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.

(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 *Colorado* mean the State of Colorado, unless the context indicates otherwise.

Table of Contents

I. Background

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. On March 31, 2010, EPA published a notice of proposed rulemaking (NPR) proposing partial approval of the State Implementation Plan (SIP) revision "State of Colorado Implementation Plan to Meet the Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I)—Interstate Transport Regarding the 1997 8-Hour Ozone Standard," submitted by the State on June 18, 2009. As indicated by the title, this SIP addresses the first two of the four requirements listed above-i.e., (1), "significant contribution," and (2), "interference with maintenance." EPA's proposed rule action reviewed and proposed approval of the Colorado SIP's section addressing only the "significant contribution" requirement. EPA will act at a later date on the Colorado Interstate Transport SIP section that addresses the "interference with maintenance" requirement.

To assess whether emissions from Colorado 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,[1] 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 Colorado not just to areas designated nonattainment, but also to areas in violation of the NAAQS. Because EPA did not have detailed modeling for Colorado and nearby downwind states, our approach did not rely on a quantitative determination of Colorado's contribution but on a weight-of-evidence approach using quantitative information such as Colorado'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, back trajectory analyses for the downwind nonattainment areas closest to the State, 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 Colorado emissions to the ozone nonattainment areas noted above. 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 Colorado 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) commenting on EPA's **Federal Register** action proposing approval of the portion of the Colorado Interstate Transport SIP that addresses the "significant contribution to nonattainment" requirement of CAA Section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone NAAQS. In this section EPA responds to the significant adverse comments made by the commenter.

Comment No. 1—The commenter asserted that EPA's proposed approval was based on a "flawed legal standard." According to the commenter, EPA erred in the proposal by explaining that various factual or technical assessments indicate that it is "unlikely" that emissions from Colorado sources significantly contribute to violations of the 8-hour ozone NAAQS in other states. The commenter's position was 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 the commenter's characterization of EPA's analysis and the commenter'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 Colorado 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 the commenter 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 Colorado emissions sources do not significantly contribute to violations of the 1997 8-hour ozone NAAQS in any other state, for the reasons explained elsewhere in this notice. In other words, EPA has concluded that the existing SIP for Colorado already contains adequate

[1] 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).

provisions to prevent emissions from Colorado sources from significantly contributing to violations of the 1997 8-hour ozone NAAQS in other states and is therefore approving Colorado's submission for this purpose.

Comment No. 2—The commenter argued that Colorado and EPA did not appropriately assess impacts to nonattainment in downwind states. According to the commenter, Colorado failed to assess significance of downwind impacts in accordance with EPA guidance and precedent. Although this is unclear from the comment, the commenter evidently believes that EPA's applicable guidance for this purpose appears only in the 1998 NO_X SIP call. The commenter 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 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. (63 FR 57356–57376, October 27, 1998).

EPA Response—EPA disagrees with the commenter 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 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.[2] 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 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."[3] 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."[4] To that end, EPA specifically recommended that states located within the geographic region covered by the "Clean Air Interstate Rule" (CAIR)[5] comply with section 110(a)(2)(D) for the 1997 8-hour ozone 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."[6] 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 interstate transport.

The commenter did not acknowledge or discuss EPA's actual guidance for section 110(a)(2)(D) SIP submissions for the 1997 8-hour ozone NAAQS, and thus it is unclear whether the commenter was aware of it. In any event, EPA believes that the Colorado submission and EPA's evaluation of it was consistent with EPA's guidance for the 1997 8-hour ozone NAAQS. For example, as discussed in the proposal notice, the state and EPA considered information such as monitoring data in Colorado 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 the commenter 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 Colorado submission at issue here would be that because the available evidence indicates that there is very little contribution from emissions from Colorado sources to nonattainment in other states, it is not necessary to

[2] 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.

[3] Id. at 3.

[4] Id.

[5] 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).

[6] Id. at 5.

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. 3—The commenter argued that Colorado based its claim of no significant contribution "primarily on attainment plan modeling for the Denver Metropolitan Area/North Front Range (DMA/NFR) nonattainment area" and noted that EPA itself "does not accept" that modeling for purposes of assessing impacts on nonattainment in downwind States.

EPA Response—EPA disagrees with the commenter's characterization of the state's submission and of EPA's evaluation of it. This comment reflects an incomplete reading of EPA's evaluation of how the results of Colorado's modeling analysis for the DMA/NFR relate to an assessment of whether emissions from Colorado sources contribute significantly to downwind nonattainment of the 1997 8-hour ozone NAAQS in other states.

It is correct that the State relied upon this information in its submission to EPA. It is correct that EPA did not agree with Colorado's view that the modeling analysis results for the DMA/NFR attainment plan, in and of themselves, prove that there could be no significant contribution from Colorado sources to downwind ozone nonattainment in other states. EPA explicitly disagreed with the state's belief that: "* * * these results [of the DMA/NFR modeling analysis] demonstrate that the magnitude of ozone transport from Colorado to other States is too low to significantly contribute to nonattainment. * * *."

Nevertheless, EPA did agree that these modeling results were a relevant piece of information that could be useful when considered in conjunction with other information. EPA stated that these modeling results do support the conclusion that there is not significant transport of ozone from Colorado to other states with violations of the NAAQS: "* * * [h]owever, as a reflection of emission levels, the relatively (to the 1997 8-hour ozone NAAQS) moderate concentrations in eastern Colorado * * * somewhat reduce the probability of significant contribution from Colorado emission sources to considerably farther downwind nonattainment areas such as St. Louis, Missouri, and Chicago, Illinois." (See 75 FR 16034–35). The commenter suggests that EPA approved the State's submission based wholly upon technical support that EPA itself rejected and this is incorrect.

Comment No. 4—The commenter reiterated its concern that the Colorado section 110(a)(2)(D) submission was deficient because it did not strictly follow the commenter'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 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.

EPA Response—EPA disagrees with the commenter'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 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 Colorado, augmented by EPA's own analysis, sufficiently establishes that Colorado sources do not significantly contribute to violations of the 1997 8-hour ozone 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. 5—The commenter asserted that Colorado and EPA provided "no analysis" of the contribution from Colorado to downwind states and no "actual assessment" of the significance of any such contribution.

EPA Response—EPA disagrees with the commenter's position. The commenter again assumes that section 110(a)(2)(D) explicitly requires the type of modeling analysis that the commenter advocates throughout its comments. Because the commenter apparently views the NO_X SIP Call as the applicable guidance, the commenter contends that any analytical approach that is not identical to that approach is impermissible. In addition, the commenter 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 Colorado sources to downwind nonattainment of the 1997 8-hour ozone NAAQS. As stated in the proposal:

> "EPA's evaluation of whether emissions from Colorado contribute significantly to ozone nonattainment in these areas [St. Louis and Chicago] relies on an examination of a variety of data and analysis that provide insight on ozone transport from Colorado to these two areas. Because EPA does not have detailed modeling for Colorado and nearby downwind states, our approach does not rely on a quantitative determination of Colorado'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 all of these factors provides a reliable qualitative conclusion on whether Colorado's emissions are likely to contribute significantly to nonattainment in the St. Louis and the Illinois/Wisconsin areas."

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 Colorado sources do not significantly contribute to downwind nonattainment of the 1997 8-hour ozone NAAQS in other states. Thus, contrary to the commenter's assertion, EPA did perform an "analysis" and an "assessment" that was a reasonable basis for its conclusion that emissions from Colorado 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 the commenter could adequately evaluate the issue and support a rational determination in this instance.

Comment No. 6—The commenter objected to EPA's proposed approval because Colorado assessed impacts in downwind states by considering monitoring data in those states as a means of evaluating significant contribution to nonattainment. In other

words, the commenter is concerned that Colorado did not assess impacts in areas that have no monitor. The commenter likewise objected to EPA's "endorsement" of this approach. The commenter 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, the commenter 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 the commenter, 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, the commenter 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 the commenter's arguments. First, the commenter misunderstands the point that EPA was making in the 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.

The commenter's misunderstanding of EPA's statement concerning designation status evidently caused the commenter 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.[7]

Finally, EPA disagrees with the commenter'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 the commenter's position, as neither refers to any explicit mandatory or recommended approach to assess air quality in non-monitored areas.[8] 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.[9] 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, the commenter 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 NAAQS in a particular area. Put another way, in order for there to be significant contribution to nonattainment for the 1997 8-hour ozone 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 Colorado contribute significantly to ozone 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. 7—In support of its comments that EPA should assess significant contribution to nonattainment in nonmonitored areas, the commenter argued that existing modeling performed by another organization "indicates that large areas of neighboring states will be likely to violate the ozone NAAQS." According to the commenter, 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"). The commenter asserted that: "Slide 28 of this presentation displays projected 4th highest 8-hour ozone reading for 2018 and indicates that air quality in areas such as northern New Mexico, western Wyoming, southern Utah, and central Arizona will exceed and/or violate the 1997 ozone

[7] *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).

[8] 2006 Guidance, p. 5.

[9] "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.

NAAQS * * *."[10] In short, the commenter 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 of states adjacent to Colorado.

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, the commenter'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* [emphasis ours] 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 the commenter were technically sound, the conclusion drawn from it by the commenter is inaccurate and does not support its claim of projected violations of the NAAQS in large areas (monitored or unmonitored) of Colorado's neighboring States.

Finally, EPA has reviewed the WRAP presentation submitted by the commenter, 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.[11] 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 the commenter's concerns about large expanses of 8-hour ozone nonattainment areas projected for 2018 in areas without monitors.

Comment No. 8—As additional support for its assertion that EPA should require modeling to assess ambient levels in unmonitored portions of other states, the commenter relied on an additional study entitled the "Uinta Basin Air Quality Study (UBAQS)." The commenter argued that UBAQS further supports its concern that Colorado and EPA, having limited the evaluation of downwind impacts only to areas with monitors, failed 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.[12]

EPA Response—As noted above, EPA does not agree that it is appropriate to assess significant contribution to nonattainment for the 1997 8-hour ozone NAAQS in the way advocated by the commenter. Even taking the UBAQS modeling results at 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, the commenter'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 it is not specified. If it is actually predicted smaller than or equal to 84.9 ppb then the area is attaining the 1997 8-hour ozone NAAQS, if it is predicted as greater than 84.9 ppb then it is not attaining those NAAQS. Thus, the 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. EPA does not believe that this evidence adequately establishes that one or both areas definitely violate the NAAQS, even if the information were taken at face value.

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.[13] The study deviates in at least two significant ways from EPA's 2007 guidance on SIP modeling.[14] 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).[15] 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

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

[11] 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," pp. ES–3, ES–4, 3–4, 3–12, 3–30, 5–1. Prepared for the New Mexico Environment Department, Air Quality Bureau, Santa Fe, NM, by ENVIRON International Corporation, Novato, CA.

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

[13] See UBAQS, pp. 4–27 to 4–29.

[14] EPA, 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 (2007), available at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

[15] DVC × RRF = DVF.

ppb, UBAQS modeling uses RRFs based on one or more days of ozone concentrations above 70 ppb.[16] 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.

Comment No. 9—In support of its arguments that EPA should not assess significant contribution to nonattainment through evaluation of impacts at monitors instead of modeling impacts where there is no such monitor, 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 O_3 monitors, while many large mid-western and western States have one or no non-urban monitors." 74 FR 34525 (July 16, 2009). From this statement, the commenter argues that it is not appropriate for EPA to limit evaluation of significant contribution to nonattainment of the ozone NAAQS in other states relying on monitoring data instead of modeling ambient levels.

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 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, Colorado itself submits just such a report on an annual basis, and EPA reviews it for adequacy.[17] All other states submit comparable reports. Absent a specific concern that another state's current monitor network is inadequate to evaluate ambient levels of the 1997 8-hour ozone NAAQS, EPA has no reason to believe that the evaluation of possible significant contribution from Colorado sources in reliance on those monitors is incorrect.

Comment No. 10—The commenter objected to EPA's proposed approval of the Colorado SIP submission because neither Colorado nor EPA performed a specific modeling analysis to assure that emissions from Colorado 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 Colorado 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.

EPA Response—EPA disagrees with the commenter'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 the commenter's position also reflects a misunderstanding of the approach EPA used in the remanded CAIR due to an 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 Colorado contributes significantly to violations of the 1997 8-hour ozone 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 the Colorado sources do not contribute significantly to nonattainment, in accordance with the requirement of Section 110(a)(2)(D).

Comment No. 11—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), the commenter 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.[18] The commenter 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 Colorado 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 that the statewide emissions at issue in an evaluation under section 110(a)(2)(D).

EPA Response—As explained above, EPA disagrees with the commenter's fundamental argument that modeling is mandatory in all instances in order to evaluate significant contribution to nonattainment, whether by section

[16] See UBAQS, p. 4–28

[17] See, for example, "Colorado Annual Monitoring Network Plan" dated 2009–2010. Plan is available for review at the regulations.gov Web site under Docket ID No. EPA–R08–OAR–2007–1032.

[18] 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.

110(a)(2)(D), by EPA guidance, or by past EPA precedent. EPA's applicable guidance made recommendations as to different approaches that could lead to demonstration of 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. EPA's CAIR analysis excluded certain western states on the basis of a qualitative assessment of topography, geography, and meteorology.[19]

EPA believes that the commenter's references to EPA statements commenting on the actions of other agencies are inapposite. As the commenter 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. 12—In further support of its argument that EPA should always require modeling to evaluate significant contribution to nonattainment, the commenter 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).

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 Colorado do not contribute significantly to nonattainment for the 1997 8-hour ozone standard in any other state 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 Colorado contribute significantly to nonattainment in any other states under section 110(a)(2)(D).

Comment No. 13—The commenter also objected to EPA's proposed approval of the Colorado 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 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 Colorado contributes significantly to nonattainment undermines the agency's reliance on any 'weight-of-evidence' approach."

EPA Response—The fact that neither the CAA generally, nor section 110(a)(2)(D) specifically, include the explicit phrase "weight of evidence" does not mean 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 is to assess whether there is a significant contribution to nonattainment in other states. The proper consideration, therefore, is whether EPA has a rational technical basis for its decision. Even if the term "weight of evidence" does not appear in section 110(a)(2)(D) or elsewhere in the CAA, courts have recognized EPA's reliance on such an analytical approach where reasonable.[20] 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, instate 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* [emphasis added]." [21] On the basis of this guidance, Colorado and EPA chose to assess the impacts of emissions from Colorado sources on the closest downwind nonattainment areas (St. Louis, Missouri, and Illinois/Wisconsin counties along the southwestern shore of Lake Michigan) through a weight of evidence approach using quantitative information such as Colorado's distance from areas with monitors showing violating 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 Colorado, 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." [22] The differences between the specific types of evidence used in the NO_X SIP Call and

[19] *See* 69 FR 4581, January 30, 2004.

[20] See, e.g., *BCCA* v. *EPA,* 355 F.3d 817 (5th Cir. 2003).

[21] 75 FR 16034, March 31, 2010.

[22] "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.

in EPA's analysis for this action 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 Colorado 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. 14—The commenter also objected to EPA's proposed approval of the Colorado submission on the grounds that EPA did not assess the potential impacts of Colorado sources of emissions on violations of the 1997 8-hour ozone NAAQS in Arizona (Phoenix area), and Utah (Davis County area.)

EPA Response—EPA did not discuss or assess potential impacts of Colorado emissions on Arizona or Utah in the proposal. EPA first notes that, west of the Continental Divide the prevailing winds generally move from south-westerly or westerly directions, as indicated by the typical movement of weather systems.

Also, EPA notes that Davis County had a monitor indicating a violation of the NAAQS in 2007, but has not since then. Thus, there are currently no monitors in Utah with data showing violations of the 1997 8-hour ozone NAAQS and, as a consequence, there are no monitors for which it would be appropriate to evaluate the possibility of significant contribution to nonattainment from Colorado sources for the 1997 8-hour ozone NAAQS. In Arizona, the Maricopa 8-hour ozone nonattainment area, which includes Phoenix, does have monitors indicating a violation of this NAAQS. However, Phoenix lies approximately 600 miles southwest of the Colorado DMA/NFR area, and this area is generally upwind from Colorado sources. Emissions from Colorado would have to be affected by strong winds from the northeast, which are very infrequent, in order to contribute significantly to 8-hour ozone nonattainment in the Phoenix area. The rarity of northeasterly winds in Arizona may be gauged by images of wind roses for Phoenix and Tucson.[23]

Comment No. 15—The commenter argued that both Colorado and EPA relied inappropriately on a flawed ozone "nonattainment" SIP for the DMA/NFR nonattainment area as a basis for the proposed approval. According to the commenter, EPA cannot approve Colorado's section 110(a)(2)(d) submission because it relies heavily on the requirements of the ozone nonattainment area SIP for the DMA/NFR nonattainment area. The commenter argued that "many" of the provisions of the nonattainment area SIP are themselves flawed or deficient. As examples, the commenter outlined alleged deficiencies in the Colorado Air Quality Control Commission's Regulation No. 7, RACT requirements for NO_X emissions, exemptions for certain source categories of NO_X emissions, and other unspecified provisions in the DMA/NFR nonattainment area SIP.

EPA Response—EPA disagrees with the commenter's position that its proposed approval relied heavily on the nonattainment area SIP for the DMA/NFR area, and that as a consequence EPA cannot approve the Colorado section 110(a)(2)(D) submission for the significant contribution element for the 1997 8-hour ozone NAAQS. First, EPA notes that its reliance on material from, and related to, the "8-Hour Ozone Attainment Plan" was limited to considering the modeling results indicating a quick drop in ambient ozone levels from the DMA/NFR area to the easternmost Colorado counties. EPA did not purport to pass upon the adequacy or approvability of each and every aspect of that nonattainment area SIP by referring to the modeling results as a source of relevant facts to be taken into consideration.

Second, the proposal made clear that EPA's interpretation of the significance of this information is different from Colorado's: "EPA does not accept the State of Colorado Interstate Transport SIP assessment that these results demonstrate that 'the magnitude of ozone transport from Colorado to other states is too low to significantly contribute to nonattainment in * * * any other state with respect to the 0.08 ppb NAAQS.' "[24] EPA explained its own view that the relatively moderate ozone concentrations in eastern Colorado (compared to the 1997 8-hour ozone NAAQS), while not excluding a potential significant contribution from Colorado emissions to downwind nonattainment areas, reduce the probability of its occurrence.[25] This is neither the key piece, nor even one of the key pieces, of evidence upon which EPA relies for its determination that emissions from Colorado sources do not contribute significantly to downwind nonattainment areas. To the contrary, EPA considered a variety of technical data and analyses of transport factors wholly independent of and substantively stronger than the modeling results connected with the DMA/NFR nonattainment area SIP.

In addition, EPA notes that the commenter did not specify exactly how each of the purported flaws in the Colorado nonattainment area SIP for the DMA/NFR area could affect the reliability of the modeling results EPA used in the proposed rule, or the weight-of-evidence analysis that was the basis of the proposed approval of the Colorado section 110(a)(2)(D) submission for the significant contribution element. For example, the commenter did not explain what impact the specific alleged defects in Regulation 7 would have on emissions, and how any increases in emissions as a result of those defects would in turn result in significant contribution to nonattainment in other states. Absent more data or explanation supporting the commenter's general concerns, EPA cannot conclude that these alleged nonattainment SIP "defects," even if EPA ultimately agrees that they are statutory or regulatory deficiencies, result in additional emissions that have such impacts. Given this uncertainty as to the impacts of the alleged defects, if any, EPA does not agree that it is per se inappropriate to consider the modeling results in the very limited way that the Agency has done so in this action.

Furthermore, EPA does not agree with the commenter that, given the alleged defects, EPA cannot approve the Colorado interstate transport SIP for the significant contribution element of section 110(a)(2)(D)(i)(I) until the alleged defects are resolved. As discussed below, the first step of the process to determine whether this

[23] Reproductions of wind roses are available for review under Docket ID No. EPA–R08–OAR–2007–1032, and online at: *http://home.pes.com/windroses/wrgifs/_6200.GIF; http://www.wrh.noaa.gov/twc/aviation/windrose_TUS.php;* and *http://www.wrcc.dri.edu/htmlfiles/westwinddir.html*

[24] See 75 FR 16034–35, and "State of Colorado Implementation Plan to Meet the Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I)—Interstate Transport Regarding the 1997 8-hour Ozone Standard," p. 17, December 12, 2009.

[25] 75 FR 16035.

element is satisfied is the factual determination of whether a State's emissions contribute significantly to nonattainment in downwind areas. If this factual finding is in the negative, as is the case for EPA's assessment of the contribution from emissions from Colorado, then section 110(a)(2)(D)(i)(I) does not require any changes to a state's provisions.

Finally, EPA does not agree that it is appropriate to address the commenter's specific substantive comments about the merits of Rule 7 in the context of this action on the section 110(a)(2)(D) SIP submission. Colorado has separately submitted its ozone nonattainment SIP for the DMA/NFR nonattainment area to the Agency, and that submission will ultimately be the subject of another rulemaking in which EPA will evaluate and act upon that specific SIP submission. The commenter may resubmit its specific substantive comments on Rule 7, and any other comments on the nonattainment SIP for the DMA/NFR area, in that later rulemaking.

Comment No. 16—The commenter also objected to EPA's proposed approval because "Colorado's SIP, as written, simply does not contain any language that 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 have argued that 110(a)(2)(D)(i) requires a state SIP to contain an explicit provision literally prohibiting emissions that contribute significantly to nonattainment in any other state and that, in order to approve the Colorado interstate transport SIP, EPA must examine the SIP to determine whether it contains such an explicit prohibition.

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 a specific provision literally 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 Colorado, then section 110(a)(2)(D)(i)(I) does not require any changes to a state's SIP. 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. 17—The commenter noted a provision for stationary source permitting in the Colorado SIP that the commenter argued is inadequate to ensure that sources in Colorado will not significantly contribute to nonattainment in other states. The commenter also argued that Colorado does not sufficiently implement a requirement in the SIP to ensure stationary sources do not cause a violation of the 1997 8-hour ozone NAAQS, because Colorado guidelines do not uniformly require ozone modeling for such sources. The commenter stated that EPA cannot approve the Colorado interstate transport SIP unless the issues commenter identifies are first resolved.

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 Colorado, then section 110(a)(2)(D)(i)(I) does not require any substantive changes to a state's SIP, nor does it require EPA to determine whether a state should require modeling in all permitting actions. 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 Colorado interstate transport SIP unless EPA addresses specific provisions and state guidelines for permitting stationary sources.

Comment No. 18—The commenter argued that EPA cannot approve the section 110(a)(2)(D) submission from Colorado 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. The commenter argued that a section 110(l) analysis must consider all NAAQS once they are promulgated, and argued 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).

Colorado'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. 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 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 submission will not interfere with attainment or maintenance of any 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 (December 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 portions of the Colorado interstate transport SIP addressing the "significant contribution" requirements of section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone NAAQS. As discussed above in EPA's response to comments, the SIP revision that EPA is partially approving in this action 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 NAAQS. As a result, the SIP revision does not relax any existing requirements or alter the status quo air quality. Furthermore, 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

EPA is partially approving the Interstate Transport SIP submitted by the State of Colorado on June 18, 2009. Specifically, in this action EPA is approving the portions of that SIP submission that address the requirement of Section 110(a)(2)(D)(i)(I) that emissions from sources in that state do not "significantly contribute" to violations of the 1997 8-hour ozone NAAQS in any other state. EPA has concluded that the state's submission, and additional evidence evaluated by EPA, establish that emissions from Colorado sources do not have such an impact on other states for purposes of the 1997 8-hour ozone NAAQS. 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. At a later date, EPA will act on those portions of the Interstate Transport SIP 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.

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, 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.

Carol Rushin,

Deputy 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 G—Colorado

■ 2. Section 52.352 is added to subpart G to read as follows:

§ 52.352 Interstate transport.

Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding the 1997 8–Hour Ozone Standard for the "significant contribution" requirement, as adopted by the Colorado Air Quality Control Commission on December 30, 2008, State effective January 30, 2009, and submitted by the Governor's designee on June 18, 2009.

[FR Doc. 2010–13050 Filed 6–2–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0053; FRL–9158–1]

RIN 2060–AN47

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the paints and allied products manufacturing area source rule. With this direct final rule, EPA is amending the definition of "material containing hazardous air pollutants." It was not EPA's intent to omit the part of this definition that addresses non-carcinogens, and this omission could potentially and erroneously include facilities as applicable to the rule when they should not be covered.

This action clarifies text of the National Emission Standards for Hazardous Air Pollutants: Paints and Allied Products Manufacturing Area Source Standards which was published on December 3, 2009. This action will not change the level of health protection the final rule provides or the standards and other requirements established by the rule.

DATES: This direct final rule is effective on September 16, 2010 without further notice, unless EPA receives relevant adverse comment by July 19, 2010. If EPA receives relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0053, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov:* Follow the instructions for submitting comments.
- *Agency Web site: www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- *E-mail: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2008–0053 in the subject line of the message.
- *Fax:* Send comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2008–0053.
- *Mail:* Area Source NESHAP for Paints and Allied Products Manufacturing Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, *Mailcode:* 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0053. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0053. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available (*e.g.,* CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding