Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	* *	*
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/11/10 [Insert page number where the document begins].	
2002 Base Year Inventory for VOC, NO_X, and CO.	Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/11/10 [Insert page number where the document begins].	
2008 RFP Transportation Conformity Budgets.	Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/11/10 [Insert page number where the document begins].	

■ 3. Section 52.1075 is amended by adding paragraph (j) to read as follows:

§ 52.1075 Base year emissions inventory.

* * * * *

(j) EPA approves as a revision to the Maryland State Implementation Plan the 2002 base year emissions inventories for the Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007. This submittal consists of the 2002 base year point, area, non-road mobile, and on-road mobile source inventories in area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO_X).

■ 4. Section 52.1076 is amended by adding paragraphs (s) and (t) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(s) EPA approves revisions to the Maryland State Implementation Plan consisting of the 2008 reasonable further progress (RFP) plan, reasonably available control measures, and contingency measures for the Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007.

(t) EPA approves the following 2008 RFP motor vehicle emissions budgets (MVEBs) for the Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X TPD)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan	2008	2.3	7.9	April 13, 2009, (74 FR 13433), published March 27, 2009.

[FR Doc. 2010–13687 Filed 6–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0993; FRL–9160–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a portion of a State Implementation Plan (SIP) submitted by the State of New Mexico for the purpose of addressing the "good neighbor" provisions of the Clean Air Act (CAA) section 110(a)(2)(D)(i) for the 1997 ozone National Ambient Air Quality Standard (NAAQS) and the 1997 $PM_{2.5}$ NAAQS. This SIP revision satisfies a portion of the State of New Mexico's obligation to submit a SIP that demonstrates that adequate provisions are in place to prohibit air emissions from adversely affecting another state's air quality through interstate transport. This rulemaking action is being taken under section 110 of the CAA and addresses one element of CAA section 110(a)(2)(D)(i), which pertains to prohibiting air pollutant emissions from within New Mexico from contributing significantly to nonattainment of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in any other state.

DATES: This final rule will be effective July 12, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2007–0993. All documents in the docket are listed at *www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (FOIA) Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection

Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6717; fax number (214) 665–7263; e-mail address *shahin.emad@epa.gov.*

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

Outline

I. What action is EPA taking?

We are approving a portion of the submission from the State of New Mexico demonstrating that New Mexico has adequately addressed one of the required elements of the CAA section 110(a)(2)(D)(i), the element that prohibits air pollutant emissions from sources within a state from contributing significantly to nonattainment of the relevant NAAQS in any other state. We have determined that emissions from sources in New Mexico do not significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS or the 1997 $PM_{2.5}$ NAAQS in any other state. Because emissions from sources in New Mexico do not significantly contribute to nonattainment in any other state, section 110(a)(2)(D)(i)(I) does not require any substantive changes to New Mexico's SIP.

The remaining three elements of section 110(a)(2)(D) are that a state's SIP contain adequate provisions to prevent: Interference with maintenance of the NAAQS in any other state; interference with measures required to prevent significant deterioration of air quality in any other state; and interference with measures required to protect visibility in any other state. EPA will evaluate the New Mexico SIP and SIP submissions for compliance with these other requirements of section 110(a)(2)(D) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in future rulemakings.

II. What is the background for this action?

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

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance) for SIP submissions that states should use to address the requirements of section 110(a)(2)(D)(i). EPA developed this guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D) for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS.

On September 17, 2007, EPA received a SIP submission from the State of New Mexico to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. The state based its submittal on EPA's 2006 Guidance. As explained in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each State to submit a SIP that contains adequate provisions to prohibit emissions from sources within that state from adversely affecting another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. In this rulemaking EPA is addressing only the requirement that pertains to preventing sources in the state from emitting pollutants in amounts which will contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in any other state. In its submission, the State of New Mexico indicated that its current SIP is adequate to prevent such significant contribution to nonattainment in any other state, and thus no additional emissions controls are necessary at this time to alleviate interstate transport.

On April 8, 2010, we published a direct final rule and a parallel proposal to approve the portion of New Mexico's SIP submission that addressed one element of the CAA section 110(a)(2)(D)(i), which pertains to prohibiting air pollutant emissions from within New Mexico from contributing significantly to nonattainment of the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in any other state (75 FR 17868). The direct final rule and proposal stated that if EPA received any relevant adverse comments during the public comment period ending on May 10, 2010, then EPA would withdraw the direct final rule and respond to such comments in a subsequent final action based upon the proposal. EPA received adverse comments during the comment period, and accordingly EPA withdrew the direct final rule on May 3, 2010 (75 FR 23167). The April 8, 2010, proposal (75 FR 17894) provides the basis for today's final action.

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

EPA received three comment letters on the April 8, 2010, direct final rule and proposal. The letters can be found on the internet in the electronic docket for this action. To access the letters, please go to *http://www.regulations.gov* and search for Docket No. EPA–R06–OAR–2007–0993, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph above. The discussion below addresses those comments and our response.

A. Comments From WildEarth Guardians

Comment No. 1—The commenter argued that New Mexico and EPA did not appropriately assess impacts to nonattainment in downwind states. According to the commenter, New Mexico failed to assess the significance of downwind impacts in accordance with EPA precedent and refers to the 1998 NO_X SIP Call.

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 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 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 with recommendations to states about how to address section 110(a)(2)(D) in SIP submissions for the 1997 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.[1] 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 the 2006 Guidance, 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."[2] 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."[3] To that end, EPA specifically recommended that states located within the geographic region covered by the Clean Air Interstate Rule (CAIR)[4] 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."[5] 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 New Mexico submission and EPA's evaluation of it is consistent with EPA's guidance for the 1997 8-hour ozone NAAQS. For example, as discussed in the direct final notice, the State of New Mexico and EPA considered information such as monitoring data in other 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 are consistent with the concepts of the NO_X SIP Call referenced by the commenter: (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 New Mexico submission at issue here would be that because the available evidence indicates that there is so very little contribution of emissions from New Mexico sources to nonattainment in other states, it is not necessary to advance to the final step and evaluate whether the cost of controls for those sources is above or below a certain cost of control as part of determining whether the contribution constitutes "significant contribution to nonattainment" for regulatory purposes, as was necessary in the NO_X SIP Call and in CAIR.

Comment No. 2—The commenter believes that New Mexico and EPA did not appropriately assess impacts to nonattainment in downwind states in terms of air quality. Specifically, the commenter objected to EPA's proposed approval because New Mexico assessed impacts in downwind states by considering only areas that had monitoring data as for evaluating significant contribution to nonattainment. In other words, the commenter is concerned that New Mexico did not assess impacts in areas that have no monitor. The commenter implied 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

[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"); p. 3.

[2] Id. at 3.

[3] Id.

[4] 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).

[5] Id. at 5.

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.[6]

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. Neither section 110(a)(2)(D)(i)(I) provisions, nor the 2006 Guidance EPA issued for the 1997 8-hour ozone NAAQS, support the commenter's position, as neither refers to any explicit mandatory or recommended approach to assess air quality in non-monitored areas.[7] The same focus on monitor 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.[8] 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 or of the 1997 $PM_{2.5}$ NAAQS in a particular area.

EPA did not use photochemical modeling to determine if an area is violating the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS to designate the area as nonattainment without supporting monitoring data. EPA's regulations for these NAAQS, the monitoring requirements for these NAAQS, and EPA's guidance for designations for these NAAQS provide for such designations for violating areas to be based only on monitoring data. In addition, this is reasonable for these particular NAAQS because photochemical models, while based on the best science available, only provide a best estimate of air quality. EPA's 2007 modeling guidance[9] recognizes that model results and projections will continue to have uncertainty.

Therefore, even if modeling analyses indicated violation of the 1997 8-hour ozone NAAQS in other states, EPA would not make a determination that these areas should be designated nonattainment for these NAAQS without monitoring data in the area to support a determination of nonattainment. In summary, in order for there to be significant contribution to nonattainment for either of these specific 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 New Mexico 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, and EPA modeling guidance.

Comment No. 3—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").[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 New Mexico.

EPA Response—EPA disagrees with this comment on several grounds. First, EPA does not agree that it is appropriate when satisfying the requirements of Section 110(a)(2)(D) to evaluate significant contribution to nonattainment for the 1997 8-hour ozone NAAQS by modeling ambient

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

[7] 2006 Guidance, p. 5.

[8] "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." *See,* 62 FR 60336.

[9] EPA–454/B–07–002, April 2007, "Guidance on the Use of Models and other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze", Office of Air Quality Planning and Standards, Air Modeling Group. Research Triangle Park, North Carolina, available at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

[10] The presentation is available for review as Document ID # EPA–R06–OAR–2007–0993–0008.9 at *Regulations.gov,* Docket ID # EPA–R06–OAR–2007–0993.

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 fourth maximum 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 fourth maximum above the NAAQS only constitutes an exceedance of the NAAQS; to constitute a violation of the 1997 8-hour ozone NAAQS, the average of the fourth high for three consecutive years at the same monitor must exceed the standard. 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 New Mexico's neighboring states.

Even if EPA believed that it was appropriate to use modeling to establish violations of the 1997 8-hour ozone NAAQS, 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) [11] 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.[12] 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 areas of other states violating the 1997 8-hour ozone NAAQS projected for 2018 in areas without monitors.

Comment No. 4—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 "2009 Uinta Basin Air Quality Study" (UBAQS). The commenter argued that the UBAQS further supports its concern that New Mexico 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 [13] 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 southwestern corner of Utah are also currently in nonattainment and will be in nonattainment in 2012.[14]

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. In particular, EPA does not agree that it is necessary to evaluate significant contribution to areas where only the model predicts nonattainment where there are no monitors. Even if EPA felt it was appropriate to use model results to determine areas that are not attaining the standard, EPA does not agree that the modeled nonattainment of the 1997 8-hour ozone NAAQS (current and projected) in the Wasatch Front Range area in the UBAQS supports the commenter's concerns about the need to evaluate the possibility of significant contribution from New Mexico to nonattainment in these areas. Based on what the commenter presented, 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." [15] First, the commenter's interpretation of the predicted ozone concentrations shown in Figures 4–3a and 4–3b (pages 4 and 5 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 the exact modeled value is not specified and there are only three grid cells with this value range estimated. If the actual model prediction is less than or equal to 84.94 ppb then the area is attaining the 1997 8-hour ozone NAAQS, if it is predicted as greater than 84.94 ppb then the modeling is indicating that it is not attaining those NAAQS. Thus, the current and predicted design values for the three grid cells in 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.[16] The study deviates in at least two significant ways from EPA's 2007 guidance on SIP modeling.[17] One deviation is the UBAQS modeling reliance on fewer than the five years of data recommended by EPA to generate an 8-hour ozone current 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 deviation is in the computation of the relative responsive

[11] This document is available for review at the *regulations.gov* Web site under Docket ID No. EPA–R06–OAR–2007–0993.

[12] 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.

[13] In this action the expression "UBAQS" refers to the "FINAL REPORT UBAQS TECHNICAL REPORT", June 30, 2009. The presentation is available for review as Document ID # EPA–R06–OAR–2007–0993–0008.9 at *regulations.gov,* Docket ID # EPA–R06–OAR–2007–0993.

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

[15] WG's April 16, 2010 comment letter, pp. 3. The letter is available for review at the *regulations.gov* Web site Docket ID No. EPA–R06–OAR–2007–0993.

Page three of the commenter's letter.

[16] *See* UBAQS, pp. 4–27 to 4–29.

[17] EPA, Guidance on the Use of Models and other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$ 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.*

factor (RRF), which directly affects the modeling's future design value (DVF).[18] Due to unavailability of data satisfying EPA's recommendation that the RRF be based on a minimum of five days of ozone concentrations above 85 ppb, UBAQS modeling uses RRFs based on one or more days of ozone concentrations above 70 ppb.[19] Also, looking at Figures 3–19a–j of the UBAQS report, which cover ozone modeling performance through September of 2005, shows the modeling to have an over prediction bias for ozone. So, EPA concludes that the modeling analysis results provided by the commenter are unreliable for projecting nonattainment status even if EPA believed it was appropriate to use modeling for this purpose for the 1997 8-hr ozone NAAQS.

Finally, even if it were appropriate to consider modeled violations and the modeling were reliable for this purpose, the commenter has not raised any convincing evidence that emissions from New Mexico sources are impacting southwestern Utah during the predicted high ozone events. Specifically, no assessment or source apportionment was performed that indicated sources in New Mexico contributed to the three grid cells with modeled high values that may be modeled nonattainment values in Utah. In fact, the predominant wind direction would not carry emissions from New Mexico into southwestern Utah. Furthermore, in evaluating the Figures provided (Fig 4–3a to 4–4b) and other information in the modeling report, the modeling also does not indicate that emissions from New Mexico are impacting the higher modeled ozone values in the southwestern Utah area.

In summary, EPA does not agree that it is appropriate for purposes of section 110(a)(2)(D) to use modeled nonattainment as a basis for evaluation, for these two NAAQS (1997 8-hour ozone NAAQS and PM 2.5 NAAQS) especially in light of the concerns with the modeling discussed above. Even if EPA were to use modeling for this purpose, the UBAQS modeling analyses does not clearly predict violations of the 1997 8-hour ozone NAAQS in western Colorado and eastern Utah. In particular, the UBAQS modeling does not clearly establish violations of the NAAQS in southwestern Utah because of the way the results were reported. Significantly, the model does project violations in the Salt Lake City area (in 2006 and 2012 model years), but monitors in the area do not substantiate these modeled predictions. Based on monitoring data for 2007–2009, the Salt Lake City area does not have a monitored design value within 6 ppb of the level of the 1997 8-hour ozone NAAQS. In addition, EPA does not consider the UBAQS modeling reliable because the modeling deviates from EPA guidance and appears to have an over-prediction bias. Finally, the commenter did not provide evidence that emissions from New Mexico in fact contributed significantly to the modeled exceedances or violations projected in this modeling.

Comment No. 5—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 ozone monitoring 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 to reliance on monitoring data instead of modeled ambient levels.

EPA Response—EPA does not disagree that there are relatively few ozone monitors in the western states, and that relatively few of these ozone 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, the subject of this rulemaking, but rather the next iteration of the ozone NAAQS. Because the new ozone standard is likely to be significantly more stringent than the 1997 8-hour ozone NAAQS, it is anticipated 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 a newer ozone NAAQS does not 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 the deployment of monitors in the state meets the applicable regulatory requirements and guidance recommendations.

For example, New Mexico itself submits just such a report on an annual basis, and EPA reviews it for adequacy.[20] All 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 New Mexico sources in reliance on those monitors is incorrect.

Comment No. 6—The commenter objected to EPA's proposed approval of the New Mexico's SIP submission because neither New Mexico nor EPA performed a specific modeling analysis to assure that emissions from New Mexico sources do not significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS in downwind States.

EPA Response—First, this comment is incorrect. EPA and New Mexico did provide modeling as part of the evaluation of whether emissions from sources in New Mexico impact monitors with violating data in other states. The modeling is discussed in the proposed federal register and technical support document for this action and is one of the primary considerations in EPA's approval. The modeling that the commenter claims is necessary but absent, is modeling to assess impacts in areas with no monitors. As explained above, EPA believes that the assessment of significant contribution to nonattainment under section 110(a)(2)(D) for these NAAQS should be based upon impacts at monitors.

Second, EPA disagrees with the commenter's belief that only modeling can establish whether or not there is significant contribution from one state to another. 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

[18] Id., DVC × RRF = DVF.

[19] *See* UBAQS, p. 4–28.

[20] *See* the New Mexico Annual Monitoring Network Plan dated July 14, 2009. The plan is available for review at the regulations.gov Web site under Docket ID No. # EPA–R06–OAR–2007–0993.

recommended other forms of information that states might wish to evaluate as a qualitative approach as part of their section 110(a)(2)(D) submissions for the 1997 8-hour ozone NAAQS. EPA has concluded that the qualitative approach used by New Mexico in addition to modeling to assess the existence of, and extent of, any significant contribution to downwind ozone nonattainment is consistent with EPA's 2006 Guidance.

Comment No. 7—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.[21] 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 New Mexico's emissions and to insure compliance with Section 110(a)(2)(D)(i)(I). The commenter reasoned that the emissions that would result from the actions at issue in the other agency decisions, such as selected oil and gas drilling projects, would be of less magnitude and importance than the statewide emissions at issue in an evaluation under section 110(a)(2)(D).

EPA Response—As explained above, this comment is misplaced because EPA and New Mexico did employ modeling as part of the evaluation. Further, 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 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. 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." Even EPA's own CAIR analysis relied on a combination of qualitative and quantitative analyses. EPA's CAIR analysis excluded certain western states on the basis of a qualitative assessment of topography, geography, and meteorology.[22]

Furthermore, 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 National Environmental Policy Act, not the Clean Air Act. As explained above, in the context of section 110(a)(2)(D), EPA does not agree that only modeling is always required to make that different type of evaluation, and EPA itself has relied on other more qualitative evidence when it deemed that evidence sufficient to reach a reasoned determination.

Comment No. 8—In further support of its argument that EPA should require a specific type of 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).

EPA Response—EPA disagrees with this comment. The cited language implies that the need for control strategy requirements has already been demonstrated, and sets a modeling analysis requirement to demonstrate the adequacy of the control strategy developed to achieve the reductions necessary to prevent an area's air quality from continuing to violate the NAAQS. EPA's determination that emissions from sources in New Mexico do not contribute significantly to nonattainment for the 1997 8-hour ozone NAAQS 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). This modeling may also be appropriate under certain circumstances for maintenance SIPs under section 110(a)(1). Thus, the commenter's cited regulation is not relevant to EPA's technical demonstration assessing whether emissions from New Mexico contribute significantly to nonattainment in any other states under section 110(a)(2)(D)(i).

Comment No. 9—The commenter expressed concern with EPA statements in the proposed approval about the current factual attainment of the Denver Metro/North Front Range area of Colorado. The commenter noted that nine counties in the Denver area are currently formally designated "nonattainment" for the 1997 8-hour ozone NAAQS. The commenter took issue with EPA's description of the nature of the nonattainment problem in this area as resulting from an unusually bad ozone season that "temporarily" resulted in violations of the NAAQS. The commenter argued that data from the 2001–2003 period and the 2005–2007 period showed consistent violations of the 1997 8-hour ozone NAAQS in the Denver area, and that these violations are the reason for the current nonattainment designation.

EPA Response—EPA disagrees that formal designation status of an area is the most important consideration in evaluating the existence of, and extent of, the impacts of interstate transport from one state to another. In past actions under section 110(a)(2)(D), EPA has interpreted that provision to turn upon the actual monitored ambient levels in a downwind area, regardless of the formal designation status of the area. For example, EPA developed the CAIR

[21] WG's April 16, 2010 comment letter, pp. 8–9. 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–R06–OAR–2007–0993–0008.3 through 0993–0008.6.

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

rule based upon evaluation of monitor data showing violations of the 1997 $PM_{2.5}$ NAAQS in certain areas, in advance of completing the designation process for those NAAQS under section 107(d). [23] EPA agrees that the designation status of an area is a relevant consideration, but the actual monitored ambient levels are an appropriate measure, especially when there is evidence that the monitored levels are different than reflected by the designation for the area. EPA itself has also looked to future attainment status as a means of evaluating the presence of, and extents of, interstate transport. This analysis depends not upon the anticipated formal designation status of the area, but rather upon the anticipated monitored level of the area.[24]

EPA believes that the commenter is placing undue importance upon the EPA's characterization of the data from Denver area monitors as "temporarily" in nonattainment based on the "bad" ozone season of 2007. EPA agrees that this area has historically had relatively high ambient levels. However, as explained in the proposal, these levels have improved, and more importantly, have improved during the period that is most relevant and most recent. As noted in the proposal, recent monitoring data from the Denver area for the 2007–2009 period indicates that the area is below the level of the NAAQS. For this trend to change, EPA anticipates that the Denver area would have to have dramatically higher ozone levels in 2010 than the area has experienced for many years. EPA believes that it is more reasonable to conclude that the monitored attainment of this area at the time of the analysis done by New Mexico will continue. Therefore there could not be significant contribution from sources in New Mexico to nonattainment in Denver.

EPA believes that the downward trend in monitored nonattainment in the Denver area supports this conclusion. At the time the modeling was performed to support the state's section 110(a)(2)(D) submission, Denver was monitoring attainment (the 2004–2006 8-Hour Ozone Design Value (DV) was 81 ppb).[25] In 2007, the Denver area experienced a particularly bad ozone season, and inclusion of the data from this year did temporarily affect the monitored values in this area. However, the most recent data for this area, preliminary data for 2007–2009 DV (awaiting final data validation), is 82 ppb even with inclusion of the very high ozone values from 2007. Thus, the area's most recent DV based upon preliminary data is several ppb below the 1997 8-hour ozone NAAQS, and the area is therefore currently monitoring attainment.

The downward trend in ozone concentrations is in part the result of a sustained effort to attain the NAAQS in the Denver area. The Denver area has seen a drop in ozone levels in the last 10 years attributable in part to federal measures that have reduced mobile source emissions. In addition, Colorado adopted an Ozone Action Plan in December 2008 that included additional reductions in emissions of ozone precursors (NO_X and VOCs), that will further aid the area in maintaining attainment. Given these facts, EPA concludes that the monitored attainment of the 1997 8-hour ozone NAAQS in the Denver area is likely to continue.

Comment No. 10—The commenter also disputed the EPA statement in the proposal that it is "unlikely that Denver will be in nonattainment at the end of the 2010 ozone season," and questioned why EPA did not cite or include any actual model data to support this assertion. The commenter specifically took issue with EPA's reference to the "2010 ozone season" in the proposal because section 110(a)(2)(D) would prohibit significant contribution to nonattainment at all times, not simply during the "2010 ozone season."

EPA Response—As discussed above, EPA believes the monitoring data adequately demonstrates that the Denver area is attaining the standard and is likely to continue to do so. The commenter is correct that EPA did not cite modeling that showed that Denver would be in attainment in 2010 in the proposal. We are aware, however, of the photochemical modeling for Denver completed as part of the "Ozone Action Plan" adopted by Colorado in December 2008.[26] This plan included the benefits of federal measures and fleet turnover and additional local NO_X and VOC reductions. The plan also included photochemical modeling that indicated all monitors in the area would be in attainment of the 1997 8-hour ozone NAAQS in 2010. The modeling results supplement the monitoring results discussed previously indicating the area is in attainment and will be in attainment in 2010.

Further, EPA believes that the commenter is mistakenly assuming that EPA's reference to the "2010 ozone season" implied that section 110(a)(2)(D) would not require the elimination of emissions from sources in an upwind state that significantly contributed to violations of a NAAQS at any time of the year. In the case of the 1997 8-hour ozone NAAQS, however, it is a fact that there is an "ozone season" in many places across the county. Higher ozone concentration levels typically occur during the warmer, sunnier portions of the year, especially the summer. Like most areas, Denver has an ozone season. Therefore, it is not unreasonable for EPA to evaluate the likely impacts of data from monitors in this area during the "ozone season."

EPA also disagrees that an evaluation focused on impacts on 2010 levels is not adequate for purposes of section 110(a)(2)(D). As further discussed elsewhere in this notice, EPA's 2006 Guidance to states for section 110(a)(2)(D) SIP submissions recommended that states might elect to evaluate the existence of, and extent of, significant contribution to nonattainment in other states by 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. EPA itself in the context of the CAIR rule evaluated whether there would be such impacts in 2010. This year was a reasonable choice, because it correlated with the presumptive attainment dates for states with nonattainment areas. For example, in the case of the 1997 $PM_{2.5}$ NAAQS, the applicable attainment date is as expeditiously as practicable, but not later than five years from the effective date of the designation, *i.e.,* by 2010. Because 2010 is a reasonable date for this analysis, given the purpose of section 110(a)(2)(D), and is consistent with EPA's recommendations in the 2006 Guidance, EPA concludes that the selection of this date for the analysis supporting the New Mexico submission was appropriate. The commenter did not suggest another date that would be more appropriate nor did they explain the basis for requiring a different year for this analysis.

Comment No. 11—The commenter also asserted that EPA was wrong in stating that the Denver area had not experienced a 4th highest 8-hour ozone reading of 92 ppb in the last 15 years. The commenter claimed that the Denver metro area experienced a 4th highest

[23] *See:* Final CAIR rule, 70 FR 25,162, 25,263–25,269.

[24] EPA notes that the commenter itself also made the argument that nonattainment for purposes of section 110(a)(2)(D) should be viewed "in terms of air quality, and not in terms of area designations" on page 2 of its own comment letter.

[25] Data from EPA's Air Quality System which is EPA's repository of ambient air quality data. (*http://www.epa.gov/ttn/airs/airsaqs/*).

[26] "Denver Metro Area & North Front Range Ozone Action Plan Including Revisions to the State Implementation Plan", Approved by Colorado Air Quality Control Commission, December 12, 2008.

max of 95 ppb at the Roxborough Park monitor in Douglas County in 2005 and of 95 ppb at the Applewood monitor in Jefferson County in 1998 and in 2003.

EPA Response—In response to this comment, EPA rechecked the data in the EPA's Air Quality System (AQS) and believes the commenter was in error that a fourth highest maximum of 95 ppb occurred at the Roxborough Park (also know as the Chatfield monitor) monitor in 2005. EPA's AQS indicates a value of 84 ppb in 2005. However, EPA's AQS does indicate that a 95 ppb 4th high occurred in 2003 at the Roxborough Park monitor and this may be the date that the commenter intended. In any event, upon closer examination, EPA concludes that the commenter is correct that values above 92 ppb have occurred in the Denver area in the last 15 years.

EPA also notes that the current DVs (2007–2009) for these two monitors (Roxborough Park and Applewood) are 77 ppb and 76 ppb, which is well below the 1997 8-hour ozone NAAQS. Furthermore, these monitors would have to have fourth high daily maximum 8-hour monitored values of 104 and 111 ppb respectively in 2010 to have a 2008–2010 DV violating the 1997 8-hour ozone NAAQS. The fourth high daily maximum value monitored the last 15 years in the Denver area was 95 ppb which is significantly lower than the 104 or 111 ppb values that would have to be monitored for either of these two monitors to be violating the 1997 8-hour ozone NAAQS.

Therefore, EPA believes that the commenter's correction that there have been higher values (maximum of 95 ppb in the last 15 years) at monitors in the Denver area does not fundamentally affect EPA's evaluation in this case. The higher values were not at the monitor that was the basis for the Denver area design value in the last several years. The monitor that has been the basis for the Denver area DV has been the Rocky Flats North monitor. Even though the commenter is correct that the area has monitored higher values at certain monitors in the past, these monitors are not the monitors that have in recent years determined whether the area will continue to monitor attainment because they have not recorded the highest design value in the area. The Rocky Flats North monitor has the highest 2007–2009 Denver area DV of 82 ppb and is based upon fourth high values of 90 ppb in 2007, 79 ppb in 2008, and 79 ppb in 2009. This monitor would have to have a fourth high daily maximum of 97 ppb in 2010 to result in a violation of the 1997 8-hour ozone NAAQS. Therefore, it does not change EPA's conclusion that the Denver area continues to monitor attainment and therefore emissions from sources in New Mexico cannot be contributing significantly to violations of the 1997 8-hour ozone NAAQS in this area.

Comment No. 12—The commenter also pointed to modeling data used by New Mexico that appears to contradict the conclusion that emissions from New Mexico do not contribute significantly to violations of the 1997 8-hour ozone NAAQS in Denver. The commenter argued that data available in New Mexico's own technical support document that was part of EPA's record (Docket No. EPA–R06–OAR–2007–0993) establish that emissions from New Mexico sources "often contributes greater than 2 parts per billion in ozone on days when exceedances of the 1997 ozone NAAQS are recorded in Denver" and can contribute "more than 5% to Denver's total ozone concentrations." Finally, the commenter argued that New Mexico wrongly assumed that this amount of contribution was not relevant "under the assumption that the region was not in nonattainment" when the area is currently designated nonattainment.

EPA Response—EPA disagrees with the commenter's conclusions drawn from the modeling. The modeling was conducted using an emissions inventory from 2002. Because emissions in the year 2010 are expected to be lower, EPA considers this modeling to be a conservative estimate of ozone levels in the future and of the impact of New Mexico's emissions on other states. EPA believes that the modeling shows higher impacts than are actually occurring. The modeling utilized existing CENRAP modeling databases available at the time and the source apportionment evaluation was conducted using the 2002 emission inventory databases. Because the available databases were for 2002 and not 2010, EPA considers the results of the modeling conservative because significant emission reductions are expected to occur throughout the modeled area between 2002 and 2010 (as a result of both federal and state measures, including fleet turnover impacts) that would result in lower ambient ozone levels and fewer exceedances of the 1997 8-hour ozone NAAQS throughout the modeling domain.

Specifically, there are three elements in this analysis that EPA concludes lead to overestimation of the impacts of New Mexico sources and therefore make this modeling less reliable to determine that sources in New Mexico contribute significantly to violations of the 1997 8-hour NAAQS in Colorado (or any other state). These three elements that result from using a 2002 and not a 2010 emission inventory are: (a) Additional emissions reductions in other states as a result of ozone nonattainment SIPs have been implemented that were not reflected in the 2002 emission inventory; [27] (b) additional emissions reductions as a result of federal measures (including On-road, Non-road, and the impacts of fleet turnover) throughout the modeling domain since 2002; and (c) additional reductions from large stationary NO_X sources and from mobile sources as a result of federal measures that have occurred in New Mexico since 2002. As a result of these differences in the emission inventory between 2002 and 2010, New Mexico's Technical Support Document describing and evaluating the modeling indicated that the impacts for New Mexico's emissions were considered conservative estimates and were expected to overstate the State's contribution to areas in other states. EPA believes that these conservative assumptions make the modeling reliable for purposes of determining that there is not a significant contribution from sources in New Mexico to the other states, but less reliable for purposes of determining that there is such significant contribution. EPA believes that the modeling relied upon by the State is conservative because of the three emission elements discussed above and that this is further supported by studies referred to by the commenter. Other studies support the conclusion that the Denver area will be monitoring attainment in 2010 for the 1997 8-hour ozone NAAQS, and therefore emissions from sources in New Mexico would not be contributing significantly to nonattainment in this area. Specifically, the WRAP model emission inventories for 2002 and 2018 showed decreases nationally in ozone precursors (NO_X and VOC.) [28] The UBAQS modeling report included emission inventory assessments between 2006 and 2012 that also showed decreases in New Mexico's NO_X emissions for the part of New Mexico

[27] Additional emission reductions have occurred as a result of 1-hour ozone and 8-hour ozone nonattainment area SIPs for Denver and other areas in the modeling domain (Dallas, Houston, etc.). The most recent SIP submitted indicated that all of the Denver area monitors would be in attainment in 2010 with the 1997 8-hour ozone NAAQS. The Denver SIP also included an analysis of emission inventories in the Denver area that showed a net decrease in NO_X and VOC emissions between 2006 and 2010 (Ibid DOAP) despite the inclusion of growth in Oil and Gas emissions in the Denver area. (DOAP)

[28] WRAP EDMS, *http://vista.cira.colostate.edu/TSS/EDMS.aspx*.

that was in the 12 km modeling grid.[29] Finally, the fact that Denver is monitoring attainment at this time is further indication that the 2002 modeling was conservative because it predicted exceedances in Denver, while the 2010 monitoring data is showing attainment.

Because the modeling was conservative and overstates the extent of contribution from sources in New Mexico to the Denver area, it is inappropriate to use the modeling as a definitive determination of New Mexico's impacts on downwind areas. The modeling was designed to be conservative and as such only provides a clear indication of non impact on downwind nonattainment areas. Therefore, EPA disagrees that the modeling supports the conclusion of significant contribution from New Mexico sources to the Denver nonattainment area as the commenter indicated. The commenter is correct that the CENRAP based modeling with a 2002 emission inventory showed impacts that were above 2 ppb and contribution levels that were above 5%, but due to the conservative nature of the 2002 assessment, EPA does not conclude that it indicates that sources in New Mexico have a significant contribution to nonattainment in Denver.

EPA also believes that NO_X emissions in upwind states are the most relevant consideration for interstate transport of ozone. In the final CAIR rule, EPA concluded that NO_X emissions were the primary pollutant to reduce in order to yield reductions in interstate transport of emissions that affect levels of ozone in the context of the 1997 8-hour ozone NAAQS.[30] Recent photochemical modeling in the New Mexico and Colorado region further support this conclusion, and therefore we have thus focused on NO_X emissions in the context of ozone in this action as well.

As reflected in the New Mexico submission and the UBAQS modeling documentation, New Mexico has decreased emissions of NO_X from several sources which would lessen New Mexico's impact on ozone in areas outside of New Mexico. Therefore, the reductions in NO_X emissions in New Mexico would decrease the impacts from New Mexico on Denver's ambient ozone levels when transport conditions would occur that New Mexico's emissions could impact the Denver area. A review of the UBAQS report indicates New Mexico's NO_X reductions are mostly from elevated point source reductions (*i.e.*, from tall stationary source stacks). Elevated emissions would have the greatest chance to transport downwind, so these reductions are likely among the most effective at reducing long range transport impacts on ozone levels regionally. In any event, based on preliminary 2007–2009 data, Denver is attaining the 1997 8-hour ozone NAAQS. Therefore, New Mexico's emissions cannot be considered as contributing significantly to nonattainment of those NAAQS in the Denver area

In summary, the Denver area is monitoring attainment of the 1997 8-hour ozone NAAQS. The modeling submitted by the State to support its submission indicating impacts from sources in New Mexico on the Denver area is conservative, and probably overestimates both the ozone levels in Denver and any impacts from New Mexico's emissions. There have been significant emission reductions in the modeled area, supporting the conclusion that the modeling based on 2002 represents a conservative description of ozone levels and New Mexico's impact on the Denver area and therefore should not be relied upon solely to draw a conclusion about the impact of emissions from New Mexico in the Denver area. Considering the modeling in conjunction with the expected emission reductions and the actual monitoring data in this area, EPA concludes that emissions from New Mexico are not contributing to nonattainment of the 1997 8-hour ozone NAAQS in the Denver area.

Comment No. 13—The commenter argued that New Mexico and EPA inappropriately relied on analyses conducted in connection with CAIR to justify its conclusion that emissions from sources in New Mexico do not contribute significantly to nonattainment in downwind states with regards to the 1997 $PM_{2.5}$ NAAQS. According to the commenter, neither of the modeling analyses EPA used during the development of the CAIR rule supports the conclusion.

The commenter acknowledged that the REMSAD modeling that EPA used initially for CAIR in 2004 assessed emissions from New Mexico, but claimed that EPA eventually "rejected" this modeling and replaced it with analysis using the CMAQ model as a more "accurate" means of assessing $PM_{2.5}$ impacts among states. The commenter did note that EPA explained in the final CAIR rule that it believed the REMSAD model "treats the key physical and chemical processes associated with secondary aerosol formation and transport," but pointed to EPA's statement that the REMSAD model "does not have all the scientific refinements of CMAQ" and also to EPA's use of the CMAQ modeling for the final CAIR rule instead of the REMSAD modeling. The commenter thus implied that the REMSAD modeling could have no relevance to whether emissions from New Mexico sources contribute significantly to nonattainment in other states for purposes of the 1997 $PM_{2.5}$ NAAQS.

Similarly, the commenter argued that the CMAQ modeling could not support the conclusion that New Mexico sources are not contributing significantly to violations of the NAAQS in other states. The commenter claimed that although New Mexico was included in the CMAQ $PM_{2.5}$ modeling domain for CAIR, EPA did not specifically assess impacts from New Mexico to downwind States. The commenter acknowledged that EPA conducted state by state "zero out" modeling for 37 states, but claimed that because EPA had not conducted such a zero out modeling run for New Mexico, the CMAQ model runs do not support the proposed conclusion in this action.

EPA Response—EPA disagrees with the commenter's judgment that the technical analyses conducted in conjunction with CAIR do not provide technical support for the conclusion that New Mexico sources do not contribute significantly to violations of the 1997 $PM_{2.5}$ NAAQS in any other state. EPA agrees that it progressively refined its analytical approach from the time of the proposed CAIR rule to the final CAIR rule, but it does not follow that the analyses done for CAIR are inappropriate for consideration in today's action. EPA believes that the analyses conducted for CAIR in fact provide technical support to the conclusion that emissions from New Mexico sources do not contribute significantly to violations of these $PM_{2.5}$ NAAQS in any other state.

EPA conducted modeling in the CAIR proposal using REMSAD modeling. With respect to the REMSAD modeling, the commenter is correct that EPA specifically evaluated the impact of emissions from New Mexico on other states in the eastern half of the United

[29] "UINTA BASIN AIR QUALITY STUDY (UBAQS)", prepared by Environ for the Independent Petroleum Association of Mountain States (IPAMS), June 30, 2009. Tables 2–18 and 2–20. The UBAQS 12 km grid included parts of northwestern New Mexico (including parts of the San Juan basin) and the emission inventory data indicated that emissions of NO_X from this area were going to decrease from 115,942 tpy in 2006 to 95,867 tpy in 2012.

[30] *See:* Final CAIR rule, 70 FR 25162, 25174 ("As discussed in section III below, for 8-hour ozone, we reiterate the finding of the NO_X SIP Call that NO_X emissions, and not VOC emissions, are of primary importance for interstate transport purposes.")

States. The modeling indicated a 0.03 μg/m^3 maximum impact from New Mexico's emissions on downwind $PM_{2.5}$ nonattainment areas in 2010, which was significantly lower than the 0.15 μg/m^3 value used as the threshold for significance in the proposed CAIR rule and the 0.20 μg/m^3 value used in the final CAIR rule.[31] In other words, EPA's analysis indicated that the impact of emissions from New Mexico sources were only a small fraction of the initial threshold amount that EPA considered relevant as the first stage of the analysis to determine the existence of, and extent of, impact on other states.

The commenter implied that EPA's subsequent use of the CMAQ model for the final CAIR rule per se renders REMSAD invalid for purposes of today's action. To support this assertion, the commenter overstated the potential limitations of the REMSAD model, a misimpression heightened by the way in which the commenter described EPA's own stated position. The full statement by EPA in the final CAIR rule was: [32]

"However, even though REMSAD does not have all the scientific refinements of CMAQ, we believe that REMSAD treats the key physical and chemical processes associated with secondary aerosol formation and transport. Thus, we believe that the conclusions based on the proposal modeling using REMSAD are valid * * *"

This was not a categorical dismissal of REMSAD modeling for all purposes; it was a recognition that REMSAD was reliable for certain purposes even though the subsequent CMAQ modeling was an improvement. During rulemaking, it is appropriate for EPA to make improvements and refinements to models and the associated databases. EPA responded to comments raising concerns about reliance on the REMSAD modeling results from the proposal package and determined that decisions and determinations based on the proposal REMSAD modeling were still valid in the final CAIR rule.

With respect to the CMAQ modeling, New Mexico was not among the 37 states for which it did specific "zero out" modeling runs. EPA disagrees, however, with the commenter's extrapolation that this means EPA "did not assess" the impacts of emissions from New Mexico with respect to the 1997 $PM_{2.5}$ NAAQS in the final CAIR rule. To the contrary, EPA's evaluation of New Mexico with REMSAD was part of the analysis for the proposed CAIR rule and EPA did not reject the results of the REMSAD modeling in the final CAIR rule.[33] The lack of significant impact on nonattainment from New Mexico and other Western States shown by the REMSAD modeling in the proposal helped influence the more refined modeling analysis in the CAIR final rule which focused only on the Eastern States.

In considering this comment, EPA has looked again at the use of the REMSAD modeling for the CAIR proposal for assessing New Mexico's impacts on other States. We continue to believe that the REMSAD results are sufficient to make a determination of no significant contribution to nonattainment of the 1997 $PM_{2.5}$ NAAQS in other states because of the very small impacts that were estimated from emissions from New Mexico sources. The REMSAD modeling had indicated that New Mexico's impacts on downwind 2010 $PM_{2.5}$ nonattainment areas was only 15% of the significance level used in the final CAIR rule. Because the REMSAD modeling indicated values of only 15% of the final significance level, EPA did not consider the differences between the two modeling platforms (REMSAD and CMAQ) to be significant enough to lead to further analysis using CMAQ based modeling. EPA has determined in this action that the results from the REMSAD based modeling continue to support the conclusion that emissions from New Mexico sources are not contributing significantly to violations of the 1997 $PM_{2.5}$ NAAQS in other states. The commenter did not articulate any way in which the distinctions between REMSAD and CMAQ would result in at least a seven-fold increase in the estimated impacts of emissions from New Mexico emissions on another state's 1997 $PM_{2.5}$ nonattainment area. EPA does not believe that such a divergence would be likely.

Comment No. 14—The commenter argued that it is also inappropriate for EPA to rely on the CAIR modeling because the 2004 REMSAD model did not include other western states (including Arizona, California, Nevada, Utah, Idaho, Oregon, and Washington). The commenter asserted that EPA never assessed the impacts of emissions from New Mexico to these western states in the CAIR modeling and that this is problematic because there are $PM_{2.5}$ nonattainment areas in California and in Utah. Although not clear, the commenter apparently argues that the existence of designated $PM_{2.5}$ nonattainment areas in California and Utah renders the CAIR modeling irrelevant. More specifically, the commenter argues that because EPA has recently designated certain counties in the Salt Lake City area and Cache County, Utah as nonattainment for the 2006 $PM_{2.5}$ NAAQS, EPA was obligated to assess and limit downwind impacts accordingly in accordance with Section 110(l) of the Clean Air Act.

EPA Response—EPA disagrees with the commenter on this issue. First, this rulemaking addresses the potential impacts of emissions from New Mexico sources on other states with violations of the 1997 $PM_{2.5}$ NAAQS, not the 2006 $PM_{2.5}$ NAAQS. Therefore, EPA's assessment of New Mexico's SIP was based on potential impacts on areas violating the 1997 $PM_{2.5}$ NAAQS (15 μg/m^3 annual and 65 μg/m^3 24-hour standard). The application of section 110(a)(2)(D) to the 2006 $PM_{2.5}$ NAAQS, or other NAAQS, will be addressed in later actions that pertain to those NAAQS.

Second, EPA believes that the analysis conducted in conjunction with CAIR is both relevant and very probative in evaluating the presence of, and extent of, interstate transport from New Mexico sources to other states in this action. The CAIR modeling and analysis specifically evaluated impacts on areas that were violating the 1997 $PM_{2.5}$ NAAQS. The other western states identified by the commenter were in the CAIR modeling domain but were not evaluated further in the CAIR rule because, with the exception of California and Montana, these states were in attainment of the 1997 $PM_{2.5}$ NAAQS.[34] Absent areas with violations of those NAAQS, there could be no significant contribution to violations of the 1997 $PM_{2.5}$ NAAQS. With regard to California and Montana, EPA indicated in the CAIR rule that interstate transport impacts were not a significant contributor to these areas, therefore impacts from New Mexico sources to California were not likely.[35]

Finally, even aside from the CAIR analysis, EPA does not believe that emissions from New Mexico sources contribute significantly to violations of the 1997 $PM_{2.5}$ NAAQS in California. The areas of California with violations of the 1997 $PM_{2.5}$ NAAQS are generally

[31] *See,* Final CAIR rule 70 FR 25162, at 25174.

[32] *See,* Final CAIR rule 70 FR 25162, at 25234.

[33] In this action, "CAIR Proposal" refers to the proposal rule published on January 30, 2004 in the **Federal Register** and entitled "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone", Interstate Air Quality Rule, 69 FR 4566.

[34] *See,* Final CAIR rule 70 FR 25162, at 25169: ("Only two States in the western part of the U.S., California and Montana, have counties that exceeded the $PM_{2.5}$ standards") and ("Because interstate transport is not believed to be a significant contributor to exceedances of the $PM_{2.5}$ standards in California or Montana, today's final CAIR does not cover these States").

[35] Id.

located far to the west, hundreds of miles from New Mexico sources, across large expanses of mountain ranges that would impede transport, and generally upwind from New Mexico. EPA believes that the predominant meteorological conditions would carry New Mexico emissions to the east, north, or south but not generally to the west. As a result, EPA concludes that it is very unlikely that New Mexico's emissions transport hundreds of miles to the west to the 1997 $PM_{2.5}$ NAAQS in California.[36] The CAIR modeling only addressed areas that were expected to be in nonattainment in 2010, based on existing monitoring data at the time and 2010 photochemical modeling. Other than California, none of the other states mentioned by the commenter were monitoring nonattainment, or designated nonattainment for the 1997 $PM_{2.5}$ standards, at the time these analyses were conducted.

Although not cited by the commenter, EPA notes that there has been one monitored violation of the 1997 $PM_{2.5}$ annual NAAQS in Utah. It occurred in 2002–2004 time period at a single monitor in the Salt Lake City area. This violation has not continued. In this instance, the state concluded that the monitor was heavily impacted by a nearby source. After the state instituted controls at the source, the design value has dropped to less than 45 $\mu g/m^3$ in the last four years. EPA notes that the impact of a nearby source does not in and of itself negate the possibility of impacts of interstate transport at that monitor as well. However, because that monitor has not subsequently shown any violation of the 1997 $PM_{2.5}$ NAAQS, EPA concludes that there are no areas in Utah with violations of that NAAQS to which New Mexico sources could be contributing significantly. All other $PM_{2.5}$ monitors in the area have consistently had DVs below 55 $\mu g/m^3$ since the 2001–2003 DV period.

Comment No. 15—The commenter also criticized modeling that the state and EPA relied upon because of concerns about the accuracy of the underlying emissions inventories on which the models relied. In particular, the commenter claimed that the modeling fails to address recent growth in emission inventories for oil and gas operations in New Mexico that have been raising the emissions from the state higher than have been previously reported in emissions inventories.

The commenter argued that these increases in emissions at least call into question the accuracy of the modeling relied upon by EPA to support the proposed approval of the State's submission, and at worst demonstrate that EPA has failed to address a key aspect of contribution to nonattainment in downwind states from New Mexico sources.

The commenter listed several recent reports that estimated increased emissions of SO_2, NO_X, and VOCs that result from the growth of oil and gas exploration in certain areas in New Mexico. The more recent studies cited by the commenter were:

- The November 25, 2009 inventory of 2006 oil and gas emissions in the San Juan Basin of New Mexico, which includes San Juan, Rio Arriba, McKinley, and Sandoval Counties, prepared by the Independent Petroleum Association of the Mountain States ("IPAMS"). This inventory found that oil and gas point and area sources within this region annually released 42,075 tons of NO_X, 60,697 tons of volatile organic compounds ("VOCs") and 305 tons of sulfur dioxide ("SO_2").;
- The August 2009 report on 2005 emissions in the Four Corners region of northwestern New Mexico, which found that oil and gas point and area sources within the region annually released 57,682 tons of NO_X, 668 tons of SO_2, and 117,370 tons of VOCs. The report indicates that by 2018, these emissions will increase to 65,543 tons of NO_X, 670 tons of SO_2, and 143,050 tons of VOCs; and
- The 2007 WRAP Phase II Inventory of 2002 oil and gas emissions, which found that oil and gas activities throughout New Mexico released 112,540 tons of NO_X and 13,925 tons of SO_2, and that by 2018 would release 110,034 tons of NO_X and 13,002 tons of SO_2 in the State.

The commenter argued that without specifically addressing these more recent increases in the emissions associated with oil and gas development, New Mexico and EPA have no basis to conclude that the modeling relied upon in the proposed approval is accurate or ensures that emissions are not and will not significantly contribute to nonattainment in other states. The commenter also noted that the modeling prepared for CAIR utilized emission inventories from 2001, which would likewise fail to account for the more recent increase in emissions associated with oil and gas development.

EPA Response—EPA shares the commenter's concern with emissions from oil and gas development, and agrees that dramatic increases in such emissions, and especially emissions from sources that are not appropriately controlled, have the potential to contribute significantly to violations of NAAQS in other states. However, EPA has investigated this issue in response to the commenter's concerns in this action, and has concluded that the information currently available does not indicate that New Mexico's emissions from oil and gas development are significantly contributing to violations of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in other states. To reach this conclusion, EPA has used available information and extrapolated what the impacts of the additional emissions from oil and gas development would be in a worst case scenario, as part of evaluating how those increases would affect the modeling results and other information EPA relied upon in the proposal.

EPA has to make regulatory decisions using the emissions inventories and analyses that are available at the time of the decision. These inventories are, of course, constantly being updated and refined. The CAIR modeling used a base year emission inventory from 2001 that EPA then projected to 2010, which was the timeframe that EPA used for the analysis of New Mexico's impacts on areas in other states with monitors projected to have violations of the 1997 $PM_{2.5}$ NAAQS. The CENRAP modeling used a 2002 inventory to assess New Mexico's ozone impacts on areas in other states with monitors projected to have violations of the 1997 8-hour ozone NAAQS. At the time this modeling was conducted, EPA believed that the emission estimates for oil and gas development were appropriate.

The commenter cited studies that have been conducted more recently to refine estimates of current emissions and future projected emission levels from oil and gas development in areas of New Mexico. These more recent studies indicate that emissions from oil and gas development are likely much higher than those assumed in the models. Because the studies do not indicate the amount of emissions growth that has happened since the 2001/2002 timeframe, however, it is difficult to determine the impact this presumed increase would have. Therefore, to evaluate this concern, below we consider a worst case estimate impact of oil and gas emissions on whether emissions from sources in New Mexico significantly contribute to nonattainment in other states.

The reports cited by the commenter indicate that emissions from all oil and gas development in New Mexico in the years from 2002–2006 have a range of up to 112,540 tpy of NO_X, 117,370 tpy of VOC, and 13,925 tpy of SO_2. In

[36] EPA reached this same conclusion in the CAIR rule. *See,* Final CAIR rule 70 FR 25162, at 25169.

comparison, the modeling conducted using the 2002 CENRAP emission inventory databases included emissions from all sources in New Mexico with totals of 306,194 tpy of NO_X, 1,749,081 tpy of VOC and 100,174 tpy of SO_2.[37] The modeling conducted for CAIR included an inventory from all sources of 242,782 tpy of NO_X and 173,724 tpy of SO_2 for the 2010 base level emissions for sources in New Mexico.[38] These emissions inventories used for the CENRAP modeling and the CAIR modeling did include some emissions from oil and gas development activities in New Mexico, so EPA believes that some portion of emissions attributed to such sources in the more recent studies were included in statewide emission inventories from all sources and thus in the CENRAP and CAIR modeling.

It would be very difficult to ascertain the exact amount of emissions from oil and gas sources that were included in the emission inventories for these two modeling evaluations and thus to ascertain the exact amount that the inventories used for the modeling exercises underestimate such emissions. Therefore, to evaluate how much the additional emissions from oil and gas development could impact the determination, we have used a worst case estimate of how much higher the emissions in New Mexico could be, based on the studies provided by the commenter. If one uses the highest NO_X value from these reports of 112, 540 tpy and compare that with the 306,194 tpy of NO_X (from the CENRAP based modeling), the percentage increase in NO_X emissions would be a 36% increase in NO_X emissions over the modeled emissions. Similarly, if one compares the highest SO_2 value from the reports (using 13,925 tpy from the reports and 100,174 tpy from the CENRAP based modeling) the percentage increase in SO_2 emissions would be less than a 8% increase in SO_2 emissions over the modeled emissions. EPA believes that these are worst case scenario increases, because they include the highest estimate of oil and gas development emission from the reports supplied by the commenter, but they probably overestimate the true increase over the inventories used for the modeling, and double count the emissions of oil and gas that were in the original modeling.

EPA notes that these estimates also do not include the significant reductions that have occurred in New Mexico from non oil and gas sectors, such as federal motor vehicle controls and fleet turn over and controls on SO_2 and NO_X emissions installed on large stationary sources including the San Juan Generating Station. In addition, emissions in other parts of the modeling domain outside of New Mexico would be expected to have decreased after 2002 due to federal and state controls including fleet turnover and would not have been included in the CENRAP based modeling for ozone and only partially included in the CAIR modeling.

EPA relied on photochemical modeling conducted for CAIR for the $PM_{2.5}$ analysis in determining that New Mexico's emissions do not make a significant contribution in areas in other states with monitors showing violations of the 1997 $PM_{2.5}$ NAAQS. As discussed elsewhere in this notice, the modeling indicated that the largest impact from New Mexico's emissions on any such monitor in another state was only 15% of the significance level used in the final CAIR rule. In the worst case estimate above, NO_X emissions could at most be 36% higher and SO_2 could be at most 8% higher than was modeled in CAIR. Although the impact on the model would not necessarily be linear, EPA does not believe that such a relatively small increase in total SO_2 and NO_X emissions would increase the impact of New Mexico emissions by the more than 7 fold necessary to reach the significance level EPA used in CAIR for the 1997 $PM_{2.5}$ NAAQS.

EPA relied on photochemical modeling based on 2002 emission inventories (available from CENRAP's efforts) in determining that New Mexico's emissions do not make a significant contribution in areas in other states with monitors showing violations of the 1997 8-hour ozone NAAQS. EPA relied on this modeling to evaluate the possible contribution from New Mexico sources to areas that were monitoring violations of the 1997 8-hour NAAQS. EPA considers the modeling conservative in that it used 2002 inventories, and for the *entire* modeling grid (which covered most of the continental U.S. and parts of Canada and Mexico), and it did not include the benefits from emission reductions after 2002 from federal and state requirements including fleet turnover. The modeling did not indicate values that were close to the significance levels for New Mexico's impacts on out of state areas which were nonattainment and/or monitoring nonattainment of the 1997 8-hour ozone NAAQS. The area monitoring nonattainment with the highest modeled impact from sources in New Mexico was the Dallas/Fort Worth Area. The modeled daily average contribution from sources in New Mexico was 0.4% with a contribution average of 0.4 ppb. EPA's screening criteria for the first step of the analysis for any significant contribution, established in CAIR and upheld by the court, were 1% and 2 ppb respectively. EPA believes that even a conservative estimate of a 36% increase in NO_X emissions from New Mexico's sources would not more than double New Mexico's impact on other states, even before considering the other offsetting NO_X emission reductions between 2002 and 2010 from other source categories. Therefore, EPA concludes that these new emission estimates would not result in significant enough changes in impacts from New Mexico's sources to change the determination that emissions from sources in New Mexico do not significantly contribute to violations of the 1997 8-hour ozone NAAQS in other states, based on available information. Accordingly, New Mexico does not need to amend its SIP substantively to reduce any additional emissions to prevent such impacts on other states.

Finally, EPA notes that photochemical modeling is a very detailed and complicated process and there are continual refinements in emission inventories and other modeling databases. Unfortunately, the statutory and regulatory requirements, and especially the timing requirements, for developing and evaluating SIPs do not allow for time or resources to do every possible refinement to emission inventories on a continual basis. In this specific case, EPA agrees that the sudden expansion of oil and gas development and the emissions increases from such activities are a source category for which emissions inventories need updating, to insure that future regulatory actions by both states and EPA continue to be based upon the most recent and accurate information available

EPA is concerned with the growth in emissions from oil and gas development in New Mexico and other areas of the country, including other states in Region 6. On May 10, 2010, EPA Region 6 held a meeting with the principal oil and gas producers, trade organizations, and the five States in the Region, with the goal of finding ways to improve the emission inventory for these sources. Region 6 has initiated this process because a clearer understanding of these emissions will be necessary for future air quality plans under the new revised standards.

Comment No. 16—The commenter also objected to EPA's proposed approval because "New Mexico's SIP, as written, simply does not contain any

[37] WRAP EDMS, CENRAP TSD.

[38] CAIR Proposal TSD.

language that prohibits emissions that contribute significantly to nonattainment in any other state." The commenter also noted 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 New Mexico 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 the 1998 NO_X SIP Call. [39] 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 emissions from sources in the State contribute significantly to nonattainment in downwind areas.[40] If this factual finding is in the negative, as is the case for EPA's assessment of the contribution from emissions from sources in New Mexico, then section 110(a)(2)(D)(i)(I) does not require any changes to the 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 another mechanism such as the cap and trade program of the NO_X SIP Call. 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 specific provision for stationary source permitting in the New Mexico SIP that the commenter argued is inadequate to ensure that sources in New Mexico will not significantly contribute to nonattainment in other States. According to the commenter, New Mexico has a regulatory provision that requires the State agency to deny an application for a permit or permit revision for a stationary source under certain circumstances, including the violation of any NAAQS. The commenter claimed that New Mexico interprets this authority to allow the denial of such a permit, only if the source is physically located in a designated nonattainment area.

EPA Response—EPA disagrees with the commenter's characterization of the State's regulations that New Mexico can only deny a permit for new or modified sources located in a designated nonattainment area. EPA has reviewed the New Mexico permitting provisions cited by the commenter. Section 20.2.72.208 NMAC contains the reasons the department must deny a permit. Section 20.2.72.208 D explicitly provides that one of the reasons the State will deny a permit is if "the construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico Ambient Air Quality Standard unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable." Section 20.2.79 NMAC and 20.2.72.216 NMAC apply in nonattainment areas which have more stringent requirements than attainment areas.

EPA believes that the provisions of Section 20.2.72.208 NMAC apply in attainment areas of the State and are unambiguous. The State's regulations provide that it "shall deny" a permit for a source located in an attainment area, if that new or modified source would cause or contribute to air contaminant levels that exceed any NAAQS, whether those violations occur in New Mexico or elsewhere. To verify this understanding of the State's regulations, EPA contacted NMED regarding this comment. NMED responded with an E-mail that is included in the docket for this rulemaking confirming that the provisions of 20.2.72.208 NMAC apply in the attainment areas of the State and provide for denial of permits if the construction, modification or revision will cause or contribute to levels in excess of the NAAQS.

Comment No. 18—The commenter argued that EPA cannot approve the section 110(a)(2)(D) submission from New Mexico because the State and EPA did not comply with the requirements of section 110(l). Evidently, the commenter believes that the section 110(a)(2)(D) submission for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS 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 recently 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) in this action or that section 110(l) requires disapproval of the SIP submission at issue here.

Section 110(l) provides in part that: "the 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 58,199, 58,134 (Oct. 5. 2005); 70 FR 17.029, 17,033 (Apr. 4, 2005); 70 FR 53, 57 (Jan. 3, 2005); 70 FR 28,429, 28,431 (May 18, 2005).

New Mexico's submission is the initial submission by the State to address the significant contribution to nonattainment element of 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. This submission does not revise or remove any existing emissions limit for any NAAQS, or

[39] 63 FR 57356, October 27, 1998

[40] *See* 2005 CAIR Rule (70 FR 25162) and 1998 NO_X SIP Call (63 FR 57356).

change any other existing substantive SIP provisions relevant to the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS or any other 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 concerning a PM10 maintenance plan in another state is consistent with this interpretation. In the cited action, EPA noted that: "Utah had either removed or altered a number of stationary source requirements," creating the possibility of a relaxation of existing EPA approved SIP requirements and thereby interfering with attainment, a possibility that is not present here. *See* 74 FR 62727 (Dec. 1, 2009). Thus, the action cited by the commenter is clearly distinguishable.

The commenter did not provide any specific basis for concluding that approval of this SIP submission would interfere with attainment or maintenance of any 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. In particular, EPA has determined that the submission complies with the requirements of section 110(a)(2)(D)(i). Accordingly, assuming that section 110(l) applies to this SIP submission, EPA finds that approval of the submission is consistent with the requirements of section 110(l).

Comment No. 19—In a separate comment letter, the commenter expressed concern with EPA's proposed approval of the State's submission for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS because the state "does not appropriately limit ozone" in its PSD permitting program. To support this claim, the commenter noted that EPA has previously made a "finding of failure to submit" because New Mexico had not made another submission that would have the effect of making NO_X a regulatory precursor for ozone in the context of PSD. According to the commenter, EPA should not approve the State's submission for section 110(a)(2)(D)(i)(I) for the significant contribution to nonattainment requirement because of this outstanding obligation with respect to the PSD requirements of the CAA for the 1997 8-hour ozone NAAQS.

EPA Response—EPA acknowledges that it made the finding of failure to submit noted by the commenter.[41] However, EPA disagrees with the commenter's view of how that prior finding affects today's specific action. First, the "finding of failure to submit" to which the commenter refers is not for a failure to make a submission with respect to section 110(a)(2)(D). In that prior action, EPA made a formal finding that the State had, at that time, not yet made a different SIP submission, necessary to comply with a separate requirements of section 110(a)(2)(C) and section 110(a)(2)(J).

Second, EPA believes that the cited finding of failure to submit does not relate to the requirements of section 110(a)(2)(D)(i)(I) with respect to significant contribution to nonattainment at issue in this action, but rather to the separate requirements of section 110(a)(2)(D)(i)(II) that SIPs include measures to prevent interference with measures required for "prevention of significant deterioration." EPA's 2006 Guidance explained the Agency's views of what the four separate and distinct elements of section 110(a)(2)(D) require.[42] EPA's guidance made recommendations to States for making submissions to meet each of the separate requirements of section 110(a)(2)(D) for the 1997 8-hour ozone standards and 1997 $PM_{2.5}$ standards. Within the guidance, EPA recommended that States evaluate the existence of, and extent of, significant contribution to nonattainment in other States by various means, intended to consider relevant facts about such contribution to nonattainment. By contrast, EPA recommended that States meet the separate requirement that their SIPs contain measures to prevent interference with measures required to prevent significant deterioration of air quality in other States by different means. In particular, EPA explained that this latter element of section 110(a)(2)(D) would be the correct context in which to confirm that the State in question had updated its own SIP to contain measures related to PSD.

In the 2006 Guidance, EPA explicitly identified the regulatory requirements and separate SIP revision necessary to implement the PSD program for the 1997 8-hour ozone NAAQS as among the requirements that EPA considered relevant to the prevention of significant deterioration requirements of section 110(a)(2)(D).[43] EPA stated its view that implementation of the PSD permitting program within the State would address the requirement to prohibit emissions that interfere with measures to prevent significant deterioration in neighboring States. EPA also explained that the permitting program for the 8-hour ozone NAAQS would require that new or modified sources will not cause or contribute to violations of the NAAQS in neighboring States, so that additional SIP submissions with rule changes or modeling demonstrations would not be required to establish that a State's program complies with the requirement in section 110(a)(2)(D)(i)(II). In short, EPA believes that evaluation of a State's SIP for compliance with section 110(a)(2)(D)(i)(II) is the proper context in which to determine whether such SIP meets current federal PSD requirements. Today's action does not address this element of section 110(a)(2)(D), and accordingly, the finding of failure to submit is not a basis not to approve the State's submission for this purpose.

Finally, EPA notes that the State of New Mexico has subsequently made a submission to comply with the rule that was the basis for the finding of failure to submit cited by the commenter. EPA is in the process of evaluating that submission and will act on it at a later date. EPA anticipates that it may elect to act upon that separate submission at the same time it acts upon the State's section 110(a)(2)(D) submission for the prevention of significant deterioration requirement, as EPA has recently done in the case of the section 110(a)(2)(D) submission for the State of North Dakota.

B. Comments From New Mexico Environment Department, Air Quality Bureau

Comment No. 1—The commenter stated that while it did not object to EPA's proposed approval of the "contribute to nonattainment" prong of section 110(a)(2)(D)(i) of the CAA, it believed that EPA should have approved the SIP submission as meeting all prongs of that section. The commenter asserted its belief that New Mexico satisfied all requirements of section 110(a)(2)(D) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in its submission, following EPA's recommendations in the 2006 Guidance for this SIP revision.

EPA Response—We appreciate NMED's comments. At this time, EPA is only taking action on the portions of the

[41] *See,* Completeness Findings for Section 110(a)(2) State Implementation Plans for the 8-hour Ozone NAAQS, 73 FR 16,205 (March 28, 2008).

[42] "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" August 15, 2006.

[43] Id, at pages 6–8.

State's submission that pertain to the significant contribution to nonattainment requirements of section 110(a)(2)(D) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. EPA will act on the remaining requirements of section 110(a)(2)(D) for these NAAQS at a later date.

IV. Final Action

We are approving one element of the Interstate Transport SIP submitted by the State of New Mexico on September 17, 2007. Specifically, in this action we are approving the element that addresses the requirement of Section 110(a)(2)(D)(i)(I) that emissions from sources in that State do not "contribute significantly" to violations of the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS in any other State. After fully considering all comments received on the proposal and direct final rule EPA has concluded that the State's submission, and additional evidence evaluated by EPA, establish that emissions from New Mexico sources do not contribute significantly to nonattainment of the relevant NAAQAS in any other State. Accordingly, New Mexico does not need to include additional emission limitations on its sources to eliminate any such contribution to other States for purposes of these NAAQS.

At a later date, EPA will act on addressing the remaining requirements of section 110(a)(2)(D)(i) which are: interference with the maintenance of the NAAQS in any other state; interference with measures required to prevent significant deterioration of air quality in any other State; and interference with measures required to protect visibility in any other State.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 28, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

■ 2. The second table in § 52.1620(e) entitled "EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP" is amended by adding an entry to the end to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

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

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/effective date	EPA approval date	Explanation
*	* *	*	*	* *
Interstate transport for the 1997 ozone and PM $_{2.5}$ NAAQS.	New Mexico	09/17/07	06/11/10 [*insert FR page number where the document begins*].	06/11/10 Approval for revisions to prohibit significant contribution to nonattainment in any other State.

[FR Doc. 2010–13686 Filed 6–10–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0278; FRL–8829–2]

Trifloxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation increases existing tolerances for residues of trifloxystrobin in or on corn, field, forage; corn, sweet, forage; and corn, sweet, stover. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). Additionally, EPA is removing several tolerances which have expired.

DATES: This regulation is effective June 11, 2010. Objections and requests for hearings must be received on or before August 10, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0278. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tawanda Maignan, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8050; e-mail address: maignan.tawanda@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the harmonized test guidelines referenced in this document electronically, please go *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0278 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 10, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0278, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through