Borland NDB/DME, AK, and west of 160° W. longitude within a 72.8-mile radius of Chignik Airport, AK; and that airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eareckson Air Station, AK, and within a 7-mile radius of Adak Airport, AK, and within 5.2 miles northwest and 4.2 miles southeast of the 061° bearing from the Mount Moffett NDB, AK, extending from the 7-mile radius of Adak Airport, AK, to 11.5 miles northeast of Adak Airport, AK, and within a 6.5-mile radius of King Cove Airport, and extending 1.2 miles either side of the 103° bearing from King Cove Airport from the 6.5-mile radius out to 8.8 miles, and within a 6.4-mile radius of the Atka Airport, AK, and within a 6.3-mile radius of Nelson Lagoon Airport, AK, and within a 6.3-mile radius of the Nikolski Airport, AK, and within a 6.4-mile radius of Sand Point Airport, AK, and within 3 miles each side of the 172° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 13.9 miles south of Sand Point Airport, AK, and within 5 miles either side of the 318° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of Sand Point Airport, AK, and within 5 miles either side of the 324° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of the Sand Point Airport, AK, and within a 6.6-mile radius of St. George Airport, AK, and within an 8-mile radius of St. Paul Island Airport, AK, and 8 miles west and 6 miles east of the 360° bearing from St. Paul Island Airport, AK, to 14 miles north of St. Paul Island Airport, AK, and within 6 miles west and 8 miles east of the 172° bearing from St. Paul Island Airport, AK, to 15 miles south of St. Paul Island Airport, AK, and within a 6.4-mile radius of Unalaska Airport, AK, and within 2.9 miles each side of the 360° bearing from the Dutch Harbor NDB, AK, extending from the 6.4-mile radius of Unalaska Airport, AK, to 9.5 miles north of Unalaska Airport, AK; and that airspace extending upward from the surface within a 4.6-mile radius of Cold Bay Airport, AK, and within 1.7 miles each side of the 150° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 7.7 miles southeast of Cold Bay Airport, AK, and within 3 miles west and 4 miles east of the 335° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 12.2 miles northwest of Cold Bay Airport, AK.

Issued in Washington, DC, on March 24, 2010.

Kelly Neubecker,

Acting Manager, Airspace and Rules Group.

[FR Doc. 2010–7266 Filed 3–30–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0282; FRL–9131–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of North Dakota on April 6, 2009. Specifically, EPA is proposing approval of revisions to the North Dakota air pollution control rules regarding prevention of significant deterioration of air quality, and partial approval of the SIP revision "Interstate Transport of Air Pollution" addressing the requirements of Clean Air Act section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone National Ambient Air Quality Standards (NAAQS). For the latter, EPA proposes approval of the North Dakota Interstate Transport SIP sections that address the requirements of section 110(a)(2)(D)(i) prohibiting a state's emissions from contributing significantly to any other state's nonattainment of the NAAQS, or from interfering with any other state's required measures to prevent significant deterioration of its air quality. EPA will act at a later date on the North Dakota Interstate Transport SIP sections that address the remaining two requirements of section 110(a)(2)(D)(i), prohibiting a state's emissions from interfering with any other state's maintenance of the NAAQS, or with any other state's required measures to protect visibility. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before April 30, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0282, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: videtich.callie@epa.gov* and *mastrangelo.domenico@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2009–0282. 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. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6436, *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 *North Dakota* and *State* mean the State of North Dakota.

Table of Contents

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Proposing?

EPA is proposing approval of revisions to the State provisions on the prevention significant deterioration (PSD) of air quality in subsection 33–15–15–01.2 of the North Dakota Administrative Code (NDAC), and is also proposing partial approval of the North Dakota Interstate Transport of Air Pollution SIP for the 1997 $PM_{2.5}$ and 8-hour ozone National Ambient Air Quality Standards (NAAQS). The revisions to NDAC subsection 33–15–15–01.2, and the addition to the North Dakota SIP of section 7.8, "Interstate Transport of Air Pollution," were adopted by the State of North Dakota on April 1, 2009 and submitted to EPA on April 6, 2009. EPA is proposing to approve the revision of NDAC subsection 33–15–15–01.02, incorporating changes to 40 CFR 52.21 made by EPA through August 1, 2007. EPA also proposes to approve the language and demonstrations of the North Dakota Interstate Transport SIP that address two elements of section 110(a)(2)(D)(i): significant contribution to nonattainment of the NAAQS in any other state, element (1), and interference with required measures by any other state to prevent significant deterioration (PSD) of its air quality, element (3).

III. What Is the State Process To Submit This Material to EPA?

Section 110(k) of the CAA addresses EPA's rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

The North Dakota Department of Health (NDDH) held a public hearing on October 7, 2008 for revisions to subsection 33–15–15–01.02 of the NDAC and for the addition to the North Dakota SIP of the Interstate Transport non-regulatory provisions. The NDDH adopted the provisions on April 1, 2009 and submitted them to EPA on April 6, 2009.

In a March 2, 2010 email, EPA requested that the North Dakota Air Quality Division clarify the State commitment, stated in the Interstate Transport SIP submitted to EPA April 6, 2009, to EPA's interim policy on the use of PM_{10} as surrogate for $PM_{2.5}$. In a March 8, 2010 letter to the Region 8 Air Program, the North Dakota Air Quality Division clarified its interpretation of EPA's Surrogate Policy. This correspondence is included in this action's supporting docket available for public review.

We have evaluated the submittal by the NDDH and have determined that the State met the requirements of section 110(a)(2) of the CAA for reasonable notice and public hearing.

IV. EPA's Review and Technical Information

A. Prevention of Significant Deterioration Provisions

The revisions to subsection 33–15–15–01.2 updated to August 1, 2007 the baseline date for incorporation by reference of the Federal requirements at 40 CFR 52.21. In addition, various administrative corrections and clarifications were made. As these revisions were made to make the PSD provisions consistent with Federal requirements, they are approvable.

B. Interstate Transport SIP

The interstate transport provisions at CAA section 110(a)(2)(D)(i), also referred to as the "good neighbor"

provisions, require that each state SIP contain adequate provisions prohibiting emissions that adversely affect another state's air quality through interstate transport of air pollutants. Section 110(a)(2)(D)(i) contains four requirements or elements: (1) Significant contribution to nonattainment of the NAAQS in any other state; (2) interference with maintenance of the NAAQS by any other state; (3) interference with any other state's required measures to prevent significant deterioration of its air quality; and (4) interference with any other state's required measures to protect visibility. On August 15, 2006, EPA issued guidance for SIP submissions addressing the section 110(a)(2)(D)(i) requirements for the 1997 $PM_{2.5}$ and 8-hour ozone standards.[1] In November 2005 (70 FR 71612) and May 2008 (43 FR 28321), EPA finalized regulations implementing Phase II of the 1997 8-hour ozone NAAQS, and the New Source Review (NSR) Program for the 1997 $PM_{2.5}$ NAAQS.

To demonstrate that its SIP satisfies the requirements for significant contribution to nonattainment, North Dakota relies on a combination of: (a) EPA modeling analysis results published in Federal Register notices as part of the Clean Air Interstate Rule (CAIR) rulemaking process; [2] (b) monitoring data gathered by states and reported to EPA in the Air Quality System (AQS) database; and (c) consideration of geographical and meteorological factors affecting the likelihood of significant pollution transport from North Dakota to the closest $PM_{2.5}$ and 8-hour ozone nonattainment areas or violating monitors in other states. In this action EPA also expands on the analysis of geographical and meteorological factors, and of ozone and $PM_{2.5}$ concentration levels reflecting AQS monitoring data. EPA deems that the North Dakota Interstate Transport SIP sections addressing requirements (1) and (3) of section 110(a)(2)(D)(i) are consistent with EPA's 2006 guidance and the referenced implementation rules for ozone and $PM_{2.5}$.

Significant Contribution Element—$PM_{2.5}$

Section 110(a)(2)(D)(i) provides that EPA cannot approve a state's SIP for a new or revised NAAQS unless it contains adequate measures to prohibit emissions from sources within the state from contributing significantly to nonattainment of the NAAQS in another state. 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 $PM_{2.5}$ 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. It should be noted that significant contribution to nonattainment is not restricted to impacts upon areas that are formally designated nonattainment. Consistent with EPA's approach in CAIR, this impact must be evaluated with respect to monitors showing a violation of the NAAQS (70 FR 25172, May 12, 2005, and 63 FR 57371, October 27, 1998). Furthermore, although relevant information other than modeling may be considered in assessing the likelihood of significant contribution to violations of the 1997 $PM_{2.5}$ standard in another state, 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 within North Dakota do not significantly contribute to violations in another state of the 1997 $PM_{2.5}$ standard.

Although significant contribution must be measured not just against nonattainment areas, but against areas with monitors showing violations of the NAAQS, nonattainment areas are a convenient starting point for the analysis. For the 1997 annual $PM_{2.5}$ standard, Libby, in Lincoln County, Montana, and Chicago, in Cook County, Illinois, are the designated nonattainment areas closest to the State of North Dakota. In 2005, EPA designated both areas nonattainment for violations of the 1997 annual $PM_{2.5}$ standards. See 70 FR 944 (January 5, 2005), and 40 CFR 81.314 and 81.327.

A number of considerations provide evidence that North Dakota emissions are unlikely to contribute significantly to the violations of the 1997 annual $PM_{2.5}$ standards in Libby. First, Libby is more than 650 miles straight west of Bismarck, and any impact from North Dakota emissions would have to rely on strong easterly winds that rarely occur in the State.[3] This substantial distance and the rarity of easterly surface winds, while not outcome determinative given the distances across which $PM_{2.5}$ can transport, support a conclusion that North Dakota emissions are unlikely to contribute significantly to violations of the 1997 annual $PM_{2.5}$ standard in Libby. Second, in the process of designating Libby nonattainment for these standards, EPA noted the predominantly local origins of $PM_{2.5}$ nonattainment in Libby.[4] While the predominance of local sources does not alone rule out the possibility of impacts from interstate transport, this fact in conjunction with the distance and the near absence of easterly winds in North Dakota supports a conclusion that North Dakota emissions are unlikely to contribute significantly to violations in Libby. Third, during the ten years for which monitoring data are available, from 1999 to 2008, annual $PM_{2.5}$ design values at all other monitors in Montana remained significantly below the 15 $\mu g/m^3$ nonattainment threshold. Annual $PM_{2.5}$ design values for most of these monitors remained at levels equal to, or less than, two thirds of the NAAQS. Even the three highest design values at these monitors were 20 percent lower than the level of the annual standard.[5]

The fact that monitors located between North Dakota and Libby are not registering violations of the NAAQS does not conclusively establish that emissions from North Dakota could not contribute in the aggregate to violations

[1] 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"). This EPA guidance document is one of the documents available for review in the docket document entitled: "Relevant Guidance and Supporting Documentation for the Proposed Rulemaking **Federal Register** Action Docket ID # EPA–R08–OAR–2009–0282."

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

[3] Distances from Bismarck, North Dakota, to areas in other states are intended to approximate the average transport distance of emissions from sources in North Dakota to such areas. For surface wind directions, *see* "Climate of North Dakota-Wind," USGS web page at *http://www.npwrc.usgs.gov/resource/habitat/climate/wind.htm,* visited February 10, 2010, and available for review in EPA's January 14, 2010 docket memorandum: "Relevant Guidance and Supporting Documentation for the Proposed Rulemaking **Federal Register** Action Docket ID # EPA–R08–OAR–2009–0282."

[4] "Technical Support for State and Tribal Air Quality Fine Particle ($PM_{2.5}$) Designations," Chapter 6, pp. 347–352, December 2004.

[5] In 2001, 2002 and 2006, design values for two monitors in Missoula County were 11.1, 11.4 and 11.8 $\mu g/m^3$. Computed from AQS monitoring data.

in Libby, but this fact combined with other relevant evidence such as the distance, wind direction, and localized nature of the violations in Libby again supports the North Dakota's Interstate Transport SIP conclusion on $PM_{2.5}$ contribution. Finally, by 2007–2008, the annual $PM_{2.5}$ design values for the Libby nonattainment area itself fell below the level of the NAAQS, a reduction attributed to an effective wood stove replacement program that decreased $PM_{2.5}$ emissions by approximately 59 percent.[6] In other words, were there emissions from North Dakota sources reaching Libby, they would no longer be significantly contributing to violations of the NAAQS in that location.

Similarly, available information indicates that North Dakota emissions are unlikely to contribute significantly to the violations of the 1997 annual $PM_{2.5}$ standards in Cook County Illinois. In its rulemaking process for CAIR, EPA determined which states should be subject to the rule due to their significant contribution to nonattainment of the 1997 $PM_{2.5}$ NAAQS in other states. This determination included a modeling analysis of the contributions by upwind states to a violating monitor in Cook County, which is approximately 750 miles southeast of Bismarck, North Dakota. According to modeling cited in the CAIR proposal of January 30, 2004 (69 FR 4566), EPA estimated that the maximum contribution by emissions from sources in North Dakota to downwind counties predicted to have violating monitors for the $PM_{2.5}$ annual standard in the 2010 base year was to Cook County. EPA estimated that the North Dakota annual average contribution to Cook County would be 0.12 $\mu g/m^3$ (Table V–5, 69 FR 4608), an amount well below 0.20 $\mu g/m^3$, the threshold set by EPA in CAIR for the initial determination of whether a state would be subject to the rule (70 FR 25188–91).[7] The CAIR modeling analysis thus provides support for the conclusion that emissions from North Dakota are not significantly contributing to violations of the 1997 annual $PM_{2.5}$ NAAQS in Cook County.[8]

As mentioned above, EPA must consider not only significant contribution to nonattainment areas, but also to areas with monitors showing violations of the NAAQS. A review of the AQS monitoring data for adjacent downwind states shows that it is highly unlikely that emissions from North Dakota contribute significantly to downwind areas that have monitors showing violations of the 1997 24-hour and annual $PM_{2.5}$ NAAQS. Between 1999 and 2008 there were no violations of the 1997 $PM_{2.5}$ NAAQS at any of the monitors in adjacent downwind states, such as Minnesota, South Dakota and Iowa.[9]

In South Dakota, monitors in Minnehaha and Brookings Counties had the highest design values for 1997 24-hour $PM_{2.5}$ standards during the 1999–2008 period. Their design values ranged, respectively, from 23 to 28 and from 21 to 26 $\mu g/m^3$, as compared with the 1997 24-hour $PM_{2.5}$ NAAQS of 65 $\mu g/m^3$. For annual $PM_{2.5}$, Codington and Minnehaha Counties had the monitors with the highest design values, ranging from 9.5 to 10.3 $\mu g/m^3$, and from 9.3 to 10.4 $\mu g/m^3$, respectively, as compared to the annual NAAQS of 15 $\mu g/m^3$.

In Minnesota, during 1999–2008, the highest design values for 1997 24-hour $PM_{2.5}$ NAAQS occurred for monitors in the Twin Cities' Hennepin and Ramsey Counties, where they ranged, respectively, from 23 to 32 and from 26 to 36 $\mu g/m^3$. The highest design values for annual $PM_{2.5}$ reflected $PM_{2.5}$ monitored levels also in these two counties, and ranged, respectively, from 8.9 to 11.9 $\mu g/m^3$ and from 10.7 to 13.8 $\mu g/m^3$. It must be noted that the highest design value of 13.8 $\mu g/m^3$, for a monitor in Ramsey County, reflected annual $PM_{2.5}$ concentrations registered during the 1999–2001 time span. After 2001, $PM_{2.5}$ concentrations in Ramsey County decreased steadily, and between 2006 and 2008 the highest design value for any of the Minnesota monitoring stations was 11.2 $\mu g/m^3$, significantly below the annual NAAQS.

In Iowa, the highest 24-hour $PM_{2.5}$ design values during the 1999–2008 years reflected pollutant concentrations registered at monitors in Clinton and Muscatine Counties. In these counties, design values ranged, respectively, from 28 to 36 and from 34 to 38 $\mu g/m^3$, as compared with the 1997 24-hour $PM_{2.5}$ NAAQS of 65 $\mu g/m^3$. The highest annual $PM_{2.5}$ design values occurred in the same counties, and ranged from 11.7 to 14.1 $\mu g/m^3$ in Clinton County, and from 12.5 to 13.3 $\mu g/m^3$ in Muscatine County.

The data and weight of evidence analysis presented above support the conclusion of the North Dakota Interstate Transport SIP (adopted April 1, 2009 and submitted April 6, 2009) that emissions from North Dakota do not contribute significantly to nonattainment in any other state for the 1997 $PM_{2.5}$ NAAQS, consistently with the requirements of element (1) of CAA section 110(a)(2)(D)(i).

Significant Contribution Element—8-Hour Ozone

As noted above, Section 110(a)(2)(D)(i) provides that EPA cannot approve a state's SIP for a new or revised NAAQS unless it contains adequate measures to prohibit emissions from sources within the state from contributing significantly to nonattainment of the NAAQS in another state. 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. The assessment of significant contribution to nonattainment is not restricted to impacts upon areas that are formally designated nonattainment. Consistent with EPA's approach in CAIR, this impact must be evaluated with respect to monitors showing a violation of the NAAQS (70 FR 25172, May 12, 2005, and 63 FR 57371, October 27, 1998). Furthermore, although relevant information other than modeling may be considered in assessing the likelihood of significant contribution to violations of the 1997 8-hour ozone standard in another state, EPA notes that no single piece of information in the following discussion is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together supports the conclusion that emissions from North Dakota sources are unlikely to contribute significantly to violations in another state of the 1997 8-hour ozone standard.

[6] State of Montana, Department of Environmental Quality, "State Implementation Plan-Libby Annual $PM_{2.5}$ Control Plan," submitted to EPA April 1, 2008.

[7] This threshold was upheld by the U.S. Court of Appeals for the DC Circuit in its adjudication of consolidated challenges to CAIR. *See North Carolina* v. *EPA,* 531 F.3d 896, 930 (DC Cir. 2008).

[8] As EPA only evaluated sources of NO_X and SO_2 in CAIR, the CAIR modeling analysis, like the other evidence considered in this action, is not by itself dispositive of the issue of significant contribution.

[9] Unless otherwise referenced, for AQS monitoring data and related design values referenced in this action see Table 1 and Table 2 in the docket document entitled: "Relevant Guidance and Supporting Documentation for the Proposed Rulemaking **Federal Register** Action Docket ID # EPA–R08–OAR–2009–0282."

Although significant contribution must be measured not just against nonattainment areas, but against areas with monitors showing violations of the NAAQS, nonattainment areas are a convenient starting point for the analysis. For the 1997 8-hour ozone NAAQS, the North Dakota Interstate Transport SIP revision identifies the Denver Metro Area/North Front Range (DMA/NFR) in Colorado, and the Illinois and Wisconsin counties along the southwestern shores of Lake Michigan as the closest designated nonattainment areas.[10] EPA's evaluation of whether emissions from North Dakota contribute significantly to the ozone nonattainment in these areas is based on an examination of how geographical and meteorological factors affect transport from North Dakota to the two areas noted above. Our approach does not rely on a quantitative determination of North Dakota's contribution, as EPA did for other states in its CAIR rulemaking, but on a weight-of-evidence analysis based on qualitative assessments and estimates of the relevant factors. While conclusions reached for each of the factors considered in the following analysis are not in and by themselves determinative, consideration of the likely effect of all factors provides a reliable qualitative conclusion on whether North Dakota's emissions are likely to contribute significantly to nonattainment in the DMA/NFR area and the Illinois/Wisconsin Counties.

The DMA/NFR nonattainment area is approximately 550 miles southwest of Bismarck, North Dakota.[11] Distance per se is not an obstacle to long range transport of ozone and/or its precursors, as discussed in the January 30, 2004 notice proposing CAIR (69 FR 4599); NO_X (the primary ozone precursor that was the object of the CAIR transport study) may be transported for long distances, contributing significantly to high ozone concentrations in other states. However, with increasing distance there are greater opportunities for ozone and/or NO_X dispersion and/or removal from the atmosphere due to the effects of winds and chemical sink processes. In this context, one may conclude that the 550 mile distance between North Dakota and the DMA/NFR reduces but does not exclude the possibility of significant contribution to this area's nonattainment.

Another transport factor is wind direction. Research for North Dakota and states immediately to the south and east shows that in North Dakota both surface and regional transport winds from the northeast, needed to transport ozone to the DMA/NFR area, are generally rare. Thirty years of data collected by the United States Geological Survey (USGS) on surface wind direction for several North Dakota locations show that there was much variability by location and time of the year, with the exception of northeasterly winds, which were very infrequent.[12] For long range transport winds, a modeling analysis of ozone dispersion during the summer months (June to August) of the five year period 1991–1995 shows that on high local ozone days North Dakota and states immediately to the south or east were characterized by southerly regional transport winds. On high regional ozone days, during the same period transport winds did not have a prevailing orientation, and certainly not a northeasterly one.[13] To the extent that these results are representative of general ozone transport patterns not limited to the 1991–95 period, the rarity of northeasterly winds in North Dakota and adjacent areas provides evidence that NO_X emissions from North Dakota are likely to be transported in a direction away from the Colorado DMA/NFR nonattainment area, and therefore supports the conclusion that emissions sources in North Dakota are unlikely to contribute significantly to violations of the 1997 ozone NAAQS in Denver.[14]

The Illinois/Wisconsin counties along the southwestern shores of Lake Michigan (which make up the other nonattainment area within possible transport distance of North Dakota) are approximately 700 miles east-southeast from Bismarck. The CAIR modeling domain for 8-hour ozone transport analysis included only the eastern half of North Dakota, and the CAIR modeling analysis did not determine whether NO_X emissions from North Dakota sources contributed significantly to ozone nonattainment in any downwind states.[15] However, the CAIR modeling analysis results for Minnesota provide us the opportunity to draw inferences about ozone contribution from North Dakota sources to nonattainment in the Illinois/Wisconsin area. It must be noted that Minnesota is nearly half as distant from this nonattainment area as North Dakota (400 miles as compared with 700),[16] and that to reach the Illinois/Wisconsin nonattainment area, ozone transport winds from Minnesota would have to have a northwesterly orientation similar to that necessary for substantial ozone transport from North Dakota. In addition, the CAIR modeling analysis estimated the Minnesota's NO_X emissions for the 2010 base year to be approximately twice as large as the NO_X emissions from North Dakota's sources (381,500 as compared with 182, 800 tons).[17] Finally, the CAIR analysis determined that emissions from Minnesota were below the initial threshold for including states in CAIR.[18] In light of this CAIR determination, and of Minnesota's larger NO_X emissions and shorter distance to the nonattainment area, it is plausible to conclude that NO_X emissions from North Dakota sources are not likely to contribute significantly to nonattainment of the 1997 8-hour ozone standard in the Illinois and Wisconsin counties along the southwestern shores of Lake Michigan.

Additional ozone transport factors specific to North Dakota are distance from the nonattainment area and prevailing orientation of the winds. As noted above, Bismarck is approximately 700 miles from the Illinois/Wisconsin nonattainment area, a distance which does not exclude the realistic possibility that significant ozone transport might occur. Research on surface wind direction in North Dakota, reflected in the USGS data referenced earlier, shows a great variability depending on location and time of the year. Northwesterly winds are more frequent than southwesterly or southeasterly winds considered separately, but less frequent

[10] The Wisconsin nonattainment areas for the 1997 8-hour ozone standard include: Door, Kewaunee, Manitowoc, Sheboygan, Ozaukee, Washington, Milwaukee, Waukesha, Racine and Kenosha counties; the Chicago nonattainment area includes Cook County and several adjacent Illinois and Indiana counties (69 FR 23858, April 30, 2004).

[11] Distances from Bismarck, North Dakota, to areas in other states are intended to approximate the average transport distance of emissions from sources in North Dakota to such areas.

[12] *See* USGS data in EPA's January 14, 2010 docket memorandum: "Relevant Guidance and Supporting Documentation for the Proposed Rulemaking **Federal Register** Action Docket ID # EPA–R08–OAR–2009–0282."

[13] Ozone Transport Assessment Group (OTAG), Air Quality Analysis Workgroup, "3.3 Climatology of Ozone Synoptic scale Transport in the Eastern US," Figures 1(a) and 5(a), pp. 3, 6, January 11, 1998. The high ozone days included the days with ozone concentrations in the 90th percentile.

[14] *Ibid.*

[15] 69 FR 4584 (Jan. 30, 2004) ("We are deferring findings for Texas, Oklahoma, Kansas, Nebraska, South Dakota and North Dakota, which at this time cannot be assessed on the same bases as States to the east because they are only partially included in the modeling domain * * *").

[16] The 400 mile distance to the nonattainment area is calculated from St. Cloud, and is intended to be a rough approximation of the average transport distance of NO_X emission sources from Minnesota.

[17] 69 FR 4590.

[18] Minnesota was not listed among the upwind states that contribute significantly to downwind counties projected nonattainment for 8-hour ozone in the 2010 base year, and is not a CAIR state for the 8-hour ozone standard. 69 FR 4602, Table V–2; 70 FR 25167.

than the two combined. On the other hand, as noted earlier in this review, during the ozone season of the years 1991–1995, on local high ozone days regional transport winds in North Dakota were predominantly southerly, and on high regional ozone days they lacked a prevailing orientation. There was no strong northwesterly component that might allow for significant transport of NO_X to the Illinois/Wisconsin area.[19] To the extent that these results are representative of general ozone transport patterns not limited to the 1991–95 period, one may add the relative infrequency of northwesterly transport winds from North Dakota to the other factors that make it unlikely for emissions from North Dakota sources to contribute significantly to nonattainment in the noted Illinois/Wisconsin area.

This conclusion is supported by the recent attainment demonstration developed for the nonattainment counties along the western shores of Lake Michigan by the Wisconsin Department of Natural Resources (WDNR). The WDNR analysis identifies heavy industrial activity and dense urbanization as the major local contributors to the high ozone concentrations in the Illinois and Wisconsin Counties along the southwestern shores of Lake Michigan. Regional ozone transport is thought to contribute from 40 to 60% of the maximum ozone concentrations in the Lake Michigan airshed, and the contributing transport is estimated to originate from south-southwesterly areas, within a span of 160 to 270 degrees. Any ozone transport from North Dakota would fall outside this span. The WDNR finding, in combination with the results of the analysis for other transport factors presented above, strengthens the conclusion that it is unlikely that emissions from North Dakota sources contribute significantly to the nonattainment of the Illinois/Wisconsin Counties on the southwestern shores of Lake Michigan.[20]

Finally, by 2008, the 8-hour ozone design values for the Illinois and Wisconsin nonattainment counties along the shores of Lake Michigan fell below the level of the NAAQS, a reduction attributed to the implementation of State and Federal control measures since the designation of these counties as nonattainment in 2004. In other words, were there emissions from North Dakota sources reaching the Illinois and Wisconsin counties along the western rim of Lake Michigan, they would no longer be significantly contributing to violations of the NAAQS in that area.[21]

As mentioned above, EPA must consider not only significant contribution to nonattainment areas, but also to areas with monitors showing violations of the NAAQS. A review of the AQS monitoring data for adjacent downwind states shows that it is highly unlikely that emissions from North Dakota contribute significantly to downwind areas that have monitors showing violations of the 1997 8-hour ozone NAAQS. Between 1999 and 2008 there were no violations of the 1997 8-hour ozone NAAQS at any of the monitors in adjacent downwind states, such as Minnesota, South Dakota and Iowa.

The design values for Minnesota, South Dakota and Iowa during the 1999–2008 years remained substantially below the 1997 NAAQS in most counties, as shown by the highest design values. In South Dakota, the highest design values were in Custer and Jackson Counties, where they peaked, respectively, at 71 and at 68 ppb. In Minnesota, the highest design values were in Anoka and Washington Counties, where they peaked at 75 ppb. In Iowa, the highest design values were in Clinton and Scott Counties, where they reached levels between 78 and 80 ppb in the early part of the 1999–2008 period, and decreased to levels, respectively, between 67 and 72, and 65 and 70 ppb during 2006–2008. The decrease of Iowa ozone levels between 1998 and 2008 can be gauged by comparing the peak levels of 79–80 ppb in 2000–2003 with peak levels of 70–75 ppb in 2006–2008.

The data and weight of evidence analysis presented above support the conclusion of the North Dakota Interstate Transport SIP (adopted April 1, 2009 and submitted April 6, 2009) that emissions from North Dakota do not contribute significantly to nonattainment in any other state for the 1997 8-hour ozone NAAQS, consistently with the requirements of element (1) of CAA section 110(a)(2)(D)(i).

Interference With PSD Element—$PM_{2.5}$ and Ozone

The third element of section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. The State of North Dakota interstate transport SIP is consistent with the 2006 guidance. The SIP indicates in Section 7.8.1, subsection C, "Impact on Prevention of Significant Deterioration (PSD)," that the State's SIP provisions include an EPA-approved PSD program applicable to all regulated pollutants. North Dakota's regulations for its PSD program were federally-approved and made part of the SIP on November 2, 1979 (44 FR 63103). On July 19, 2007, EPA approved the North Dakota PSD revisions incorporating EPA's December 31, 2002 NSR Reforms into the State's regulations (72 FR 39564). North Dakota does not have nonattainment areas for any of the criteria pollutants and therefore does not have a Nonattainment New Source Review (NNSR) program.

Consistent with EPA's November 29, 2005 Phase II rule for the 1997 8-hour ozone standard (70 FR 71612), the State updated, effective April 1, 2009, its PSD provisions by incorporating by reference most of the federal provisions at 52.21, including the definition of regulated NSR pollutant at 52.21(b)(50), listing NO_X as an ozone precursor. As discussed elsewhere in this notice, EPA proposes in this action to approve the April 1, 2009 update. Thus, the April 1, 2009 update, taken together with interstate transport SIP section 7.8.1, subsection C, satisfies the requirements of the third element of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone standard.

For $PM_{2.5}$, North Dakota's SIP declares that the State will follow EPA's interim guidance on use of PM_{10} as a surrogate for $PM_{2.5}$. In response to EPA's request of March 2, 2010, the North Dakota Air Quality Division, in a March 8, 2010 letter to the EPA Region 8 Air Program, has clarified an ambiguity in its interpretation of the interim guidance. The letter states that, until the guidance is ended or replaced, North Dakota will apply it consistent with EPA's interpretation of the federal case law relevant to the use of the PM_{10} Surrogate Policy (see 75 FR 6827, 6831–32, February 11, 2010). The State will also take into account the limits provided in the policy itself, such as the need to identify the technical difficulties that justify the application of the policy in each specific case (75 FR 6834). With that clarification, the North Dakota Interstate Transport SIP satisfies the requirements of the third element of section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS.

On the basis of the data and analysis presented above, EPA concludes that the North Dakota Interstate Transport

[19] *Ibid.*

[20] Wisconsin Department of Natural Resources, "Attainment Demonstration—The Wisconsin Counties of Kenosha, Racine, Milwaukee, Waukesha, Ozaukee, Washington, Sheboygan, Manitowoc and Door," pp. 8, 51, September 2009.

[21] *Ibid.* p. 14.

non-regulatory provisions adopted into the State SIP April 1, 2009 satisfactorily address the requirements of elements (1) and (3) of section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone standards.

V. Proposed Action

EPA is proposing approval of revisions, submitted by the Governor of North Dakota with a letter dated April 6, 2009, to the prevention of significant deterioration provisions in subsection 33–15–15 of the NDAC, and partial approval of the addition to the State SIP of the "Interstate Transport of Air Pollution" SIP addressing the requirements of Clean Air Act section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone National Ambient Air Quality Standards (NAAQS). For the North Dakota Interstate Transport SIP, EPA is proposing approval of: (a) The introductory language in the State SIP Section 7.8; (b) the "Overview" language in subsection A., Section 7.8.1; (c) language in Section 7.8.1, subsection B., "Nonattainment and Maintenance Area Impact," that specifically addresses element (1) of section 110(a)(2)(D)(i), the requirement that the SIP contain adequate provisions prohibiting emissions from North Dakota from contributing significantly to nonattainment in any other state; and (d) Section 7.8.1, subsection C, "Impact on Prevention of Significant Deterioration (PSD)."

VI. 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 18, 2010.

Carol L. Campbell,

Acting Assistant Regional Administrator, Region 8.

[FR Doc. 2010–6894 Filed 3–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1032; FRL–9131–4]

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: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing partial approval of the State Implementation Plan (SIP) revisions "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 of Colorado on June 18, 2009. The Colorado Interstate Transport SIP revisions submitted June 18, 2009 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 **Federal Register** action EPA proposes approval of the Colorado SIP sections that address the requirement of section 110(a)(2)(D)(i)(I) prohibiting a state's emissions from contributing significantly to any other state's nonattainment of the NAAQS. EPA will act at a later date on the Colorado Interstate Transport SIP sections that address the requirement prohibiting a state's emissions from interfering with any other state's maintenance of the NAAQS. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before April 30, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–1032, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: videtich.callie@epa.gov* and *mastrangelo.domenico@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed under **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.