMAC). The Air Board has promulgated rules that limit the formation of O<sub>3</sub> by limiting the precursors that contribute to its formation. In addition, the Air Board has promulgated rules to control emissions of other criteria pollutants, including rules providing for emission limitations and standards, permits, fees, market-based control techniques, and compliance schedules. These rules include the following provisions applicable to implementation of any NAAQS, including O<sub>3</sub>, as well as control of O<sub>3</sub> precursors [such as Oxides of Nitrogen (NOx) and Volatile Organic Compounds (VOCs)]:

- 20.11.1 NMAC, *General Provisions*
- 20.11.2 NMAC, *Fees*
- 20.11.3 NMAC, *Transportation Conformity*
- 20.11.4 NMAC, *General Conformity*
- 20.11.5 NMAC, *Visible Air Contaminants*
- 20.11.6 NMAC, *Emergency Action Plan*
- 20.11.7 NMAC, *Variance Procedure*
- 20.11.8 NMAC, *Ambient Air Quality Standards*
- 20.11.20 NMAC, *Fugitive Dust Control*
- 20.11.21 NMAC, *Open Burning*
- 20.11.22 NMAC, *Woodburning*
- 20.11.39 NMAC, *Permit Waivers and Air Quality Notifications for Certain Source Categories*
- 20.11.40 NMAC, *Source Registration*
- 20.11.41 NMAC, *Construction Permits*
- 20.11.43 NMAC, *Stack Height Requirements*
- 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*
- 20.11.47 NMAC, *Emissions Inventory Requirements*
- 20.11.49 NMAC, *Excess Emissions*
- 20.11.60 NMAC, *Permitting in Nonattainment Areas*
- 20.11.61 NMAC, *Prevention of Significant Deterioration*
- 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*
- 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*
- 20.11.65 NMAC, *Volatile Organic Compounds*
- 20.11.66 NMAC, *Process Equipment*
- 20.11.67 NMAC, *Equipment, Emissions, Limitations*
- 20.11.68 NMAC, *Incinerators and Crematories*
- 20.11.90 NMAC, *Source Surveillance; Administration and Enforcement*
- 20.11.100 NMAC, *Motor Vehicle Inspection - Decentralized*<sup>23</sup>
- 20.11.102 NMAC, *Oxygenated Fuels*
- 20.11.103 NMAC, *Motor Vehicle Visible Emissions*

<sup>22</sup> ROA §§ 9-5-1-1 to -99 and Bern. Code §§ 30-31 to -47.

<sup>23</sup> Albuquerque – Bernalillo County has also adopted another regulation for motor vehicle inspections that is not in the SIP: 20.11.101 NMAC, *Motor Vehicle Inspection – Centralized*, which states that its objective is control of carbon monoxide and hydrocarbons.

The record of EPA's approval of specific New Mexico statutes, local ordinances, local regulations, and other enforceable documents into the New Mexico SIP is available at 40 CFR Part 52, Subpart GG, Sections 1620-1640.

Albuquerque-Bernalillo County has submitted certain proposed revisions to permitting provisions of its SIP to EPA and is awaiting EPA action on these proposals.<sup>24</sup> If such approval should be granted, the Albuquerque-Bernalillo County portion of the New Mexico SIP would be updated accordingly. Aside from these proposed revisions, EHD has an EPA-approved air permitting program with related control strategies for both major and minor sources, thus creating an EPA approved process for implementing applicable CAA requirements in the source's permit.<sup>25</sup>

**Startup, shutdown and malfunction (SSM); affirmative defenses and director's discretion.** On May 22, 2015, EPA published notice of a "SIP call," finding the SSM provisions of SIPs for 45 statewide and local jurisdictions substantially inadequate to meet Clean Air Act requirements.<sup>26</sup> Albuquerque - Bernalillo County was one of those jurisdictions.<sup>27</sup> The SIP call found the affirmative defense provisions of 20.11.49 NMAC, *Excess Emissions*, substantially inadequate to meet Clean Air Act requirements. In response to the SIP call, the Air Board adopted amendments to 20.11.49 NMAC to remove affirmative defenses from the regulation and replace them with enforcement discretion provisions. The Air Board adopted these amendments based on a rulemaking petition from EHD, which crafted the amendments to meet all requirements specified by EPA in the SIP call for amendments that would be sufficient to meet CAA obligations. As recommended by EPA, Albuquerque-Bernalillo County's SIP submittal to EPA on the proposed amendments also requested that 20.11.49 NMAC be withdrawn entirely from the New Mexico SIP. The submittal was sent to EPA for approval on October 17, 2016.<sup>28</sup>

<b>SECTION 110(a)(2)(B)</b>	Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality; and (ii) upon request, make such data available to the Administrator.
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<sup>24</sup> As noted on page 6 of this iSIP certification, Albuquerque-Bernalillo County has submitted SIP revisions applying to the following regulations and is awaiting EPA approval: 20.11.39, 20.11.41, and 20.11.49 NMAC. Also as noted on page 6 of this iSIP certification, EHD has requested an EPA update of its delegated authority to implement and enforce federal standards under Sections 111 and 112 of the CAA, which are incorporated by reference in 20.11.63 and 20.11.64 NMAC.

<sup>25</sup> 40 CFR Part 52, Subpart GG, Section 1620(c)

<sup>26</sup> 80 Fed. Reg. 33,840 (June 12, 2015).

<sup>27</sup> 80 Fed. Reg. 33,840, 33,968 (June 12, 2015) (finding affirmative defense provisions of 20.11.49 NMAC, *Excess Emissions*, substantially inadequate to meet CAA requirements).

<sup>28</sup> Letter from Butch Tongate, New Mexico Environment Department Cabinet Secretary, to Ron Curry, Administrator of EPA Region 6, October 17, 2016 (submitting proposed revision to the SIP addressing requirements of the EPA SIP Call on excess emissions during periods of startup, shutdown, and malfunction).

EHD is authorized to conduct monitoring of ambient air quality: “[T]he local agency . . . shall develop facts and make investigations consistent with the [state] Air Quality Control Act.”<sup>29</sup> The act of monitoring is one process by which EHD’s Air Quality Program “develop[s] facts and makes investigations” of Bernalillo County air quality. Thus, the Air Act and Ordinances authorize EHD to conduct its monitoring program.

Monitoring is also mandated by EPA regulations. Therefore, under both state statute and federal regulations, EHD has the obligation and authority to monitor air quality for O<sub>3</sub> at appropriate locations in accordance with EPA’s ambient air quality monitoring network requirements, 40 CFR Parts 53 (“Ambient Air Monitoring Reference and Equivalent Methods”) and 58 (“Ambient Air Quality Surveillance”). EHD’s monitoring program implements the following specific federal regulatory requirements:

- providing for submission of data to EPA’s Air Quality System in a timely manner<sup>30</sup>;
- providing EPA with annual monitoring network plans<sup>31</sup>; and
- obtaining EPA’s approval of any planned changes to monitoring sites or to the network plan.<sup>32</sup>

Pursuant to the above authority, EHD maintains a monitoring network throughout Bernalillo County to assess ambient concentrations for all of the NAAQS, including O<sub>3</sub>. All monitors are subjected to the quality assurance requirements of 40 CFR Part 58, Appendix A. Monitors are located at sites that have met the minimum siting requirements of Part 58, Appendix E. All data is submitted to EPA’s Air Quality System (AQS) in accordance with the schedule prescribed by 40 CFR Part 58.

As part of its responsibility for maintaining the monitoring network, EHD submits an *Annual Air Monitoring Network Plan* (AAMNP) for EPA review.<sup>33</sup> This document describes how EHD has complied with monitoring requirements and explains any proposed changes. EHD submitted its 2017 AAMNP on July 1, 2017 and received notification of EPA approval on October 3, 2017.<sup>34</sup> Ambient air quality data reported in the 2017 and 2018 AAMNP showed O<sub>3</sub> levels at the following levels at three different monitoring sites.<sup>35</sup>

<sup>29</sup> NMSA 1978, § 74-2-5.1(B). See also the equivalent provisions in ROA § 9-5-1-5(B) and Bern. Code § 30-34(b).

<sup>30</sup> 40 CFR § 58.16 (“Data submittal and archiving requirements”).

<sup>31</sup> 40 CFR § 58.10 (“Annual monitoring network plan and periodic network assessment”).

<sup>32</sup> 40 CFR § 58.14 (“System modification”).

<sup>33</sup> 40 CFR § 58.10.

<sup>34</sup> Letter from Guy R. Donaldson, Associate Director for Air Multimedia Division, EPA Region 6, to Danny Nevarez, Deputy Director, Albuquerque Environmental Health Department (October 3, 2017).

<sup>35</sup> Albuquerque Environmental Health Department, Air Quality Program, Ambient Air Monitoring Section, 2017 Annual Network Review for Ambient Air Monitoring, p. 8 and 2018 Annual Network Review for Ambient Air Monitoring, p. 9. The 2018 document is in the process of being submitted to EPA.

Site name	2014-2016 Design Value	2015-2017 Design Value
(Standard is 0.070 ppm) <sup>36</sup>		
Del Norte 0023	0.065 ppm	0.067 ppm
South Valley 0029	0.065 ppm	0.065 ppm
Foothills 1012	0.064 ppm	0.067 ppm

The EPA-approved 2017 AAMNP describes ongoing activities for monitoring O<sub>3</sub>. These activities comply with EPA requirements for the State and Local Air Monitoring Stations (SLAMS) network and the National Core Multi-Pollutant Monitoring Stations (NCore) network. EHD complies with all monitoring requirements specified in the final rule promulgating the 2015 O<sub>3</sub> standard.<sup>37</sup>

<b>SECTION 110(a)(2)(C)</b>	Include a program to provide for enforcement of the measures in subparagraph (A) [section 110(a)(2)(A)], and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in Parts C and D [of Title I of the CAA, i.e. the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) permit programs].
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**Enforcement:** The Air Act and Ordinances authorize EHD to enforce emission limits and control measures satisfying Element A of this iSIP certification, above. The statutes, regulations, and ordinances establishing the emissions limits and control measures described in Element A, coupled with air quality permits issued by EHD, set forth the boundaries beyond which regulated entities in Albuquerque-Bernalillo County can expect enforcement action. The Air Act and Ordinances authorize EHD to enforce applicable requirements through administrative compliance orders or commencement of civil actions.<sup>38</sup> EHD enforces statutes and ordinances and regulations and permit conditions as the local air pollution control agency established for Albuquerque and Bernalillo County.<sup>39</sup> These ordinances were authorized under the Air Quality Control Act, NMSA 1978, § 74-2-4.

<sup>36</sup> Three-year average of the 4th highest 8-hour average.

<sup>37</sup> 80 Fed. Reg 65,416 to 65,430.

<sup>38</sup> NMSA 1978, §§ 74-2-12 and 12.1; ROA §§ 9-5-1-14, 98 and -99 and Bern. Code §§ 30-43, -42, -44, and -46.

<sup>39</sup> ROA § 9-5-1-5; Bern. Code § 30-34.

**Preconstruction PSD Permitting of Major Sources:** Under the general statutory authority discussed in Element A of this iSIP, above, the Air Board and EHD have the authority to implement a comprehensive Prevention of Significant Deterioration (PSD) permit program not only for O<sub>3</sub> but for all regulated New Source Review (NSR) pollutants. This authority is implemented in regulations codified at 20.11.61 NMAC, *Prevention of Significant Deterioration*, setting forth PSD requirements for all sources in areas designated in attainment or unclassifiable for a NAAQS.<sup>40</sup>

Albuquerque-Bernalillo County's comprehensive PSD program for all NSR pollutants has been previously approved into the New Mexico SIP by EPA.<sup>41</sup>

Albuquerque Bernalillo County has the authority to issue permits under its PSD program to sources of Greenhouse Gasses (GHGs).<sup>42</sup> Pursuant to EPA's Greenhouse Gas Tailoring Rule, EPA has approved Albuquerque Bernalillo County's PSD provisions for greenhouse gasses into the New Mexico SIP.<sup>43</sup>

**Regulation of minor sources and minor modifications:** Per 40 CFR §§ 51.160 through 51.164, the Air Board has approved a preconstruction regulation applicable to modification and construction of stationary minor sources emitting a NAAQS pollutant.<sup>44</sup> This preconstruction regulation also applies to minor modifications of major sources emitting a NAAQS pollutant.<sup>45</sup> EPA has previously approved these provisions into the New Mexico SIP<sup>46</sup> and is currently reviewing certain revisions that Albuquerque-Bernalillo County has adopted to 20.11.41 NMAC and submitted to EPA as proposed SIP revisions.<sup>47</sup>

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<sup>40</sup> For other regulations governing issuance of permits that may apply to a facility subject to PSD requirements, see 20.11.41 NMAC, *Construction Permits* and 20.11.42 NMAC, *Operating Permits*. For the regulation governing permitting for sources located in nonattainment areas, see 20.11.60 NMAC, *Permitting in Nonattainment Areas*.

<sup>41</sup> 58 Fed. Reg. 67,330 (Dec. 21, 1993) (initial approval); 72 Fed. Reg. 20,728 (Apr. 26, 2007) (approving SIP revisions for EPA's 2002 reforms to the NSR rules); 77 Fed. Reg. 58,032 (Sept. 19, 2012) (concerning the 1997 and 2008 Ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS); 80 Fed. Reg. 52,401 (Aug. 31, 2015) (responding to EPA rulemakings on PSD implementation, greenhouse gas regulations, and fugitive emissions). EPA's Guidance on Infrastructure State Implementation Plan (SIP) Elements Under Clean Air Act Sections 110(a)(1) and 110(a)(2), September 2013, requires that an iSIP submission address whether an air agency has submitted any PSD program SIP revisions, regarding any NSR pollutant, for which the submission deadline has passed as of the date for EPA's proposed approval of an infrastructure SIP submission. This requirement does not apply to this O<sub>3</sub> infrastructure SIP submittal.

<sup>42</sup> 20.11.61.7(CCC) NMAC.

<sup>43</sup> 76 Fed. Reg. 81,836 (Dec. 29, 2011).

<sup>44</sup> 20.11.41 NMAC, *Construction Permits*.

<sup>45</sup> *Id.*

<sup>46</sup> 69 Fed. Reg. 78,312 (Dec. 30, 2004).

<sup>47</sup> In a June 2017 action on a SIP submittal to EPA dated July 26, 2013, EPA approved the following: the establishment of a new Minor NSR general construction permitting program; changes to the Minor NSR Public Participation requirements; and the addition of exemptions from Minor NSR permitting for inconsequential emission sources and activities. Additionally, EPA conditionally approved certain provisions related to accelerated permit review and technical permit revisions, provided that the Air Board conduct a rulemaking to adopt amendments to

<b>SECTION 110(a)(2)(D)</b>	<p>Contain adequate provisions -</p> <p>(i) prohibiting any source or other type of emissions activity from emitting any air pollutant in amounts which will:</p> <ul style="list-style-type: none"> <li>(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or</li> <li>(II) interfere with measures required to be included in the applicable implementation plan for any other State under Part C [of Title I of the CAA] to prevent significant deterioration of air quality or to protect visibility,</li> </ul> <p>(ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).</p>
<p><u>Contributions to nonattainment; interference with maintenance, per CAA § 110(a)(2)(D)(i)(I) (the “Good Neighbor provision”):</u> EHD is working with EPA to address this requirement as it relates to the 2015 ozone NAAQS but a sufficient basis for a submittal addressing Good Neighbor requirements does not yet exist. EHD will continue to consult with EPA on how best to develop an appropriate submittal for this element as early as practicable.</p> <p><u>Interference with prevention of significant deterioration, per § 110(a)(2)(D)(i)(II):</u> As noted above in Element C of this iSIP, Albuquerque-Bernalillo County has a comprehensive EPA-approved PSD program. Thus, the PSD program includes measures to prevent interference with PSD measures in other states.</p>	

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20.11.41 NMAC, *Construction Permits*, to respond to EPA’s conditional approval and to address CAA requirements. 82 Fed. Reg. 29,421 (June 29, 2017).

The Air Board responded to this conditional approval by conducting a rulemaking on November 8, 2017 in which it adopted amendments to 20.11.41 NMAC, *Construction Permits*. EHD consulted EPA in connection with this rulemaking to address any potential SIP approvability issues. See Letter from Butch Tongate, New Mexico Environment Department Cabinet Secretary, to Anne Idsal, Administrator of EPA Region 6, January 18, 2018 (proposed revision to the State Implementation Plan (SIP) addressing U.S. Environmental Protection Agency (EPA) conditional approval of 20.11.41 NMAC).

Note that at the November 8, 2017 rulemaking hearing the Air Board separately adopted 20.11.39 NMAC, *Permit Waivers and Air Quality Notifications for Certain Source Categories*. For certain eligible source categories (certain gasoline dispensing facilities and emergency stationary reciprocating internal combustion engines), this regulation creates a partial exception to construction permit requirements, allowing them to use a streamlined administrative process for authorization of construction, while still mandating compliance with all applicable federal air quality standards and other CAA requirements. The adoption of 20.11.39 NMAC necessitated a further change to 20.11.41 NMAC, *Construction Permits*. This additional change to 20.11.41 NMAC was adopted by the Air Board at the November 8, 2017 meeting as part of a separate rulemaking hearing, unrelated to the amendments adopted in response to EPA’s conditional approval of 20.11.41 NMAC. EHD consulted EPA in connection with this rulemaking to address any potential SIP approvability issues. See Letter from Butch Tongate, New Mexico Environment Department Cabinet Secretary, to Anne Idsal, Administrator of EPA Region 6, January 18, 2018 (Proposed revision to State Implementation Plan (SIP) incorporating new regulation 20.11.39 NMAC and a related amendment to 20.11.41 NMAC).

Interference with protection of visibility, per § 110(a)(2)(D)(i)(II): With respect to the visibility element of § 110 (a)(2)(D)(i)(II), Albuquerque-Bernalillo County has a regional haze program in place that fully meets the requirements of 40 CFR § 51.309 and has been approved by EPA into the New Mexico SIP.<sup>48</sup> In its approval action, EPA found that the regional haze SIP element and its associated rules “meet the requirements of the [CAA] and comply with the provisions of 40 CFR § 51.309, thereby meeting requirements for reasonable progress for the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report for approval of the plan through 2018.”<sup>49</sup> EPA’s approval of Albuquerque-Bernalillo County’s regional haze SIP element (as well as regional haze SIP provisions for the states of New Mexico, Wyoming and Utah), has been upheld by the Tenth Circuit.<sup>50</sup> By having this EPA-approved regional haze SIP element in place, Albuquerque-Bernalillo County meets the requirements of § 110 (a)(2)(D)(i)(II), prohibiting interference with protection of visibility in other states. Albuquerque Bernalillo County regulations implementing the Regional Haze SIP are codified as follows:

- 20.11.5 NMAC, *Visible Air Contaminants*;
- 20.11.20 NMAC, *Fugitive Dust Control*;
- 20.11.21 NMAC, *Open Burning*;
- 20.11.22 NMAC, *Wood Burning*;
- 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*;
- 20.11.65 NMAC, *Volatile Organic Compounds*;
- 20.11.66 NMAC, *Process Equipment*;
- 20.11.67 NMAC, *Equipment, Emissions, Limitations*;
- 20.11.71 NMAC, *Municipal Solid Waste Landfills*;
- 20.11.100 NMAC, *Motor Vehicle Inspection - Decentralized*;
- 20.11.102 NMAC, *Oxygenated Fuels*;
- 20.11.103 NMAC, *Motor Vehicle Visible Emissions*.

EPA approval of the Regional Haze SIP followed previous regional haze SIP submissions by Albuquerque-Bernalillo County on December 26, 2003 and September 10, 2008.<sup>51</sup> EPA has also approved Albuquerque – Bernalillo County’s Five-Year Regional Haze Progress Report, which demonstrated that the city/county area is making reasonable progress toward meeting visibility goals for the first Regional Haze planning period and thus finding that no revisions to the existing Regional Haze SIP element are required at this time.<sup>52</sup>

Compliance regarding interstate pollution abatement: As described above in this Element of the iSIP and in Element C, Albuquerque Bernalillo County has a fully EPA approved PSD permitting program. Thus, the PSD program includes provisions that satisfy the interstate pollution abatement requirements of CAA § 126(a) and are consistent with 40 CFR § 51.166(q)(2)(iv), requiring notification of other air

<sup>48</sup> 77 Fed. Reg. 71,119 (Nov. 29, 2012). See also 82 Fed. Reg. 58,347 (approval of the Regional Haze Five Year Progress Report).

<sup>49</sup> *Id.*

<sup>50</sup> *Wild Earth Guardians v. EPA*, 770 F.3d 919 (10th Cir. 2014).

<sup>51</sup> See 77 Fed. Reg. 24,768 (Apr. 25, 2012) (proposing approval of Albuquerque Bernalillo County regional haze SIP and describing history of regional haze rule and related earlier SIP submissions by Albuquerque-Bernalillo County).

<sup>52</sup> 82 Fed. Reg. 58,347 (Dec. 12, 2017).

agencies whose jurisdictions may be affected by emissions from an outside source. The regulation requiring such notice is codified at 21.11.61.21(C)(4) NMAC.

Regarding CAA, § 126(b) and (c), no sources within Albuquerque-Bernalillo County are subject to an active finding under these provisions with respect to O<sub>3</sub>. If such findings should occur in the future, EHD will consult with EPA Region VI.

Compliance regarding international air pollution: Regarding CAA, § 115, no sources within Albuquerque-Bernalillo County are subject to an active finding under Section 115 with respect to O<sub>3</sub>.

<b>SECTION 110(a)(2)(E)(i)</b>	Provide: (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof).
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Organization responsible for the SIP: The Air Act and Ordinances serve as the legal basis for establishing the Air Board and the Environmental Health Department (EHD) as the responsible authorities for implementing federal air quality standards in Albuquerque-Bernalillo County.<sup>53</sup> The Air Act and Ordinances serve as the legal basis for establishing EHD as the air pollution control agency for Albuquerque-Bernalillo County, for this purpose empowering EHD to carry out a variety of functions including monitoring, compliance, enforcement, and developing and presenting proposed plans and rules to the Air Board for adoption and promulgation.<sup>54</sup> For purposes of these provisions, the Air Board and EHD are the sole organizations that participate in (i.e. have legal duties and authority related to) developing, implementing, and enforcing the EPA-approved SIP provisions related to the 2015 O<sub>3</sub> NAAQS in Albuquerque-Bernalillo County.<sup>55</sup>

Resources (i.e. personnel & funding) available to carry out the SIP: As of the date of this iSIP certification submittal, the Air Board and EHD have adequate funding and personnel to carry out the functions described in this document addressing the 2015 O<sub>3</sub> NAAQS. Funding and personnel for activities related to the 2015 O<sub>3</sub> NAAQS will be provided through permit fees, general funds from the City of Albuquerque, and funds provided under CAA §§ 103 and 105 grants. Element L of this iSIP discusses local authority to collect permit fees, as required under the CAA, thereby providing a resource base for local CAA-required permit programs, as well as implementation and enforcement of the regulatory structure embodied in permit conditions. At present, EHD anticipates that local and federal funding sources will be adequate to implement and enforce the 2015 O<sub>3</sub> NAAQS over the next five years. However, this anticipation could change if approved appropriations change. At present,

<sup>53</sup> NMSA 1978 § 74-2-5 and 5.1; ROA §§ 9-5-1-4 and -5; Bern. Code §§ 30-33 and -34.

<sup>54</sup> NMSA 1978 § 74-2-5.1; ROA § 9-5-1-5; Bern. Code § 30-34.

<sup>55</sup> Under the Air Act, state authorities retain jurisdiction and control for administration of the Act with respect to any failure to act by a local authority. See Element E(iii) of this iSIP certification. Under NMSA 1978 § 74-2-6, the public may propose new air quality regulations and comment on proposed rulemakings, but the public, unlike the Air Board or EHD, does not have legal duties and authority to develop, implement, and enforce the SIP.

EHD does not anticipate the need for additional resources to implement the plan for the 2015 O<sub>3</sub> NAAQS beyond those which have been utilized for the preparation of the plan, for SIP revisions submitted to EPA, and for other current programmatic demands. Should EPA determine that EHD lacks adequate personnel to carry out the SIP, EPA may issue a finding with respect to that deficiency, which EHD would have a legal obligation to correct.

Authority to carry out the SIP: The Air Board and EHD have adequate authority under statutes, ordinances, and regulations to carry out SIP obligations with respect to the 2015 O<sub>3</sub> NAAQS. The Air Act and Ordinances authorize the Air Board to adopt plans, emission standards and rules and to modify, reverse or sustain permits issued by EHD.<sup>56</sup> In addition, EHD has authority under the Air Act and Ordinances to issue permits under the Air Board's regulations and to enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.<sup>57</sup> This legal framework empowers EHD to carry out administrative assessments, inspections, issuance of penalties for permit violations, and appropriate litigation.<sup>58</sup> To act under the foregoing legal provisions, EHD has full authority under state law and city and county ordinances to carry out all SIP obligations relating to the 2015 O<sub>3</sub> NAAQS.<sup>59</sup>

<b>SECTION 110(a)(2)(E)(ii)</b>	(ii) requirements that the State comply with the requirements respecting State boards under section 128, and
To comply with the provisions of CAA § 128 regarding state and local board composition and conflicts of interest, the City of Albuquerque and Bernalillo County have implemented a number of ordinances. EPA has collectively approved these ordinances into the SIP, determining that they meet CAA requirements. <sup>60</sup> As required by CAA § 128, local EPA approved ordinances require that at least a majority of Air Board members must represent the public interest and must not derive any significant portion of their income from persons subject to permits or enforcement orders implementing state obligations under the CAA. The ordinances also require Air Board members who have a conflict of interest regarding a matter before the Board, such as a potential direct or indirect monetary gain for the member or the member's spouse or minor child, must disqualify themselves and abstain from voting on the matter. <sup>61</sup>	

<sup>56</sup> NMSA 1978, §§ 74-2-5 and -7.

<sup>57</sup> NMSA 1978, §§ 74-2-5.1, -7, -12, -12.1; ROA §§ 9-5-1-5, -7, and - 98 and - 99; Bern. Code §§ 30-34, -36, -42, -43, and -46.

<sup>58</sup> *Id.*

<sup>59</sup> NMSA 1978, §§ 74-2-1 to 74-2-17; ROA §§ 9-5-1-1 to 9-5-1-99; and Bern. Code §§ 30-31 to 30-47.

<sup>60</sup> 64 Fed. Reg. 29,235 (July 1, 1999) (initial approval); 80 Fed. Reg. 63,431 (Oct. 20, 2015) (approval of revisions to State Boards and Conflict of Interest Provisions). The 2015 EPA action approved into the SIP numerous locally adopted revisions to or recodification of specific ordinances that satisfy CAA § 128 requirements regarding the composition of the Air Board and conflicts of interest.

<sup>61</sup> ROA § 9-5-1-3; Bern. Code § 30-32. An additional local conflict of interest ordinance applies to City of Albuquerque employees, addressing potential issues such as nepotism and outside employment. ROA §§ 3-3-1 to -13. The City of Albuquerque Charter contains further Code of Ethics provisions addressing conflicts of interest, such as inappropriate gifts and personal financial benefits for employees. City of Albuquerque Charter, Article XII, Section 4. Similarly, a county ordinance addresses conflicts of interest for Bernalillo County employees. Bern. Code

NMSA 1978 § 74-2-4(B) also provides that the Air Board be comprised of 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 CAA or Air Act.

Additionally, the Air Board's rulemaking regulation requires members to recuse themselves from rulemakings where their impartiality may reasonably be questioned or if the Air Board member: (1) has a personal bias or prejudice concerning a party; (2) is related to a party within a third degree of relationship, (3) is an officer, director or trustee of a party or interested participant in the proceeding; or (4) has a financial interest in the proceeding or has any other conflict.<sup>62</sup>

The Air Board regulation governing adjudicatory proceedings also requires members to recuse themselves from such proceedings, for example permit reviews, where the Air Board member: (1) has a personal bias or prejudice concerning a party or the outcome of the proceeding; (2) has personal knowledge of disputed facts concerning the proceeding; (3) is related to a party within the third degree of relationship; (4) is an officer, director or trustee of a party or interested participant in the proceeding; (5) has a financial interest in the proceeding or facility that is the subject of the proceeding or has any other conflict of interest; (6) or has performed prosecutorial or investigatory functions in connection with a permitting action at issue in the proceeding.<sup>63</sup>

<b>SECTION 110(a)(2)(E)(iii)</b>	(iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.
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Pursuant to NMSA 1978, § 74-2-4, local authority to implement the New Mexico Air Quality Control Act has been assumed by the City of Albuquerque and Bernalillo County, through the adoption of these jurisdictions' respective Joint Air Quality Control Board Ordinances which created the Air Board and authorized local administration by the City of Albuquerque Department of Environmental Health.<sup>64</sup> The New Mexico Environment Department and the state Environmental Improvement Board retain jurisdiction and control for administration of the Air Quality Control Act with respect to any failure to act by a local authority.<sup>65</sup>

<b>SECTION 110(a)(2)(F)</b>	Require, as may be prescribed by the Administrator: (i) 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, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and
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§§ 2-126 to 2-136. EPA has approved these and additional city and county legal authorities that meet CAA § 128 requirements. 80 Fed. Reg. 63,431 (Oct. 20, 2015).

<sup>62</sup> 20.11.82.14 NMAC.

<sup>63</sup> 20.11.81.12(B)(3)(a) NMAC.

<sup>64</sup> ROA §§ 9-5-1-1 to -99; and Bern. Code §§ 30-31 to -47.

<sup>65</sup> NMSA 1978, § 74-2-4(D).

	(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;
<p><u>Source monitoring:</u> The state Air Act provides that regulations adopted by the Air Board may “require any person emitting any air contaminant” to conduct monitoring of such emissions, install equipment appropriate for such monitoring, use monitoring methods prescribed by the Air Board, maintain related records, and submit reports regarding the emissions.<sup>66</sup> Consistent with 40 CFR § 51.212, Albuquerque-Bernalillo County regulations provide that stationary sources may be subject to periodic inspection and emissions testing.<sup>67</sup> These source monitoring requirements authorize EHD to identify allowable test methods which a source must use. The requirements do not contain any provision that would prevent the use of any credible evidence.</p> <p><u>Source reporting:</u> Consistent with 40 CFR §§ 51.211, 51.321 to 51.323, and 40 CFR Part 51, subpart A, Albuquerque-Bernalillo County provides that stationary sources may be required to periodically report emissions and emissions-related data. These provisions are contained in the NMAC regulations cited in the paragraph above. In addition, stationary sources may be required to maintain and report emissions inventories according to a prescribed schedule, in a format established by EHD.<sup>68</sup> To facilitate gathering and reporting of emissions data by sources, Albuquerque-Bernalillo County establishes specific requirements for maintaining records and reporting emissions, including provisions relating to content of records and EHD inspections.<sup>69</sup> EHD is current with its submittals to the National Emissions Inventory (NEI) database. EHD submitted its 2014 comprehensive NEI to EPA January 14, 2016 and EHD submitted its most recent (calendar year 2016) NEI for larger sources on December 29, 2017.</p> <p><u>Correlation of source emission reports with emissions limitations and standards:</u> Pursuant to the NMAC provisions cited above and consistent with 40 CFR § 51.116, EHD is authorized to use emissions data gathered and reported by sources to analyze “the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under the applicable emission limitations or sources.”<sup>70</sup> EHD correlates data about source emissions with the applicable emission limitations and standards to monitor for excess emissions to assist in maintaining the NAAQS.</p>	

<sup>66</sup> NMSA § 74-2-5(C)(6).

<sup>67</sup> 20.11.41.22 NMAC (inspection and testing related to construction permits); 20.11.42.12 NMAC (inspection and testing related to operating permits); 20.11.49.15 NMAC (inspection and testing related to excess emissions); 20.11.60.27 NMAC (inspection and testing related to permitting in nonattainment areas); 20.11.61.12 to 20.11.61.20 NMAC (testing and prevention related to permitting for prevention of significant deterioration); and 20.11.90 NMAC, *Source Surveillance; Administration and Enforcement* (general procedures for inspection and enforcement and assuring proper operating procedures by regulated sources).

<sup>68</sup> 20.11.47 NMAC, *Emission Inventory Requirements*.

<sup>69</sup> 20.11.90 NMAC, *Source Surveillance; Administration and Enforcement*.

<sup>70</sup> 40 CFR § 51.116(c). See also 20.11.90.13(C) NMAC (“Emission data obtained by the director shall be correlated with applicable emission limitations and other control measures . . .”).

<b><u>Availability of emission reports by sources:</u></b> Emission data obtained under the above-cited provisions are made available to the public during normal business hours. <sup>71</sup>	
<b>SECTION 110(a)(2)(G)</b>	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority.
<p><b><u>Authority to respond to emergency episode:</u></b> The Air Act and Ordinances provide EHD with authority to address air quality emergencies. Upon a finding that any owner/operator of a source or combination of air emission sources presents an imminent and substantial endangerment to the public health or welfare or to the environment, the Director of the Environmental Health Department may bring a civil suit seeking to restrain the source of the air contaminants.<sup>72</sup> If such a civil suit is not a practicable means of promptly protecting public health or welfare or the environment, the Director may issue orders necessary for such protection on a temporary basis, pending litigation and court-ordered action.<sup>73</sup></p> <p><b><u>Contingency plan to implement emergency episode authority:</u></b> The Director of the Environmental Health Department formulates and administers an emergency action plan approved by the Air Board to address source emissions that cause pollutant concentrations to reach levels constituting an imminent and substantial endangerment to the health of persons.<sup>74</sup> Consistent with 40 CFR § 51, Subpart H, <i>Prevention of Air Pollution Emergency Episodes</i>, the Air Board has adopted the <i>Air Pollution Episode Contingency Plan for Bernalillo County</i> that covers air pollution episodes and the occurrence of an emergency due to the effects of the pollutants on the health of persons.<sup>75</sup></p>	
<b>SECTION 110(a)(2)(H)</b>	<p>Provide for revision of such plan:</p> <ul style="list-style-type: none"> <li>(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and</li> <li>(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements, or to otherwise comply with any additional requirements established under this Act.</li> </ul>

**SIP revision to account for NAAQS revisions:** the Air Board has the authority to adopt new regulations and to amend or repeal regulations in order to attain and maintain the NAAQS and prevent or abate air pollution throughout Albuquerque – Bernalillo County.<sup>76</sup> To assist the Board with all NAAQS revisions, EHD has authority to develop and present to the Board a plan for the regulation, control, prevention or abatement of air pollution.<sup>77</sup> Because these provisions allow for changes as necessary to

<sup>71</sup> 20.11.90.13(C) NMAC.

<sup>72</sup> NMSA 1978 § 74-2-10(A); ROA § 9-5-1-10(A); Bern. Code § 30-39(A).

<sup>73</sup> NMSA 1978 § 74-2-10(B); ROA § 9-5-1-10(B); Bern. Code § 30-39(B).

<sup>74</sup> 20.11.6 NMAC, *Emergency Action Plan*.

<sup>75</sup> 56 Fed. Reg. 38,073 (Aug. 21, 1991); 40 CFR § 52.1639.

<sup>76</sup> NMSA 1978 § 74-2-5; ROA § 9-5-1-4; Bern. Code § 30-33

<sup>77</sup> NMSA 1978 § 74-2-5.1(H); ROA § 9-5-1-5(I); Bern. Code § 30-34(i).

local air quality regulations and programs, they provide the legal basis for the Air Board and EHD to submit proposed SIP revisions for EPA review in order to accommodate EPA revisions of a NAAQS. Nothing in New Mexico's statutory or regulatory authority prohibits Albuquerque-Bernalillo County from revising regulations and programs for submission as proposed SIP revisions in the event of a revision to the NAAQS.

SIP revision to account for EPA finding of inadequacy: the above cited provisions also provide the legal basis for the Air Board and EHD to submit proposed revisions of the SIP for EPA review in the event the EPA Administrator finds the SIP to be substantially inadequate to attain the NAAQS or to otherwise meet all applicable CAA requirements. As described elsewhere in this document, the Air Board and EHD have recently demonstrated their abilities to exercise this authority when EHD proposed amendments to 20.11.49 NMAC, *Excess Emissions*, in response to EPA's 2015 finding of substantial inadequacy and the Air Board amended that regulation and submitted proposed revisions of the SIP to EPA.

<b>SECTION 110(a)(2)(I)</b>	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);
This infrastructure SIP submittal does not address CAA § 110(a)(2)(I). According to EPA's interpretation of the CAA, this element does not need to be addressed in the context of an infrastructure SIP submission. <sup>78</sup>	
<b>SECTION 110(a)(2)(J)</b>	Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

Consultation with identified officials on certain actions: Section 121 of the CAA requires a SIP to provide for consultation with local political subdivisions and with federal land managers regarding adoption of certain SIP elements affecting those entities. Albuquerque-Bernalillo County meets this requirement because all SIP revisions undergo public notice and hearing, which requires offering a reasonable opportunity for comment by the interested members of the public, including local political subdivisions and federal land managers affected by a SIP revision. In particular, the Air Act provides that, "no regulations or emission control requirement shall be adopted until after a public hearing by . . . the local board" and that, "at the hearing . . . 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."<sup>79</sup>

To implement these consultation requirements, the Air Board has adopted several regulations establishing a process for consultation with local political subdivisions and federal land managers. One such regulation, governing the rule making process, provides notice of SIP revisions to affected

<sup>78</sup> EPA, *Guidance on Infrastructure State Implementation Plan Elements under Clean Air Act §§ 110(a)(1) and 110(a)(2)*, p. 52, [https://www.epa.gov/sites/production/files/2015-12/documents/guidance\\_on\\_infrastructure\\_sip\\_elements\\_multipollutant\\_final\\_sept\\_2013.pdf](https://www.epa.gov/sites/production/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf) (last visited February 28, 2018).

<sup>79</sup> NMSA 1978, § 74-2-6(B) and (D); see also ROA § 9-5-1-6(B) and (D); Bern. Code §§ 30-35(b) and (d).

persons and organizations and affords them an opportunity to participate in the revision process.<sup>80</sup> Other regulations providing for public participation and notification include those programs implementing permitting in nonattainment areas and for Prevention of Significant Deterioration.<sup>81</sup> Additionally, public participation and notification provisions are incorporated in regulations governing adjudicatory decisions by the Air Board.<sup>82</sup> Collectively, the foregoing provisions ensure that there will be an established process for consultation with local political subdivisions and federal land managers, as well as persons affected by the actions specified in CAA § 121.

In addition to the above consultation requirements, Albuquerque Bernalillo County's SIP-approved Transportation Conformity and General Conformity rules require that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations, general conformity determinations, and proposed transportation conformity related SIP revisions.<sup>83</sup> In addition, regulations identify local and federal government entities that are consulted in SIP revisions related to transportation conformity and general conformity determinations in federally mandated transportation planning.<sup>84</sup>

Public notification: Consistent with CAA § 127 and 40 CFR § 51.285, EHD makes available to the public information about instances or areas in which the measured value of regulated pollutants exceeds the values set forth in the NAAQS. EHD makes air quality data from Albuquerque-Bernalillo County's monitoring network available via EPA's Air Quality System Data Mart website.<sup>85</sup> Additionally, as required by grants under CAA § 105, Albuquerque-Bernalillo County must submit monitoring data to EPA's Air Quality System (AQS) within 90 days after the end of a quarter. EHD's website provides information to the public on current air quality conditions in EHD's jurisdiction, using the EPA's color-coded Air Quality Index (AQI) to show current concentrations of criteria pollutants.<sup>86</sup> The AQI information covers health effects potentially associated with varying levels of specific pollutants. By this means, EHD advises the public of potential health hazards associated with measured values for O<sub>3</sub> and other NAAQS pollutants that may at times exceed the concentrations specified in the NAAQS.

<sup>80</sup> 20.11.82 NMAC, *Rulemaking Procedures -- Air Quality Control Board*.

<sup>81</sup> 20.11.60.23 NMAC, (requiring consultation with federal land manager on major source permits in nonattainment areas that affect visibility in federal Class I areas); 20.11.60.26 NMAC (providing for public participation and notification on major source permits in nonattainment areas, including consultation with federal land managers); 20.11.61.21 and 20.11.61.24 NMAC (providing for public participation and notification on major source permits subject to prevention of significant deterioration requirements, including federal land managers).

<sup>82</sup> 20.11.81.14(G) and 20.11.81.14(I) NMAC (providing specific procedural requirements for public notification and hearing). Further public participation and notification provisions apply regarding issuance of construction permits, 20.11.41.14, 20.11.41.15, and 20.11.41.16 NMAC (providing for public participation and notification at various stages of the construction permitting process).

<sup>83</sup> 20.11.3.105, 20.11.3.112, and 20.11.4 NMAC.

<sup>84</sup> 20.11.3 and 20.11.4 NMAC.

<sup>85</sup> *Air Data: Air Quality Data Collected at Outdoor Monitors Across the US*, EPA, <https://www.epa.gov/outdoor-air-quality-data> (last visited February 28, 2018).

<sup>86</sup> *Today's Status*, AQP, <http://www.cabq.gov/airquality/todays-status> (last visited February 28, 2018).

EHD's website also provides links to additional EPA web-based information tools on criteria pollutant emission sources, past air quality data trends, and forecasts of future air quality conditions.<sup>87</sup> By linking to these EPA resources, EHD further advises the public about criteria pollutants, local air quality conditions and the potential health hazards that may arise from such conditions.

In addition to the above measures, EHD and the Air Board promote public awareness of measures that can prevent instances in which measured values of criteria pollutants exceed values specified in the NAAQS. Promotion of such awareness occurs by offering specific information on how the public can participate in regulatory and other efforts to improve air quality. In particular, EHD and the Air Board follow specific procedures, mandated by regulations, to inform the public of: (1) procedures for members of the public to petition the Air Board for a rulemaking proceeding;<sup>88</sup> (2) time and place of upcoming rulemaking proceedings;<sup>89</sup> (3) procedures for members of the public to participate in rulemakings;<sup>90</sup> and (4) procedures for members of the public to participate in the permitting process.<sup>91</sup> The foregoing regulations require that notices of proceedings be published by particular methods (e.g. in a newspaper of general circulation or on a web page), thus providing interested members of the public an opportunity to be heard during rulemaking and permitting.

EHD and the Air Board further promote the above forms of public participation by providing links on the EHD website to important information about such participation.<sup>92</sup> This web-based information includes: the content of relevant regulations; notices of proceedings; Air Board and EHD contact information; description of the process for filing air quality complaints; descriptions of permitting and compliance programs; and access to full text documents on completed, ongoing or upcoming regulatory proceedings, such as petitions, notices of intent, public comments, and public review drafts of proposed regulations.

Prevention of significant deterioration: EPA has stated that the requirements for this sub-element of an iSIP are the same as the requirements to satisfy Element C of an iSIP submittal, which must comply with CAA § 110(a)(2)(C).<sup>93</sup> Accordingly, please refer to the discussion of Albuquerque-Bernalillo County's PSD program in Element C of this iSIP certification for a description of how the

<sup>87</sup> Apps & Resources, AQP, <http://www.cabq.gov/airquality/apps-resources> (last visited February 28, 2018).

<sup>88</sup> 20.11.82.18 NMAC, *Rulemaking Procedures -- Air Quality Control Board* (providing that "any person" may petition the Air Board for rulemaking).

<sup>89</sup> 20.11.82.19 NMAC.

<sup>90</sup> 20.11.82.19 NMAC.

<sup>91</sup> 20.11.41.14 to 20.11.41.16 NMAC (public participation in construction permits); 20.11.42.13 NMAC (public participation in operating permits); 20.11.60.26 NMAC (public participation in permitting in nonattainment areas); 20.11.61.21 NMAC (public participation in permitting for prevention of significant deterioration); and 20.11.81 NMAC, *Adjudicatory Procedures -- Air Quality Control Board*.

<sup>92</sup> Air Quality, AQP, <http://www.cabq.gov/airquality> (last visited February 28, 2018)

<sup>93</sup> EPA, *Guidance on Infrastructure State Implementation Plan Elements under Clean Air Act §§ 110(a)(1) and 110(a)(2)*, p. 54, [https://www.epa.gov/sites/production/files/2015-12/documents/guidance\\_on\\_infrastructure\\_sip\\_elements\\_multipollutant\\_final\\_sept\\_2013.pdf](https://www.epa.gov/sites/production/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf) (last visited February 28, 2018).

Albuquerque Bernalillo County PSD program satisfies iSIP requirements. Additional discussion of PSD programs appears in Element D.

Visibility protection: EPA has stated that state and local air agencies do not need to address this sub-element in element J of an iSIP submittal, because a NAAQS revision does not change visibility requirements or impose new visibility protection requirements. Therefore, this element of the iSIP certification does not address the visibility sub-element.<sup>94</sup>

<b>SECTION 110(a)(2)(K)</b>	Provide for: (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;
<p><u>Authority to conduct air quality modeling:</u> The Air Act and Ordinances authorize EHD to “develop facts and make investigations and studies” consistent with the Act.<sup>95</sup> These legal provisions provide EHD with necessary authority to develop air quality assessments and conduct modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated. EHD follows EPA guidelines for air dispersion modeling.<sup>96</sup> EHD utilizes air quality modeling or requires sources to conduct such modeling under several local regulations.<sup>97</sup></p> <p><u>Authority to provide modeling data to EPA:</u> EHD has authority to provide modeling data to EPA upon request and will do so when EHD receives such a request. This authority derives from the same legal provisions, discussed above, that authorize EHD to “develop facts and make investigations and studies” consist with the Air Act and ordinances. Additional authority derives from provisions in the Air Act and Ordinances that require EHD to present “a plan for the regulation, control, prevention or abatement of air pollution” to the Air Board.<sup>98</sup> The Air Board, in turn, approves regulations implementing the air pollution control plan, consistent with standards in the CAA and the New Mexico Air Act.<sup>99</sup> These legal provisions require and authorize development and adoption of plans to attain and maintain the NAAQS -- including generation of modeling data to be provided to EPA. EHD shares modeling data upon request with EPA to assure that Albuquerque Bernalillo County’s EPA-approved portion of the New Mexico SIP functions as the above-referenced laws intend.</p>	

<sup>94</sup> *Id.*, pp. 54 - 55.

<sup>95</sup> NMSA 1978, § 74-2-5.1(A); ROA § 9-5-1-5(B); and Bern. Code § 30-34(b).

<sup>96</sup> 40 CFR, Part 51, Appendix W.

<sup>97</sup> 20.11.3.105 NMAC (modeling undertaken during local transportation conformity process); 20.11.4.159 NMAC (modeling undertaken in determining transportation conformity of federal actions); 20.11.41.13 NMAC (modeling required during construction permit applications); 20.11.42.12 NMAC (for inclusion in operating permit applications); 20.11.60.25 NMAC (modeling required for permitting in nonattainment areas); 20.11.61.17 NMAC (modeling required to prevent significant deterioration of air quality in attainment areas).

<sup>98</sup> NMSA 1978 § 74-2-5.1(H); ROA § 9-5-1-5(I); Bern. Code § 30-34(i).

<sup>99</sup> NMSA § 74-2-5; ROA § 9-5-1-4; Bern. Code § 30-33.

<b>SECTION 110(a)(2)(L)</b>	Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover— (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V ;
The Air Board has approved regulations providing for fees to cover reasonable costs of reviewing and acting upon permit applications, as well as implementing the terms and conditions of a permit under the CAA and the New Mexico Air Quality Control Act. <sup>100</sup>	
<b>SECTION 110(a)(2)(M)</b>	Provide for consultation and participation by local political subdivisions affected by the plan.
The Air Quality Control Act and implementing regulations provide for consultation with local political subdivisions affected by the Albuquerque-Bernalillo County elements of the New Mexico SIP. For a detailed description of these provisions, please see the information in Element J, above, of this iSIP certification.	

<sup>100</sup> See 20.11.2 NMAC (on air quality related fees in general); 20.11.7.12 NMAC (fees for petitions for variances); collectively 20.11.13 NMAC; 20.11.14 NMAC; 20.11.17 NMAC and 20.11.22 NMAC (fees related to fugitive dust control); 20.11.40.13 NMAC and 20.11.40.14 NMAC (fees for source registrations); 20.11.41.12 NMAC; 20.11.41.13 NMAC; 20.11.41.16 NMAC; 20.11.41.23 NMAC; 20.11.41.32 NMAC (construction permit fees); 20.11.42.12 NMAC and 20.11.42.13 NMAC (operating permit fees); 20.11.81.8 NMAC and 20.11.81.14 NMAC (fees for adjudicatory proceedings); 20.11.100.20 NMAC; 20.11.100.23 NMAC; 20.11.100.24 NMAC; 20.11.100.29 NMAC; 20.11.100.33 NMAC; 20.11.100.35 NMAC; 20.11.100.35 NMAC; 20.11.101.18 NMAC; 20.11.101.28 NMAC; 20.11.104.111 NMAC (fees for motor vehicle standards and inspections).