

EPA-APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>PART 9. MAJOR SOURCES AFFECTING NONATTAINMENT AREAS</b>				
252:100–8–50 ..	Applicability .....	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–51 ..	Definitions .....	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–52 ..	Source applicability determination .....	6/11/2001	11/26/2010 [Insert FR page number where document begins].	NOT in SIP: paragraph (b)(2).
252:100–8–53 ..	Exemptions .....	6/11/2001	11/26/2010 [Insert FR page number where document begins].	
252:100–8–54 ..	Requirements for sources located in nonattainment areas PSD or NNSR program submissions containing rule changes for PM <sub>2.5</sub> .	6/11/2001	11/26/2010 [Insert FR page number where document begins].	

<sup>1</sup> Submitted.

\* \* \* \* \* (e) \* \* \* \* \*

**EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP**

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
Interstate transport for the 1997 ozone and PM <sub>2.5</sub> NAAQS.	Statewide .....	5/1/2007	11/26/2010 [Insert citation of publication].	Approval for revisions to prohibit interference with Prevention of Significant Deterioration in any other State.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R10–OAR–2010–0669; FRL–9231–2]

**Approval and Promulgation of Implementation Plans; Idaho**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State for Idaho for the purpose of addressing the “good neighbor” provisions of the Clean Air Act (the Act or 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<sub>2.5</sub> NAAQS. This SIP revision addresses the requirement that the State of Idaho’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 approving the Idaho Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i) that emissions from Idaho sources do not significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS and the 1997 PM<sub>2.5</sub> NAAQS in any other state, interfere with maintenance of the 1997 8-hour ozone NAAQS and the 1997 PM<sub>2.5</sub> NAAQS in any other state, and interfere with measures required in the SIP of any other state under part C of subchapter I of the CAA to prevent significant deterioration of air quality. This action is being taken under section 110 and part C of subchapter I of the CAA.

**DATES:** This action is effective on December 27, 2010.

**ADDRESSES:** Copies of the State’s SIP revision and other information supporting this action are available for inspection at EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, EPA Region 10, Office of

Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553–6706.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we”, “us” or “our” are used, we mean EPA. Information is organized as follows:

**Table of Contents**

- I. What action is EPA taking?
- II. What is the background for this action?
- III. Response to Comments
  - A. Comments Relating to the “Significant Contribution to Nonattainment” Element
  - B. Comments Relating to the “Interfere With Maintenance” Element
  - C. Comment Relating to Section 110(l)
- IV. Final Action
- V. Scope of Action

**I. What action is EPA taking?**

EPA is approving a portion of Idaho’s Interstate Transport State Implementation Plan (SIP) revision for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS submitted by the Idaho Department of Quality (IDEQ) on June 28, 2010. Specifically, we are approving the portion of the plan that addresses

the following elements of CAA section 110(a)(2)(D)(i): (1) Significant contribution to nonattainment of these NAAQS in any other state, (2) interference with maintenance of these NAAQS by any other state, and (3) interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to these NAAQS. IDEQ addressed element (4), interference with any other state's required measures to protect visibility, by referring to its Regional Haze SIP, which will be submitted separately. EPA will take action on the visibility element in a separate action. None of the findings and conclusions in this notice, accordingly, relate to EPA's analysis of interference with another state's required measures to protect visibility. EPA will also take action on the portion of Idaho's SIP that addresses the 2006 PM<sub>2.5</sub> NAAQS<sup>1</sup> in a separate action.

## 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<sub>2.5</sub>). This action is being taken in response to the promulgation of the 1997 8-hour ozone NAAQS and 1997 PM<sub>2.5</sub> NAAQS. This action does not address the requirements of the 2006 24-hour PM<sub>2.5</sub> NAAQS or the 2008 8-hour ozone NAAQS; those standards will be addressed in a future action.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within three 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<sub>2.5</sub> 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 standards and 1997 PM<sub>2.5</sub> standards.

<sup>1</sup> The PM<sub>2.5</sub> standard was revised in 2006. See "National Ambient Air Quality Standards for Particulate Matter," at 71 FR 61144 (October 17, 2006).

On June 28, 2010, we received a SIP revision from the State of Idaho to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone NAAQS and 1997 PM<sub>2.5</sub> 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) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this rulemaking EPA is addressing the first three elements: (1) Significant contribution to nonattainment of these NAAQS in any other state, (2) interference with maintenance of these NAAQS by any other state, and (3) interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to these NAAQS. Idaho asserted in its SIP submission that its current SIP is adequate to prevent such contribution and interference, and thus no additional controls or revisions are needed with respect to the 1997 8-hour ozone NAAQS and 1997 PM<sub>2.5</sub> NAAQS.

On September 13, 2010, EPA published a proposal to approve the portion of Idaho's SIP submission that addresses the three elements of CAA section 110(a)(2)(D) for both the 1997 8-hour ozone NAAQS and 1997 PM<sub>2.5</sub> NAAQS: (1) Significant contribution to nonattainment of these NAAQS in any other state, (2) interference with maintenance of these NAAQS by any other state, and (3) interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to these NAAQS (75 FR 55494). EPA finds that Idaho's Interstate Transport SIP provisions addressing elements (1), (2), and (3) of section 110(a)(2)(D)(i) are consistent with the requirements of the CAA.

## III. Response to Comments

EPA received one letter from WildEarth Guardians (WG) commenting on several aspects of EPA's proposed approval of the Idaho Interstate Transport SIP. These comments addressed the "significant contribution to nonattainment," and "interfere with maintenance," elements of the SIP for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS. WG also alleged in its comments that EPA failed to comply with the requirements of CAA Section 110(l) with respect to the attainment

and maintenance of the current NAAQS. No comments were received that specifically addressed EPA's proposed approval of the "interfere with any other state's required measures to prevent significant deterioration" elements of the SIP for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS. In this section EPA summarizes and responds to the significant adverse comments submitted by the commenter.

### A. Comments Relating to the "Significant Contribution to Nonattainment" Element

*Comment No. 1*—WG argued that Idaho and EPA did not appropriately assess impacts to nonattainment in downwind states. According to WG, Idaho failed to assess significance of downwind impacts in accordance with EPA guidance and precedent. The commenter identified statements by EPA in the context of the 1998 NO<sub>x</sub> SIP Call as the applicable guidance for this purpose. WG asserts that, based on the precedent of the NO<sub>x</sub> SIP Call, the following issues need to be addressed in determining whether or not an area is significantly contributing to nonattainment in downwind states: (a) The overall nature of the ozone problem; (b) the extent of downwind nonattainment problems to which the upwind state's emissions are linked; (c) the ambient impact of the emissions from the upwind state's sources on the downwind nonattainment problems; and (d) the availability of highly cost-effective control measures for upwind emissions. 63 FR 57356, 57376 (October 27, 1998).

*EPA Response*—EPA disagrees with the commenter's conclusions regarding the relevant guidance and standards necessary to determine whether or not a state's emissions contribute significantly to nonattainment in another state. 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 such 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 and its application to factual situations before the Agency.

The NO<sub>x</sub> 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 used in the NO<sub>x</sub> SIP Call is necessarily the only way that states or EPA may evaluate the existence of, and extent of, interstate transport in all situations, and especially in situations where the state and EPA are evaluating the question on a state by state basis, and in situations where there is not evidence of widespread interstate transport.

The commenter failed to acknowledge that EPA issued specific guidance making recommendations to states about how to address section 110(a)(2)(D) in SIP submissions for the 8-hour ozone and PM<sub>2.5</sub> 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<sub>2.5</sub> National Ambient Air Quality Standards" on August 15, 2006 ("2006 Guidance").<sup>2</sup> The 2006 Guidance postdated the NO<sub>x</sub> SIP Call, and was developed by EPA specifically to address SIP submissions for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS. In EPA's proposal, this Guidance was identified by the Agency as applicable to the analysis before it.

In the 2006 Guidance, EPA 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."<sup>3</sup> 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."<sup>4</sup> To that end, EPA specifically recommended that states located within the geographic region covered by the "Clean Air Interstate Rule" (CAIR)<sup>5</sup> comply with

section 110(a)(2)(D) for the 1997 8-hour ozone and PM<sub>2.5</sub> 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."<sup>6</sup> 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 and in light of the cost of control to mitigate emissions that resulted in significant contribution.<sup>7</sup>

WG did not acknowledge or discuss EPA's 2006 Guidance for section 110(a)(2)(D) SIP submissions for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS, even though it was specifically identified and applied in EPA's proposal. EPA believes that the Idaho submission and EPA's evaluation of it were consistent with EPA's 2006 Guidance for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS. For example, as discussed in the proposal notice, the state and EPA considered information such as monitoring data in Idaho and downwind states, geographical and meteorological information, and technical studies of the nature and sources of nonattainment problems in various downwind states. These are among the types of information that EPA recommended and that EPA considers relevant under the circumstances of this action. Thus, EPA has concluded that the state's submission meets the requirements of section 110(a)(2)(D) and that EPA's evaluation of the state's SIP is consistent with the applicable 2006 Guidance and the Act.

Finally, EPA notes that the considerations in the 2006 Guidance are

consistent with the concepts that WG identified as applicable from the NO<sub>x</sub> SIP Call: (a) The overall nature of the problem; (b) the extent of the downwind nonattainment problems to which the upwind state's emissions are linked; (c) the ambient impact of the emissions from the upwind state's sources on the downwind nonattainment problems; and (d) the availability of highly cost-effective control measures for upwind emissions. These factors were taken into account in EPA's analysis of the Idaho SIP with the exception of consideration of the costs of controls for sources. EPA did not evaluate those costs because the available evidence indicated that there is very little contribution from emissions from Idaho sources to nonattainment in other states.

*Comment No. 2*—WG objected to EPA's proposed approval on the grounds that Idaho and EPA failed to adequately analyze and assess the contribution from Idaho's emissions to downwind states, and did not conduct an actual assessment of the significance of any such contribution or impacts.

*EPA Response*—EPA disagrees with WG's characterization of Idaho's and EPA's demonstration and analysis. WG again assumes that section 110(a)(2)(D) explicitly demands the type of modeling analysis that the commenter advocates throughout its comments. WG contends that any analytical approach that is not identical to the approach used in the NO<sub>x</sub> SIP Call is impermissible. In addition, WG failed to acknowledge that in other actions under section 110(a)(2)(D), EPA has used a variety of analytical approaches, short of modeling, to evaluate whether a specific state is significantly contributing to violations of the NAAQS in another state (e.g., the west coast states that EPA concluded should not be part of the geographic region of the CAIR rule based upon qualitative factors, and not by the zero out modeling EPA deemed necessary for some other states).

EPA's analysis took into account meteorological conditions, monitoring data, distance, topography and other quantitative and qualitative forms of available information to evaluate and identify a potentially significant contribution from Idaho's emissions to nonattainment of the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS in other states. As noted in EPA's proposal, no single piece of information informing this analysis is, by itself, dispositive of the issue. Instead, the total weight of all the evidence taken together was used to evaluate significant contributions to violations of the 1997 8-hour ozone or 1997 PM<sub>2.5</sub> NAAQS in another state. Based on the available information,

<sup>2</sup>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<sub>2.5</sub> National Ambient Air Quality Standards (Aug. 15, 2006) ("2006 Guidance"), p. 3. An electronic copy is available for review at the regulations.gov Web site as Document ID No. EPA-R10-OAR-2010-0669-0005.

<sup>3</sup>2006 Guidance at 3.

<sup>4</sup>*Id.*

<sup>5</sup>In this action, "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<sub>x</sub> SIP Call; Final Rule." 70 FR 25162.

<sup>6</sup>2006 Guidance at 5.

<sup>7</sup>*Id.*

using a combination of quantitative data and qualitative analyses, we concluded emissions from Idaho do not contribute significantly to downwind ozone nonattainment. Thus, contrary to WG's assertion, EPA did perform an analysis and assessment that formed a reasonable basis for the conclusion that emissions from Idaho do not contribute significantly to downwind ozone and PM<sub>2.5</sub> nonattainment, using a combination of quantitative data and qualitative analyses. EPA does not agree that the type of analysis advocated by WG is required by the statute and is necessary to support a rational determination in this instance.

*Comment No. 3*—WG objected to EPA's proposed approval because EPA's assessment of impacts on downwind states was based upon monitoring data in those states, and WG alleges that this is not an adequate means of evaluating significant contribution to nonattainment. WG is concerned that the impacts of Idaho's emissions in areas without monitors were not assessed and that EPA only assessed "impacts to areas that are designated as nonattainment or with monitors that have recorded violations of the ozone and PM<sub>2.5</sub> NAAQS." WG argued that this reliance on monitoring data is inconsistent with both section 110(a)(2)(D) and with EPA's guidance provided in the NO<sub>x</sub> SIP Call. In support of its objections, WG quoted statements from the NO<sub>x</sub> SIP Call proposal in which EPA discussed its proposed 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 WG, this statement, and similar ones in the context of the final NO<sub>x</sub> SIP Call rulemaking, establish that states and EPA cannot utilize monitoring data to evaluate the existence of, and extent of, interstate transport. Furthermore, WG 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 WG's arguments. First, WG misunderstands the point that EPA was making in quoted statement from the NO<sub>x</sub> SIP Call proposal (and that EPA has subsequently made in the context of

CAIR). When EPA stated that it would evaluate impacts on air quality in downwind states, independent of the current formal "designation" of such downwind states, it was not referring to air quality in the absence of monitor data. EPA's point was that it was inappropriate to wait for either initial designations of nonattainment for a new NAAQS under section 107(d)(1), or for a redesignation to nonattainment for an existing NAAQS under section 107(d)(3), before EPA could assess whether there is significant contribution to nonattainment of a NAAQS in another state.

For example, in the case of initial designations, section 107(d) contemplates a process and timeline for initial designations that could well extend for two or three years following the promulgation of a new or revised NAAQS. By contrast, section 110(a)(1) requires states to make SIP submissions that address section 110(a)(2)(D) and interstate transport "within 3 years or such shorter period as the Administrator may prescribe" of EPA's promulgation of a new or revised NAAQS. This schedule does not support a reading of section 110(a)(2)(D) that is dependent upon formal designations having occurred first. This is a key reason why EPA determined that it was appropriate to evaluate interstate transport based upon monitor data, not designation status, in the CAIR rulemaking and in the matter at hand.

WG's misunderstanding of EPA's statement concerning designation status evidently caused WG to believe that EPA's assessment of interstate transport in the NO<sub>x</sub> SIP Call was not limited to evaluation of downwind areas with monitors. This is simply incorrect. In both the NO<sub>x</sub> 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<sub>x</sub> SIP Call, EPA specifically evaluated the impacts of emissions from upwind states on monitors located in downwind states. The NO<sub>x</sub> 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.<sup>8</sup>

Finally, EPA disagrees with WG's argument that the assessment of

significant contribution to downwind nonattainment must include evaluation of impacts on non-monitored areas. First, neither section 110(a)(2)(D)(i)(I) provisions, nor the 2006 Guidance support WG's position, as neither refers to any requirement or recommendation to assess air quality in non-monitored areas.<sup>9</sup> The same focus on monitored data as a means of assessing interstate transport is found in the NO<sub>x</sub> SIP Call and in CAIR. An initial step in both the NO<sub>x</sub> SIP Call and CAIR was the identification of areas with current monitored violations of the ozone and/or PM<sub>2.5</sub> NAAQS.<sup>10</sup> 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, WG 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. Reliance on monitoring data 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 or PM<sub>2.5</sub> NAAQS in a particular area. Put another way, in order for there to be significant contribution to nonattainment for the 1997 8-hour ozone or PM<sub>2.5</sub> NAAQS, there must be a monitor with data showing a violation of that NAAQS. EPA concludes that by considering data from monitored areas, its assessment of whether emissions from Idaho contribute significantly to ozone or PM<sub>2.5</sub> nonattainment in downwind states is consistent with the 2006 Guidance, and with the approach used by both the CAIR rule and the NO<sub>x</sub> SIP Call.

*Comment No. 4*—In support of its comments that EPA should assess significant contribution to nonattainment in nonmonitored areas,

<sup>9</sup> 2006 Guidance, p. 5.

<sup>10</sup> "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<sub>x</sub> SIP call proposed rule action reads: "\* \* \* For current nonattainment areas, EPA used air quality data for the period 1993 through 1995 to determine which counties are violating the 1-hour and/or 8-hour NAAQS. These are the most recent 3 years of fully quality assured data which were available in time for this assessment." 62 FR 60336.

<sup>8</sup> *Michigan v. U.S. EPA*, 213 F.3d 663, 674–681 (DC Cir. 2000); *North Carolina v. EPA*, 531 F.3d 896, 913–916 (D.C. Cir. 2008) (upholding EPA approach to determining threshold despite remanding other aspects of CAIR).

WG argued that existing modeling performed by another organization “indicates that large areas of neighboring states will likely violate the ozone NAAQS.” According to WG, 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”). WG asserted that: “Slide 28 of this presentation displays projected 4th highest 8-hour ozone reading for 2018 and indicates that air quality in areas throughout Utah, Wyoming, Colorado, and Nevada will exceed and/or violate the 1997 ozone NAAQS. \* \* \*” In short, WG 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 in these western states.

*EPA Response*—EPA disagrees with this comment on several grounds. First, as explained in response to other comments, EPA does not agree that it is appropriate to evaluate significant contribution to nonattainment for the 1997 8-hour ozone NAAQS by modeling ambient levels in areas where there is no monitor to provide data to establish a violation of the NAAQS in question. Section 110(a)(2)(D) does not require such an approach, EPA has not taken this approach in the NO<sub>x</sub> 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, WG’s own description of the ozone concentrations predicted for the year 2018 as projecting “violations” of the ozone NAAQS is inaccurate. Within the same sentence, quoted above, slide 28 is described as displaying the projected 4th max ozone reading for the year 2018, and as indicating that “\* \* \* air quality \* \* \* will exceed or violate [our emphasis] the 1997 ozone NAAQS.” By definition, a one year value of the 4th max above the NAAQS only constitutes an exceedance of the NAAQS; to constitute a violation of the 1997 8-hour ozone NAAQS, the standard must be exceeded for three consecutive years at the same monitor. Thus, even if the WRAP presentation submitted by WG were technically sound, the conclusion drawn from it by WG is inaccurate and does not support its claim of projected violations of the NAAQS in surrounding states.

EPA has also reviewed the WRAP presentation submitted by WG and believes that there was a substantial error in the WRAP modeling software

that led to an overestimation of ground level ozone concentrations. A recent study conducted by Environ for the Four Corners Air Quality Task Force (FCAQTF; Stoeckenius *et al.*, 2009) has demonstrated that excessive vertical transport in the CMAQ and CAMx models over high terrain was responsible for overestimated ground level ozone concentrations due to downward transport of stratospheric ozone.<sup>11</sup> 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 WG’s concerns about large expanses of 8-hour ozone nonattainment areas projected for 2018 in areas without monitors.

*Comment No. 5*—As additional support for its assertion that EPA should require modeling to assess ambient levels in unmonitored portions of other states, WG relied on an additional study entitled the “Uinta Basin Air Quality Study (UBAQS).” The commenter argued that the UBAQS study further supports its concern that limiting the evaluation of downwind impacts only to areas with monitors fails to assess ozone nonattainment in non-monitored areas. According to the commenter, UBAQS modeling results show that: (a) The Wasatch front region is currently exceeding and will exceed in 2012 the 1997 8-hour ozone NAAQS, and (b) based on 2005 meteorological data, portions of the four counties in the southwest corner of Utah are also currently in nonattainment and will be in nonattainment in 2012.<sup>12</sup>

*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 WG. Even taking the UBAQS modeling results at their face value, however, EPA does not agree that the 8-hour ozone nonattainment (current and projected) in the Wasatch Front Range area supports the commenter’s concerns about the need to evaluate the

possibility of significant contribution to nonattainment in non-monitored areas. EPA sees several problems with the commenter’s interpretation of the UBAQS analysis results for counties in Utah’s southwestern corner: “based on 2005 meteorological data, portions of Washington, Iron, Kane, and Garfield Counties are also in nonattainment and will be in nonattainment in 2012.”

First, WG’s interpretation of the predicted ozone concentrations shown in Figures 4–3a and 4–3b (pages 5 and 6 of the comment letter) is inaccurate. A close review of the legend in these figures indicates that the highest ozone concentrations predicted by the model for portions of the counties noted above are somewhere between 81.00 and 85.99 ppb, but a specific concentration is not provided. If the ozone concentration is actually predicted to be smaller than or equal to 84.9 ppb, then the area is attaining; if it is predicted as greater than 84.9 ppb then it is not attaining. This means that current and predicted design values for the southwestern Utah area identified in Figures 4–3a and 4–3b could both be in attainment or both in nonattainment, or one of them in attainment and the other in nonattainment, for the 1997 8-hour ozone NAAQS.

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.<sup>13</sup> The study deviates in at least two significant ways from EPA’s 2007 guidance on SIP modeling.<sup>14</sup> One issue is the UBAQS modeling reliance on fewer than the five years of data recommended by EPA to generate a current 8-hour ozone design value (DVC). UBAQS relaxed this requirement so that sites with as little as 1 year of data were included as DVCs in the analysis. The other issue is the computation of the relative responsive factor (RRF), which directly affects the modeling’s future design value (DVF).<sup>15</sup> Again due to unavailability of data satisfying EPA’s recommendation that the RRF be based on a minimum of five days of ozone concentrations above 85

<sup>11</sup> 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.” Prepared for the New Mexico Environment Department, Air Quality Bureau, Santa Fe, NM, by ENVIRON International Corporation, Novato, CA.

<sup>12</sup> The southwestern area referred to by the commenter includes portions of Washington, Iron, Kane, and Garfield Counties.

<sup>13</sup> See “UBAQS,” pages 4–27 to 4–29.

<sup>14</sup> EPA. 2007. Guidance on the Use of Models and other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub> and Regional Haze. Office of Air Quality Planning and Standards, Air Modeling Group. Research Triangle Park, North Carolina (<http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf>).

<sup>15</sup> DVC × RRF = DVF.

ppb, UBAQS modeling uses RRFs based on one or more days of ozone concentrations above 70 ppb.<sup>16</sup> EPA concludes that the modeling analysis results used by the WG are unreliable for projecting non-attainment status and therefore do not support its comments.

*Comment No. 6*—In support of its arguments that EPA should not limit assessment of significant contribution to nonattainment through evaluation of impacts at monitors, but include, through a modeling analysis, impacts where there are no such monitors, the commenter cited a past statement by EPA to the effect that the monitor network in the western United States needs to be expanded. The quoted statements included EPA's observation that "[v]irtually all States east of the Mississippi River have at least two to four non-urban O<sub>3</sub> monitors, while many large mid-western and western States have one or no non-urban monitors." 74 FR 34,525 (July 16, 2009). From this statement, the commenter argues that it is not appropriate for EPA to limit the evaluation of significant contribution to nonattainment in other states to a consideration of monitor data instead of modeling ambient pollutant levels because there are states with few or no non-urban monitors surrounding Idaho.

*EPA Response*—EPA acknowledges that WG's observation that there are relatively few monitors in the western states, and that relatively few monitors are currently located in non-urban areas of western states, is factually correct. 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 taken out of context, because EPA was in that proposal referring to changes in state monitoring networks that it anticipates will be necessary in order to implement *not* the 1997 8-hour ozone NAAQS that is the subject of this rulemaking, but rather the 2008 ozone NAAQS for which there are concerns that there will be a need to evaluate ambient levels in previously unmonitored areas of the western United States. The fact that additional monitors may be necessary in the future for the newer ozone NAAQS does not automatically mean that the existing ozone monitoring networks are insufficient for the 1997 8-hour ozone NAAQS, as the commenter implies. Indeed, states submit annual monitoring

network plans to EPA and EPA evaluates these to insure that they meet the applicable requirements. For example, Idaho itself submits just such a report on an annual basis, and EPA reviews it for adequacy.<sup>17</sup> All other states submit comparable reports.

*Comment No. 7*—WG objected to EPA's proposed approval of the Idaho SIP submission because neither Idaho nor EPA performed a specific modeling analysis to assure that emissions from Idaho sources do not significantly contribute to nonattainment in downwind states. According to the commenter, EPA's decision to use a qualitative approach to determine whether emissions from Idaho contribute significantly to downwind nonattainment is not consistent with its own preparation of a regional model to evaluate such impacts from other states as part of CAIR.

*EPA Response*—EPA disagrees with WG's proposition that only modeling can establish whether or not there is significant contribution from one state to the nonattainment of another. First, as noted above, EPA does not believe that section 110(a)(2)(D) requires a modeling analysis in all instances. While modeling can be useful, EPA believes that other forms of analysis can be sufficient to evaluate whether or not there is significant contribution to nonattainment. For this reason, EPA's 2006 Guidance recommended other forms of information that states may rely upon as part of their section 110(a)(2)(D) submissions for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS. EPA has concluded that its qualitative approach to the assessment of significant contribution to downwind ozone and PM<sub>2.5</sub> nonattainment is consistent with EPA's 2006 Guidance.

Second, EPA notes that WG's comment also reflects a misunderstanding of the approach EPA used in the remanded CAIR. In CAIR, EPA determined that several factors provided a reasonable basis to exclude certain western states from the ambit of that rulemaking: "[i]n analyzing significant contribution to nonattainment, we determined it was reasonable to exclude the Western U.S., including the states of Washington, Idaho, Oregon, California, Nevada, Utah, and Arizona from further analysis due to geography, meteorology, and topography. Based on these factors we concluded that the PM<sub>2.5</sub> and 8-hour ozone nonattainment problems are not

likely to be affected significantly by pollution transported across these States' boundaries. \* \* \* 69 FR 4581 (January 30, 2004).

EPA has taken a similar approach to assess whether Idaho contributes significantly to violations of the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS in downwind states. In the proposed action, EPA explained several forms of substantive and technically valid evidence that led to the conclusion that emissions from Idaho sources do not contribute significantly to nonattainment, in accordance with the requirement of Section 110(a)(2)(D).

*Comment No. 8*—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), WG noted that EPA itself asks other agencies to perform such modeling in other contexts. As examples, the commenter cited four instances in which EPA commented on actions by other agencies and recommended the use of a 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.<sup>18</sup> WG 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 Idaho 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, EPA disagrees with WG's fundamental argument that modeling is required 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 can satisfy the interstate transport requirements for significant contribution to nonattainment in other states. Even EPA's own CAIR analysis relied on a combination of qualitative and quantitative analyses, as explained above. As indicated in our response to

<sup>17</sup> EPA most recently reviewed the adequacy of the Idaho monitoring network on October 14, 2010. See letter dated October 14, 2010 from Debra Suzuki, EPA Region 10, to Dave Broker, IDEQ.

<sup>18</sup> WG's October 13, 2010, comment letter, pp. 9–10. The referenced letters have been included in the docket for this action.

<sup>16</sup> See UBAQS, p. 4–28.

Comment No. 7, the CAIR analysis excluded the western states based on a qualitative assessment of the regions topography, geography and meteorology.<sup>19</sup>

EPA believes that the commenter's references to EPA statements commenting on the actions of other agencies are inapposite. As WG is aware, those comments were made in the context of the evaluation of the impacts of various federal actions pursuant to the National Environmental Policy Act (NEPA), not the Clean Air Act. As explained above, section 110(a)(2)(D) governs this particular decision-making process, and EPA does not agree that modeling is always required to support the evaluation. EPA itself has relied on qualitative evidence for this purpose when the relevant record provides evidence sufficient to reach a reasoned determination.

*Comment No. 9*—In further support of its argument that EPA should always require modeling to evaluate significant contribution to nonattainment, WG referred to EPA regulations governing nonattainment SIPs. The commenter referenced 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 argued that this regulation supports its 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 addresses the control strategy requirements when the necessity of controls has already been established. The cited provision requires a modeling analysis 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 Idaho do not contribute significantly to nonattainment for the 1997 8-hour ozone standard in any other states eliminates the need for a control strategy aimed at satisfying the section 110(a)(2)(D) requirements. The provision cited by the commenter, therefore, is inapplicable in this context. 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 subchapter I, part D of the CAA. This interpretation was upheld by the Sixth Circuit Court of Appeals. *Wall v. U.S. EPA*, 265 F.3d 426, 436 (6th Cir. 2001). Thus, the commenter's cited regulation is not relevant to EPA's technical analysis assessing whether emissions from Idaho contribute significantly to nonattainment in any other states under section 110(a)(2)(D).

*Comment No. 10*—WG referenced several modeling analyses of emissions in the western United States which it contends renders EPA's analysis inadequate. The commenter “challenged” EPA to prove the modeling results it presented are insufficient by presenting a contrary modeling analysis, and argued that EPA has an obligation to do so.

*Response*: EPA disagrees with WG's contention that EPA is obligated to evaluate and disprove the modeling analyses it has submitted with a competing modeling analysis when other available information is available to dispute the modeling analysis. EPA's interpretation of section 110(a)(2)(D) is that the statute does not explicitly require modeling, and while modeling can be useful in certain circumstances, there is no obligation to use it to evaluate whether or not there is significant contribution to nonattainment. Section 110(a)(2)(D)(i) does not specify the forms of evidence to be used for meeting the requirements, and the 2006 Guidance specifically recommends other forms of information that states might wish to evaluate as part of their section 110(a)(2)(D) submissions. We evaluated whether Idaho's SIP met the requirement of section 110(a)(2)(D)(i) based on EPA's 2006 Guidance and have a reasonable basis, as discussed in the proposed approval, for concluding that Idaho has met the requirement of 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS in the absence of a modeling analysis.

*Comment No. 11*—WG also objected to EPA's proposed approval of the Idaho submission on the grounds that it was based upon a “weight-of-evidence analysis,” and that no such weight of evidence test appears in the CAA generally, or in section 110(a)(2)(D) in particular. According to the commenter, there is no regulatory support for using a “weight-of-evidence” approach to assessing air quality impacts. The commenter asserted that EPA neither cited nor quoted regulations or policy that provides for this, and failed to lend any specific meaning to the phrase

through its proposed approval. Finally, the commenter asserted, without explaining, its belief that EPA failed to address “several relevant factors related to the determination of whether Idaho contributes significantly to nonattainment undermines the agency's reliance on any ‘weight-of-evidence’ approach.”

*EPA Response*—EPA agrees with WG that neither the CAA generally, nor section 110(a)(2)(D) specifically, include the explicit phrase “weight of evidence.” It simply does not follow, however, that it is inappropriate for EPA to use such an approach in this context. As explained above, section 110(a)(2)(D) does not explicitly stipulate how EPA may assess whether there is a significant contribution to nonattainment in other states. Through past actions such as CAIR, EPA has used a weight of evidence approach to exclude some states from further consideration.<sup>20</sup> As described above, in EPA's 2006 Guidance the Agency specifically recommended types of information that states might wish to rely upon to evaluate the presence of, and extent of, interstate transport for this purpose. EPA believes that a weight of evidence approach that properly considers appropriate evidence is sufficient to make a valid determination, as in this case.

Specifically, EPA's technical analysis in the September 13, 2010 proposed action underscores its reliance on implementation policies set in the EPA 2006 Guidance: “EPA's August 15, 2006, guidance to states concerning section 110(a)(2)(D)(i) recommended various methods by which states might evaluate whether or not its emissions significantly contribute to violations of the 1997 ozone standards in another state. Among other methods, EPA recommended consideration of available EPA modeling conducted in conjunction with CAIR, *or in the absence of such EPA modeling, consideration of other information such as the amount of emissions, the geographic location of violating areas, meteorological data, or various other forms of information that would be relevant to assessing the likelihood of significant contribution to violations of the NAAQS in another state* [our emphasis].”<sup>21</sup> On the basis of this Guidance, Idaho and EPA chose to assess the impacts of emissions from Idaho sources on nonattainment areas for the 1997 ozone NAAQS and 1997 PM<sub>2.5</sub> NAAQS in surrounding states through a weight of evidence approach

<sup>19</sup> 69 FR 4581, January 30, 2004.

<sup>20</sup> See: 69 FR 4581, January 30, 2004.

<sup>21</sup> 75 FR 55494, September 13, 2010.

using quantitative and qualitative information such as monitoring data for those other states, Idaho's distance from areas with monitors showing violation of the NAAQS, meteorological conditions, and other characteristics for those areas. EPA's use of a weight of evidence analysis is by no means unusual for the assessment of ozone impacts through long range transport. The same analytical framework was used in the 1998 NO<sub>x</sub> SIP Call, as indicated under Section II.C., entitled "Weight-of-Evidence Determination of Covered States."<sup>22</sup> The differences between the specific types of evidence used in the NO<sub>x</sub> SIP Call and in our analysis do not invalidate the use of the weight of evidence approach.

As for the commenter's argument that EPA "fails to lend any specific meaning to the phrase through its proposed approval," the Agency's technical analysis described in the proposal did specify the characteristics, including limitations, of a weight of evidence analysis: "[f]urthermore \* \* \* EPA notes that no single piece of information is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together is used to evaluate significant contributions to violations of the 1997 8-hour ozone or 1997 PM<sub>2.5</sub> NAAQS in another state." (75 FR 55496).

Finally, as to the commenter's assertion that EPA failed to consider "several relevant factors" and thus failed to conduct an appropriate weight of evidence evaluation, EPA cannot weigh the validity of this comment in the absence of an explanation of what these factors might be.

*Comment No. 12*—WG questioned whether a regulatory provision from Idaho's SIP, IDAPA 58.01.013.203.02, that was identified in the proposed action constitutes a "prohibition on emissions that significantly interfere with nonattainment."<sup>23</sup> WG argued that this provision does not appear to ensure compliance with section 110(a)(2)(D)(i)(I) because, the commenter explains, the provision

<sup>22</sup>As discussed above, EPA applied a multi-factor approach to identify the amounts of NO<sub>x</sub> emissions that contribute significantly to nonattainment. \* \* \* 1998 SIP Call, 63 FR 57381, October 27, 1998.

<sup>23</sup>EPA notes that WG appears to have incorrectly stated and conflated the two different standards presented in CAA section 110(a)(2)(D)(i)(I) in this comment. EPA assumes that, due to the placement of this comment in a section that WG entitled "Measures in the SIP do not Appear to Ensure that Idaho will not Significantly Contribute to Nonattainment" and statements made later in the comment, that the comment applies only to EPA's proposed approval of the nonattainment prong of 110(a)(2)(D)(i)(I) and was not provided in reference to the maintenance prong.

applies only to stationary sources (actually point sources) and not to mobile or field burning emissions, and that all sources must be considered in order to meet the requirements of the statute. The commenter alleged that 110(a)(2)(D)(i)(II) applies to any source or other type of emission activity and, therefore, Idaho's SIP provision is inadequate if it is limited in its application to stationary sources. WG went on to identify emission inventory information to support its argument that mobile source emissions and agricultural burning emissions are significant sources of emissions in Idaho. The commenter questioned the assertion that the abovementioned regulatory provision provides authority to limit a source's emissions to ensure attainment in other states. WG also questioned how the provision would apply in attainment areas. Finally, the commenter concluded that the Idaho SIP does not appear to contain provisions that effectively prohibit emissions from any source from significantly contributing to nonattainment in any other state.

*EPA Response*—EPA agrees with the commenter's assertion that the requirements of section 110(a)(2)(D)(i)(I) are applicable to all source categories and not only to stationary sources. The commenter seems to have read EPA's proposed action to imply that the provisions cited by Idaho are the only consideration in evaluating whether Idaho has met the requirement regarding whether or not a state's emissions significantly contribute to violations of 1997 ozone and 1997 PM<sub>2.5</sub> standards in another state. In fact, these provisions, which provide IDEQ with the authority to require a permit if emission rate reductions are necessary to attain any ambient air quality standard, were identified by EPA in the proposed action as "additional support for [EPA's] conclusion that emissions from Idaho sources do not significantly contribute to nonattainment in any other state \* \* \*." As noted in EPA's proposed action, no single piece of information was by itself dispositive in evaluating Idaho's potential contribution to nonattainment in another state. EPA has taken into account the Idaho SIP as a whole, which includes but is not limited to the cited permitting provisions, and the actual contribution of emissions from Idaho to nonattainment receptors in other states to evaluate whether the significant contribution element has been met.

EPA disagrees with the commenter's apparent view that under section 110(a)(2)(D) SIPs must contain literal provisions 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. In conducting its analysis of whether or not the state's SIP is adequate, EPA evaluates the actual contribution of a state's emissions to nonattainment in another state and does not base its analysis on the written provisions of the SIP alone. Therefore, EPA believes that satisfaction of the "significant contribution" requirement is not to be demonstrated through a literal requirement for a prohibition of the type advocated by the commenter.

EPA's past application of section 110(a)(2)(D) did not require the literal prohibition advocated by the commenter. For example, in 1998 NO<sub>x</sub> SIP call (63 FR 57356, October 27, 1998) EPA indicated that "the term 'prohibit' means that SIPs must eliminate those amounts of emissions determined to contribute significantly to nonattainment \* \* \*." As a result, the first step of the process to determine whether this statutory requirement is satisfied is the factual determination of whether a state's emissions contribute significantly to nonattainment in downwind areas. See 2005 CAIR Rule (70 FR 25162) and 1998 NO<sub>x</sub> SIP Call (63 FR 57356). If this factual finding is in the negative, as is the case for EPA's assessment of the contribution from emissions from Idaho, then section 110(a)(2)(D)(i)(I) does not require any changes to a state's provisions. If, however, the evaluation reveals that there is such a significant contribution to nonattainment in other states, then EPA requires the state to adopt substantive provisions to eliminate those emissions. The state could achieve these reductions through traditional command and control programs, or at its own election, through participation in a cap and trade program. Thus, EPA's approach in this action is consistent with the Agency's interpretation of 110(a)(2)(D)(i) in the 2006 guidance, the CAIR Rule, and the NO<sub>x</sub> SIP call, none of which required the *pro forma* literal "prohibition" of the type advocated by the commenter.

#### *B. Comments Relating to the "Interfere With Maintenance" Element*

*Comment No. 1*—The commenter stated that EPA inappropriately defined the term "interfere with maintenance." It argued that EPA's definition appeared to be "inappropriately conflated with the



definition of nonattainment.” It argued that the definition of maintenance appeared to be tied to nonattainment, asserting that “unless an area has violated or is in violation of the NAAQS, the agency will not consider whether Idaho is interfering with that area’s ability to maintain compliance with the NAAQS.” For this reason, it argued EPA did not give independent meaning to the “interfere with maintenance” prong of section 110(a)(2)(D)(i)(I).

The commenter also maintains that EPA’s analysis did not consider Idaho’s impacts on neighboring states that have not previously violated, but that “may be barely attaining the NAAQS.” To illustrate its contention that EPA has inappropriately defined “interference with maintenance,” the commenter pointed to information regarding Cache Valley, Utah, which it describes as an example of an area that has not violated the 1997 24-hour PM<sub>2.5</sub> NAAQS, but that may be barely attaining the NAAQS and should, therefore, be classified as a maintenance receptor. The commenter did not provide any other concrete examples of areas that EPA should have identified as maintenance receptors.

**Response**—The definition of maintenance used by EPA is consistent with the direction given to EPA by the Court of Appeals for the DC Circuit in *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008).<sup>24</sup> In that case, the court analyzed the definition of “interfere with maintenance” used in the CAIR rule. The court found that the definition EPA used “gave no independent significance to the ‘interfere with maintenance’ prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance.” *North Carolina* at 910. It further reasoned that “[u]nder EPA’s reading of the statute, a state can never “interfere with maintenance” unless EPA determines that at one point it “contribute[d] significantly to nonattainment.” *Id.* Based on this analysis, the court found the definition unlawful holding that “[b]ecause EPA describes CAIR as a complete remedy to a section 110(a)(2)(D)(i)(I) violation and does not give independent significance to the ‘interfere with maintenance’ language to identify upwind states that interfere

with downwind maintenance, EPA unlawfully nullifies that aspect of the statute and provides no protection for downwind areas that, despite EPA’s predictions, still find themselves struggling to meet NAAQS due to upwind interference in 2010.” *Id.* at 910–911.

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

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

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

FR 52697). The maximum design value referenced in this sentence is the maximum *future* design value calculated using each of the three base design value periods separately. Whether or not one of the three base period design values exceeded the NAAQS was not a factor considered in determining whether a site was a maintenance receptor.

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

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

<sup>24</sup> As EPA noted in the proposal, the term “interfere with maintenance” is not defined in the CAA. As such, the term is ambiguous and EPA’s interpretation of that term in this action is both reasonable and consistent with the overall goals of the CAA. By this approach, EPA is giving independent meaning to the term and supporting that interpretation with technical analysis to apply it to the facts of this action.

difficulty maintaining the standard. North Carolina. at 911.

EPA used this same approach to identify any potential maintenance receptors for purposes of evaluating Idaho's SIP submission. For the reasons explained above, this approach is both reasonable and consistent with the direction given to EPA by the DC Circuit in *North Carolina*.

As explained above, EPA established a methodology to identify sites that may have difficulty maintaining the 1997 8-hour ozone or 1997 PM<sub>2.5</sub> NAAQS. This process identifies any specific receptors in downwind states that, even though they are projected to be in attainment and thus would not be nonattainment receptors, may have difficulty maintaining the NAAQS in question. Based on this methodology, EPA projected that the Cache Valley in Utah will not have difficulty meeting the 1997 8-hour ozone NAAQS or the 1997 PM<sub>2.5</sub> NAAQS because none of the future year design values exceeded the NAAQS and Cache Valley is not a maintenance receptor.

EPA notes that, except for Cache Valley, Utah, the commenter provides no specific examples or facts to support its arguments that there are areas in neighboring states which are "barely attaining the NAAQS." In the absence of any specific comments regarding the location of monitoring receptors, monitoring concentrations, or time periods during which these areas were purportedly "barely attaining" the NAAQS, EPA cannot respond to the commenter's generic concerns about interference with maintenance in the neighboring states of Montana, Nevada, Oregon, Montana, Wyoming, and other areas of Utah. EPA's analysis shows that there are no sites in any states adjacent to Idaho with design values exceeding the 65 ug/m<sup>3</sup> which should accordingly be identified as maintenance receptors.

WG provided only the example of Cache Valley, Utah, as an area that EPA should have identified as a maintenance receptor. The commenter appears to implicitly argue that EPA has inappropriately established an interference with maintenance threshold, although it did not identify specific criteria that should warrant designating an area as a maintenance receptor. Even if EPA did not rely on the methodology discussed above to give meaning to the "interfere with maintenance" prong of section 110(a)(2)(D), the commenter's argument that Cache County is "barely attaining" the NAAQS is not persuasive. The data pointed to by the commenter is not sufficient to support a reasonable conclusion that the area warrants

evaluation as a maintenance receptor. The commenter identified the four highest monitored values for PM<sub>2.5</sub> at the Cache County monitor for each year from 2005 through 2010. However, EPA's regulations establish that attainment of the PM<sub>2.5</sub> NAAQS is determined when the three-year average of the 98th percentile value at each monitoring site is less than or equal to 65 ug/m<sup>3</sup>. The 98th percentile value for Cache County cannot be evaluated by considering only the four highest monitored readings during each of the years cited by the commenter. In fact, all of the values cited by the commenter would be eliminated from consideration in an attainment analysis. EPA concludes that this data is not sufficiently persuasive to warrant identifying Cache County as a maintenance receptor.

Although the commenter did not provide a full data set in its comments, EPA has analyzed a complete data set for the Cache County monitor and determined that the highest three-year average of the 98th percentile for the monitor is only 66% of the standard. EPA computed the highest 3-year average of the 98th percentile values for each of the three-year periods covered by the 2005–2010 period that the commenter references. The highest value for any complete three-year periods was 42 ug/m<sup>3</sup>, well below 65 ug/m<sup>3</sup>. EPA disagrees with the commenter's conclusion that there is a reasonable basis for characterizing this area as "barely attaining" the NAAQS or one that warrants additional evaluation as a maintenance receptor.

*Comment No. 2*—The commenter cited a variety of information suggesting that receptors in the Denver/North Front Range (Denver/NFR) area should also be considered for maintenance purposes under 110(a)(2)(D)(i) in this action. The commenter points out that as EPA itself has stated that "Data for 2005–2007 and 2006–2008 reflect violations of the 8-hour ozone NAAQS at the Rocky Flats North monitor (values of {0.085} and 0.086 ppm, respectively)." The commenter also argued that modeling prepared in conjunction with Colorado's Denver/NFR attainment demonstration shows that by 2010, the three-year design value is only projected to be lowered to 0.084 parts per million, barely in compliance with the NAAQS, and that certain portions of the Denver/NFR area of Colorado would violate the 1997 ozone NAAQS in 2010 at grid cells west of Fort Collins. The commenter referenced several documents that are part of the Colorado's Denver/NFR 8-hour Ozone Attainment Demonstration in support of its arguments. The

commenter cited the report's language that indicated that the modeling projection of a value above the 1997 8-hour standard to the west of Fort Collins is not "implausible" explaining, "[i]n the case of the Denver ozone modeling, higher ozone concentrations are estimated west of Fort Collins than at the locations of the two monitors in Fort Collins on some days and this does not appear to be an error in the modeling system".<sup>25</sup>

The commenter argued that EPA's failure to consider the Denver/NFR area as a receptor for evaluating interference with maintenance in this action reflects the very problem that the DC Circuit warned could result without giving independent meaning to the term "interfere with maintenance."

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

The commenter's argument that EPA did not consistently identify maintenance receptors is premised on the same fundamental misunderstanding (discussed in the previous response to comment addressing the "interfere with maintenance" prong) that EPA's identification of nonattainment receptors was based on current or past NAAQS violations. As explained above, this is not correct. EPA did not base its identification of maintenance receptors on an analysis of whether air quality at those receptors exceeded the NAAQS in the base years. The methodology EPA used to identify maintenance areas takes into account historic variability of emissions at specific monitoring sites to analyze whether or not monitoring sites projected to be in attainment in 2012 will nonetheless remain at risk of slipping into nonattainment in that year. The commenter provided a number of modeling or monitoring analyses for

<sup>25</sup> Commenter referenced the Colorado Department of Public Health and Environment's "2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan Control Strategy" and the Environ modeling report "Final 2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan"

2010 or earlier. As we have addressed in responses elsewhere in this notice, EPA continues to believe 2012 is the appropriate year for this analysis. Thus, modeling or monitoring data for other years is not directly relevant to this rulemaking. Nonetheless, below we address the commenter's specific assertions about the modeling.

The commenter asserts that monitoring data for 2005–07 and 2006–08 for the Rocky Flats North monitor reflect violations of the 8-hour NAAQS and therefore EPA should consider this Rocky Flats North monitor as a "maintenance receptor." The commenter further cites to modeling prepared in conjunction with Colorado's Denver/NFR attainment demonstration to support its assertion that EPA has applied inconsistently its definition of interference with maintenance. The modeling data referenced by the commenter, however, only identifies monitors that, in the commenter's view, are at risk of being in nonattainment or having maintenance problems in 2010. The monitoring data cited indicates high ozone levels in the past. The underlying issue raised is thus substantively the same as that raised in Comment No. 3 below which argues that EPA's analysis is faulty because it identifies receptors likely to have difficulty maintaining the standard in 2012 and not at the present or in the past. EPA's response to Comment No. 3 below, illustrates how its approach, based on modeling analyses that identify receptors at risk for maintenance in the year 2012, is appropriate and consistent with the D.C. Circuit decision in *North Carolina v. EPA*.

EPA's method is based on model projection values that take into account multi-year variability in ozone data at specific monitors. For identification of maintenance receptors, EPA utilized the monitoring data from the 2003–2007 period to calculate 2012 future year modeling design value projections. The 2003–07 period includes three Design Value (DV) periods (2003–2005, 2004–2006, and 2005–2007). The 2012 future year DVs were calculated by multiplying a 3-year DV (base year) by the ratio of the Future Year average of the daily 8-hour ozone maximums around a monitor over the Base Year average of the daily 8-hour ozone maximums around a monitor. This calculation was performed for each of the three 3-year DVs (2003–2005, 2004–2006, and 2005–2007). This approach yielded three different projected 2012 design values and thus, tests for variability in meteorology. If any of the three 2012 projections was above the

1997 ozone standard, then the receptor would be considered a maintenance receptor. None of the 2012 projections for the Denver/NFR area was above the standard so the area was not considered a maintenance area. This approach was the same as the approach used for every potential receptor evaluated. It is worth noting that EPA's analysis included the 2005–2007 data for the Rocky Flats monitor (which is one of the highest monitored DVs in recent years for this monitor) that the commenter raised as a concern and pursuant to its methodology as previously described EPA's analysis determined that the Rocky Flats monitor would not be a maintenance receptor in 2012.

Further, EPA disagrees with commenter's conclusion that the modeling performed for the Denver/NFR attainment demonstration with the 2010 model projections establishes that any of the areas identified will have maintenance problems for the 1997 8-hour ozone NAAQS. We disagree with the commenter's conclusion that the Denver/NFR area monitors should be identified as "maintenance receptors" in large part because he bases his conclusion on projections for 2010 instead of 2012. This modeling used projections for 2010 not 2012, which as explained above and in response to Comment No. 3 below is not the correct year for comparison, given the approach EPA has developed for determining maintenance receptors. EPA's analysis of maintenance receptors, which is based on the approach developed in the Transport Rule Proposal to be consistent with the DC Circuit's opinion in *North Carolina v. EPA* and uses projections for 2012, did not identify any maintenance receptors in the Denver/NFR area. This conclusion is consistent with evidence suggesting emissions are likely to trend downward (for example, with two more years of fleet turnover, this modeling would likely have projected lower levels of ozone in 2012) and preliminary monitoring data for 2010, which indicates that the Denver/NFR area is meeting the 1997 ozone standard. Further, EPA has reviewed Colorado's attainment demonstration for the Denver/NFR area and proposed that the combination of the modeling and weight of evidence analyses demonstrates that Denver will be in attainment in 2010.<sup>26 27</sup>

<sup>26</sup> EPA's "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze," EPA-454/B-07-002, April 2007.

<sup>27</sup> 75 *Federal Register* 40 CFR part 52 [EPA-R08-OAR-2010-0285; FRL-9177-2], Proposed Rule, "Approval and Promulgation of Air Quality Implementation Plans; Colorado; Attainment

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

First, the UAA analysis is for 2010, which as noted above is not the correct analysis year. Second, EPA guidance indicates that NAAQS violations in the UAA should be handled on a case by case basis.<sup>28</sup> The guidance stresses that due to the lack of measured data, the examination of ozone concentrations as part of the unmonitored area analysis is more uncertain than the monitor based attainment test. This is true even in situations such as this where, as the commenter points out, no known errors were identified by the contractor in the modeling analysis. As a result, the UAA results are recommended to be treated as a separate test from the monitor based attainment test with less weight put on the conclusions of the UAA analysis. EPA's attainment demonstration guidance indicates "[w]hile it is expected that States will implement additional emission controls to eliminate predicted violations of the monitor based test, the same requirements may not be appropriate in unmonitored areas."<sup>29</sup> The guidance recommends that it may be appropriate to deploy additional monitors in an area where the unmonitored analysis indicates a potential future year violation.

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

Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions"; pages 42346–42361.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, page 32.

2009 and 72 ppb for January through August 2010.<sup>30</sup>

Therefore, EPA does not believe the modeling performed for the State of Colorado's Denver/NFR area SIP can support the conclusion that this area should be considered a maintenance receptor area for the purposes of 110(a)(2)(D)(i). The methodology developed to identify maintenance receptors for the purpose of analyzing interference with maintenance with respect to the 1997 ozone and PM<sub>2.5</sub> NAAQS relies on base period monitoring data to identify monitor locations that are projected to have maintenance problems in 2012. The methodology does not identify receptors based on modeling data alone. While the monitor has not operated long enough to account for variability in ozone levels, the newly installed monitor in the relevant area is reading well below the standard and this fact further confirms that the modeling results and the UAA results do not support the conclusion that receptors in the Denver/NFR area should be considered maintenance receptors for the purpose of CAA section 110(2)(D)(i).

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

*Comment No. 3*—The commenter also argued that EPA's analysis ignores whether emissions from Idaho sources are at present interfering with maintenance in other states. The commenter argued that EPA erred by considering only whether Idaho emissions will interfere with maintenance of the NAAQS in 2012 at monitors that would then be considered "maintenance receptors." It argues that this approach is inconsistent with the approach taken to determine whether Idaho significantly contributes to nonattainment in other states. The commenter agreed that "EPA should ensure that Idaho does not interfere with maintenance or contribute significantly to nonattainment in other states in the future," but argued that "the agency's duties under Section

110(a)(2)(D)(i) apply both in the present and the future." In short, the commenter argued that EPA's approach is flawed simply because EPA evaluated whether or not there is significant contribution to nonattainment in other states looking at current data, whereas EPA evaluated whether there is interference with maintenance looking at future projected data.

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

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

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

In *North Carolina v. EPA*, the DC Circuit rejected North Carolina's argument that EPA erred in limiting its analysis of downwind areas by excluding areas that were currently monitored nonattainment but projected to be in attainment at a future date. Like the commenter argues here, North Carolina had argued that EPA was obligated to analyze the significant contribution of states that were contributing to areas of North Carolina that were in nonattainment at the time the rule was promulgated, even though those areas were projected to come into attainment by the year selected for the

future base case analysis. In rejecting this argument, the DC Circuit explained that the approach used by EPA was identical to the one used previously in the NO<sub>x</sub> SIP Call and that "because 'will' can mean either certainty or indicate the future tense," EPA's approach was reasonable. In other words, the court approved EPA's approach that entailed the evaluation of interstate transport impacts at a future date in time.

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

Finally, EPA notes that the text of section 110(a)(2)(D)(i) does not explicitly specify how to evaluate the existence of, or extent of, interstate transport and whether that interstate transport is of sufficient magnitude to significantly contribute to nonattainment or interfere with maintenance 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's 2006 Guidance explicitly stated our 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." 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." As discussed above in response to comments regarding the "significant contribution to nonattainment" element, the state's submittal and EPA's evaluation of that submittal were consistent with the 2006

<sup>30</sup> The Rist Canyon monitoring station uses a Federal Equivalent Method (FEM) and follows the quality assurance requirements of 40 CFR part 58 appendix A. Ozone data collected at this monitoring station is eligible for comparison to the ozone NAAQS after the monitor has operated for more than 24 months per 40 CFR 58.30(c). Design values, however, are based on the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (see 40 CFR part 50, appendix D).

Guidance and considered the type of information (such as monitoring data in Idaho and downwind states, geographical and meteorological information, and technical studies of the nature and sources of nonattainment problems in various downwind states) that EPA recommended as relevant for evaluating that element. EPA's approach to evaluating whether Idaho's emissions significantly contribute to nonattainment in another state is consistent with the 2006 Guidance and is a reasonable interpretation of section 110(a)(2)(D)(i).

Just as EPA has used the best available information to make its determination regarding Idaho's potential interference with maintenance in another state, it has developed and applied a methodology to evaluate whether Idaho's emissions potentially contribute significantly to nonattainment of the NAAQS in another state that is based upon consideration of information that is consistent with the 2006 Guidance, past EPA analyses of significant contribution, and reasonably appropriate for that purpose. As was explained in the proposed action and in this final action's response to comments pertaining to the "significant contribution to nonattainment" analysis above, section 110(a)(2)(D) is ambiguous with regard to the methods and standards applicable to a significant contribution to nonattainment determination. Therefore, EPA must interpret those provisions, and the Agency's interpretation is subject to judicial deference so long as it is a reasonable construction of the statute. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837. EPA does not agree with the commenter's contention that EPA's approach to the "interference with maintenance" and "significant contribution to nonattainment" prongs of section 110(a)(2)(D) are flawed. Rather, each analysis is based upon the best available information and is a reasonable interpretation and application of the statute's requirements.

#### C. Comment Relating to Section 110(l)

*Comment No. 1*—The commenter argued that EPA cannot approve the section 110(a)(2)(D) submission from Idaho because the state and EPA did not comply with section 110(l). The commenter argues that a section 110(l) analysis must consider all NAAQS once they are promulgated, and that EPA's analysis under section 110(l) was inadequate.

*EPA Response*—EPA agrees that a required section 110(l) analysis must consider the potential impact of a

proposed SIP revision on attainment and maintenance of all NAAQS that are in effect and impacted by a given SIP revision. However, EPA disagrees that it failed to comply with the requirements of section 110(l) or that section 110(l) requires disapproval of the SIP submission at issue here.

Section 110(l) provides in part that: "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress \* \* \*, or any other applicable requirement of this chapter." EPA has consistently interpreted Section 110(l) as not requiring a new attainment demonstration for every SIP submission. EPA has further concluded that preservation of the status quo air quality during the time new attainment demonstrations are being prepared will prevent interference with the states' obligations to develop timely attainment demonstrations. 70 FR 58134, 58199 (October 5, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 53, 57 (January 3, 2005); 70 FR 28429, 28431 (May 18, 2005).

Idaho's submission is the initial submission by the state to address for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS the first three elements of section 110(a)(2)(D)(i): (1) Significant contribution to nonattainment in any other state, (2) interference with maintenance by any other state, and (3) interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality. This submission does not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> 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 Idaho interstate transport SIP will not interfere with attainment or maintenance of any NAAQS.

The commenter did not provide any specific basis for concluding that approval of this SIP submission would interfere with attainment or maintenance of a NAAQS, or with any other applicable requirement of the Clean Air Act. EPA concludes that approval of the submission will not make the status quo air quality worse, and is in fact consistent with the development of an overall plan capable of meeting the Act's attainment requirements. Accordingly, EPA finds

that approval of the submission is consistent with the requirements of section 110(l).

#### IV. Final Action

EPA is approving revisions to the Idaho SIP, submitted on June 28, 2010, which adequately demonstrate that for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS, air pollutant emissions from sources within Idaho do not (1) significantly contribute to nonattainment of the NAAQS in any other state or (2) interfere with maintenance of the NAAQS by any other state. EPA is also approving the provisions in the Idaho SIP relating to interference with any other state's required measures to prevent significant deterioration. In its September 13, 2010, proposal (75 FR 55494), EPA proposed to approve Idaho's SIP as adequate for purposes of meeting the requirements of section 110(a)(2)(D)(i)(II) contingent upon EPA taking final action to approve revisions to Idaho's PSD requirements that were consistent with our proposed action on these PSD requirements on March 18, 2010. 75 FR 13058. We received no comments on this proposed contingent approval. EPA's Region 10 Regional Administrator signed the final approval of the PSD program revisions on November 10, 2010. These approved provisions ensure that there will be no interference with any other state's required PSD measures because Idaho's SIP meets current CAA requirements for PSD.

In conclusion, EPA is approving revisions to the Idaho SIP, submitted on June 28, 2010, because they adequately demonstrate that for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS, air pollutant emissions from sources within Idaho do not (1) significantly contribute to nonattainment of the NAAQS in any other state, (2) interfere with maintenance of the NAAQS by any other state, and (3) interfere with any other state's required measures to prevent significant deterioration of its air quality, as required by section 110(a)(2)(D)(i).

As noted previously, EPA will address element (4), interference with any other state's required measures to protect visibility, in a separate action. EPA will also take action on the portion of Idaho's SIP that addresses the 2006 PM<sub>2.5</sub> NAAQS in a separate action.

#### V. Scope of Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within "Indian Country" as

defined in 18 U.S.C. 1151.<sup>31</sup> Therefore, EPA proposes that this SIP approval not extend to “Indian Country” in Idaho. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA’s previous approval of Idaho’s PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with EPA’s approval of Idaho’s title V air operating permits program. See 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

## VI. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: November 10, 2010.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

■ 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 N—Idaho

■ 2. The table in § 52.670(e) entitled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures” is amended by adding an entry to the end to read as follows:

#### § 52.670 Identification of plan.

\* \* \* \* \*  
(e) \* \* \*

<sup>31</sup>“Indian country” is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d’Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
Interstate Transport State Implementation Plan, May 11, 2010 (see comments).	State-wide .....	06/28/2010	11/26/2010 [Insert page number where the document begins]	For the 1997 8-hour ozone NAAQS and the 1997 PM <sub>2.5</sub> NAAQS. See docket EPA-R10-OAR-2010-0669.

[FR Doc. 2010-29626 Filed 11-24-10; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R10-OAR-2008-0482; FRL-9231-1]

**Approval and Promulgation of Implementation Plans; Idaho**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving numerous revisions to the Idaho State Implementation Plan that were submitted to EPA by the State of Idaho on May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008, and June 8, 2009. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act or CAA). EPA is taking no action in this rulemaking on a number of submitted rule revisions that are unrelated to the purposes of the implementation plan.

**DATES:** This action is effective on December 27, 2010.

**ADDRESSES:** Copies of the State's SIP revision and other information supporting this action are available for inspection at EPA Region 10, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, EPA Region 10, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Seattle, Washington 98101, or at (206) 553-6706.

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

**Table of Contents**

- I. Background for This Action
  - A. What revisions to the Idaho SIP does this action address?
  - B. What comments did we receive on our proposal for these revisions?
    - 1. Section 110(l)
      - a. Summary of Comments Regarding Section 110(l)
      - b. EPA Response to Section 110(l)-Related Comments
    - 2. Section 193
      - a. Summary of Comments Regarding Section 193
      - b. EPA Response to Section 193-Related Comments
- II. Final Action
  - A. Rules To Approve Into the Idaho SIP
  - B. Rules on Which No Action Is Taken
  - C. Scope of Action
- III. Statutory and Executive Order Reviews

**I. Background for This Action**

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit State Implementation Plans (SIPs) to attain and/or maintain the National Ambient Air Quality Standards (NAAQS) and EPA's actions regarding approval of those SIPs. On May 22, 2003, April 2, 2004, July 13, 2005, May 5, 2006, April 16, 2007, May 12, 2008, and June 8, 2009, the Idaho Department of Environmental Quality (IDEQ) submitted numerous revisions to the SIP for the State of Idaho. On March 18, 2010, EPA solicited public comment on a proposal to approve all of the revisions submitted by IDEQ, except the identified provisions on which EPA proposed to take no action. 75 FR 13058. This final action will update the

federally approved SIP to reflect changes to the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) that were made by IDEQ and reviewed and deemed approvable into the Idaho SIP (Code of Federal Regulations part 52, subpart N).

*A. What revisions to the Idaho SIP does this action address?*

Table 1 below identifies each SIP submittal addressed in this action, including the submittal date, title and sections of IDAPA 58.01.01 that are revised. The submittals include Idaho's annual incorporation by reference of various portions of the Code of Federal Regulations (CFR), revised new source review (NSR) requirements, revised permit to construct exemptions, updates and clarifications to the State's permitting program, revisions related to the definition of "regulated air pollutant," modified definitions for the State's major and minor source permitting programs, procedures for transferring permits, clarifications to sulfur content of fuels provisions, and various editorial changes. The submittals also included provisions we are taking no action on, including an electric generating unit construction prohibition, demonstration of preconstruction compliance with toxic standards, permit fee provisions, appeal provisions, provisions relating to Tier 1 operating permits, facility emissions cap, standards of performance of certain types of waste incinerators, and various definition revisions. More information about each SIP submittal, including a summary of the submittal and relevant background information and analysis supporting our action, can be found in our proposed approval. 75 FR 13058 (March 18, 2010).

TABLE 1—IDEQ SIP SUBMITTALS ADDRESSED IN THIS ACTION

Date of submittal	Title (with IDEQ Docket No.)	Sections of IDAPA 58.01.01 revised or amended
05/22/2003 <sup>1</sup> .....	Soil Vapor Extraction (58-0101-0102) ..... 2001 IBR of Federal Regulations (58-0101-0103) ..... Hospital/Medical/Infectious Waste Incinerators (58-0101-0103).	58.01.01.210. 58.01.01.008 and 107. 58.01.01.861.