appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 20, 2010.

Ira W. Leighton,

Acting, Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart OO—Rhode Island

■ 2. Section 52.2088 is amended by adding paragraph (c) to read as follows:

§ 52.2088 Control strategy: Ozone.

* * * * *

(c) Determination of Attainment. Effective July 6, 2010, EPA is determining that the Providence (All of Rhode Island) 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard. Under the provisions of EPA's ozone implementation rule (*see* 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for as long as the area does not monitor any violations of the 1997 8-hour ozone standard. If a violation of the 1997 ozone NAAQS is monitored in the Providence (All of Rhode Island) 8-hour ozone nonattainment area, this determination shall no longer apply.

[FR Doc. 2010–13211 Filed 6–2–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0282; FRL–9155–6]

Approval and Promulgation of State Implementation Plan Revisions; State of North Dakota; Air Pollution Control Rules, and Interstate Transport of Pollution for the 1997 $PM_{2.5}$ and 8-Hour Ozone NAAQS: "Significant Contribution to Nonattainment" and "Interference With Prevention of Significant Deterioration" Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving State Implementation Plan (SIP) revisions submitted by the State of North Dakota on April 6, 2009. Specifically, EPA is approving revisions to the North Dakota air pollution control rules regarding prevention of significant deterioration of air quality, and partially approving the SIP revision "Interstate Transport of Air Pollution" addressing the requirements of Clean Air Act section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone National Ambient Air Quality Standards (NAAQS). These revisions, referred to as the Interstate Transport of Air Pollution SIP, address the requirements of Clean Air Act section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). In this action, EPA is approving the North Dakota Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(I) that emissions from the state's sources do not "contribute significantly" to nonattainment of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in any other state. In addition, EPA is approving the provisions of this SIP that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from the state's sources do not interfere with measures required in the SIP of any other state under part C of the Clean Air Act (CAA) to prevent "significant deterioration of air quality." EPA will act at a later date on the North Dakota Interstate Transport SIP provisions that address the remaining two requirements of section 110(a)(2)(D)(i), that emissions from the state's sources do not "interfere with maintenance" of the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in any other state, and do not interfere with measures required in the SIP of any other state to "protect visibility." This action is being taken under section 110 of the Clean Air Act.

DATES: *Effective Date:* This final rule is effective July 6, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2009–0282. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov*, or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through

Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6416, *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *North Dakota* mean the State of North Dakota, unless the context indicates otherwise.

Table of Contents

I. Background and Purpose

In a proposed rule action published March 31, 2010 EPA proposed approval of revisions to the State provisions on the prevention of significant deterioration (PSD) of air quality in subsection 33–15–15–01.2 of the North Dakota Administrative Code (NDAC),[1] and partial approval of the North Dakota Interstate Transport of Air Pollution SIP for the 1997 $PM_{2.5}$ and 8-hour ozone National Ambient Air Quality Standards (NAAQS). The revisions to NDAC subsection 33–15–15–01.2, and the addition to the North Dakota SIP of section 7.8, "Interstate Transport of Air Pollution," were adopted by the State of North Dakota on April 1, 2009 and submitted to EPA on April 6, 2009.

In chapter 33–15–15, NDAC, Prevention of Significant Deterioration of Air Quality, revisions were made to subsection 33–15–15–01.2, Scope. The baseline date for incorporation by reference of the federal PSD program set out at 40 CFR 52.21 was updated to August 1, 2007. In addition, various administrative corrections and clarifications were made. In our proposal to approve these revisions, EPA stated that the revisions were made to make the North Dakota PSD program consistent with federal requirements. EPA did not receive comments that persuade the Agency that the revisions are less stringent than or inconsistent with federal requirements, and thus EPA is approving them in today's final action.

Section 110(a)(2)(D)(i) of the CAA requires that a state's SIP must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with any other state's required measures to prevent significant deterioration of air quality; or (4) interfere with any other state's required measures to protect visibility. In our proposed rule EPA proposed partial approval of the North Dakota Interstate Transport of Air Pollution SIP for the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS. Specifically, EPA proposed approval of the North Dakota SIP sections that addressed the first and third requirements, "significant contribution" and "interference with PSD" of the Interstate Transport CAA provisions. EPA will act at a later date on the North Dakota Interstate Transport SIP sections that address the remaining requirements: "interference with maintenance" and "interference with visibility."

To assess whether emissions from North Dakota contribute significantly to downwind nonattainment for the 1997 $PM_{2.5}$ NAAQS, North Dakota and EPA's technical analysis relied on the results of CAIR modeling and on monitoring data in neighboring downwind states. The CAIR modeling results indicated that the State contribution to the closest nonattainment area was below the "significant contribution" threshold. Monitoring data showed that in downwind states there were no monitors violating the 1997 24-hour or annual $PM_{2.5}$ NAAQS.

To assess whether emissions from North Dakota contribute significantly to downwind nonattainment for the 1997 8-hour ozone NAAQS, EPA's technical analysis relied on EPA's 2006 Guidance, recommending consideration of available EPA modeling conducted in conjunction with CAIR,[2] or in the absence of such EPA modeling, consideration of other information such as the amount of emissions, the geographic location of violating areas, meteorological data, or various other forms of information that would be relevant to assessing the likelihood of significant contribution to violations of the NAAQS in another state. Consistent with the NO_X SIP Call and CAIR, our technical analysis assessed the extent of ozone transport from North Dakota not just for areas designated nonattainment, but also for areas in violations of the NAAQS. Because EPA did not have detailed modeling for North Dakota and nearby downwind states, our approach did not rely on a quantitative determination of North Dakota's contribution but on a weight-of-evidence approach using quantitative information such as North Dakota's distance from areas with monitors showing violations of the NAAQS, modeling results outlining wind vectors for regional transport of ozone on high ozone days, CAIR modeling results for other states, and results of modeling studies for the nonattainment areas specifying the range of wind directions along which contribution of ozone transport occurred. Given that the assessments for each of these pieces of evidence are not individually definitive or outcome determinative, EPA concluded in its proposed action that the various factual and technical considerations supported a determination of no significant contribution from North Dakota emissions to the ozone nonattainment areas noted above.

EPA did not receive comments that persuade the Agency that there is such significant contribution for the 1997 ozone or $PM_{2.5}$ NAAQS and thus in today's final action EPA is making a final regulatory determination that North Dakota's emissions sources do not contribute significantly to violations of the 1997 8-hour ozone NAAQS in any other state.

II. Response to Comments

EPA received one letter from WildEarth Guardians (WG) and one letter from the Sierra Club commenting on EPA's **Federal Register** action proposing approval of the portion of the North Dakota Interstate Transport SIP that addresses the "significant contribution to nonattainment" and PSD requirements of CAA Section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, and specific revisions to the air quality control rules

[1] EPA notes that in the referenced proposed rule there were references to the revision of "NDAC subsection 33–15–15–01.02" (75 FR 16027). As was clear from the context, the references were the results of typographical errors.

[2] In this action the expression "CAIR" refers to the final rule published in the May 12, 2005 **Federal Register** and entitled "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO_X SIP Call; Final Rule" (70 FR 25162).

addressed within that proposal. In this section EPA responds to the significant adverse comments made by the commenters.

Comment No. 1—WG opposed EPA's approval of North Dakota's revision of its PSD program, based on several alleged deficiencies in that program. Although WG does not explicitly state it, in the context of this action, which also approves the PSD portion of the interstate transport SIP noted above, WG's comments could be taken to argue that the alleged deficiencies adversely impact the measures required in other states to prevent significant deterioration of air quality in such states. To the extent WG makes this argument, EPA responds below.

As to the first deficiency, WG noted that the current federally-enforceable version of the North Dakota PSD program incorporates 40 CFR 52.21 as it stood on October 1, 2003. WG stated that the PSD program in North Dakota should be amended to reflect the effects of court opinions that vacated portions of that version of 52.21.

EPA Response—EPA disagrees with the commenter's argument that the North Dakota SIP does not reflect current requirements. North Dakota's submittal incorporated 40 CFR 52.21 as it stood on August 1, 2007. The August 1, 2007 version of 40 CFR 52.21 fully reflected the effects of federal court decisions vacating certain portions of NSR rules promulgated in 2002 and 2003.[3] Therefore, EPA believes that the North Dakota PSD program approved by EPA in this action also reflects the effects of those decisions and is therefore consistent with federal requirements.

EPA agrees with the implicit argument (mentioned above) that certain deficiencies in a state's existing SIP, or in a section 110(a)(2)(D) SIP submission itself, could affect the approvability of the section 110(a)(2)(D) SIP submission with respect to the PSD requirement. As provided in EPA's guidance for such SIP submissions for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, EPA made recommendations with respect to specific SIP revisions that it anticipated would be appropriate to address in the section 110(a)(2)(D) SIP submissions for these NAAQS, whether by reference to other submissions already made or within the same SIP submission. For example, for the requirements of the PSD element of section 110(a)(2)(D) for these NAAQS, EPA indicated that a state's SIP should reflect the current requirements for the implementation of the PSD and nonattainment NSR requirements for these NAAQS, as a means of establishing that the state's SIP would not interfere with measures to prevent significant deterioration in other states. EPA believes that this assessment is fact specific, however, and that the question of whether a state's SIP could cause such interference in another state must be examined on a case by case basis.

In this instance, because the North Dakota program now tracks the requirements of 40 CFR 52.21 as of August 1, 2007, WG's concern gives no reason to conclude that the revisions could interfere with the measures required in other states.

Comment No. 2—As another potential defect in the North Dakota PSD program, WG noted that the North Dakota PSD program adds the sentence: "[t]his term does not include effects on integral vistas," to 40 CFR 52.21(b)(29), that is, the definition of "adverse impact on visibility." WG argued that this additional language renders the PSD program less stringent than federal requirements.

EPA Response—EPA disagrees with WG's comment. In this comment, and others, WG appears to believe that per se any deviation from the language of 40 CFR 52.21 is invalid. However, the minimum federal requirements for state PSD programs are specified in 40 CFR 51.166, not in 52.21.[4] One way in which a state PSD program may meet the requirements of 51.166 is to adopt by reference the federal PSD program at 52.21, as North Dakota has here. To determine whether deviations from 52.21 in the North Dakota PSD program meet federal requirements for a state program, the program is judged against the minimum federal requirements for a state PSD program given in 51.166.

As to the requirements of 51.166, section 51.166(o)(1) creates a requirement for visibility impact analysis for new major stationary sources and major modifications. Federal requirements for protection of visibility in state SIPs are set out in subpart P of part 51. Procedures for the visibility impact analysis required by 51.166(o)(1) are given in 51.307, which, by its placement in subpart P, uses the definition of the term "adverse impact on visibility" at 51.301. North Dakota's definition is consistent with the federal definition; in fact, it matches it precisely. In addition, no integral vistas have been identified under section 51.304, so the addition of the sentence has no effect. Therefore, EPA disagrees with the comment that the North Dakota PSD program, by modifying 52.21(b)(29), does not meet federal requirements.

Comment No. 3—As another potential issue, WG noted that the North Dakota PSD program deletes references to NAAQS at 52.21(d), (k)(1), and (v)(2)(iv)(a). WG argued that the references must be restored to ensure that the NAAQS apply everywhere and that PSD increments are federal increments.

EPA Response—The cited references are replaced in the North Dakota rules by provisions that apply the state ambient air quality standards for areas within North Dakota's jurisdiction and that apply the NAAQS elsewhere. As discussed elsewhere in these responses, updates to the state ambient air quality standards, consistent with revisions to the NAAQS, were submitted by North Dakota to EPA on April 1, 2009. EPA will be acting on the revision in a separate action. Also, the North Dakota PSD program incorporates 40 CFR 52.21(c), which defines the PSD increments, by reference without modification; therefore, the North Dakota PSD increments are the federal increments.

Comment No. 4—As an additional concern, WG noted that the North Dakota PSD program replaces 40 CFR 52.21(h) with different state stack height requirements. WG argued that these requirements must be at least as stringent as federal requirements. Implicitly, WG argued that these different stack height requirements would interfere with other states's required PSD measures.

EPA Response—EPA disagrees with this comment. WG did not explain or identify any way in which the state requirements are less stringent than federal requirements. EPA has reviewed

[3] 67 FR 80186 (Dec. 31, 2002); 68 FR 61248 (Oct. 23, 2003); *New York* v. *U.S.* EPA, 413 F.3d 3 (D.C. Cir. 2005); *New York* v. *EPA,* 443 F.3d 880 (D.C. Cir. 2006).

[4] "The EPA implements the statutory PSD requirements through two sets of regulations. At 40 CFR 51.166, EPA has set minimum program requirements for States to follow in preparing, adopting, and submitting a PSD program for inclusion as part of the required SIP pursuant to Section 110(c) of the Act. At 40 CFR 52.21, EPA has promulgated a Federal PSD program requiring the Administrator's preconstruction review and approval of major new or modified stationary sources in the absence of an approved State PSD program, and for areas such as Indian Lands and Outer Continental Shelf areas that are outside of the jurisdiction of individual States." 58 FR 31622, 31623 (June 3, 1993). For states that—unlike North Dakota—lack a SIP-approved PSD program, EPA may delegate implementation of 52.21 to the state. E.g., 73 FR 53401 (Sept. 16, 2008) ("Prior to approval of Michigan's submitted PSD program, EPA delegated to Michigan (via delegation letter dated September 26, 1988) the authority to issue PSD permits through the Federal PSD rules at 40 CFR 52.21.").

the North Dakota state stack height requirements and finds that the requirements are at least as stringent as those in 40 CFR 51.166(h), which specifies the minimum stack height requirements for a state PSD program. Therefore, EPA does not believe that the provision creates a deficiency in the North Dakota PSD program or that the North Dakota SIP interferes with measures required for prevention of significant deterioration in any other state for purposes of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Comment No. 5—WG further argued that the North Dakota PSD program must include 40 CFR 52.21(l)(1) and must update the reference to Appendix W to part 51 in order to be consistent with current federal law requirements. WG also asserted that the North Dakota guidelines for air quality modeling are unacceptable because they are less stringent than applicable federal requirements.

EPA Response—EPA disagrees with the commenter's assessment on this point. The federal requirements for modeling in a PSD program are set out at 40 CFR 51.166(l). The North Dakota PSD provision that replaces 52.21(l)(1) is consistent with these requirements. Furthermore, the provision does not specify a particular date for incorporation of Appendix W; EPA therefore believes no update to the reference is necessary. Finally, 51.166(l) provides for modification or substitution of models in Appendix W on a case-by-case or generic basis with written approval of the Administrator. The Administrator has approved, in writing, use of the North Dakota guideline on a generic basis by approving previous submittals of the North Dakota PSD program that contained the same provision allowing for use of the guideline. Therefore, EPA believes that the North Dakota provision is consistent with federal requirements in 51.166(l).

Comment No. 6—WG also identified analyses for visibility as another alleged deficiency in the existing PSD program in North Dakota. WG noted that the state's PSD program requires visibility analysis for new source review to be prepared in accordance with state requirements. WG argued that these requirements are less stringent than federal requirements, and that the provision must therefore be deleted.

EPA Response—EPA disagrees with the commenter's assessment. In this instance, WG did not explain or identify any way in which the state requirements are less stringent than federal requirements. The federal requirements for visibility analysis procedures for new source review in state PSD programs are provided in 40 CFR 51.307. The procedures do not specify a particular method for visibility analysis. EPA has reviewed the North Dakota requirements for visibility analysis and finds they are consistent with federal requirements. Therefore, this is not a basis for disapproval of the North Dakota PSD program revision or the section 110(a)(2)(D) submission.

Comment No. 7—WG expressed concern with certain public process provisions in the North Dakota SIP. In particular, WG identified state specific provisions for public participation replacing those at 52.21(q). WG argued that the state should not be allowed to provide "summaries" of other materials it considered in making its permit decisions.[5] WG also argued that the state provisions should require the Department to respond to relevant comments.

EPA Response—EPA disagrees with the commenter's view of these specific requirements. The minimum federal requirements for public participation in a state PSD program are set out in 51.166(q). The state provision cited by WG is consistent with the requirements at 51.166(q)(2)(ii); in fact, the provision matches 51.166(q)(2)(ii) precisely. Therefore, EPA believes that the North Dakota PSD program meets federal requirements for public participation. As such, this is not a basis for disapproval of the North Dakota PSD program revision or the section 110(a)(2)(D) submission.

Comment No. 8—WG identified other procedural requirements as potential defects in the North Dakota SIP. WG noted that the North Dakota PSD program adds to 52.21(r)(2) the sentence: "[i]n cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit to construct a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant." WG argued that this provision should be removed because it allows major sources to be built with stale determinations of ambient air impacts and best available control technology.

EPA Response—Federal requirements for source obligations in a state PSD program are set out at 51.166(r). This federal regulatory provision does not impose any particular time period for validity of a PSD permit. In addition, 52.21(r)(2) currently provides for extensions beyond the given eighteen-month period, if an applicant makes a satisfactory showing that an extension is justified. Thus, EPA believes that the state regulatory provision cited by the commenter is consistent with both 51.166(r) and 52.21(r)(2). Given this conclusion, EPA does not consider this a basis for disapproval of the North Dakota PSD program revision or the section 110(a)(2)(D) submission.

Comment No. 9—WG also opposed EPA's proposed approval of the North Dakota section 110(a)(2)(D) SIP submission with respect to PSD requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS because the submission did not address other, more recent NAAQS. WG noted that the current EPA-approved version of the North Dakota SIP at NDAC 33–15–02 does not incorporate all current NAAQS, including the 2006 $PM_{2.5}$ NAAQS, the 2008 ozone NAAQS, and the 2010 NO_2 NAAQS. WG stated its concern that the failure to incorporate the latest NAAQS implies that these NAAQS will not be addressed in permitting and planning determinations by the state.

EPA Response—EPA disagrees with the commenter on this point. First, in this action, EPA is approving the North Dakota interstate transport SIP for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS; EPA is also approving a revision to North Dakota's PSD program. WG does not explain how a failure to incorporate the current NAAQS in the state ambient air quality standards is relevant to EPA's action on the North Dakota interstate transport SIP for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. Thus, the comment does not give grounds for disapproval of the interstate transport SIP for the NAAQS at issue in this rulemaking.

Furthermore, as noted in the proposal for this action, EPA has included the revision to North Dakota's PSD program in this action to address an issue specifically mentioned in the 2006 guidance. The guidance recommended that in order to satisfy the PSD requirement of 110(a)(2)(D)(i), the state's interstate transport SIP, or existing SIP, should meet the requirements of the Phase II implementation rule for the 1997 8-hour ozone NAAQS. In particular, this means the state's SIP should identify NO_X as a precursor to ozone, and the SIP revision submitted by North Dakota has done so. Thus, the current NAAQS are not relevant to this action.

Finally, EPA disagrees that approval of this SIP submission implies that North Dakota will not take appropriate required actions with respect to other,

[5] The commenter refers to section (g) of the provision, but from the mention of "summaries" it appears the commenter is referring to section (b).

more recent, NAAQS. Consistent with the requirements of the CAA and applicable regulations, EPA expects North Dakota to consider other more recent NAAQS in permitting decisions. As additional SIP revisions are necessary, EPA anticipates that the state will comply, as indeed it has in this very action with respect to necessary revisions for the 1997 8-hour ozone NAAQS.

Comment No. 10—WG asserted that EPA's proposed approval was based on a "flawed legal standard." According to WG, EPA erred in the proposal by explaining that various factual or technical assessments indicate that it is "highly unlikely" that emissions from North Dakota sources significantly contribute to violations of the 1997 8-hour ozone NAAQS, or to violations of the 1997 $PM_{2.5}$ NAAQS in other states. WG's position is that EPA cannot approve a SIP submission based upon "unlikelihood" because CAA Section 110(a)(2)(D)(i)(I) prohibits emissions that contribute significantly to nonattainment in other States and does not allow EPA to approve SIPs simply because a state's emissions are "unlikely" to contribute significantly to nonattainment.

EPA Response—EPA disagrees with WG's characterization of EPA's analysis and WG's interpretation of the statutory requirements. First, EPA notes that the discussion in the proposal was intended to present the various factual and technical considerations available to assess whether there is or is not significant contribution to nonattainment in other states as a result of emissions from North Dakota sources. Given that these assessments are not individually definitive or outcome determinative, EPA believes that it is entirely appropriate to present and describe the relative probative value of the various considerations accurately. Second, EPA notes that all such technical evaluations are by their nature subject to some degree of uncertainty. Indeed, the modeling that WG elsewhere contends should be the sole method for evaluating interstate transport is itself but one means of evaluating the real world impacts of emissions in light of meteorological conditions, wind direction, and other such variables, and produces a result that is itself subject to some degree of uncertainty. Third, EPA believes that it was also appropriate to describe the various factual and technical considerations and whether they indicated a "likelihood" of significant contribution to nonattainment in another state because the proposal was seeking comment from the public upon whether these considerations together supported a determination of no such significant contribution. EPA did not receive comments that persuade the Agency that there is such significant contribution, and thus in today's final action EPA is making a final regulatory determination that North Dakota emissions sources do not significantly contribute to violations of the 1997 8-hour ozone NAAQS, or to violations of the 1997 $PM_{2.5}$ NAAQS in any other state, for the reasons explained elsewhere in this notice. In other words, EPA has concluded that the existing SIP for North Dakota already contains adequate provisions to prevent emission from North Dakota sources from significantly contributing to violations of the 1997 8-hour ozone NAAQS, or to violations of the 1997 $PM_{2.5}$ NAAQS in other states and is therefore approving North Dakota's submission for this purpose.

Comment No. 11—WG argued that North Dakota and EPA did not appropriately assess impacts to nonattainment in downwind states. According to WG, North Dakota failed to assess significance of downwind impacts in accordance with EPA guidance and precedent. Although this is unclear from the comment, WG evidently believes that EPA's applicable guidance for this purpose appears only in the 1998 NO_X SIP call. WG asserts that, based on the precedent of the NO_X SIP Call, the following issues need to be addressed in determining whether or not an area is significantly contributing to nonattainment in downwind States: (a) The overall nature of the ozone problem; (b) the extent of downwind nonattainment problems to which upwind States' emissions are linked; (c) the ambient impact of the emissions from upwind States' sources on the downwind nonattainment problems; and (d) the availability of high cost-effective control measures for upwind emissions. (63 FR 57356–57376, October 27, 1998).

EPA Response—EPA disagrees with WG on this point. Section 110(a)(2)(D) does not explicitly specify how states or EPA should evaluate the existence of, or extent of, interstate transport and whether that interstate transport is of sufficient magnitude to constitute "significant contribution to nonattainment" as a regulatory matter. The statutory language is ambiguous on its face and EPA must reasonably interpret that language when it applies it to factual situations before the Agency.

EPA agrees that the NO_X SIP Call is one rulemaking in which EPA evaluated the existence of, and extent of, interstate transport. In that action, EPA developed an approach that allowed the Agency to evaluate whether there was significant contribution to ozone nonattainment across an entire region that was comprised of many states. That approach included regional scale modeling and other technical analyses that EPA deemed useful to evaluate the issue of interstate transport on that geographic scale and for the facts and circumstances at issue in that rulemaking. EPA does not agree, however, that the approach of the NO_X SIP Call is necessarily the only way that states or EPA may evaluate the existence of, and extent of, interstate transport in all situations, and especially in situations where the state and EPA are evaluating the question on a state by state basis, and in situations where there is not evidence of widespread interstate transport.

Indeed, EPA issued specific guidance making recommendations to states about how to address section 110(a)(2)(D) in SIP submissions for the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA issued this guidance document, entitled "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" on August 15, 2006.[6] This guidance document postdated the NO_X SIP Call, and was developed by EPA specifically to address SIP submissions for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Within that 2006 guidance document, EPA notes that it explicitly stated its view that the "precise nature and contents of such a submission [are] not stipulated in the statute" and that the contents of the SIP submission "may vary depending upon the facts and circumstances related to the specific NAAQS."[7] Moreover, within that guidance, EPA expressed its view that "the data and analytical tools available" at the time of the SIP submission "necessarily affect[] the content of the required submission."[8] To that end, EPA specifically recommended that states located within the geographic region covered by the "Clean Air Interstate Rule (CAIR)," comply with section 110(a)(2)(D) for the 1997 8-hour

[6] Memorandum from William T. Harnett entitled Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards (Aug. 15, 2006) ("2006 Guidance"); p. 3. An electronic copy is available for review at the regulations.gov web site as Document ID No. EPA–R08–OAR–2007–1032.0004.1.

[7] Id. at 3.

[8] Id.

ozone and $PM_{2.5}$ NAAQS by complying with CAIR itself. For states outside the CAIR rule region, however, EPA recommended that states develop their SIP submissions for section 110(a)(2)(D) considering relevant information.

EPA explicitly recommended that relevant information for section 110(a)(2)(D) submissions addressing significant contribution to nonattainment "might include, but is not limited to, information concerning emissions in the State, meteorological conditions in the State, the distance to the nearest nonattainment area in another State, reliance on modeling conducted by EPA in determining that such State should not be included within the ambit of the CAIR, or such other information as the State considers probative on the issue of significant contribution." [9] In addition, EPA recommended that states might elect to evaluate significant contribution to nonattainment using relevant considerations comparable to those used by EPA in CAIR, including evaluating impacts as of an appropriate year (such as 2010) and in light of the cost of control to mitigate emissions that resulted in significant contribution.

WG did not acknowledge or discuss EPA's actual guidance for section 110(a)(2)(D) SIP submissions for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, and thus it is unclear whether WG was aware of it. In any event, EPA believes that the North Dakota submission and EPA's evaluation of it was consistent with EPA's guidance for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. For example, as discussed in the proposal notice, the State and EPA considered information such as monitoring data in North Dakota and downwind states, geographical and meteorological information, and technical studies of the nature and sources of nonattainment problems in various downwind states. These are among the types of information that EPA recommended and that EPA considers relevant. Thus, EPA has concluded that the state's submission, and EPA's evaluation of that submission, meet the requirements of section 110(a)(2)(D) and are consistent with applicable guidance.

Finally, EPA notes that the considerations the Agency recommended to States in the 2006 Guidance document are consistent with the concepts that WG enumerated from the NO_X SIP Call context: (a) The overall nature of the ozone problem; (b) the extent of downwind nonattainment problems to which upwind State's emissions are linked; (c) the ambient impact of the emissions from upwind States' sources on the downwind nonattainment problems; and (d) the availability of high cost-effective control measures for upwind emissions. The only distinction in the case of the North Dakota submission at issue here would be that because the available evidence indicates that there is very little contribution from emissions from North Dakota sources to nonattainment in other states, it is not necessary to advance to the final step and evaluate whether the cost of controls for those sources is above or below a certain cost of control as part of determining whether the contribution constitutes "significant contribution to nonattainment" for regulatory purposes, as was necessary in the NO_X SIP Call and in CAIR.

Comment No. 12—WG argued that EPA's assessment that North Dakota will not significantly contribute to nonattainment of the ozone NAAQS in downwind States is based primarily on modeling prepared in conjunction with CAIR, and yet "EPA admits that CAIR only addressed $PM_{2.5}$ impacts."

EPA Response—EPA agrees with WG that CAIR evaluated only $PM_{2.5}$ impacts for North Dakota. However, EPA disagrees that the CAIR ozone modeling results are irrelevant to this action: as the NPR made clear, it is actually the CAIR modeling analyses for ozone transport from Minnesota—not North Dakota—that EPA considered as evidence in this action.[10] Furthermore, we do not think that within the proposed rule of March 31, 2010, EPA suggested that the assessment of impacts from North Dakota's emissions to nonattainment of the ozone NAAQS in downwind States was based primarily on modeling prepared in conjunction with CAIR. Instead, EPA made clear that the CAIR modeling analysis results for Minnesota, considered in combination with emissions levels in Minnesota and North Dakota, and their respective distances from the Illinois/Wisconsin nonattainment counties, was only one piece of relevant evidence in EPA's weight-of-evidence determination. The comment seems to reflect a misreading of our proposed rule action, or a misinterpretation of one of the pieces of evidence in our technical analysis. Thus, EPA does not see in its proposed rule the contradiction alleged by this comment.

Comment No. 13—WG reiterated its concern that the North Dakota section 110(a)(2)(D) submission was deficient because it did not strictly follow WG's summary of the structure of the analysis of interstate transport in the NO_X SIP Call: (a) The overall nature of the ozone problem; (b) the extent of downwind nonattainment problems to which upwind States' emissions are linked; (c) the ambient impact of the emissions from upwind States' sources on the downwind nonattainment problems; and (d) the availability of high cost-effective control measures for upwind emissions.

EPA Response—EPA disagrees with WG's view that any analysis of interstate transport must follow a specific formulaic structure to be approvable. As noted above, EPA issued specific guidance to states making recommendations for section 110(a)(2)(D) SIP submissions for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. Within that guidance, EPA recommended various types of information that states might wish to consider in the process of evaluating whether their sources contributed significantly to nonattainment in other states. EPA has concluded that the submission from North Dakota, augmented by EPA's own analysis, sufficiently establishes that North Dakota sources do not significantly contribute to violations of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in other states. As noted above, EPA believes that the state's submission, and EPA's analysis of it, address the same conceptual considerations that the commenter advocated.

Comment No. 14—WG asserted that North Dakota and EPA provided "no analysis" of the contribution from North Dakota to downwind states and no

[9] Id. at 5.

[10] Specifically, the relevant portion of our proposed rule reads: "The CAIR modeling domain for 8-hour ozone transport analysis included only the eastern half of North Dakota, and the CAIR modeling analysis did not determine whether NO_X emissions from North Dakota sources contributed significantly to ozone nonattainment in any downwind states. However, the CAIR modeling analysis results for Minnesota provide us the opportunity to draw inferences about ozone contribution from North Dakota sources to nonattainment in the Illinois/Wisconsin area. It must be noted that Minnesota is nearly half as distant from this nonattainment area as North Dakota (400 miles as compared with 700), and that to reach the Illinois/Wisconsin nonattainment area, ozone transport winds from Minnesota would have to have a northwesterly orientation similar to that necessary for substantial ozone transport from North Dakota. In addition, the CAIR modeling analysis estimated the Minnesota's NO_X emissions for the 2010 base year to be approximately twice as large as the NO_X emissions from North Dakota's sources (381,500 as compared with 182,800 tons.) Finally, the CAIR analysis determined that emissions from Minnesota were below the initial threshold for including states in CAIR. In light of this CAIR determination, and of Minnesota's larger NO_X emissions and shorter distance to the nonattainment area, it is plausible to conclude that NO_X emissions from North Dakota sources are not likely to contribute significantly to nonattainment of the 1997 8-hour ozone standard in the Illinois and Wisconsin counties along the southwestern shores of Lake Michigan." 75 FR 16030.

"actual assessment" of the significance of any such contribution.

EPA Response—EPA disagrees with WG's position. WG again assumes that section 110(a)(2)(D) explicitly requires the type of modeling analysis that the commenter advocates throughout its comments. Because WG apparently views the NO_X SIP Call as the applicable guidance, WG contends that any analytical approach that is not identical to that approach is impermissible. In addition, WG overlooks the fact that in other actions based upon section 110(a)(2)(D), EPA has also used a variety of analytical approaches, short of modeling, to evaluate whether specific states are significantly contributing to violations of the NAAQS in another state (e.g., the west coast states that EPA concluded should not be part of the geographic region of the CAIR rule based upon qualitative factors, and not by the zero out modeling EPA deemed necessary for some other states).

In the proposed approval, EPA explained that other forms of available information were sufficient to make the determination that there is no significant contribution from North Dakota sources to downwind nonattainment of the 1997 8-hour ozone NAAQS. As stated in the proposal:

> EPA's evaluation of whether emissions from North Dakota contribute significantly to the ozone nonattainment in these areas is based on an examination of how geographical and meteorological factors affect transport from North Dakota to the two areas noted above. Our approach does not rely on a quantitative determination of North Dakota's contribution, as EPA did for other states in its CAIR rulemaking, but on a weight-of-evidence analysis based on qualitative assessments and estimates of the relevant factors. While conclusions reached for each of the factors considered in the following analysis are not in and by themselves determinative, consideration of the likely effect of all factors provides a reliable qualitative conclusion on whether North Dakota's emissions are likely to contribute significantly to nonattainment in the DMA/NFR area and the Illinois/Wisconsin Counties.[11]

EPA acknowledged that the various forms of information considered in the proposal (such as distance, orientation of surface and regional transport winds, back trajectory analyses, monitoring data) were not individually outcome determinative, but concluded that when taken together served to establish that North Dakota sources do not significantly contribute to downwind nonattainment of the 1997 8-hour ozone NAAQS in other states. Thus, contrary to WG's assertion, EPA did perform an "analysis" and an "assessment" that was a reasonable basis for its conclusion that emissions from North Dakota do not contribute significantly to downwind ozone nonattainment, using a combination of quantitative data and qualitative analyses. EPA does not agree that only the type of analysis advocated by WG could adequately evaluate the issue and support a rational determination in this instance.

Comment No. 15—WG objected to EPA's proposed approval because North Dakota assessed impacts in downwind states by considering monitoring data in those states as a means of evaluating significant contribution to nonattainment. In other words, WG is concerned that North Dakota did not assess impacts in areas that have no monitor. WG likewise objected to EPA's "endorsement" of this approach. WG argued that this reliance on monitor data is inconsistent with both section 110(a)(2)(D) and with EPA's guidance, by which the commenter evidently means the NO_X SIP Call. In support of this assertion, WG quoted from the NO_X SIP Call proposal in which EPA addressed the proper interpretation of the statutory phrase "contribute significantly to nonattainment:"

> The EPA proposes to interpret this term to refer to air quality and not to be limited to currently-designated nonattainment areas. Section 110(a)(2)(D) does not refer to "nonattainment areas," which is a phrase that EPA interprets to refer to areas that are designated nonattainment under section 107 (section 107 (d)(1)(A)(I)).

According to WG, this statement, and similar ones in the context of the final NO_X SIP Call rulemaking, establish that States and EPA cannot utilize monitoring data to evaluate the existence of, and extent of, interstate transport. Furthermore, WG interprets the reference to "air quality" in these statements to support its contention, amplified in later comments, that EPA must evaluate significant contribution in areas in which there is no monitored nonattainment.

EPA Response—EPA disagrees with WG's arguments. First, WG misunderstands the point that EPA was making in quoted statement from the NO_X SIP Call proposal (and that EPA has subsequently made in the context of CAIR). When EPA stated that it would evaluate impacts on air quality in downwind states, independent of the current formal "designation" of such downwind states, it was not referring to air quality in the absence of monitor data. EPA's point was that it was inappropriate to wait for either initial designations of nonattainment for a new NAAQS under section 107(d)(1), or for a redesignation to nonattainment for an existing NAAQS under section 107(d)(3), before EPA could assess whether there is significant contribution to nonattainment of a NAAQS in another state.

For example, in the case of initial designations, section 107(d) contemplates a process and timeline for initial designations that could well extend for two or three years following the promulgation of a new or revised NAAQS. By contrast, section 110(a)(1) requires states to make SIP submissions that address section 110(a)(2)(D) and interstate transport "within 3 years or such shorter period as the Administrator may prescribe" of EPA's promulgation of a new or revised NAAQS. This schedule does not support a reading of section 110(a)(2)(D) that is dependent upon formal designations having occurred first. This is a key reason why EPA determined that it was appropriate to evaluate interstate transport based upon monitor data, not designation status, in the CAIR rulemaking.

WG's misunderstanding of EPA's statement concerning designation status evidently caused WG to believe that EPA's assessment of interstate transport in the NO_X SIP Call was not limited to evaluation of downwind areas with monitors. This is simply incorrect. In both the NO_X SIP Call and CAIR, EPA evaluated significant contribution to nonattainment as measured or predicted at monitors. For example, in the technical analysis for the NO_X SIP Call, EPA specifically evaluated the impacts of emissions from upwind states on monitors located in downwind states. The NO_X SIP Call did not evaluate impacts at points without monitors, nor did the CAIR rulemaking. EPA believes that this approach to evaluating significant contribution is correct under section 110(a)(2)(D), and EPA's general approach to this threshold determination has not been disturbed by the courts.[12]

Finally, EPA disagrees with WG's argument that the assessment of significant contribution to downwind nonattainment must include evaluation of impacts on non-monitored areas. First, neither section 110(a)(2)(D)(i)(I) provisions, nor the EPA guidance issued for the 1997 8-hour ozone NAAQS on August 15, 2006 support WG's position, as neither refers to any requirement or recommendation to assess air quality in

[11] 75 FR 16030.

[12] *Michigan* v. *U.S. EPA,* 213 F.3d 663, 674–681 (D.C. Cir. 2000); *North Carolina* v. *EPA,* 531 F.3d 896, 913–916 (D.C. Cir. 2008) (upholding EPA approach to determining threshold despite remanding other aspects of CAIR).

non-monitored areas.[13] The same focus on monitored data as a means of assessing interstate transport is found in the NO_X SIP Call and in CAIR. An initial step in both the NO_X SIP Call and CAIR was the identification of areas with current monitored violations of the ozone and/or $PM_{2.5}$ NAAQS.[14] The subsequent modeling analyses for NAAQS violations in future years (2007 for the SIP Call and 2010 for CAIR) likewise evaluated future violations at monitors in areas identified in the initial step. Thus, WG is simply in error that EPA has not previously evaluated the presence and extent of interstate transport under section 110(a)(2)(D) by focusing on monitoring data. Indeed, such monitoring data was at the core of both of these efforts. In neither of these rulemakings did EPA evaluate significant contribution to nonattainment in areas in which there was no monitor. This is reasonable and appropriate, because data from a properly placed federal reference method monitor is the way in which EPA ascertains that there is a violation of the 1997 8-hour ozone or $PM_{2.5}$ NAAQS in a particular area. Put another way, in order for there to be significant contribution to nonattainment for the 1997 8-hour ozone or $PM_{2.5}$ NAAQS, there must be a monitor with data showing a violation of that NAAQS. EPA has concluded that by considering data from monitored areas, its assessment of whether emissions from North Dakota contribute significantly to ozone or $PM_{2.5}$ nonattainment in downwind States is consistent with the 2006 Guidance, and with the approach used by both the CAIR rule and the NO_X SIP Call.

Comment No. 16—In support of its comments that EPA should assess significant contribution to nonattainment in nonmonitored areas, WG argued that existing modeling performed by another organization "indicates that large areas of neighboring states will likely violate the ozone NAAQS." According to WG, these likely "violations" of the ozone NAAQS were predicted for the year 2018, as reflected in a slide from a July 30, 2008 presentation before the Western Regional Air Partnership ("Review of Ozone Performance in WRAP Modeling and Relevant to Future Regional Ozone Planning"). WG asserted that: "Slide 28 of this presentation displays projected 4th highest 8-hour ozone reading for 2018 and indicates that air quality throughout large portions of the West will exceed and/or violate the 1997 ozone NAAQS. * * *"[15] In short, WG argues that modeling performed by the WRAP establishes that there will be violations of the 1997 8-hour ozone NAAQS in 2018 in non-monitored areas Western states.

EPA Response—EPA disagrees with this comment on several grounds. First, as explained in response to other comments, EPA does not agree that it is appropriate to evaluate significant contribution to nonattainment for the 1997 8-hour ozone NAAQS by modeling ambient levels in areas where there is no monitor to provide data to establish a violation of the NAAQS in question. Section 110(a)(2)(D) does not require such an approach, EPA has not taken this approach in the NO_X SIP Call or other rulemakings under section 110(a)(2)(D), and EPA's prior analytical approach has not been disturbed by the courts.

Second, WG's own description of the ozone concentrations predicted for the year 2018 as projecting "violations" of the ozone NAAQS is inaccurate. Within the same sentence, quoted above, slide 28 is described as displaying the projected 4th max ozone reading for the year 2018, and as indicating that "* * * air quality * * * will exceed or *violate* [our emphasis] the 1997 ozone NAAQS." By definition, a one year value of the 4th max above the NAAQS only constitutes an exceedance of the NAAQS; to constitute a violation of the 1997 8-hour ozone NAAQS, the standard must be exceeded for three consecutive years at the same monitor. Thus, even if the WRAP presentation submitted by WG were technically sound, the conclusion drawn from it by WG is inaccurate and does not support its claim of projected violations of the NAAQS in western States south and west of North Dakota.

EPA has also reviewed the WRAP presentation submitted by WG, and believes that there was a substantial error in the WRAP modeling software that led to overestimation of ground level ozone concentrations. A recent study conducted by Environ for the Four Corners Air Quality Task Force (FCAQTF; Stoeckenius *et al.,* 2009) has demonstrated that excessive vertical transport in the CMAQ and CAMx models over high terrain was responsible for overestimated ground level ozone concentrations due to downward transport of stratospheric ozone.[16] Environ has developed revised vertical velocity algorithms in a new version of CAMx that eliminated the excessive downward transport of ozone from the top layers of the model. This revised version of the model is now being used in a number of applications throughout high terrain areas in the West. In conclusion, EPA believes that this key inadequacy of the WRAP model, noted above, makes it inappropriate support for WG's concerns about large expanses of 8-hour ozone nonattainment areas projected for 2018 in areas without monitors.

Finally, it must be noted that even if the ozone exceedances predicted for the year 2018 were based on a sound modeling analysis, even the closest areas showing exceedances are several hundred miles southwest of North Dakota and, as indicated in our proposed rule, the northeasterly winds required for ozone transport from North Dakota to these areas are a rarity (75 FR 16030).

Comment No. 17—As additional support for its assertion that EPA should require modeling to assess ambient levels in unmonitored portions of other States, WG relied on an additional study entitled the "Uinta Basin Air Quality Study (UBAQS)." The commenter argued that the UBAQS study further supports its concern that limiting the evaluation of downwind impacts only to areas with monitors fails to assess ozone nonattainment in non-monitored areas. According to the commenter, UBAQS modeling results show that: (a) The Wasatch front region is currently exceeding and will exceed in 2012 the 1997 8-hour ozone NAAQS; and (b) based on 2005 meteorological data, portions of the four counties in the southwest corner of Utah are also currently in nonattainment and will be in nonattainment in 2012.[17]

EPA Response—As noted above, EPA does not agree that it is appropriate to assess significant contribution to nonattainment for the 1997 8-hour

[13] 2006 Guidance, p. 5.

[14] "Based on this approach, we predicted that in the absence of additional control measures, 47 counties *with air quality monitors* [emphasis ours] would violate the 8-hour ozone NAAQS in 2010. * * *" From the CAIR proposed rule of January 30, 2004 (69 FR 4566, 4581). The NO_X SIP call proposed rule action reads: "* * * For current nonattainment areas, EPA used air quality data for the period 1993 through 1995 to determine which counties are violating the 1-hour and/or 8-hour NAAQS. These are the most recent 3 years of fully quality assured data which were available in time for this assessment," 62 FR 60336.

[15] The presentation is available for review as Document ID # EPA–R08–OAR–2007–1032–0007.8 at Regulations.gov, Docket ID # EPA–R08–OAR–2009–0282.

[16] Stoeckenius, T.E., C.A. Emery, T.P. Shah, J.R. Johnson, L.K. Parker, A.K. Pollack, 2009. "Air Quality Modeling Study for the Four Corners Region." Prepared for the New Mexico Environment Department, Air Quality Bureau, Santa Fe, NM, by ENVIRON International Corporation, Novato, CA.

[17] The southwestern area referred to by the commenter includes portions of Washington, Iron, Kane, and Garfield Counties.

ozone NAAQS in the way advocated by WG. Even taking the UBAQS modeling results at their face value, however, EPA does not agree that the 8-hour ozone nonattainment (current and projected) in the Wasatch Front Range area supports the commenter's concerns about the need to evaluate the possibility of significant contribution to nonattainment in non-monitored areas. EPA sees several problems with the commenter's interpretation of the UBAQS analysis results for counties in Utah's southwestern corner: "based on 2005 meteorological data, portions of Washington, Iron, Kane, and Garfield Counties are also in nonattainment and will be in nonattainment in 2012."

First, WG's interpretation of the predicted ozone concentrations shown in Figures 4–3a and 4–3b (pages 5 and 6 of the comment letter) is inaccurate. A close review of the legend in these figures indicates that the highest ozone concentrations predicted by the model for portions of the counties noted above are somewhere between 81.00 and 85.99 ppb, but a specific concentration is not provided. If the ozone concentration is actually predicted to be smaller than or equal to 84.9 ppb, then the area is attaining; if it is predicted as greater than 84.9 ppb then it is not attaining. This means that current and predicted design values for the southwestern Utah area identified in Figures 4–3a and 4–3b could both be in attainment or both in nonattainment, or one of them in attainment and the other in nonattainment, for the 1997 8-hour ozone NAAQS.

Second, even if the design values predicted for these unmonitored areas were at the top of the 81.00–85.99 ppb range, their reliability would remain questionable. The UBAQS itself identifies and illustrates major shortcomings of its modeling analysis, only to neglect assessing the impact of these shortcomings on the modeling results.[18] The study deviates in at least two significant ways from EPA's 2007 guidance on SIP modeling.[19] One issue is the UBAQS modeling reliance on fewer than the five years of data recommended by EPA to generate a current 8-hour ozone design value (DVC). UBAQS relaxed this requirement so that sites with as little as 1 year of data were included as DVCs in the analysis. The other issue is the computation of the relative responsive factor (RRF), which directly affects the modeling's future design value (DVF).[20] Again due to unavailability of data satisfying EPA's recommendation that the RRF be based on a minimum of five days of ozone concentrations above 85 ppb, UBAQS modeling uses RRFs based on one or more days of ozone concentrations above 70 ppb.[21] EPA concludes that the modeling analysis results used by the WG are unreliable for projecting non-attainment status and therefore do not support its comments.

Finally, the predicted attainment status of unmonitored areas in the southwestern corner of Utah is not relevant to our assessment of whether emissions from North Dakota contribute significantly to downwind ozone nonattainment. The counties identified that draw the commenter's attention are almost a 1,000 miles from Bismarck, North Dakota, in a southwestern direction. As indicated in our response to the previous comment, the northeasterly winds required for ozone transport from North Dakota to these areas are a rarity.

Comment No. 18—In support of its arguments that EPA should not limit assessment of significant contribution to nonattainment through evaluation of impacts at monitors, but include, through modeling analysis, impacts where there are no such monitors, the commenter cited a past statement by EPA to the effect that the monitor network in the western United States needs to be expanded. The quoted statements included EPA's observation that "[v]irtually all States east of the Mississippi River have at least two to four non-urban O3 monitors, while many large mid-western and western States have one or no non-urban monitors." 74 FR 34,525 (July 16, 2009). From this statement, the commenter argues that it is not appropriate for EPA to limit evaluation of significant contribution to nonattainment in other states relying on monitoring data instead of modeling ambient levels. The comment also indicates that States with few or no non-urban monitors include "Idaho, Nebraska, Nevada, Montana, and Oregon, which may be affected by North Dakota emissions."

EPA Response—EPA does not disagree that there are relatively few monitors in the western states, and that relatively few monitors are currently located in non-urban areas of western states. However, the commenter failed to note that the quoted statement from EPA concerning the adequacy of western monitors came from the Agency's July 16, 2009 proposed rulemaking entitled "Ambient Ozone Monitoring Regulations: Revisions to Network Design Requirements." This statement was thus taken out of context, because EPA was in that proposal referring to changes in state monitoring networks that it anticipates will be necessary in order to implement *not* [emphasis added] the 1997 8-hour ozone NAAQS that are the subject of this rulemaking, but rather the next iteration of the ozone NAAQS for which there are concerns that there will be a need to evaluate ambient levels in previously unmonitored areas of the western United States. The fact that additional monitors may be necessary in the future for newer ozone NAAQS does not automatically mean that the existing ozone monitoring networks are insufficient for the 1997 8-hour ozone NAAQS, as the commenter implies. Indeed, states submit annual monitor network reports to EPA and EPA evaluates these to insure that they meet the applicable requirements. For example, North Dakota itself submits just such a report on an annual basis, and EPA reviews it for adequacy.[22] All other states submit comparable reports.

Finally, EPA disagrees that monitored and unmonitored areas in the western States identified above by the commenter may be affected by emissions from North Dakota. As noted in the proposed rule, the easterly or northeasterly winds that would be needed to transport emissions from North Dakota to these States are rare.[23] Similarly rare is the possibility of impacts on these States from North Dakota's emissions.

Comment No. 19—WG objected to EPA's proposed approval of the North Dakota SIP submission because neither North Dakota nor EPA performed a specific modeling analysis to assure that emissions from North Dakota sources do not significantly contribute to nonattainment in downwind States. According to the commenter, EPA's decision to use a qualitative approach to determine whether emissions from North Dakota contribute significantly to downwind nonattainment is not consistent with its own preparation of a regional model to evaluate such impacts from other states as part of CAIR.

[18] See "UBAQS," pages 4–27 to 4–29.

[19] EPA. 2007. Guidance on the Use of Models and other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM2.5 and Regional Haze. Office of Air Quality Planning and Standards, Air Modeling Group. Research Triangle Park, North Carolina (*http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*).

[20] DVC × RRF = DVF.

[21] See UBAQS, p. 4–28.

[22] See, for example: "Annual Report. North Dakota Air Quality Monitoring, Data Summary, 2008." dated June 2009, North Dakota Department of Health. A is available for review at the regulations.gov Web site, under Docket ID No EPA–R08–OAR–2009–0282.

[23] See our assessment of ozone transport from North Dakota emissions to Colorado, 75 FR 16030.

EPA Response—EPA disagrees with WG's belief that only modeling can establish whether or not there is significant contribution from one state to another. First, as noted above, EPA does not believe that section 110(a)(2)(D) requires modeling. While modeling can be useful, EPA believes that other forms of analysis can be sufficient to evaluate whether or not there is significant contribution to nonattainment. For this reason, EPA's 2006 Guidance recommended other forms of information that states might wish to evaluate as part of their section 110(a)(2)(D) submissions for the 1997 8-hour ozone NAAQS. EPA has concluded that its qualitative approach to the assessment of significant contribution to downwind ozone nonattainment is consistent with EPA's 2006 Guidance.

Second, EPA notes that WG's position also reflects a misunderstanding of the approach EPA used in the remanded CAIR due to WG's exclusive focus on those States that were selected for the modeling analysis. A wider understanding of the CAIR approach would recognize that EPA decided, based on other criteria, that it was not necessary to conduct modeling for certain western states: "[i]n analyzing significant contribution to nonattainment, we determined it was reasonable to exclude the Western U.S., including the States of Washington, Idaho, Oregon, California, Nevada, Utah, and Arizona from further analysis due to geography, meteorology, and topography. Based on these factors we concluded that the $PM_{2.5}$ and 8-hour ozone nonattainment problems are not likely to be affected significantly by pollution transported across these States' boundaries * * *." (69 FR 4581, January 30, 2004).

EPA has taken a similar approach to assess whether North Dakota contributes significantly to violations of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in downwind states. In the proposed action, EPA explained several forms of substantive and technically valid evidence that led to the conclusion that emissions from North Dakota sources do not contribute significantly to nonattainment, in accordance with the requirement of Section 110(a)(2)(D).

Comment No. 20—In further support of its argument that EPA must use modeling to evaluate whether there is significant contribution to nonattainment under section 110(a)(2)(D), WG noted that EPA itself asks other agencies to perform such modeling in other contexts. As examples, the commenter cited four examples in which EPA commented on actions by other agencies in which EPA recommended the use of modeling analysis to assess ozone impacts prior to authorizing oil and gas development projects. As supporting material, the comment includes quotations from and references to EPA letters to Federal Agencies on assessing impacts of oil and gas development projects.[24] WG questioned why EPA's recommendation for such an approach in its comments to other Federal Agencies, did not result in its use of the same approach to evaluate the impacts from North Dakota emissions and to insure compliance with Section 110(a)(2)(D)(i)(I). The commenter reasoned that the emissions that would result from the actions at issue in the other agency decisions, such as selected oil and gas drilling projects, would be of less magnitude and importance than the statewide emissions at issue in an evaluation under section 110(a)(2)(D).

EPA Response—As explained above, EPA disagrees with WG's fundamental argument that modeling is required to evaluate significant contribution to nonattainment, whether by section 110(a)(2)(D), by EPA guidance, or by past EPA precedent. EPA's applicable guidance made recommendations as to different approaches that can lead to the satisfaction of the interstate transport requirements for significant contribution to nonattainment in other states. Even EPA's own CAIR analysis relied on a combination of qualitative and quantitative analyses, as explained above. As indicated in our response to Comment No. 19, the CAIR analysis excluded the Western States on the based on a qualitative assessment of the region's topography, geography and meteorology.[25]

EPA believes that the commenter's references to EPA statements commenting on the actions of other agencies are inapposite. As WG is aware, those comments were made in the context of the evaluation of the impacts of various federal actions pursuant to NEPA, not the Clean Air Act. As explained above, in the context of section 110(a)(2)(D), EPA does not agree that modeling is always required to make that different evaluation, and EPA itself has relied on other more qualitative evidence when it deemed that evidence sufficient to reach a reasoned determination.

Comment No. 21—In further support of its argument that EPA should always require modeling to evaluate significant contribution to nonattainment, WG referred to EPA regulations governing nonattainment SIPs. The commenter noted 40 CFR 51.112(a)(1), which states that: "[t]he adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in appendix W of [Part 51] (Guideline on Air Quality Models)." The commenter argues that this regulation appears to support the commenter's position that modeling is required to satisfy the significant contribution element of 110(a)(2)(D).

EPA Response—EPA disagrees with this comment. The cited language implies that the need for control strategy requirements has already been demonstrated, and sets a modeling analysis requirement to demonstrate the adequacy of the control strategy developed to achieve the reductions necessary to prevent an area's air quality from continuing to violate the NAAQS. EPA's determination that emissions from North Dakota do not contribute significantly to nonattainment for the 1997 8-hour ozone standard in any other states eliminates the need for a control strategy aimed at satisfying the section 110(a)(2)(D) requirements. Moreover, EPA interprets the language at 40 CFR 51.112(a): "[e]ach plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements," to refer to modeling for attainment demonstrations, an integral part of nonattainment area SIPs under part D of the CAA. This interpretation was upheld by the Sixth Circuit Court of Appeals. *Wall* v. *U.S. EPA,* 265 F.3d 426, 436 (6th Cir. 2001). Thus, the commenter's cited regulation is not relevant to EPA's technical demonstration assessing whether emissions from North Dakota contribute significantly to nonattainment in any other states under section 110(a)(2)(D).

Comment No. 22—WG also objected to EPA's proposed approval of the North Dakota submission on the grounds that it was based upon a "weight-of-evidence analysis," and that no such weight of evidence test appears in the CAA generally, or in section 110(a)(2)(D) in particular. According to the commenter, there is no regulatory support for using a "weight-of-evidence" approach to assessing air quality impacts. The commenter asserted that EPA neither cited nor quoted regulations or policy that provides for this, and failed to lend

[24] WG's April 9, 2010 comment letter, pp. 9–10. Complete versions of the EPA comment letters referenced here were attached to the comment as Exhibits 3 through 6, and are viewable on the Regulations.gov Web site as Documents ID No. EPA–R08–OAR–2007–1032–0007.4 through 1032–0007.7.

[25] See: 69 FR 4581, January 30, 2004.

any specific meaning to the phrase through its proposed approval. Finally, the commenter asserted, without explaining, its belief that EPA failed to address "several relevant factors related to the determination of whether North Dakota contributes significantly to nonattainment undermines the agency's reliance on any 'weight-of-evidence' approach."

EPA Response—EPA agrees with WG that neither the CAA generally, nor section 110(a)(2)(D) specifically, include the explicit phrase "weight of evidence." It simply does not follow, however, that it is inappropriate for EPA to use such an approach in this context. As explained above, section 110(a)(2)(D) does not explicitly stipulate how EPA may assess whether there is a significant contribution to nonattainment in other states. Through past actions such as CAIR, EPA has used a weight-of-evidence approach to exclude some States from further consideration.[26] As described above, EPA's guidance issued for the 1997 8-hour ozone NAAQS, the Agency specifically recommended types of information that states might wish to rely upon to evaluate the presence of, and extent of, interstate transport for this purpose. EPA believes that a weight of evidence approach that properly considers appropriate evidence is sufficient to make a valid determination, as in this case.

Specifically, EPA's technical analysis in the March 31, 2010 proposed rule action underscores its reliance on implementation policies set in the EPA 2006 Guidance: "EPA's August 15, 2006, guidance to states concerning section 110(a)(2)(D)(i) recommended various methods by which states might evaluate whether or not its emissions significantly contribute to violations of the 1997 ozone standards in another state. Among other methods, EPA recommended consideration of available EPA modeling conducted in conjunction with CAIR, *or in the absence of such EPA modeling, consideration of other information such as the amount of emissions, the geographic location of violating areas, meteorological data, or various other forms of information that would be relevant to assessing the likelihood of significant contribution to violations of the NAAQS in another state* [our emphasis]."[27] On the basis of this guidance, North Dakota and EPA chose to assess the impacts of emissions from North Dakota sources on the closest downwind nonattainment areas (Denver, Colorado, and Illinois/Wisconsin counties along the southwestern shore of Lake Michigan) through a weight of evidence approach using quantitative information such as North Dakota's distance from areas with monitors showing violation of the NAAQS, modeling results outlining wind vectors for regional transport of ozone on high ozone days, back trajectory analyses for the downwind nonattainment areas closest to North Dakota, and results of modeling studies for the nonattainment areas specifying the range of wind directions along which contributing ozone transport occurred. EPA's use of a weight of evidence analysis is by no means unusual for the assessment of ozone impacts through long range transport. The same analytical framework was used in the 1998 NO_X SIP Call, as indicated under Section II.C., entitled "Weight-of-Evidence Determination of Covered States."[28] The differences between the specific types of evidence used in the NO_X SIP Call and in our analysis do not invalidate the use of the weight-of-evidence approach.

As for the commenter's argument that EPA "fails to lend any specific meaning to the phrase through its proposed approval," the Agency's technical analysis described in the proposal did specify the characteristics, including limitations, of a weight of evidence analysis: "[f]urthermore * * * EPA notes that no single piece of information in the following discussion is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together supports the conclusion that emissions from North Dakota sources are unlikely to contribute significantly to violations of the 1997 8-hour ozone standard in any other state," (75 FR 16034).

Finally, as to the commenter's assertion that EPA failed to consider "several relevant factors" and thus failed to conduct an appropriate weight of evidence evaluation, EPA cannot weigh the validity of this comment in the absence of an explanation of what these factors might be.

Comment No. 23—The Sierra Club opposed the proposed approval on the grounds that the existing North Dakota SIP includes problematic provisions. For example, the Sierra Club pointed to provisions that it alleges will result in additional emissions that could significantly contribute to nonattainment of the NAAQS in other states. For example, Sierra Club argued that:

> "if emission violations during startup, shutdown, or malfunctions (SSM) escape enforcement, there is no way to determine that emissions from sources in North Dakota will not contribute significantly to other States' nonattainment of the NAAQS or problems with PSD compliance such as exceeding increments, short of cumulative modeling exercise assuming that all source are emitting at their physical limits without controls. See, e.g., Clean Air Act Sections 110(a)(2)(A) and (D), 42 U.S.C. Sections 7410(a)(2)(A) and (D)."[29]

EPA Response—EPA understands the concerns raised by the commenter, but does not believe that any such excess emissions would in and of themselves constitute significant contribution to nonattainment in another state. EPA notes that its technical analysis for the significant contribution element in our proposal was not premised upon distinguishing between legal and illegal, or permissible and impermissible, emissions from North Dakota sources. EPA's technical analysis, and the conclusion based on the weight of the evidence, did not depend on the precise amount of emissions from North Dakota, and did not turn upon some portion of those emissions as being the result of emissions during SSM events. Instead, EPA's evaluation was focused upon other relevant information that pertained to distance, wind direction, and the air quality status of areas in downwind states. Thus, any additional emissions from SSM events would not change the analysis or EPA's conclusion that emissions from North Dakota do not significantly contribute to nonattainment in any other state.

Furthermore, as noted below, the current version of the North Dakota provision relating to SSM, NDAC 33–15–01–13, does not create any exemption from emissions limits and does not excuse violations. PSD permit applicants and PSD permittees in North Dakota are subject to the current version of the state's regulation. Therefore, Sierra Club's concerns regarding excess emissions from sources subject to PSD are moot and do not change EPA's

[26] See: 69 FR 4581, January 30, 2004.

[27] 75 FR 16029, March 31, 2010.

[28] "As discussed above, EPA applied a multi-factor approach to identify the amounts of NO_X emissions that contribute significantly to nonattainment * * *." 1998 SIP Call, 63 FR 57381, October 27, 1998.

[29] "If emission violations are excused during startups, shutdowns, or malfunctions, and thus essentially unregulated during those periods, there is no way to determine that emissions from sources in North Dakota will not contribute significantly to other States' nonattainment of the NAAQS or problems with PSD compliance such as exceeding increments, adversely impacting air quality related values in Class I areas, or adversely impacting vegetation and visibility in all areas, short of cumulative modeling exercise assuming that all source are emitting at their physical limits without controls. See, e.g., Clean Air Act Sections 110(a)(2)(A) and (D), 42 U.S.C. Sections 7410(a)(2)(A) and (D)."

conclusion that the North Dakota SIP has adequate provisions to prohibit emissions from North Dakota from interfering with other states' required PSD programs.

Comment No. 24—As potential SIP defects affecting approvability of the section 110(a)(2)(D) SIP submission, both WG and the Sierra Club pointed to the North Dakota Administrative Code rule NDAC 33–15–01–07 that allows the North Dakota Department of Health (NDDH) to grant variances to emission limits if compliance "would cause undue hardship, would be unreasonable, impractical, or not feasible under the circumstances." WG adds that this variance provision is inappropriate and would allow additional emissions that may contribute significantly to nonattainment or interfere with PSD provisions in other States.

EPA Response—EPA agrees that this rule should be revised to provide that variances are only effective for federal law purposes when adopted as a SIP revision approved by EPA (or this provision should be removed from the SIP), and EPA plans to work with the State to clarify the SIP on this point. EPA is aware that this process requires action by the North Dakota legislature before the NDDH will be able to remove the Variance provisions from the State SIP and submit an appropriate revision to EPA.

However, EPA does not believe that this existing variance provision provides a basis for disapproval of the SIP under the facts and circumstances here. North Dakota has informed EPA that the variances granted by the NDDH under the provision during the last 15 years were only for open burning requests. In these cases, before granting a variance the NDDH requested input from the local fire department and health agency offices. North Dakota has stated that the variance provision cannot be used to avoid permitting requirements or to violate emissions limits. Furthermore, North Dakota has confirmed that the provision has not been applied to PSD permits, minor NSR permits, Title V permits, or minor operating permits, and EPA expects that such will be the case while it vigorously works with the State for its removal from the North Dakota SIP.

Moreover, EPA also disagrees with WG's additional comment that this variance provision specifically allows emissions that may contribute significantly to nonattainment or interfere with PSD provisions in other States. There is no language in rule NDAC 33–15–01–07 that reflects the commenter's interpretation.

Given the limited scope and usage of the variance provision, EPA concludes that it does not constitute interference with other states' required PSD programs. Furthermore, it does not affect EPA's factual determination that emissions from North Dakota do not significantly contribute to nonattainment in other states.

Comment No. 25—WG also expressed concern that NDAC 33–15–01–13(1) specifically allows a source to shut down air pollution control equipment for maintenance and to continue operations, so long as notification is provided to North Dakota. WG argued that such an exemption to pollution control equipment is not acceptable under the CAA.

EPA Response—EPA believes that the commenter is referring to provisions in the previous version of the provision that is no longer operative. The provision has been superseded by a revision adopted by the State on April 1, 2009 and submitted to EPA on April 6, 2009. EPA is planning to take action on the submission in the near future. The revised NDAC 33–15–01–13.1 includes at 33–15–01–13(1)(f) language that addresses the commenter's concern: "[n]othing in this subsection shall in any manner be construed as authorizing or legalizing the emissions of air contaminants in excess of the rate allowed by this article [NDAC 33–15] or a permit issued pursuant to this article."

As noted above, North Dakota has revised the provision and it currently is in effect. Thus, even before EPA takes action on the submittal of the revision, PSD permit applicants and PSD permittees must comply with the revised provision, which removes the exemption. North Dakota has confirmed that the revised provision is used in PSD permitting. Therefore, EPA believes that the superseded provision does not constitute interference with other states' required PSD measures. Furthermore, the provision—regardless of its status—does not affect EPA's factual determination that emissions from North Dakota do not significantly contribute to nonattainment in other states.

Comment No. 26—WG also argued that Rule NDAC 33–15–01–13(2) implies an exemption to compliance with emission limits in the event of a malfunction. According to the commenter, this rule not only implies an exemption for malfunction leading to a violation that lasts less than 24 hours, but gives the state unlimited discretion to allow a malfunction leading to a violation to last as long as ten days.

EPA Response—EPA again disagrees, because the commenter is evidently objecting to a previous version of this provision that is no longer operative. The provision was superseded by a revision to this rule adopted by the State on April 1, 2009 and submitted to EPA on April 6, 2009. EPA plans to take action on the submission in the near future. Under the revised provision the ten-day grace period has been removed, and the provisions only address notification requirements without any references to or exemptions of excess emissions.

North Dakota has revised the provision and it is no longer in effect. Thus, even before EPA takes action on the submittal of the revision, PSD permit applicants and PSD permittees must comply with the revised provision, which removes the ten-day grace period. Therefore, EPA believes that the superseded provision does not constitute interference with other states' required PSD measures. Furthermore, the provision—regardless of its status—does not affect EPA's factual determination that emissions from North Dakota do not significantly contribute to nonattainment in other states.

Comment No. 27—The Sierra Club expressed concern that the revised version of NDAC 33–15–01–13(2)(c) submitted by the state to EPA "does not make clear that such enforcement discretion is limited to the imposition of civil penalties and does not potentially enable sources to avoid injunctive remedies regarding excess emissions." The Sierra Club also indicated that in the revised language of rule NDAC 33–15–01–13(2)(c) "the required elements of proof in the source's report fall short of the rigorous proof requirements specified in EPA policy."

EPA Response—As noted above, the State submitted the referenced revisions to EPA on April 6, 2009, and the public, including the Sierra Club, will have an opportunity to submit substantive comments about this provision when EPA proposes action on it, as planned for the near future. EPA invites the Sierra Club to resubmit the comment at that time so that EPA may properly respond to it. EPA notes, however, that the Sierra Club appears to argue that certain portions of the 1999 EPA guidance for the affirmative defense approach to unavoidable malfunctions [30] apply to the North

[30] Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (Sept. 20, 1999).

Dakota revision. As stated in that guidance, the enforcement discretion approach endorsed by EPA in earlier guidance [31] remains valid, and North Dakota selected the enforcement discretion approach. In any event, EPA is not acting upon that April 6, 2009, submission at this time.

Comment No. 28—WG and the Sierra Club also expressed concern about a provision in the North Dakota SIP related to failure of a continuous emission monitoring system (CEMS). See NDAC § 33–15–01–13(3). WG and the Sierra Club both argued that the provision is contrary to Title IV of the CAA and the regulations at 40 CFR Part 75 implementing Title IV. WG apparently believed that EPA cannot approve the North Dakota SIP section 110(a)(2)(D) revision until the provision is removed or revised.

EPA Response—EPA disagrees with WG's conclusions on this issue. As to the significant contribution element of 110(a)(2)(D)(i), as noted above, once EPA has determined—as it has here—that emissions from North Dakota do not significantly contribute to nonattainment in any other state, no substantive modification of North Dakota's SIP is required to eliminate any emissions. As to the PSD element of 110(a)(2)(D)(i), the requirements of Part 75 relate to Title IV, the acid rain title of the Clean Air Act. These requirements are simply not relevant to the North Dakota PSD program or to the PSD element of 110(a)(2)(D)(i).

Comment No. 29—As part of its objection to the proposed action, the Sierra Club identified a North Dakota SIP provision that authorizes North Dakota to allow violations of ambient air quality standards in certain circumstances. See NDAC § 33–15–02–07(4).

EPA Response—EPA disagrees that this provision provides a basis for disapproval of the section 110(a)(2)(D) submission. The provision does allow for certain exceedances of certain state ambient air quality standards. However, it does not allow for exceedances of the applicable federal NAAQS. Therefore, EPA concludes that the provision does not constitute interference with other states' required PSD programs. Furthermore, the provision does not affect EPA's factual determination that emissions from North Dakota do not significantly contribute to nonattainment in other states.

Comment No. 30—WG also identified certain provisions in the North Dakota SIP creating exceptions to certain opacity limits as a concern in the context of action on the section 110(a)(2)(D) submission. See NDAC § 33–15–03–04(4), (5). WG described the provisions as "blanket exemptions" and argued that because visible emissions are often used as an indicator for particulate matter, the exemptions "fail to prohibit emissions that could contribute significantly to nonattainment or interfere with PSD requirements." WG therefore argued that EPA cannot approve the proposed SIP revision unless the exemptions are removed or revised.

EPA Response—EPA does not endorse the exceptions cited by WG, and EPA's action here should not be construed as an approval of these exceptions, which are not the subject of this action. EPA disagrees, however, with WG's conclusions about the impact of such exceptions on today's action. First, the exceptions are not "blanket exemptions" from all opacity limits: By the express terms of NDAC 33–15–03–04, the exceptions apply only to the numeric opacity limits specified in NDAC 33–15–03–01, –02, –03, and –04. They do not create an exception from any requirements PSD may impose related to opacity.

Furthermore, the specific numeric opacity limits are unrelated to emissions limits imposed by PSD, under which BACT is determined on a case-by-case basis. Thus, the provisions cited by WG do not create any exception from BACT emissions limits or any other PSD requirements. As a result, the exceptions are not relevant to the requirements of the PSD element of 110(a)(2)(D)(i). As to the significant contribution element of 110(a)(2)(D)(i), as noted elsewhere, once EPA has factually determined—as it has here—that emissions from North Dakota do not significantly contribute to nonattainment in any other state, no modification of North Dakota's SIP is required.

Comment No. 31—As additional problematic provisions in the North Dakota SIP, WG and Sierra Club identified provisions in the North Dakota SIP creating exceptions to certain particulate matter emissions limits. See NDAC § 33–15–05–01(2)(a). WG argued that the provisions allow the state discretion to exempt sources from compliance during temporary breakdowns or cleaning of air pollution control equipment, and that therefore the North Dakota SIP fails to prohibit emissions that contribute significantly to nonattainment in other states, or that interfere with other states' required PSD measures. Sierra Club argued that the provision violates EPA policy and creates a broader exception than allowed by the enforcement discretion or affirmative defense approaches to unavoidable malfunctions.

EPA Response—EPA does not endorse the exceptions cited by the commenters, which EPA notes are not the subject of this action. EPA disagrees, however, with the commenters' conclusions. First, as to PSD requirements: The provision cited by the commenters creates an exception only to numeric, process-based emissions limits specified in Table 3 of NDAC 33–15–05–01. The provision does not create an exception from any PSD requirements, including BACT emissions limits for particulate matter. Furthermore, these specific, numeric, process-based limits are unrelated to PSD requirements, under which BACT is determined on a case-by-case basis. Thus, the exceptions in 33–15–05–01(2)(a) do not create any exception from BACT emissions limits or other PSD requirements. As a result, the exceptions are not relevant to the requirements of the PSD element of 110(a)(2)(D)(i).

As to the significant contribution element of 110(a)(2)(D)(i), EPA disagrees with WG that EPA cannot approve the North Dakota interstate transport SIP until the provision is removed or revised. As noted elsewhere, once EPA has determined—as it has here—that emissions from North Dakota do not significantly contribute to nonattainment in any other state, no modification of North Dakota's SIP is required.

Comment No. 32—The Sierra Club commented on a provision in the North Dakota SIP related to reporting of excess emissions of sulfur dioxide and other sulfur compounds. See NDAC § 33–15–06–05. The Sierra Club asserted that the provision "contains unacceptable language" and argued the SIP should be revised to make clear that the reporting requirement does not authorize or exempt excess emissions. Sierra Club also implied that this issue makes it impossible to determine whether emissions from North Dakota significantly contribute to nonattainment in other states and whether the state's SIP would interfere with measures required in other states to prevent significant deterioration of air quality with repect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

EPA Response—The Sierra Club did not identify any particular phrase in the

[31] See Memorandum from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (Sept. 28, 1982); Memorandum from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (Feb. 15, 1983) (clarifying 1982 memorandum).

existing regulatory provision as unacceptable, so EPA presumes the reference to unacceptable language is to the absence of additional clarifying language. EPA disagrees that it is necessary to revise the provision in order to approve the North Dakota interstate transport SIP. The provision does not create any explicit exemption, and EPA believes it creates no implicit exemption. As the Sierra Club agrees, the provision simply requires sources to report excess emissions of sulfur dioxide and other sulfur compounds during periods of startup, shutdown, and malfunction. A reporting requirement is not an exemption from emissions limits.

Comment No. 33—WG objected to EPA's proposed approval because "North Dakota's SIP, as written, simply does not contain any language that literally prohibits emissions that contribute significantly to nonattainment in any other state." The commenter also notes that EPA did not assess whether the SIP does or does not contain such provisions. The commenter appears to believe that 110(a)(2)(D)(i) requires a state SIP to contain explicit provisions literally prohibiting emissions that contribute significantly to nonattainment in any other state, and that, in order to approve the North Dakota interstate transport SIP, EPA must examine the SIP to determine whether it does contain such specific words.

EPA Response—EPA disagrees with the commenter's interpretation of the statutory requirements. Section 110(a)(2)(D)(i) has no language that requires a SIP to contain literal provisions prohibiting significant contribution to nonattainment in any other state, or, for that matter, to contain any particular words or generic prohibitions. Instead, EPA believes that the statute requires a state's SIP to contain substantive emission limits or other provisions that in fact ensure that sources located within the state will not produce emissions that have such an effect in other states. Therefore, EPA believes that satisfaction of the "significant contribution" requirement is not to be demonstrated through a literal requirement for a prohibition of the type advocated by the commenter.

EPA's past application of section 110(a)(2)(D) did not require the literal prohibition advocated by the commenter. For example, in 1998 NO_X SIP call (63 FR 57356, October 27, 1998) EPA indicated that "the term 'prohibit' means that SIPs must eliminate those amounts of emissions determined to contribute significantly to nonattainment * * *" As a result, the first step of the process to determine whether this statutory requirement is satisfied is the factual determination of whether a state's emissions contribute significantly to nonattainment in downwind areas. See 2005 CAIR Rule (70 FR 25162) and 1998 NO_X SIP Call (63 FR 57356). If this factual finding is in the negative, as is the case for EPA's assessment of the contribution from emissions from North Dakota, then section 110(a)(2)(D)(i)(I) does not require any changes to a state's provisions. If, however, the evaluation reveals that there is such a significant contribution to nonattainment in other states, then EPA requires the state to adopt substantive provisions to eliminate those emissions. The state could achieve these reductions through traditional command and control programs, or at its own election, through participation in a cap and trade program. Thus, EPA's approach in this action is consistent with the Agency's interpretation of 110(a)(2)(D)(i) in the 2006 guidance, the CAIR Rule, and the NO_X SIP call, none of which required the pro forma literal "prohibition" of the type advocated by the commenter.

Comment No. 34—WG argues that the requirements for stationary source permitting in the North Dakota SIP are "riddled with vagueness, discretion, uncertainty, and unenforceability," and are inadequate to ensure that sources in North Dakota will not significantly contribute to nonattainment in other states.

EPA Response—As discussed above, the first step of the process to determine whether the "significant contribution" requirement is satisfied is the factual determination of whether a State's emissions contribute significantly to nonattainment in downwind areas. If the factual finding is in the negative, as is the case for EPA's assessment of the contribution from emissions from North Dakota, then section 110(a)(2)(D)(i)(I) does not require any changes to a state's provisions. As discussed above, EPA's approach in this action is consistent with the Agency's interpretation of 110(a)(2)(D)(i) in the 2006 guidance, the CAIR Rule and the NO_X SIP Call. Therefore, EPA disagrees with the comment that EPA cannot approve the North Dakota interstate transport SIP unless EPA addresses specific provisions and state guidelines for permitting stationary sources.

Comment No. 35—The commenter argued that EPA cannot approve the section 110(a)(2)(D) submission from North Dakota because the state and EPA did not comply with 110(l). Evidently, the commenter believes that the section 110(a)(2)(D) submission is a revision to the SIP that will interfere with attainment of the 2006 $PM_{2.5}$ NAAQS and the 2008 ozone NAAQS. And, although it is not clear, the comment could be taken to make the same point for North Dakota's revision of its PSD program. The commenter argues that a section 110(l) analysis must consider all NAAQS once they are promulgated, and argues that EPA took the same position in proposing to disapprove a PM_{10} maintenance plan.

EPA Response—EPA agrees that a required section 110(l) analysis must consider the potential impact of a proposed SIP revision on attainment and maintenance of all NAAQS that are in effect and impacted by a given SIP revision. However, EPA disagrees that it failed to comply with the requirements of section 110(l) or that section 110(l) requires disapproval of the SIP submission at issue here.

Section 110(l) provides in part that: "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter." EPA has consistently interpreted Section 110(l) as not requiring a new attainment demonstration for every SIP submission. EPA has further concluded that preservation of the status quo air quality during the time new attainment demonstrations are being prepared will prevent interference with the states' obligations to develop timely attainment demonstrations. 70 FR 58134, 58199 (October 5, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 53, 57 (January 3, 2005); 70 FR 28429, 28431 (May 18, 2005).

North Dakota's submission is the initial submission by the state to address the significant contribution to nonattainment element of 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. This submission does not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. Simply put, it does not make any substantive revision that could result in any change in emissions. As a result, the submission does not relax any existing requirements or alter the status quo air quality. Therefore, approval of the North Dakota interstate transport SIP will not interfere with attainment or maintenance of any NAAQS.

As to the PSD program, the North Dakota revision updates the incorporation date of 40 CFR 52.21 from October 1, 2003, to August 1, 2007. The

changes to § 52.21 in that period do not relax any PSD requirements. In fact, the primary substantive change was the recognition of NO_X as a precursor to ozone, a change that strengthens PSD requirements. Other changes included (as noted elsewhere in EPA's response to comments) recognition of the effects of federal cases vacating certain aspects of NSR rules promulgated in 2002 and 2003.[32] These changes do not relax any PSD requirements and in most instances strengthen them. Therefore, approval of the revision of the North Dakota PSD program will not interfere with attainment or maintenance of the NAAQS.

EPA's discussion in the notice cited by the commenter is consistent with this interpretation. In the cited action, EPA noted that "Utah ha[d] either removed or altered a number of stationary source requirements," creating the possibility of a relaxation of SIP requirements interfering with attainment, a possibility that is not present here. See 74 FR 62727 (Dec. 1, 2009). Thus, the action cited by the commenter is clearly distinguishable.

The commenter did not provide any specific basis for concluding that approval of this SIP submission would interfere with attainment or maintenance of a NAAQS, or with any other applicable requirement of the Clean Air Act. EPA concludes that approval of the submission will not make the status quo air quality worse, and is in fact consistent with the development of an overall plan capable of meeting the Act's attainment requirements. Accordingly, even assuming that section 110(l) applies to this submission, EPA finds that approval of the submission is consistent with the requirements of section 110(l).

III. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. In this action, EPA is approving the portions of the North Dakota interstate transport SIP that address the "significant contribution" and PSD elements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS; EPA is also approving a revision to the North Dakota PSD program. As discussed above in EPA's response to comments, the portions of the interstate transport SIP that EPA is approving do not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. Furthermore, as also discussed above, the revision to the North Dakota PSD program does not relax or remove any PSD requirement and in most cases strengthens those requirements. As a result, the SIP revision does not relax any existing requirements or alter the status quo air quality. Finally, EPA has determined that the revision is consistent with all applicable federal requirements and will not interfere with requirements of the Act related to administrative or procedural provisions. Therefore, the revision does not interfere with attainment or maintenance of the NAAQS or other applicable requirements of the Act.

IV. Final Action

The Environmental Protection Agency is approving portions of the Interstate Transport of Air Pollution SIP submitted by the State of North Dakota on April 6, 2009. Specifically, in this action EPA is approving: (a) The introductory language in the State SIP Section 7.8; (b) the "Overview" language in subsection A., Section 7.8.1; (c) the language in Section 7.8.1, subsection B., "Nonattainment and Maintenance Area Impact," that specifically addresses element (1) of section 110(a)(2)(D)(i), the requirement that the SIP contain adequate provisions prohibiting emissions from North Dakota from contributing significantly to nonattainment in any other state; and (d) Section 7.8.1, subsection C, "Impact on Prevention of Significant Deterioration (PSD)." As part of this action EPA is also approving revisions to the prevention of significant deterioration provisions in subsection 33–15–15 of the NDAC.

EPA has concluded that the State's submission, and additional evidence evaluated by EPA, establish that emissions from North Dakota sources do not significantly contribute to nonattainment of the 1997 8-hour ozone or the 1997 $PM_{2.5}$ NAAQS in any other state. Therefore, the State's SIP does not need to include additional substantive controls to reduce emissions for purposes of section 110(a)(2)(D)(i)(I) for these NAAQS. In addition, EPA has concluded that with the specific revisions addressed in this action, the State's SIP now contains adequate provisions to prevent emissions from the State's sources from interfering with measures required in the SIP of any other state under part C of the CAA to prevent "significant deterioration of air quality," in accordance with section 110(a)(2)(D)(i)(II).

V. Statutory and Executive Order Review

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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L.104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249,

[32] 67 FR 80186 (Dec. 31, 2002); 68 FR 61248 (Oct. 23, 2003); *New York* v. *U.S. EPA,* 413 F.3d 3 (D.C. Cir. 2005); *New York* v. *EPA,* 443 F.3d 880 (D.C. Cir. 2006).

November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *August 2, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon moNO$_X$ide, 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: May 17, 2010.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart JJ–North Dakota

■ 2. Section 52.1820 is amended to read as follows:

■ a. In the table in paragraph (c) by revising the entry for "33–15–15–01.2."

■ b. In the table in paragraph (e) by revising the entry in "(1)" and adding entry "(21)" in numerical order to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

STATE OF NORTH DAKOTA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
* *	* *	*	* *	*
33–15–15–01.2	Scope	4/1/09	6/3/10, 75 FR 31290	
* *;	* *	*	* *	*

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) * * *.

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation [3]	Explanations
(1) Implementation Plan for the Control of Air Pollution for the State of North Dakota.	Statewide	Submitted: 1/24/72 Adopted: 1/24/72.	5/31/72, 37 FR 10842	Excluding subsequent revisions, as follows: Chapters 1, 2, 6, 7, 9, 11, and 12; Sections 2.11, 3.7, 6.8, 6.10, 6.11, 6.13, 7.7, and 8.3; portions of subsection 7.8.1.B., subsections 7.8.1.D., and 8.3.1. Revisions to these non-regulatory provisions have subsequently been approved. See below.
Chapters:				

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation [3]	Explanations
1. Introduction 2. Legal Authority 3. Control Strategy 4. Compliance Schedule 5. Prevention of Air Pollution Emergency Episodes 7. Review of New Sources and Modifications 8. Source Surveillance 9. Resources 10. Inter-governmental Co-operation 11. Rules and Regulations With subsequent revisions to the chapters as follows:	.....	Clarification submitted: 6/14/73 2/19/74 6/26/74 11/21/74 4/23/75.	With all clarifications: 3/2/76, 41 FR 8956.	
* *	*	*	* *	*
(21) Section 7.8, Interstate Transport of Air Pollution (only 7.8.1.A., portions of 7.8.1.B., and 7.8.1.C., see explanation.)	Statewide	Submitted: 4/09/09 Adopted: 4/01/09.	6/3/10 75 FR 31290	Includes Section 7.8, subsection Portions of 7.8.1 as indicated below: 7.8.1.A, "Overview," the language of Subsection 7.8.1.B., "Nonattainment and Maintenance Area Impact," that specifically addresses the "significant contribution to nonattainment" requirement of CAA Section 110(a)(2)(D)(i), and all of 7.8.1.C.

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2010–13051 Filed 6–2–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1032; FRL–9155–5]

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 8-hour Ozone NAAQS: "Significant Contribution to Nonattainment" Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving State Implementation Plan (SIP) revisions submitted by the State of Colorado on June 18, 2009. These revisions, referred to as the Colorado Interstate Transport SIP, address the requirements of Clean Air Act section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). In this action EPA is approving the Colorado Interstate Transport SIP non-regulatory provisions that address the requirement of section 110(a)(2)(D)(i)(I) that emissions from the state's sources do not "contribute significantly" to nonattainment of the 1997 8-hour ozone NAAQS in any other state. EPA will act at a later date on the Colorado Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(I) that emissions from the state's sources do not "interfere with maintenance" of the 1997 8-hour ozone NAAQS in any other state. This action is being taken under section 110 of the Clean Air Act.

DATES: *Effective Date:* This final rule is effective July 6, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2007–1032. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov*, or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6416, *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.