Greenhouse Gas Reporting Rule (75 FR 43889). Comments must be received on or before September 7, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0924, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

E-mail: GHGReportingCBI@epa.gov.

Fax: (202) 566–1741.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2009–0924, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0924. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGMRR@epa.gov.* For technical information, contact the Greenhouse Gas Reporting Rule Hotline at: *http://www.epa.gov/climatechange/emissions/ghgrule_contactus.htm.* Alternatively, contact Carole Cook at 202–343–9263.

SUPPLEMENTARY INFORMATION: *Additional Information on Submitting Comments:* To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC, 20460, telephone (202) 343–9263, e-mail *GHGReportingCBI@epa.gov.*

Background on Today's Action: In this action, EPA is extending the public comment period on the July 27, 2010 Supplemental Proposal to the Proposed Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule ("Supplemental CBI Proposal," 75 FR 43889). EPA is extending the comment period for the Supplemental CBI Proposal to September 7, 2010.

On July 7, 2010, EPA published the Proposed Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained Under the Clean Air Act ("CBI Proposal," 75 FR 39094). The comment period for the CBI Proposal ends on September 7, 2010.

On July 27, 2010, EPA published the Supplemental CBI Proposal; the comment period for the Supplemental CBI Proposal would have ended on August 26, 2010.

EPA received comments requesting an extension of the public comment period for the Supplemental CBI Proposal to September 7, 2010. Commenters noted that the CBI Proposal and the Supplemental CBI Proposal both concern the confidentiality of data collected under the Greenhouse Gas Reporting Program. Commenters also noted how comments on the two proposals might be easily consolidated into one document. Therefore, to facilitate submission of public comments, EPA is extending the comment period for the Supplemental CBI Proposal to September 7, 2010 so that the comment period for both actions ends on the same day.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: August 23, 2010.

Dina Kruger,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 2010–21385 Filed 8–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0656; FRL–9193–6]

Approval and Promulgation of Implementation Plans; New Mexico; Interstate Transport of Pollution; Revisions to Prevention of Significant Deterioration Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Mexico for the purpose of addressing the "good neighbor" provisions of Clean Air Act (CAA) section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 $PM_{2.5}$ NAAQS. This SIP revision addresses the requirement that the State of New Mexico's SIP have adequate provisions to prohibit air emissions from adversely affecting another state's

air quality through interstate transport. In this action, EPA is proposing to approve the New Mexico Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(I) that emissions from New Mexico sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in any other state. In addition, EPA is proposing to approve the provisions of this SIP submission that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality. For purposes of the 1997 8-hour ozone NAAQS, EPA is also proposing to approve a SIP revision that modifies New Mexico's Prevention of Significant Deterioration (PSD) SIP for the 1997 8-hour ozone NAAQS to include nitrogen oxides (NO_X) as an ozone precursor. This action is being taken under section 110 and part C of the Clean Air Act (the Act or CAA).

DATES: Comments must be received on or before September 27, 2010.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2009–0656, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- Follow the online instructions for submitting comments.
- *EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2009–0656. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *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 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.

The state submittal is also available for public inspection during official business hours, by appointment, at the New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

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 proposing to approve a submission from the State of New Mexico demonstrating that New Mexico has adequately addressed two of the required elements of CAA section 110(a)(2)(D)(i), the elements that require that the State Implementation Plan prohibit air pollutant emissions from sources within a state from interfering with maintenance of the relevant NAAQS in any other state, and from interfering with measures required to prevent significant deterioration of air quality in any other state. We are proposing to determine that emissions from sources in New Mexico do not interfere with the maintenance of the 1997 8-hour ozone NAAQS or of the 1997 $PM_{2.5}$ NAAQS, or with measures required to prevent significant deterioration of air quality, with regards to these ozone or $PM_{2.5}$ NAAQS in any other state. In a separate prior action, we have addressed the element of section 110(a)(2)(D)(i) that pertains to prohibiting air pollutant emissions from within New Mexico from significantly contributing to nonattainment of the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in any other state (75 FR 33174). The remaining section 110(a)(2)(D)(i) element which pertains to interference with measures required to protect visibility in any other state will be addressed in a future rulemaking.

In conjunction with our proposed finding that emissions from sources in

New Mexico are not interfering with any other state's PSD program, we are also proposing to approve a portion of the SIP revision submitted by the State of New Mexico with rule revisions to regulate NOx emissions in its PSD permit program as a precursor to ozone. At this time, EPA is not taking action on other portions of the SIP revisions submitted by New Mexico together with the PSD revision.[1] EPA intends to act on the other revisions submitted together with the PSD program revisions at a later time.

EPA proposes to approve the foregoing revisions relevant to section 110(a)(2)(D)(i) and the revisions to the PSD program pursuant to section 110 and part C of the CAA.

II. What is a SIP?

Section 110(a) of the Clean Air Act (CAA) requires each state to develop a plan that provides for the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). EPA establishes NAAQS under section 109 of the CAA. Currently, the NAAQS address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

The plan developed by a state is referred to as the state implementation plan (SIP). The content of the SIP is specified in section 110 of the CAA, other provisions of the CAA, and applicable regulations. SIPs can be extensive, containing state regulations or other enforceable measures and various types of supporting information, such as emissions inventories, monitoring networks, and modeling demonstrations.

A primary purpose of the SIP is to provide the air pollution regulations, control strategies, and other means or techniques developed by the state to ensure that the ambient air within that state meets the NAAQS. However, another important aspect of the SIP is to ensure that emissions from within the state do not have certain prohibited impacts upon the ambient air in other states through interstate transport of pollutants. This SIP requirement is specified in section 110(a)(2)(D) of the CAA. Pursuant to that provision, each state's SIP must contain provisions adequate to prevent, among other things, emissions that interfere with maintenance of the NAAQS in any other state or interfere with measures required to be included in the SIP of any other state to prevent significant deterioration of air quality in such other state.

States are required to update or revise SIPs under certain circumstances. One such circumstance is EPA's promulgation of a new or revised NAAQS. Each state must submit these revisions to EPA for approval and incorporation into the federally-enforceable SIP.

III. What is the background for this action?

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

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

As identified in the 2006 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

On September 17, 2007, EPA received a SIP revision from the State of New Mexico intended to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards. In this rulemaking, EPA is addressing only the requirements that pertain to preventing sources in New Mexico from emitting pollutants that will interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in other states, or that will interfere with measures required to prevent significant deterioration of air quality in other states with respect to these NAAQS. In its submission, the State of New Mexico indicated that its current SIP is adequate to prevent such interference, and thus argued that no additional emissions controls or other revisions are necessary at this time to alleviate interstate transport for the 1997 8 hour ozone NAAQS or the 1997 $PM_{2.5}$ NAAQS. With this submission, the state would meet the first and second elements of section 110(a)(2)(D)(i).

On August 31, 2009, the New Mexico Environment Department (NMED) also adopted revisions to its PSD SIP in response to revisions required by EPA for the 1997 8-hour ozone NAAQS. EPA received these revisions on September 21, 2009. These submitted PSD revisions included changes to 20.2.74 NMAC (New Mexico Administrative Code) for "Permits—Prevention of Significant Deterioration (PSD)" necessary to address NO_X as a precursor for the 1997 8-hour ozone NAAQS. The submittal contained revisions to Subsections 20.2.74.7 NMAC, Definitions; 20.2.74.502 NMAC, Table 2, Significant Emission Rates inclusion of nitrogen oxides rate for ozone; and 20.2.74.503 NMAC, Table 3, Significant Monitoring Concentrations, Footnote b, inclusion of baseline threshold for nitrogen oxides for requirements in ambient impact analysis.

With EPA's approval of this revision, that includes NO_X as a precursor of the 1997 8-hour ozone NAAQS, New Mexico's PSD SIP will include changes necessary to implement the 1997 8-hour ozone NAAQS within the state as contemplated in the 2006 Guidance for SIP submissions to meet the third element of section 110(a)(2)(D). The submittal also contained revisions to 20.2.2 NMAC, Definitions and 20.2.79 NMAC, Permits—Nonattainment Areas. At this time, EPA is not taking action on these other SIP revisions submitted with the PSD SIP revisions.

[1] As noted later in this action, these revisions are separate from the New Mexico PSD revisions and are to 20.2.2 NMAC, Definitions and 20.2.79 NMAC, Permits-Nonattainment areas.

IV. What is EPA's evaluation of the State's submission?

A. EPA's Evaluation of Interference With Maintenance

The second element of section 110(a)(2)(D)(i) requires that a state's SIP must prohibit any source or other type of emissions activity in the state from emitting pollutants that would "interfere with maintenance" of the applicable NAAQS in any other state. This term is not defined in the statute. Therefore, EPA has interpreted this term in past regulatory actions, such as the 1998 NO_X SIP Call, in which EPA took action to remediate emissions of NO_X that significantly contributed to nonattainment, or interfered with maintenance of, the then applicable ozone NAAQS through interstate transport of NO_X and the resulting ozone.[2] The NO_X SIP Call was the mechanism through which EPA evaluated whether or not the NO_X emissions from sources in certain states had such prohibited interstate impacts, and if they had such impacts, required the states to adopt substantive SIP revisions to eliminate those NO_X emissions, whether through participation in a regional cap and trade program or by other means.

After promulgation of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, EPA again recognized that regional transport was a serious concern throughout the eastern U.S. and therefore developed the 2005 Clean Air Interstate Rule (CAIR) to address emissions of SO_2 and NO_X that exacerbate ambient ozone and $PM_{2.5}$ levels in many downwind areas through interstate transport.[3] Within CAIR, EPA likewise interpreted the term "interfere with maintenance" as part of the evaluation of whether or not the emissions of sources in certain states had such impacts on areas that EPA determined would either be in violation of the NAAQS, or would be in jeopardy of violating the NAAQS, in a modeled future year unless action were taken by upwind states to reduce SO_2 and NO_X emissions. Through CAIR, EPA again required states that had such interstate impacts to adopt substantive SIP revisions to eliminate the SO_2 and NO_X emissions, whether through participation in a regional cap and trade program or by other means.

EPA's 2006 Guidance addressed section 110(a)(2)(D) requirements for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. For those states subject to CAIR, EPA indicated that compliance with CAIR would meet the two requirements of section 110(a)(2)(D)(i)(I) for these NAAQS. For states not within the CAIR region, EPA recommended that states evaluate whether or not emissions from their sources would "interfere with maintenance" in other states, following the conceptual approach adopted by EPA in CAIR. After recommending various types of information that could be relevant for the technical analysis to support the SIP submission, such as the amount of emissions and meteorological conditions in the state, EPA further indicated that it would be appropriate for the state to assess impacts of its emissions on other states using considerations comparable to those used by EPA "in evaluating significant contribution to nonattainment in the CAIR."[4] EPA did not make specific recommendations for how states should assess "interfere with maintenance" separately, and discussed the first two elements of section 110(a)(2)(D) together without explicitly differentiating between them.

In 2008, however, the U.S. Court of Appeals for the DC Circuit found that CAIR and the related CAIR federal implementation plans were unlawful.[5] Among other issues, the court held that EPA had not correctly addressed the second element of section 110(a)(2)(D)(i)(I) in CAIR. The court noted that "EPA gave no independent significance to the 'interfere with maintenance' prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance."[6]. EPA's approach, the court reasoned, would leave areas that are "barely meeting attainment" with "no recourse" to address upwind emissions sources.[7] The court therefore concluded that a plain language reading of the statute requires EPA to give independent meaning to the interfere with maintenance requirement of section 110(a)(2)(D) and that the approach used by EPA in CAIR failed to do so.

In addition to affecting CAIR directly, the court's decision in the North Carolina case indirectly affects EPA's recommendations to states in the 2006 Guidance with respect to the interfere with maintenance element of section 110(a)(2)(D) because the agency's guidance suggested that states use an approach comparable to that used by EPA in CAIR. States such as New Mexico have already made SIP submissions that rely upon the recommendations in EPA's 2006 Guidance, and accordingly may not have sufficiently differentiated between the significant contribution to nonattainment and interfere with maintenance elements of the statute. Given the court decision on CAIR in the interim, however, EPA believes that it is necessary to evaluate these state submissions for section 110(a)(2)(D) in such a way as to assure that the interfere with maintenance element of the statute is given independent meaning and is appropriately evaluated using the types of information that EPA recommended in the 2006 Guidance. To accomplish this, EPA believes it is necessary to use an updated approach to address this issue and to supplement the technical analysis provided by the state in order to evaluate the submissions with the respect to the interfere with maintenance element of section 110(a)(2)(D).

EPA has recently proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule Proposal), in order to address the judicial remand of CAIR.[8] As part of the Transport Rule Proposal, EPA specifically reexamined the section 110(a)(2)(D) requirement that emissions from sources in a state must not "interfere with maintenance" of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in other states. In the proposal, EPA developed an approach to identify areas that it predicts to be close to the level of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS, and therefore at risk to become nonattainment for these NAAQS unless emissions from sources in other states are appropriately controlled. This approach starts by identifying those specific geographic areas for which further evaluation is appropriate, and differentiates between areas where the concern is with interference with maintenance, rather than with significant contribution to nonattainment.

As described in more detail below, EPA's analysis evaluates data from

[2] *See,* 63 FR 57356 (October 27, 1998). EPA's general approach to section 110(a)(2)(D) was upheld in *Michigan* v. *EPA,* 213 F.3d 663 (DC Cir. 2000), cert denied, 532 U.S. 904 (2001). However, EPA's approach to interference with maintenance in the NO_X SIP Call was not explicitly reviewed by the court. *See*, *North Carolina* v. *EPA,* 531 F.3d 896, 907–09 (DC Cir. 2008).

[3] *See,* 70 FR 25162 (May 12, 2005).

[4] 2006 Guidance at page 5.

[5] *See, North Carolina* v. *EPA,* 531 F.3d 896 (DC Circuit 2008).

[6] *Id.* 531, F.3d at 909.

[7] *Id.*

[8] *See* "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone," 75 FR 45210 (August 2, 2010).

existing monitors over three overlapping three year periods (*i.e.,* 2003–2005, 2004–2006, and 2005–2007), as well as air quality modeling data, in order to determine which areas are predicted to be violating the 1997 ozone and $PM_{2.5}$ NAAQS in 2012, and which areas are predicted to potentially have a difficulty with maintaining attainment as of that date. In essence, if an area's projected data for 2012 indicates that it would be violating the NAAQS based on the average of these three overlapping periods, then this monitor location is appropriate for comparison for purposes of the significant contribution to nonattainment element of section 110(a)(2)(D). If, however, an area's projected data indicate that it would be violating the NAAQS based on the highest single period, but not over the average of the three periods, then this monitor location is appropriate for comparison for purposes of the interfere with maintenance element of the statute.[9]

By this method, EPA has identified those areas with monitors that are appropriate "maintenance sites" or maintenance "receptors" for evaluating whether the emissions from sources in another state could interfere with maintenance in that particular area. EPA then uses other analytical tools to examine the potential impacts of emissions from upwind states on these maintenance sites in downwind states. EPA believes that this new approach for identifying those areas that are predicted to have maintenance problems is appropriate to evaluate the section 110(a)(2)(D) SIP submission of a state for the interfere with maintenance element.[10] EPA's 2006 Guidance did not provide this specific recommendation to states, but in light of the court's decision on CAIR, EPA will itself follow this approach in acting upon the New Mexico submission.

As explained in the 2006 Guidance, EPA does not believe that section 110(a)(2)(D) SIP submissions from all states necessarily need to follow precisely the same analytical approach of CAIR. In the 2006 Guidance, EPA stated that: "EPA believes that the contents of the SIP submission required by section 110(a)(2)(D) may vary, depending upon the facts and circumstances related to the specific NAAQS. In particular, the data and analytical tools available at the time the State develops and submits a SIP for a new or revised NAAQS necessarily affects the contents of the required submission."[11] EPA also indicated in the 2006 Guidance that it did not anticipate that sources in states outside the geographic area covered by CAIR were significantly contributing to nonattainment, or interfering with maintenance, in other states.[12] As noted in the Transport Rule Proposal, EPA continues to believe that the more widespread and serious transport problems in the eastern United States are analytically distinct.[13] For the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, EPA believes that nonattainment and maintenance problems in the western United States are relatively local in nature with only limited impacts from interstate transport. In the Transport Rule Proposal, EPA did not calculate interstate ozone or $PM_{2.5}$ contributions to or from Western States.

Accordingly, EPA believes that section 110(a)(2)(D) SIP submissions for states outside the geographic area of the Transport Rule Proposal may be evaluated using a "weight of the evidence" approach that takes into account the available relevant information, such as that recommended by EPA in the 2006 Guidance for states outside the area affected by CAIR. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area, the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider whether sources in the state may interfere with maintenance of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in other states. These submissions can rely on modeling when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a given situation.

B. New Mexico Transport SIP

To meet the requirements of section 110(a)(2)(D), the State of New Mexico made a SIP submission to address interstate transport for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. EPA has previously approved this submission for purposes of the significant contribution to nonattainment element of section 110(a)(2)(D).[14] Below, we discuss our evaluation of the state's submission with respect to the interference with maintenance element and the interference with measures required to prevent significant deterioration of air quality element.

a. Interference With Maintenance

The State's submittal focused primarily on whether emissions from New Mexico sources significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS in other states. Following the 2006 Guidance and consistent with EPA's approach in CAIR, New Mexico did not evaluate whether emissions from New Mexico sources interfere with maintenance of these NAAQS in other states separately from significant contribution to nonattainment in other states. Instead, the state presumed that if New Mexico sources were not significantly contributing to violations of the NAAQS in other states, then no further specific evaluation was necessary for purposes of the interfere with maintenance element of section 110(a)(2)(D). As explained above, however, CAIR was remanded to EPA, in part because the court found that EPA had not correctly addressed whether emissions from sources in a state interfere with maintenance of the standards in other states. Therefore, EPA must evaluate the New Mexico submission in light of the decision of the court.

On July 6, 2010, the EPA Administrator signed a proposed rule in response to the judicial remand of CAIR. The Transport Rule Proposal includes a new approach to determine whether emissions from a state interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in other states. EPA is using a comparable approach to that of the Transport Rule Proposal in this action in order to determine if emissions from New Mexico sources interfere with maintenance of these NAAQS in other states.

In the Transport Rule Proposal, EPA projected future concentrations of ozone

[9] A memorandum in the docket for this action provides the information EPA used in order to identify monitors that are receptors for evaluation of interference with maintenance for certain states in the western United States. *See,* Memorandum from Brian Timin of EPA's Office of Air Quality Planning and Standards, Air Quality Modeling Group entitled "Documentation of Future Year Ozone and Annual $PM_{2.5}$ Design Values for Western States" (August 2010) (Timin Memo).

[10] To begin this analysis, EPA first identifies all monitors projected to be in nonattainment or, based on historic variability in air quality, projected to have maintenance problems in 2012. The "problem" is that these maintenance areas are at risk not to stay in attainment because they are so close to the level of the 1997 ozone and $PM_{2.5}$ NAAQS that minor variations in weather or emissions could result in violations of the NAAQS in 2012.

[11] 2006 Guidance at 4.

[12] *Id.* at 5.

[13] *See,* Transport Rule Proposal, 75 FR 45210 (August 2, 2010) at page 45227.

[14] *See,* 75 FR 33174 (June 11, 2010).

and $PM_{2.5}$ to identify areas that are expected to be out of attainment with NAAQS or to have difficulty maintaining compliance with the NAAQS in 2012. These areas are referred to as nonattainment and maintenance receptors, respectively. These nonattainment and maintenance receptors are based on projections of future air quality at existing ozone and $PM_{2.5}$ monitoring sites in those locations. EPA then used these sites as the receptors for examining the contributions of emissions from sources located in upwind states to nonattainment and maintenance problems at these monitoring locations. Monitoring data was obtained from EPA's Air Quality System (AQS).

For ozone, EPA evaluated concentrations relevant to the 1997 8-hour ozone NAAQS. The level of the 1997 8-hour ozone NAAQS is 0.08 parts per million (ppm). The 8-hour ozone standard is met if the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration is less than or equal to 0.08 ppm (*i.e.,* less than 0.085 ppm based on the rounding convention in 40 CFR part 50 Appendix I). This 3-year average is referred to as the "design value."

For $PM_{2.5}$, EPA evaluated concentrations of both the annual $PM_{2.5}$ NAAQS and the 24-hour $PM_{2.5}$ NAAQS. The 1997 annual $PM_{2.5}$ NAAQS is met when the 3-year average of the annual mean concentration is 15.0 micrograms per cubic meter ($\mu g/m^3$) or less. The 3-year average annual mean concentration is computed at each site by averaging the daily Federal Reference Method (FRM) samples by quarter, averaging these quarterly averages to obtain an annual average, and then averaging the three annual averages to get the design value. The 2006 24-hour $PM_{2.5}$ NAAQS is met when the 3-year average of the annual 98th percentile $PM_{2.5}$ concentrations is 35 $\mu g/m^3$ or less. The 1997 24-hour $PM_{2.5}$ NAAQS is met when the 3-year average of the annual 98th percentiles is 65 $\mu g/m^3$ or less. The 3-year average mean 98th percentile concentration is computed at each site by averaging the 3 individual annual 98th percentile values at each site. The 3-year average 98th percentile concentration is referred to as the 24-hour average design value. In this action, EPA is only evaluating whether New Mexico's emissions impact other states' ability to maintain the 1997 annual and 24-hour $PM_{2.5}$ NAAQS and the 1997 8-hour ozone NAAQS, because those are the NAAQS at issue in this section 110(a)(2)(D) SIP submission. In later actions, the state and EPA will evaluate the impacts of interstate transport from emissions from New Mexico sources with respect to other NAAQS.

To project future ozone and annual $PM_{2.5}$ design values, EPA projected future ozone values based on an average of three design value periods which include the years 2003–2007 (*i.e.,* design values for 2003–2005, 2004–2006, and 2005–2007). The average of the three design values creates a "5-year weighted average" value. The 5-year weighted average values were then projected to the future years that were analyzed for the Transport Rule Proposal.[15] [16] EPA used the 5-year weighted average concentrations to project concentrations anticipated in 2012 to determine which monitoring sites are expected to be nonattainment in this future year. EPA also projected 2012 design values based on each of the three-year periods (*i.e.,* 2003–2005, 2004–2006, and 2005–2007). The highest projection is referred to as the "maximum design value" and gives an indication of potential variability in future projections due to differences in actual meteorology and emissions from what was modeled.

EPA identified those sites that are projected to be attainment based on the 5-year weighted average design value, but that have a maximum design value (based on a single three-year period) that exceeds the NAAQS, as maintenance sites because EPA anticipates that there will be more difficulty in maintaining attainment of the NAAQS at these locations if there are adverse variations in meteorology or emissions. These projected maintenance sites are the ones that EPA has used to determine if emissions from New Mexico sources potentially interfere with maintenance of the 1997 8-hour ozone NAAQS and 1997 annual $PM_{2.5}$ NAAQS in other states in this action.

From the modeling analyses conducted for the Transport Rule Proposal, EPA identified the following maintenance sites or receptors for the 1997 8-hour ozone NAAQS: Several sites in the Dallas-Ft.Worth (DFW) area; several sites in the Houston/Galveston/Brazoria (Houston) area; and other more distant sites in Georgia, Pennsylvania, New York and Connecticut.[17] For assessing New Mexico's potential for impacts on maintenance receptors, the DFW and Houston areas seem to have the highest probability of potential impact from New Mexico emissions. For the modeling analysis conducted for states not included in the Transport Rule Proposal (*i.e.*, states not included fully in the 12 km Transport Rule Proposal modeling domain), EPA identified several maintenance sites for the 1997 8-hour ozone NAAQS in southern and central California using available 36 km modeling.[18] The 12 km Transport Rule Proposal modeling domain extends from Texas northward to North Dakota and eastward from the Rocky Mountains to the East Coast and includes 37 states and the District of Columbia. Significantly, EPA's analysis did not identify any monitor sites in the states that border New Mexico (Texas, Arizona, Colorado, Utah, and Oklahoma), other than the noted Texas areas, as maintenance sites in the Transport Rule Proposal.

For the annual $PM_{2.5}$ NAAQS, EPA identified the following sites as maintenance receptors: A site in Cook County, Illinois in the Chicago area; a site in Harris County, Texas, in the Houston/Galveston/Brazoria area; and two sites in southern California. As part of the Transport Rule Proposal, EPA did not evaluate nonattainment receptors for the 1997 24-hour $PM_{2.5}$ NAAQS because there were no violations of the standard in portions of the U.S. covered by the 12 km grid, which consists of the continental U.S. east of the Rockies.[19] In fact, based on recent monitoring data (2007–2009 design values that are under final EPA review), the highest 24-hour $PM_{2.5}$ design value in the 47 states of the continental U.S. (not including California) is 50 $\mu g/m^3$, which is well below the level of the 1997 24-hour $PM_{2.5}$ NAAQS of 65 $\mu g/m^3$.[20] Therefore, outside of California, there are no areas that we would expect to have difficulty in maintaining the 1997 24-hour $PM_{2.5}$ NAAQS. We address the potential for interference with maintenance in California for the 1997 24-hour $PM_{2.5}$ NAAQS later in this notice.

EPA has evaluated available analyses and conducted additional analyses for each of these identified maintenance sites that may be potentially impacted by emissions from sources in New Mexico. Using the same proposed

[15] *See,* the Transport Rule Proposal at 75 FR 45210 (August 2, 2010).

[16] Additional information concerning these weighted averages is provided in the docket in the Timin Memo.

[17] Transport Rule Proposal, 75 FR 45210, (August 2, 2010), pages 45253–45270, and Timin Memo.

[18] The Transport Rule Proposal identifies nonattainment and maintenance receptors in the Eastern U.S. It does not include modeling results for the West. The Timin Memo documents further evaluation of the 2012 modeling to identify nonattainment and maintenance receptors in the West.

[19] *Id.,* EPA did not calculate model projections for the 24-hour $PM_{2.5}$ NAAQS in the 36km modeling domain.

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

screening thresholds for analyzing a state's impacts on another state's maintenance sites that are used in the Transport Rule Proposal, we have determined that emissions from New Mexico do not have a large enough impact on any of these identified maintenance sites to interfere with maintenance.[21] For the reasons discussed below, EPA has determined that emissions from New Mexico do not interfere with maintenance of these NAAQS in any other state.

Ozone Interfere With Maintenance Evaluation

EPA evaluated whether emissions from sources in New Mexico could interfere with maintenance of the 1997 8-hour ozone NAAQS in other states by considering the potential impacts of such sources on projected maintenance sites in California, Texas, and points much further to the east. As discussed in more detail in the Technical Support Document (TSD) for this action, EPA concluded that such impacts were most likely to be from New Mexico sources to the Houston and DFW areas and that even those impacts are very small and below the level EPA considered the initial threshold for further evaluation in the Transport Rule Proposal.

EPA did not separately determine the impacts of New Mexico's emissions on other States as part of the Transport Rule Proposal analysis because New Mexico was partially outside the 12 kilometer grid. Other modeling was available to evaluate the impact of New Mexico's emissions on the 8-hour ozone maintenance sites that EPA identified in the Houston and DFW areas. EPA has conducted a modeling estimate of impacts from New Mexico's emissions using the Central Regional Air Planning Association (CENRAP) modeling of 2002 emissions and meteorology.[22] The CENRAP modeling that EPA utilized was an earlier version of the CENRAP modeling that a number of states submitted as part of their Regional Haze State Implementation Plan submittals and is currently being reviewed by EPA. EPA's source apportionment CENRAP modeling for the 8-hour ozone NAAQS was conducted in 2006 to help provide New Mexico and other states with a technical analysis for the 110(a)(2)(D) SIP submissions.

As discussed above, the CENRAP modeling evaluated New Mexico's impact based on emission and meteorological conditions in 2002. For the reasons discussed below, EPA believes that this modeling is in fact a more conservative approach to evaluate the potential for impacts on other states since it uses a 2002 inventory rather than a 2010 or 2012 emission inventory. The 2002 analysis would include more emissions within the modeling domain because of decrease in emissions after 2002 due to federal measures (such as fleet turnover and cleaner vehicles) and local reductions in DFW, Houston, and other parts of the modeling grid.

As mentioned previously, the evaluation was based on an earlier version of the model. Source apportionment results are not available for the final version of the model. If results were available, we do not expect them to be significantly different than the earlier version and any differences would be more than offset by the conservative nature of using the 2002 emissions.

EPA analyzed source apportionment modeling with the 2002 based CENRAP modeling and concluded that maximum impacts from the emissions of New Mexico sources would be 0.2% of the NAAQS in the Dallas/Ft. Worth area and 0.4% of the NAAQS in the Houston area, which are less than the one percent of the NAAQS screening threshold (0.8 parts per billion) which EPA used in the Transport Rule Proposal to identify states for further analysis and the threshold that we are proposing for our determination. The methodology EPA used in the Transport Rule Proposal to determine if a state's emissions exceeded the one percent of the NAAQS considered the average impact of a state on a downwind monitoring site in another state. Comparing the maximum impacts shown by the CENRAP modeling to the Transport Rule Proposal screening threshold is a conservative approach, because the average impact over all exceedance days at sites in DFW or Houston would be lower. Furthermore, EPA considers the CENRAP modeling analysis conservative because it relies on 2002 emission inventory levels, whereas additional emission reductions have occurred in New Mexico and throughout the modeling domain due to fleet turnover and other measures to reduce air pollution between 2002 and 2010 that would result in lower overall pollution levels if taken into account. EPA believes that using the existing CENRAP analysis provides a conservative basis for concluding that emissions from New Mexico do not have a substantial impact at 1997 8-hour ozone NAAQS maintenance receptors outside the state.

In addition, EPA has reviewed other available information concerning the cause of higher ozone concentration levels in the DFW and Houston areas, and this further confirms that when these two areas experience elevated ozone levels, the meteorological patterns only rarely trace the origins of these air masses to the New Mexico area.[23] Because available evidence indicates that New Mexico emissions are not impacting ozone levels in the DFW and Houston areas to a degree that constitutes interference with maintenance, it is improbable that New Mexico emissions would have such impacts at other identified maintenance sites much farther to the east. EPA believes that the only other identified maintenance sites for 1997 8-hour ozone NAAQS that might be impacted by New Mexico sources are in southern and central California. As further discussed in the TSD for this notice, however, EPA has concluded that the meteorological patterns (*e.g.,* prevailing winds and meteorology that occur when ozone exceedances occur) do not transport emissions from New Mexico to California when California has elevated ozone levels, and that the relatively long distance and the intervening mountainous topography further support this conclusion.

$PM_{2.5}$ Interfere With Maintenance Evaluation

EPA evaluated whether emissions from sources in New Mexico could interfere with maintenance in other states by considering the potential impacts of such sources on projected maintenance receptors in Illinois, California, and Texas. As discussed in more detail in the TSD for this action, EPA concluded that such impacts were most likely to be from New Mexico sources to the Houston area, and that those impacts are shown to be very small.

For the 1997 annual $PM_{2.5}$ NAAQS site located in the Chicago area, previous EPA modeling developed for the 2004 CAIR proposal indicated that

[21] Transport Rule Proposal, 75 FR 45210 (August 2, 2010), pages 45253–45270. The Transport Rule Proposal included proposed screening thresholds, using 1% of the NAAQS, for determining if a State should be evaluated for emission reductions from the Transport Rule. The proposed thresholds were 0.15 $\mu g/m^3$ or more contribution to annual $PM_{2.5}$, 0.35 $\mu g/m^3$ or more contribution to the 1997 24-hour $PM_{2.5}$ NAAQS, and 0.8 ppb or more contribution to the 1997 8-hour ozone NAAQS for States which contribute to nonattainment or maintenance sites in another state. In this notice, we are using the same 1% contribution thresholds in this notice of 0.15 $\mu g/m^3$ for the annual $PM_{2.5}$ NAAQS, 0.8 ppb or more for the 1997 8-hour ozone NAAQS. We are proposing a similar 1% threshold of 0.65 $\mu g/m^3$ or more for the 1997 24-hour $PM_{2.5}$ NAAQS.

[22] Appendix G of New Mexico's SIP submittal for 110(a)(2)(d)(i), "110(a)(2)(d)(i) Modeling Technical Support Document".

[23] Further details are included in the Modeling TSD Memorandum for this notice.

impacts from New Mexico's emissions was 0.02 μg/m^3,[24] which is well below the one percent of the NAAQS (*i.e.*, (0.15 μg/m^3)) threshold that EPA has proposed as the initial threshold for interference with maintenance in the Transport Rule Proposal for the 1997 annual $PM_{2.5}$ NAAQS. The CAIR proposal modeling used a 2010 future year assessment versus the 2012 year used in the Transport Rule Proposal, but EPA believes that the emissions would be similar and that the 2010 analysis would actually have included somewhat more emissions within the modeling domain because it included two fewer years of reductions from federal measures (*e.g.,* fleet turnover). In summary, the results of analysis using 2010 would be expected to be similar to but slightly more conservative than would be expected for 2012. Therefore, we believe the 2004 CAIR modeling adequately demonstrates that New Mexico's emissions do not interfere with maintenance in the Chicago area.

EPA did not separately calculate the impact of New Mexico's emissions on the Houston area as part of the CAIR modeling or in the Transport Rule Proposal modeling, but EPA believes that one can infer from New Mexico's extremely small impact on other areas that New Mexico's impact on the Houston area would also be less than one percent of the NAAQS. The only modeling available that provided source apportionment for annual $PM_{2.5}$ values is the CAIR proposal modeling. The CAIR source apportionment results that would be expected to most closely match Houston from a transport phenomena perspective are the results for potential impacts on St. Louis. St. Louis is helpful for comparison because, while not the same direction from New Mexico it is the closest area evaluated in the CAIR proposal modeling that is to the east (in the same general transport direction) and at a similar distance from New Mexico as Houston.

For the St. Louis area, the CAIR proposal modeling indicated that a maximum impact from New Mexico's emissions of 0.02 μg/m^3, which is well below the 1% of the NAAQS screening threshold. The majority of the emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors from New Mexico sources emanate from either the Albuquerque area or from points father west, so it is a useful point from which to evaluate the relative distances, The distance from Albuquerque to St. Louis, Missouri is approximately 920 miles and the distance from Albuquerque to Houston is about 750 miles, which is about 81.5% of the distance from Albuquerque to St. Louis.[25] Even if one conservatively assumed that New Mexico emissions had twice the impact on Houston that EPA determined they do on St Louis due to the shorter transport distances, New Mexico's impact on Houston would still be significantly below the 1% of the NAAQS threshold in the Transport Proposal. Given that the difference in distances is only 18.5%, this is a conservative analysis that would indicate no significant impacts would be expected from New Mexico on sites in Houston, Texas.

Also, the relative amounts of emissions in New Mexico, when compared to the emissions in Texas, support the conclusion that New Mexico emissions do not interfere with maintenance in areas in Texas. Using databases developed in connection with the Regional Haze (RH) program and submitted with the RH SIPs, the Texas emissions of SO_2 are approximately 18 times larger than New Mexico's, the NO_X emissions are approximately 5 times greater than New Mexico's, the fine particulate matter emissions are 12 times greater than New Mexico's and the coarse particulate matter is 5.6 times greater than New Mexico's emissions. The Transport Rule Proposal modeling information also includes emission summaries that indicate that Texas's emissions are 1,338,429 tpy of NO_X and 639,505 tpy of SO_2 whereas New Mexico's emissions are 240,892 tpy of NO_X and 24,930 tpy of SO_2. Both sets of data indicate that New Mexico's emissions are much lower than Texas's emissions of $PM_{2.5}$ precursors. Moreover, most of the sources of $PM_{2.5}$ precursor emissions in Texas are much closer to the maintenance receptor in Houston, and therefore less dispersion of the pollutants occurs, so Texas's own $PM_{2.5}$ and $PM_{2.5}$ precursors will have a much larger impact on $PM_{2.5}$ levels in Houston.

In addition, the Texas Commission on Environmental Quality (TCEQ) and several researchers have conducted research into the likely causes of elevated annual and 24-hour $PM_{2.5}$ monitoring values in the Houston area. TCEQ and the researcher's analyses do not indicate that emissions from New Mexico impact Houston to a degree to raise a concern for purposes of the 1997 $PM_{2.5}$ NAAQS. These analyses indicate that meteorological patterns are transporting air masses from other directions (*i.e.,* not from the direction of New Mexico) when Houston area sites are monitoring elevated $PM_{2.5}$ levels that have the greatest impact on the annual DV.[26] As discussed further in the TSD, distance between the emission sources and the maintenance receptors and meteorological patterns during times of elevated pollution levels in Chicago and Houston also support the conclusion that New Mexico's emissions do not interfere with maintenance of the NAAQS in these areas. In summary, considering the available evidence, EPA concludes that New Mexico's emissions do not interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS in Houston area.

EPA also reviewed the potential for emissions from New Mexico sources to impact other areas with identified maintenance sites. The other such areas are located in California. As further discussed in the TSD, EPA concludes that New Mexico sources are unlikely to have such impacts given the geographic location of these areas and the meteorological patterns that prevail in the western United States. With respect to the 1997 $PM_{2.5}$ 24-hour standard of 65 μg/m^3, the other identified maintenance sites that New Mexico sources might impact are located in California. EPA has evaluated conceptual model documents and field study reports that indicate that transport patterns when elevated $PM_{2.5}$ occurs in areas of California, the meteorological patterns are not such that transport of emissions from New Mexico to California is occurring to a degree to raise a concern.[27] EPA believes that it is rare for meteorological patterns to occur that would transport emissions from New Mexico sources in such a way that they would impact California's pollution levels, and that the relatively long distance and the intervening mountainous topography further support that transport of emissions from New Mexico is unlikely. Therefore,

[24] EPA's "Technical Support Document for the Interstate Air Quality Rule Air Quality Modeling Analyses Appendix H, $PM_{2.5}$ Contributions to Downwind Nonattainment Counties in 2010", January 2004.

[25] TSD. EPA believes that such a comparison is instructive because the majority of relevant New Mexico emissions occur from sources or activities located in the Albuquerque metropolitan area, or in areas further to the west. Even if measured from the New Mexico state border to St. Louis and Houston, however, the proportional impact would presumably be comparable.

[26] "Source Apportionment for $PM_{2.5}$ at Houston Clinton Drive", David W. Sullivan, as The University of Texas at Austin Center for Energy & Environmental Research and Richard Tropp, University of Nevada Reno Desert Research Institute, TEXAQS II Workshop May 29, 2007 and TCEQ Fact Sheet "Harris County/Clinton Drive 1997 Annual Fine Particulate Matter ($PM_{2.5}$)" November 2009.

[27] "Historical Meteorological Analysis in Support of the 2003 San Joaquin Valley PM_{10} State Implementation Plan", Shawn R. Ferreria, Air Quality Meteorologist/Atmospheric Scientist And Evan M. Shipp, Supervising Air Quality Meteorologist San Joaquin Valley Air Pollution Control District January 24, 2005.

available information indicates that emissions from sources in New Mexico do not impact areas of concern in California to the degree that would interfere with maintenance of the 1997 NAAQS in those areas.

b. Interference With PSD Measures in Other States

The third element of section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. EPA's 2006 Guidance made recommendations for SIP submissions to meet this requirement with respect to both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.

EPA believes that New Mexico's submission is consistent with the 2006 Guidance, when considered in conjunction with other PSD program revisions that EPA is proposing to approve in this action. The State's submittal indicates in Section C, "Impact on Prevention of Significant Deterioration (PSD)," that the State's SIP provisions include an EPA-approved PSD program applicable to all regulated pollutants. New Mexico's regulations for its PSD program were approved by EPA and made part of the SIP on February 27, 1987 (52 FR 5694) at 52.1620/52.1640(c)(37), effective March 30, 1987. On September 5, 2007, EPA approved the New Mexico's PSD revisions incorporating EPA's December 31, 2002, NSR Reforms into the State's regulations (72 FR 50879), which also recognized volatile organic compounds as a precursor for ozone.

Consistent with EPA's November 29, 2005, Phase 2 rule for the 1997 8-hour ozone NAAQS (70 FR 71612), the State submitted a SIP revision to modify its PSD provisions to address NO_X as an ozone precursor (20.2.74 NMAC). These revisions are further discussed below. EPA believes that the PSD revision for the 1997 8-hour ozone NAAQS that make NO_X a precursor for ozone for PSD purposes, taken together with the PSD SIP and the interstate transport SIP, satisfies the requirements of the third element of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS, *i.e.,* there will be no interference with any other state's required PSD measures.

For the $PM_{2.5}$ NAAQS, New Mexico stated in its section 110(a)(2)(D)(i) submission that the State would follow EPA's interim guidance on use of PM_{10} as a surrogate for $PM_{2.5}$ as recommended in the 2006 Guidance. The New Mexico Environment Department (NMED) clarified its interpretation of the New Mexico Interstate Transport SIP for Implementation of the $PM_{2.5}$ NAAQS in a July 23, 2010 letter to EPA. In the letter NMED stated that: (1) It does not use PM_{10} as a surrogate for $PM_{2.5}$ in its permitting programs, (2) it requires that applicants include $PM_{2.5}$ modeling and emissions in their PSD and minor source permit applications, and (3) the record for the Department's permitting decision includes an explanation of how $PM_{2.5}$ emissions have been appropriately analyzed and estimated. The NMED letter is included in the electronic docket for this action. Because of clarifications to EPA guidance, EPA believes that New Mexico's approach is appropriate.

On the basis of the data and analysis presented above, EPA is proposing to determine that the New Mexico SIP as revised with respect to PSD program requirements, satisfactorily addresses the requirements of elements (2) and (3) of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS.

C. New Mexico PSD SIP

The New Mexico Environment Department (NMED) made a SIP submission to meet requirements of the 8-hour ozone NAAQS by incorporating NO_X as a precursor for ozone. The submitted PSD SIP revisions adding NO_X as a precursor for ozone include the following:

- The definition of "Major stationary source" states that a major source that is major for NO_X is considered major for ozone (20.2.74.7.AF.(4) NMAC);
- The definition of "Regulated new source review pollutant" specifically identifies NO_X as an ozone precursor (20.2.74.7.AR.(1) NMAC);
- When referring to a net emissions increase or potential to emit, a rate of emissions that equals or exceeds 40 tons per year of NO_X is significant (20.2.74.502 NMAC, Table 2, Significant Emission Rates); and
- Any net emissions increase of 100 tons per year of NO_X subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data (20.2.74.503 NMAC, Table 3, Footnote b).

For the 8-hour ozone NAAQS, the revision to 20.2.74.7.AF meets the federal definition in 40 CFR 51.166(b)(1) to identify a major source of nitrogen oxides as a major source for ozone. The revision to 20.2.74.7.AR NMAC meets the federal definition in 40 CFR 51.166(b)(49) for NO_X as an ozone precursor. The revision to 20.2.74.502 NMAC Table 2 meets the federal requirement for significant emission rate for NO_X emissions in 40 CFR 51.166(b)(23)(i). The revision to 20.2.74.503 NMAC, Table 3 meets the federal requirement for ambient air impact analysis for ozone precursors under the footnote for 40 CFR 166(i)(5)(i)(e). Thus, EPA is proposing approval of these revisions as meeting the requirements of CAA section 110 and 40 CFR 51.166 for establishing NO_X emissions as a precursor for ozone.

The State's SIP submittal also contains revisions to Parts 20.2.2 NMAC, Definitions; and 20.2.79 NMAC, Permits—Nonattainment areas. These two submitted revisions are severable from each other, are severable from the submitted revisions to 20.2.74 NMAC discussed above, and are severable from the Transport SIP requirements addressed in this proposed action. The EPA is still reviewing the approvability of the submitted revisions to Parts 20.2.2 NMAC and 20.2.79 NMAC; therefore, we are not proposing to take action on those revisions in this proposed rulemaking. We intend to act on those revisions in a future rulemaking. EPA wishes to note that it approved New Mexico's Nonattainment New Source Review SIP on February 8, 2002 (67 FR 6147). In that same action, EPA approved the NO_X waiver for the Sunland Park 1-hour ozone nonattainment area.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 20, 2010.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–21384 Filed 8–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2008–0538; FRL–9193–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: EPA proposes to grant full approval of Missouri's attainment demonstration State Implementation Plan (SIP) and control strategy for the lead National Ambient Air Quality Standard (NAAQS) nonattainment area of Herculaneum, Missouri. This proposed action supplements the proposed conditional approval published by EPA on October 8, 2008, and explains why EPA now believes full approval is appropriate. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 1978. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the Clean Air Act identified in EPA's October 2008 proposal, and demonstrates attainment of the 1.5 microgram per cubic meter ($\mu g/m^3$) lead NAAQS in the Herculaneum, Missouri area. This action does not address any obligations which Missouri may have relative to the revised lead NAAQS promulgated by EPA in 2008.

DATES: Comments must be received on or before September 27, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0538, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: jay.michael@epa.gov.*

3. *Mail:* Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to: Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2008–0538. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Michael Jay at (913) 551–7460, or e-mail him at *jay.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA.

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