

[Revise the heading of 16.5.2 as follows:]

16.5.2 Express Mail and Priority Mail Sack Labels

[Revise the text in 16.5.2 as follows:]

Labels for Express Mail or Priority Mail sacks containing Open and Distribute shipments must be barcoded and meet the requirements in 708.6.0. All lines of information must be completely visible when inserted into the label holder. Label sacks as follows:

a. Line 1 (destination line) provides information on the destination entry office where the enclosed mail is to be distributed.

1. For destination delivery unit (DDU) distribution, use the facility name and ZIP Code found in the Drop Shipment Address File available at the USPS FAST Web site at <https://fast.usps.com> (click Resources in the left-hand navigation bar, then "Go" for "Drop Ship Product File Download").

2. For SCF distribution, use the destination in L005, Column B.

3. For ADC distribution, use the destination in L004, Column B (Priority Mail Open and Distribute Only).

4. For NDC distribution, use the destination in L601, Column B.

5. For ASF distribution, use L602, Column B (Priority Mail Open and Distribute Only).

b. For Line 2 (content line), print "EXPRESS MAIL OPEN AND DIST" or "PRIORITY MAIL OPEN AND DIST," as applicable.

c. For Line 3 (origin line), show the city and state of the entry Post Office or the mailer's name and the city and state of the mailer's location. It is recommended that the mailer's name also appear with the city and state of the entry Post Office. See 708.6.2.5 for additional standards.

[Revise the tag numbers in the heading of 16.5.3 as follows:]

16.5.3 Tags 257 and 267—Express Mail Open and Distribute

[Revise the text in 16.5.3 as follows:]

Tag 257 and Tag 267 provide a place to affix Express Mail postage and the address label for the destination facility. Tag 257 or Tag 267 must be attached to each Express Mail sack, in addition to the Express Mail sack label, to identify it as an Express Mail Open and Distribute shipment as follows:

a. Attach Tag 267 to sacks used as Express Mail Open and Distribute containers destined to a NDC or SCF facility.

b. Attach Tag 257 to sacks used as Express Mail Open and Distribute containers destined to a DDU. Label

257S may be affixed to containers used for Express Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

16.5.4 Tags 161 and 190—Priority Mail Open and Distribute

* * * Tag 161 or Tag 190 must be attached to each Priority Mail sack, in addition to the Priority Mail sack label, or container to identify it as a Priority Mail Open and Distribute shipment as follows:

* * * * *

[Revise the last sentence in item 16.5.4b as follows:]

b. * * * Label 190S may be affixed to containers used for Priority Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

* * * * *

16.5.6 Address Labels

[Revise the first sentence in 16.5.6 as follows:]

In addition to Tag 257, Tag 267, Tag 161, or Tag 190, USPS-provided containers and envelopes and mailer-supplied containers used for Express Mail Open and Distribute or Priority Mail Open and Distribute must bear an address label that states "OPEN AND DISTRIBUTE AT:" followed by the facility name. * * *

16.5.7 Address Label Service Barcode Requirement

[Revise the introductory text of 16.5.7 as follows:]

An electronic service barcode using the USS 128, USS 39, or Intelligent Mail package barcode (IMpb) (eVS approved mailers) symbology for Express Mail Open and Distribute, and the concatenated GS1-128 or IMpb symbology for Priority Mail Open and Distribute, must be incorporated in the address label. Mailers must prepare address labels using the formats in 16.5.8 through 16.5.12. The labels must include either a service type code "723" with an IMpb or "DB" prefix with a USS 128 or USS 39 barcode for Express Mail Open and Distribute or service type code "55" with a concatenated GS1-128 barcode or "123" with an IMpb for Priority Mail Open and Distribute, to identify the service. The human-readable text "USPS SCAN ON ARRIVAL" must appear above the barcode. USPS certification is required from the National Customer Support Center (NCSC) for each printer used to print barcoded open and distribute address labels, except for barcodes created using USPS Shipping Assistant. NCSC contact information, formatting

specifications for barcodes and electronic files, and certification, are included in Publication 91, *Confirmation Services Technical Guide*. Mailers can use the following options available to create a label with a service barcode for Express Mail Open and Distribute and Priority Mail Open and Distribute address labels:

* * * * *

16.5.9 SCF Address Labels

* * * * *

Exhibit 16.5.9 SCF Address Label

[Replace Exhibit 16.5.9 with an Express Mail Open and Distribute SCF label.]

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16.5.11 NDC Address Labels

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Exhibit 16.5.11 NDC Address Label

[Replace Exhibit 16.5.11 with an Express Mail Open and Distribute NDC label.]

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16.6 Enter and Deposit

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16.6.2 Entry

[Revise the first sentence of 16.6.2 as follows:]

A PS Form 3152, *Confirmation Services Certification*, (Priority Mail Open and Distribute) or PS Form 3152-E (Express Mail Open and Distribute) must accompany each Open and Distribute shipment. * * *

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010-29801 Filed 11-24-10; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2009-0656; FRL-9230-3]

Approval and Promulgation of Implementation Plans; New Mexico; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Mexico

for the purpose of addressing the “good neighbor” provisions of the Clean Air Act (Act or CAA) section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standards) and the 1997 PM_{2.5} NAAQS. This SIP revision addresses the requirement that New Mexico’s SIP has adequate provisions to prohibit air emissions from adversely affecting another state’s air quality through interstate transport. In this action, EPA is approving the New Mexico Interstate Transport SIP provisions that address the requirement of CAA section 110(a)(2)(D)(i)(I) that emissions from New Mexico sources do not interfere with maintenance 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 submission 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 CAA to prevent “significant deterioration of air quality.” For purposes of the 8-hour ozone NAAQS, EPA is also approving a SIP revision that modifies New Mexico’s Prevention of Significant Deterioration (PSD) SIP for the 1997 8-hour ozone NAAQS to include nitrogen oxides (NO_x) as an ozone precursor. This action is being taken under section 110 and part C of the Act.

DATES: This final rule will be effective December 27, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2009–0656. All documents in the docket are listed at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (FOIA) Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at

214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6717; fax number (214) 665–7263; e-mail address shahin.emad@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

Outline

- I. What action is EPA taking?
- II. What is the background for this action?
- III. What comments did EPA receive and how has EPA responded to them?
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. What action is EPA taking?

We are approving a submission from the State of New Mexico demonstrating that New Mexico has adequately addressed two of the required elements of the CAA section 110(a)(2)(D)(i), the element that prohibits air pollutant emissions from sources within a state from interfering with the maintenance of the relevant NAAQS in any other state, and the element that prohibits those pollutants 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.

We have determined that emissions from sources in New Mexico do not interfere with the maintenance of the 1997 8-hour ozone NAAQS or the 1997 PM_{2.5} NAAQS or with measures required to prevent significant deterioration of air quality with regards to these ozone or PM_{2.5} NAAQS in any other state. Because we have determined that emissions from New Mexico sources do not interfere with maintenance of these NAAQS, or interfere with measures required to prevent significant deterioration of air quality in any other state, sections 110(a)(2)(D)(i)(I) and (II) do not require any substantive changes to New Mexico’s SIP for these purposes. EPA published a prior final rule (75 FR 33174) on June 11, 2010 approving the New Mexico SIP submission for the “significant contribution to nonattainment” prong of section

110(a)(2)(D)(i). The remaining element of section 110(a)(2)(D)(i), which pertains to interference with measures required to protect visibility in any other state, will be addressed in a future rulemaking.

In conjunction with our finding that emissions from sources in New Mexico are not interfering with any other state’s PSD program, we are also approving New Mexico’s submitted rule revisions to regulate NO_x emissions as a precursor to ozone in its PSD permit program. EPA intends to act on the other revisions submitted together with the PSD program revisions at a later time.

II. What is the background for this action?

On July 18, 1997, EPA promulgated new NAAQS for 8-hour ozone and fine particulate matter (PM_{2.5}). This action is being taken in response to the 1997 8-hour ozone NAAQS and PM_{2.5} NAAQS. This action does not address the requirements for the 2006 PM_{2.5} NAAQS or the 2008 8-hour ozone NAAQS; those standards will be addressed in later actions.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its “Guidance for State Implementation Plan (SIP) Submission 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” (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and 1997 PM_{2.5} NAAQS. As identified in the 2006 Guidance, the “good neighbor” provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air

quality in other states; or (4) interfere with efforts to protect visibility in other states.

On September 17, 2007, EPA received a SIP revision from the State of New Mexico intended to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone standards and the 1997 PM_{2.5} standards. On June 11, 2010, EPA found that emissions from New Mexico do not contribute significantly to nonattainment of the NAAQS in other states (75 FR 33174). In this rulemaking, EPA is addressing the requirements that pertain to preventing sources in New Mexico from emitting pollutants that will interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS in other states, or that will interfere with measures required to prevent significant deterioration of air quality in other states with respect to these NAAQS. In its submission, the State of New Mexico demonstrated that its current SIP is adequate to prevent such interference, and thus argued that no additional emissions controls are necessary at this time to alleviate interstate transport for the 1997 8-hour ozone NAAQS or the 1997 PM_{2.5} NAAQS. With the submission, the State meets the second and third elements of section 110(a)(2)(D)(i). On August 27, 2010, we published a proposed rule to approve the portion of New Mexico's SIP submission that addressed the two elements that pertain to prohibiting air pollutant emissions from within New Mexico from interfering with maintenance of the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS or with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality in any other state (75 FR 52692). We simultaneously proposed to approve New Mexico's September 21, 2009 submittal that adds NO_x as an ozone precursor in its PSD rules. For EPA's full analysis on the approvability of these SIP submittals, please see that proposal. EPA received adverse comments regarding the "interfere with maintenance" element during the comment period, and accordingly EPA is responding to those comments in today's final action.

III. What comments did EPA receive and how has EPA responded to them?

EPA received one comment letter on the August 27, 2010 proposed rule. The letter can be found on the internet in the electronic docket for this action. To access the letters, please go to <http://www.regulations.gov> and search for Docket No. EPA-R06-OAR-2007-0993,

or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph above. The discussion below addresses those comments and our response.

Comments from WildEarth Guardians.

Comment No. 1—The commenter stated that EPA inappropriately defined the term "interfere with maintenance." It argued that EPA's definition appeared to be "inappropriately conflated with the definition of nonattainment." It argued that the definition of maintenance appeared to be tied to nonattainment, asserting that "unless an area has violated or is in violation of the NAAQS, the agency will not consider whether New Mexico is interfering with that area's ability to maintain compliance with the NAAQS." For this reason, it argued EPA did not give independent meaning to the "interfere with maintenance" prong of section 110(a)(2)(D)(i)(I).

EPA Response: The definition of maintenance used by EPA is consistent with the direction given to EPA by the Court of Appeals for the DC Circuit in *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008).¹ In that case, the court analyzed the definition of "interfere with maintenance" used in the Clean Air Interstate Rule (CAIR). The court found that the definition EPA used "gave no independent significance to the 'interfere with maintenance' prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance." *Id.* at 910. It further reasoned that "[u]nder EPA's reading of the statute, a state can never 'interfere with maintenance'" unless EPA determines that at one point it "contribute[d] significantly to nonattainment." *Id.* at 910. Based on this analysis, the court found the definition unlawful holding that "[b]ecause EPA describes CAIR as a complete remedy to a section 110(a)(2)(D)(i)(I) violation and does not give independent significance to the 'interfere with maintenance' language to identify upwind states that interfere with downwind maintenance, EPA unlawfully nullifies that aspect of the statute and provides no protection for downwind areas that, despite EPA's predictions, still find themselves struggling to meet NAAQS due to

upwind interference in 2010." *Id.* at 910–911.

The approach used by EPA to evaluate New Mexico's SIP submission and to determine whether emissions from sources in New Mexico interfere with maintenance in any other state directly addresses these flaws. It gives significant independent meaning to the term "interfere with maintenance." It establishes a process to identify any specific receptors in downwind states that, even though they are projected to be in attainment and thus would not be nonattainment receptors, may have difficulty maintaining the NAAQS in question. These receptors are referred to as maintenance receptors.

The methodology EPA used to identify maintenance receptors gives independent meaning to the term "interfere with maintenance" and establishes a process to identify projected attainment receptors that, based on the historic variability of air quality at that site (which may be due to variability in emissions and/or meteorology), may have difficulty maintaining the standard. As explained in greater detail below, the commenter's objection to EPA's approach appears to be based on the misconception that the methodology EPA used to identify maintenance sites was dependent on base year NAAQS violations.

The commenter's statement that EPA's designation of maintenance receptors is "firmly hitched to a finding that the maximum design value based on a single three-year period between 2003 and 2007 is in excess of the NAAQS" appears to be based on a misunderstanding of the methodology used by EPA to identify maintenance receptors. EPA's methodology did not, as the commenter appears to assume, require a site to have a design value above the NAAQS for one of the three base periods (2003–2005, 2004–2006, 2005–2007) to be considered a maintenance site. The methodology is based on an analysis of the future year average and future year maximum design values. It does not depend on whether the base year design values exceed the NAAQS. In the proposal, EPA explained that "EPA identified those sites that are projected to be attainment based on the 5-year weighted average design value, but that have a maximum design value (based on a single three-year period) that exceeds the NAAQS, as maintenance sites." (75 FR 52697). The maximum design value referenced in this sentence is the maximum *future* design value calculated using each of the three base design value periods separately. Whether or not one of the three base

¹ As EPA noted in the proposal, the term "interfere with maintenance" is not defined in the CAA. As such, the term is ambiguous and EPA's interpretation of that term in this action is both reasonable and consistent with the overall goals of the CAA. By this approach, EPA is giving independent meaning to the term and supporting that interpretation with technical analysis to apply it to the facts of this action.

period design values exceeded the NAAQS was not a factor considered in determining whether a site was a maintenance receptor.

To better understand this concept, it is useful to compare the methodologies used in the Transport Rule (TR) proposal (75 FR 45210 (August 2, 2010)) to identify nonattainment and maintenance receptors. In the TR proposal, base period (2003–2007) ambient data were projected to the future (using model outputs), to identify both nonattainment and maintenance receptors. In both cases, receptors were identified by projected future design values; however, because more conservative data were used for the maintenance analysis, this analysis could identify receptors that were projected by the nonattainment analysis to be in attainment, yet might have difficulty attaining the standard due to historic variability of air quality at that site. To identify future nonattainment sites EPA calculated the future year design values by projecting the 5-year weighted average design value for each site. Only if this future year design value exceeded the NAAQS was the site considered to be a nonattainment receptor. However, to identify projected maintenance sites EPA used a different methodology that took into account historic variability in air quality at each receptor. For this approach EPA calculated the maximum future year design value by processing each of the three base design value periods (2003–2005, 2004–2006, and 2005–2007) separately. The highest of the three future values is the maximum design value, which is used to determine maintenance receptors.

In this way, EPA's analysis identifies those areas that are projected to be in attainment, but may have difficulty maintaining attainment of the standard, for example in a year with particularly severe meteorology (weather that is conducive to ozone and/or particulate formation). In other words, this analysis does exactly what the DC Circuit directed EPA to do in *North Carolina*, 531 F.3d 896. It gave independent meaning to the "interfere with maintenance" prong of 110(a)(2)(D) and is providing protection to any areas that, although they are predicted to attain the standard (and thus upwind sources could not be found to significantly contribute to nonattainment in that area) may have difficulty maintaining the standard. *Id.* at 911.

EPA used this same approach to identify any potential maintenance receptors for purposes of evaluating New Mexico's SIP submission. For the reasons explained above, this approach

is both reasonable and consistent with the direction given to EPA by the DC Circuit in *North Carolina*, 531 F.3d 896.

Comment No. 2—The commenter cited a variety of information suggesting that receptors in the Denver/North Front Range (Denver/NFR) area should also be considered for maintenance purposes under 110(a)(2)(D)(i) in this action. The commenter points out that as EPA itself has stated that "Data for 2005–2007 and 2006–2008 reflect violations of the 8-hour ozone NAAQS at the Rocky Flats North monitor (values of {0.085} and 0.086 ppm, respectively)." The commenter also argued that modeling prepared in conjunction with Colorado's Denver/NFR attainment demonstration shows that by 2010, the three-year design value is only projected to be lowered to 0.084 parts per million, barely in compliance with the NAAQS, and that certain portions of the Denver/NFR area of Colorado would violate the 1997 ozone NAAQS in 2010 at grid cells west of Fort Collins. The commenter referenced several documents that are part of the Colorado's Denver/NFR 8-hour Ozone Attainment Demonstration in support of its arguments. The commenter cited the report's language that indicated that the modeling projection of a value above the 1997 8-hour standard to the west of Fort Collins is not "implausible" explaining, "In the case of the Denver ozone modeling, higher ozone concentrations are estimated west of Fort Collins than at the locations of the two monitors in Fort Collins on some days and this does not appear to be an error in the modeling system".²

The commenter argued that EPA's failure to consider the Denver/NFR area as a receptor for evaluating interference with maintenance in this action reflects the very problem that the DC Circuit warned could result without giving independent meaning to the term "interfere with maintenance." The commenter asserted that EPA's own modeling (CENRAP modeling with 2002 emission inventory) indicated that sources in New Mexico contribute more than 2 parts per billion (up to 5% of Denver/NFR area's total concentrations) of ozone on days when exceedances of the 1997 8-hour standard are projected in Denver/NFR.³ The commenter stated

² Commenter referenced the Colorado Department of Public Health and Environment's "2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan Control Strategy" and the Environ modeling report "Final 2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan."

³ EPA Source Apportionment Modeling using a version of the CENRAP modeling database with a 2002 Emission Inventory.

that EPA has rejected this modeling information because it used outdated emission data without any indication that it is invalid or fails to indicate that sources within New Mexico may interfere with maintenance in Colorado.⁴

EPA's Response—EPA disagrees with the commenter's argument that EPA has inappropriately identified the correct monitors for maintenance receptors. As discussed in greater detail in the previous response to comment, EPA has selected a method that identifies maintenance receptors separately from nonattainment receptors and gives an independent meaning to the interfere with maintenance prong of section 110(a)(2)(D)(i). EPA has consistently applied this method to all potential receptors in States potentially impacted by New Mexico's emissions including those in the Denver/NFR area.

The commenter's argument EPA did not consistently identify maintenance receptors is premised on the same fundamental misunderstanding discussed in response to comment #1—that EPA's identification of nonattainment receptors was based on current or past NAAQS violations. As explained above, this is not correct. EPA did not base its identification of maintenance receptors on an analysis of whether air quality at those receptors exceeded the NAAQS in the base years. The methodology EPA used to identify maintenance areas takes into account historic variability of emissions at specific monitoring sites to analyze whether or not monitoring sites projected to be in attainment in 2012 will nonetheless remain at risk of slipping into nonattainment in that year. The commenter provided a number of modeling or monitoring analyses for 2010 or earlier. As we have addressed in responses elsewhere in this notice, EPA continues to believe 2012 is the appropriate year for this analysis. Thus, modeling or monitoring data for other years is not directly relevant to this rulemaking. Nonetheless, below we address the commenter's specific assertions about the modeling.

The commenter asserts that monitoring data for 2005–07 and 2006–08 for the Rocky Flats North monitor reflect violations of the 8-hour NAAQS and therefore EPA should consider this Rocky Flats North monitor as a "maintenance receptor." The commenter further cites modeling prepared in conjunction with Colorado's Denver/NFR attainment demonstration to support its assertion that EPA has

⁴ Commenter referenced 75 FR pages 33182–33183.

applied inconsistently its definition of interference with maintenance. The modeling data referenced by the commenter, however, only identifies monitors that, in the commenter's view, are at risk of being in nonattainment or having maintenance problems in 2010. The monitoring data cited indicates high ozone levels in the past. The underlying issue raised is thus substantively the same as that raised in comment no. 3 below which argues that EPA's analysis is faulty because it identifies receptors likely to have difficulty maintaining the standard in 2012 and not at the present or in the past. EPA's response to comment no. 3 below, illustrates how its approach, based on modeling analyses that identify receptors at risk for maintenance in the year 2012, is appropriate and consistent with the DC Circuit decision in *North Carolina v. EPA*.

EPA's method is based on model projection values that take into account multi-year variability in ozone data at specific monitors. For identification of maintenance receptors, EPA utilized the monitoring data from the 2003–2007 period to calculate 2012 future year modeling design value projections. The 2003–07 period includes three Design Value (DV) periods (2003–2005, 2004–2006, and 2005–2007). The 2012 future year DVs were calculated by multiplying a 3-year DV (base year) by the ratio of the Future Year average of the daily 8-hour ozone maximums around a monitor over the Base Year average of the daily 8-hour ozone maximums around a monitor. This calculation was performed for each of the three 3-year DVs (2003–2005, 2004–2006, and 2005–2007). This approach yielded three different projected 2012 design values and thus, tests for variability in meteorology. If any of the three 2012 projections was above the 1997 ozone standard, then the receptor would be considered a maintenance receptor. None of the 2012 projections for the Denver/NFR area was above the standard so the area was not considered a maintenance area. This approach was the same as the approach used for every potential receptor evaluated. It is worth noting that EPA's analysis included the 2005–2007 data for the Rocky Flats monitor (which is one of the highest monitored DVs in recent years for this monitor) that the commenter raised as a concern and pursuant to its methodology as previously described EPA's analysis determined that the Rocky Flats monitor would not be a maintenance receptor in 2012.

Further, EPA disagrees with commenter's conclusion that the

modeling performed for the Denver/NFR attainment demonstration with the 2010 model projections establishes that any of the areas identified will have maintenance problems for the 1997 8-hour ozone NAAQS. We disagree with the commenter's conclusion that the Denver/NFR area monitors should be identified as "maintenance receptors" in large part because he bases his conclusion on projections for 2010 instead of 2012. This modeling used projections for 2010 not 2012, which as explained above and in response to comment no. 3 below is not the correct year for comparison, given the approach EPA has developed for determining maintenance receptors. EPA's analysis of maintenance receptors, which is based on the approach developed in the Transport Rule Proposal to be consistent with the DC Circuit's opinion in *North Carolina v. EPA* and uses projections for 2012, did not identify any maintenance receptors in the Denver/NFR area. This conclusion is consistent with evidence suggesting emissions are likely to trend downward (for example, with two more years of fleet turnover, this modeling would likely have projected lower levels of ozone in 2012) and preliminary monitoring data for 2010, which indicates that the Denver/NFR area is meeting the 1997 ozone standard. Further, EPA has reviewed Colorado's attainment demonstration for the Denver/NFR area and proposed that the combination of the modeling and Weight of Evidence analyses demonstrates that Denver will be in attainment in 2010.^{5,6}

In addition, the commenter's concern that an area west of Fort Collins might exceed 84 ppb in 2010 is based on exceedance values in the Colorado modeling analysis from a special analysis, called the Unmonitored Area Analysis (UAA), that is recommended for model grid cells that are not analyzed in the monitor based attainment demonstration because they are not located near a monitor. EPA does not believe that the UAA establishes that this area should be considered a maintenance receptor area for the purposes of 110(a)(2)(D)(i).

First, the UAA analysis is for 2010, which as noted above is not the correct analysis year. Second, EPA guidance

indicates that NAAQS violations in the UAA should be handled on a case by case basis.⁷ The guidance stresses that due to the lack of measured data, the examination of ozone concentrations as part of the unmonitored area analysis is more uncertain than the monitor based attainment test. This is true even in situations such as this where, as the commenter points out; no known errors were identified by the contractor in the modeling analysis. As a result, the UAA results are recommended to be treated as a separate test from the monitor based attainment test with less weight put on the conclusions of the UAA analysis. EPA's attainment demonstration guidance indicates "While it is expected that States will implement additional emission controls to eliminate predicted violations of the monitor based test, the same requirements may not be appropriate in unmonitored areas."⁸ The guidance recommends that it may be appropriate to deploy additional monitors in an area where the unmonitored analysis indicates a potential future year violation.

To address the concerns raised by the UAA, Colorado installed an additional ozone monitor in the area West of Fort Collins to determine whether the model predicted ozone concentrations are, in fact, valid. The special purpose monitor, located in Rist Canyon, began operation on May 14, 2009. The Rist Canyon monitoring station has collected data for two ozone seasons (approximately 16 months) since it began operating and the fourth highest daily maximum 8-hour average ozone concentration reading is 69 ppb for May through December of 2009 and 72 ppb for January through August 2010.⁹

Therefore, EPA does not believe the modeling performed for the State of Colorado's Denver/NFR area SIP can support the conclusion that this area should be considered a maintenance receptor area for the purposes of 110(a)(2)(D)(i). The methodology developed to identify maintenance receptors for the purpose of analyzing interference with maintenance with respect to the 1997 ozone and PM_{2.5} NAAQS relies on base period monitoring data to identify monitor

⁷ Id.

⁸ Id., page 32.

⁵ EPA's "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze," EPA-454/B-07-002, April 2007.

⁶ 75 *Federal Register* 40 CFR part 52 [EPA-R08-OAR-2010-0285; FRL-9177-2], Proposed Rule, "Approval and Promulgation of Air Quality Implementation Plans; Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions"; pages 42346–42361.

⁹ The Rist Canyon monitoring station uses a Federal Equivalent Method (FEM) and follows the quality assurance requirements of 40 CFR part 58 Appendix A. Ozone data collected at this monitoring station is eligible for comparison to the ozone NAAQS after the monitor has operated for more than 24 months per 40 CFR 58.30(c). Design values, however, are based on the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (see 40 CFR part 50, Appendix D).

locations that are projected to have maintenance problems in 2012. The methodology does not identify receptors based on modeling data alone. While the monitor has not operated long enough to account for variability in ozone levels, the newly installed monitor in the relevant area is reading well below the standard and this fact further confirms that the modeling results and the UAA results do not support the conclusion that receptors in the Denver/NFR area should be considered maintenance receptors for the purpose of CAA section 110(2)(D)(i).

EPA also disagrees with the commenter's comments that the 2002 CENRAP based modeling that evaluated New Mexico's impacts demonstrates a maintenance problem since the analysis was based on emission and meteorological conditions in 2002, not the analysis year of 2012. The CENRAP modeling used a 2002 emission inventory which is likely to project higher ozone levels and is therefore very conservative compared to modeling projections with a 2012 emission inventory analysis. The CENRAP modeling was performed to provide a conservative test using source apportionment modeling with a readily available modeling system (since construction of a complete modeling system from scratch requires significantly more time and resources) to determine whether further analysis was warranted to determine if emissions from sources in New Mexico (and other states) could potentially interfere with maintenance in downwind nonattainment areas. The sole purpose of the modeling was to provide a very conservative technical analysis that would provide a basis for determining that an area did not have a significant impact upon the Denver/NFR area. Therefore, the CENRAP modeling cannot serve to provide a basis for determining that an area has an impact on other areas in 2012. It also cannot be relied upon to provide a basis to determine which areas should be considered as maintenance for the purposes of 110(a)(2)(D)(i).

In conclusion, EPA disagrees with the commenter. We have used a fully consistent approach in identifying areas that may have difficulty in maintaining attainment of the NAAQS. It is these areas that we have further evaluated to see if New Mexico's emissions would interfere with maintenance of the NAAQS.

Comment No. 3—The commenter also argued that EPA's analysis ignores whether emissions from New Mexico sources are at present interfering with maintenance in other States. The

commenter argued that EPA erred by considering only whether New Mexico emissions will interfere with maintenance of the NAAQS in 2012 at monitors that would then be considered "maintenance receptors." It argues that this approach is inconsistent with the approach taken to determine whether New Mexico significantly contributes to nonattainment in other States (citing 75 FR 33174–33190). The commenter agreed that "EPA should ensure that New Mexico does not interfere with maintenance or contribute significantly to nonattainment in other states in the future," but argued that "the agency's duties under Section 110(a)(2)(D)(i)(I) apply both in the present and the future." In short, the commenter argued that EPA's approach is flawed simply because EPA evaluated whether or not there is significant contribution to nonattainment in other states looking at current data, whereas EPA evaluated whether there is interference with maintenance looking at future projected data.

EPA Response: EPA disagrees with the commenter concerning the evaluation of significant contribution versus interference with maintenance. Section 110(a)(2)(D)(I)(i) of the Clean Air Act requires states to submit SIPs within 3 years of promulgation or revision of a NAAQS that:

- (D) Contain adequate provisions—
 - (i) Prohibiting * * * any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will—
 - (I) Contribute significantly to nonattainment or, interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or
 - (II) Interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility.

In determining the appropriate year to analyze in determining whether emissions from New Mexico will interfere with maintenance by any other State, EPA used an approach upheld by the DC Circuit in *North Carolina v. EPA*. In that case, the Court examined EPA's definition of "will" in "will contribute significantly." The placement of the word "will" at the end of section 110(a)(2)(D)(i) clarifies that it applies to all of the provisions that follow—both those in 110(a)(2)(D)(i)(I) and those in 110(a)(2)(D)(i)(II). Thus the DC Circuit's discussion of the meaning of the word "will" in "will significantly contribute" also applies to the meaning of the word

"will" in "will * * * interfere with maintenance."

In *North Carolina v. EPA*, the DC Circuit rejected North Carolina's argument that EPA erred in limiting its analysis of downwind areas by excluding areas that were currently monitored nonattainment but projected to be in attainment at a future date. Like the commenter argues here, North Carolina had argued that EPA was obligated to analyze the significant contribution of states that were contributing to areas of North Carolina that were in nonattainment at the time the rule was promulgated, even though those areas were projected to come into attainment by the year selected for the future base case analysis. In rejecting this argument, the DC Circuit explained that the approach used by EPA was identical to the one used previously in the NOx SIP Call and that "because 'will' can mean either certainty or indicate the future tense," EPA's approach was reasonable. In other words, the court approved EPA's approach that entailed the evaluation of interstate transport impacts at a future date in time.

Contrary to the assertions of the commenter, EPA believes that evaluation of interference with maintenance using a future date is the most appropriate approach for that requirement. As explained in the proposed action, the court decision affecting the CAIR rule required EPA to reevaluate its approach to the interfere with maintenance requirement of section 110(a)(2)(D) and to develop a new approach to give that requirement separate meaning. In doing so, EPA has developed an approach that necessarily requires a number of years of data, and an analysis that evaluates where there may be difficulties with maintaining attainment at a specific point in time, in this instance 2012. EPA's prior evaluation of whether emissions from New Mexico were significantly contributing to nonattainment in other states was based on the data available at the time of that evaluation and before EPA had developed its approach for evaluating interference with maintenance. It is reasonable and appropriate for EPA to use, in this rulemaking, the current approach to identifying maintenance receptors for purposes of section 110(a)(2)(D) that EPA developed to be consistent with the direction given to EPA in *North Carolina v. EPA*.

Finally, we note that comments on the validity or reasonableness of EPA's approach to determining significant contribution in the prior action are not directly relevant to this rulemaking.

This rulemaking addresses only the “interfere with maintenance” and PSD prongs of section 110(a)(2)(D)(i).

IV. Final Action

We are approving two elements of the Interstate Transport SIP submitted by the State of New Mexico on September 17, 2007. Specifically, in this action we are approving the New Mexico Interstate Transport SIP provision that address the requirement of Section 110(a)(2)(D)(i)(I) that emissions from sources in New Mexico do not interfere with maintenance of the 1997 8-hour ozone or 1997 PM_{2.5} NAAQS in any other state, and the provision that addresses the requirement of Section 110(a)(2)(D)(i)(II) that emissions from New Mexico’s sources do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent “significant deterioration of air quality.” For purposes of the 1997 8-hour ozone NAAQS, EPA also is approving a SIP revision adopted by NMED on August 31, 2009, that modifies New Mexico’s PSD SIP for the 1997 8-hour ozone NAAQS to include nitrogen oxides as an ozone precursor.

After fully considering all comments received on the proposed rule, we have concluded that the State’s submission, and additional evidence evaluated by EPA, establishes that emissions from New Mexico sources do not interfere with the maintenance of the ozone and PM_{2.5} NAAQS of 1997 in any other states or with measures required by SIPs of other states to prevent significant deterioration of air quality. Accordingly, New Mexico does not need to include additional emission limitations on its sources to eliminate any such contribution to other states for purposes of these NAAQS.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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, 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 January 25, 2011. 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 oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 10, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 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 GG—New Mexico

■ 2. Section 52.1620 is amended:

■ a. In paragraph (c) by revising the entry for Part 74 under “New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality”.

■ b. In paragraph (e) revising the entry in the second table for “Interstate transport for the 1997 ozone and PM_{2.5} NAAQS” and adding a new entry immediately after it.

The amendments read as follows:

§ 52.1620 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Part 74	Permits—Prevention of Significant Deterioration.	8/31/2009	11/26/2010 [Insert citation of publication].	

(e) * * *

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

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/effective date	EPA approval date	Explanation
Interstate transport for the 1997 ozone and PM _{2.5} NAAQS.	New Mexico	9/17/2007	6/10/2010	Revisions to prohibit significant contribution to nonattainment in any other state. Approval for revisions to prohibit interference with maintenance and PSD measures in any other state.
Interstate transport for the 1997 ozone and PM _{2.5} NAAQS.	New Mexico	9/17/2007	11/26/2010 [Insert citation of publication].	Revisions to prohibit interference with maintenance and PSD measures in any other state.

[FR Doc. 2010-29397 Filed 11-24-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2007-0314; FRL-9230-2]

Approval and Promulgation of Implementation Plans; Oklahoma; State Implementation Plan Revisions for Interstate Transport of Pollution, Prevention of Significant Deterioration, Nonattainment New Source Review, Source Registration and Emissions Reporting and Rules of Practice and Procedure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving part of a State Implementation Plan (SIP) revision submitted by the State of Oklahoma that demonstrates that adequate provisions are in place to prohibit Oklahoma air emissions from interfering with Prevention of Significant Deterioration (PSD) measures required in the SIP of any other state for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) and the 1997 fine particulate matter (PM_{2.5}) NAAQS. Specifically,

EPA is approving the Oklahoma Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from sources in Oklahoma do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent “significant deterioration of air quality.” EPA is also approving portions of revisions to the Oklahoma SIP submitted on February 14, 2002, and June 24, 2010. The February 14, 2002, revisions we are approving relate to PSD and Nonattainment New Source Review (NNSR) for major sources, source registration and emissions reporting and other rules of practice and procedure (except for revisions relating to minor sources). The June 24, 2010, revisions we are approving include nitrogen oxides (NO_x) as an ozone precursor in Oklahoma’s PSD SIP for purposes of the 1997 8-hour ozone NAAQS. This action is being taken under section 110 and parts C and D of the Clean Air Act (CAA).

DATES: This final rule is effective on December 27, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R06-OAR-2007-0314. All documents in the docket are listed at www.regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information

or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (FOIA) Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6645; fax number (214) 665-