

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation <sup>3</sup>	Explanations
(22) Section 7.8, Interstate Transport of Air Pollution (only portion of 7.8.1.B.).	Statewide .....	Submitted: 4/09/09; Adopted: 4/01/09.	11/22/10 [insert FR page number where document begins].	Includes portions of Subsection 7.8.1.B., "Nonattainment and Maintenance Area Impact," that specifically address the "interference with maintenance" requirement of CAA Section 110(a)(2)(D)(i).

<sup>3</sup>In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular pro

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R08-OAR-2007-1035; FRL-9229-2]

**Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 8-Hour Ozone NAAQS: "Interference With Maintenance" Requirement**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is partially approving State Implementation Plan (SIP) revisions submitted by the State of Colorado on June 18, 2009. Specifically, EPA is approving the portions of the "State of Colorado Implementation Plan to Meet the Requirements of Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I)—Interstate Transport Regarding the 1997 8-Hour Ozone Standard" addressing the "interference with maintenance" requirement of section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by any other state. The "interference with maintenance" requirement of section 110(a)(2)(D)(i)(I) prohibits a state's emissions from interfering with maintenance of the NAAQS by any other state. This action is being taken under section 110 of the CAA.

**DATES: Effective Date:** This final rule is effective December 22, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2007-1035. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov>, or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6416, [mastrangelo.domenico@epa.gov](mailto:mastrangelo.domenico@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *Colorado* and *State* mean the State of Colorado.

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**I. Background**

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 July 18,

1997 revision to the 8-hour ozone NAAQS. This action does not address the requirements for the 1997 PM<sub>2.5</sub> NAAQS, the 2006 PM<sub>2.5</sub> NAAQS, or the 2008 8-hour ozone NAAQS; those standards will be addressed in a later action.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. Section 110(a)(2)(D)(i) of the CAA requires that a state's SIP must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with any other state's required measures to prevent significant deterioration of air quality; or (4) interfere with any other state's required measures to protect visibility.

On June 18, 2009 the State of Colorado submitted a SIP addressing the section 110(a)(2)(D)(i)(I) requirements (1) and (2), noted above, for the 1997 8-hour ozone NAAQS. The state based its submittal on EPA's 2006 Guidance discussed below. As noted earlier, in this rulemaking EPA is addressing the requirement that pertains to preventing sources in the State from emitting pollutants in amounts which will interfere with the maintenance of the 1997 8-hour ozone NAAQS by any other state.

On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM<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)(i) for the 1997 8-hour ozone NAAQS and 1997 PM<sub>2.5</sub> NAAQS.

In a **Federal Register** action dated September 17, 2010, EPA proposed approval of the Colorado Interstate Transport SIP portions addressing the interference with maintenance requirement of section 110(a)(2)(D)(i)(I). EPA concluded in its proposed action that the various factual and technical considerations supported a determination that emissions from Colorado do not interfere with maintenance by any states with areas at risk for maintenance of the 1997 8-hour ozone NAAQS. EPA did not receive comments that persuade the Agency that there is such interference, and thus in today's final action EPA is making a final regulatory determination that Colorado emissions sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS in any other state.

## II. Response to Comments

EPA received one letter dated October 18, 2010 with comments from the WildEarth Guardians (WG) environmental organization. The WG letter includes three separate comments under sections A., B., and C., and is accessible online at regulations.gov under Docket No. EPA-R08-OAR-2007-1035. Later in this section EPA responds to the significant comments made by the commenter. WG clarifies in its introductory remarks on the letter's first page that its comments are directed to both the Colorado and the North Dakota Federal Register proposed rule actions of September 17, 2010 (75 FR 56935 and 75 FR 56928) because "EPA's rationale for approving both SIPs is the same." EPA will consider WG's comments, as appropriate, equally applicable to the referenced EPA proposed rule actions. For clarity, however, in this action EPA will address WG's comments as if they were directed only to the proposed rule action for Colorado (75 FR 56935).<sup>1</sup>

*Comment No. 1*—In its comments under section A., "Maintenance is Inappropriately Defined," WG states that EPA's definition of interference with maintenance, and by implication the identification of maintenance receptors,

appeared to be "inappropriately conflated with the definition of nonattainment." It argues 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 \* \* \* Colorado [is] interfering with that area's ability to maintain compliance with the NAAQS." For this reason, WG argues EPA did not give independent meaning to the interfere with maintenance prong of section 110(a)(2)(D)(i)(I).

*EPA Response*—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 definition of maintenance used by EPA is consistent with the direction given to EPA by the Court of Appeals for the D.C. Circuit in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).<sup>2</sup> In that case, the court analyzed the definition of "interfere with maintenance" used in the Clean Air Interstate Rule (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."<sup>3</sup> 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'."<sup>4</sup> 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, it 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."<sup>5</sup>

The approach used by EPA in its September 17, 2010 proposal to assess whether emissions from sources in Colorado interfere with maintenance of the NAAQS in any other state takes into account the flaws identified by the court, by giving independent meaning to the section 110(a)(2)(D)(i) "interference with maintenance" requirement. Our September 17, 2010 proposed action relies on a process established by EPA's August 2, 2010 Transport Rule Proposal 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 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.<sup>6</sup> It does not depend on the whether the base year design values exceed the NAAQS. The Transport Rule Proposal explained that EPA used the average concentrations of the three design values for the three base periods noted above to determine the 2012 average design value at monitoring sites. Monitoring sites with projected average design values above the NAAQS would be in nonattainment, while those with projected average design values below the NAAQS would be in attainment in 2012. To identify among the attainment monitoring sites those at risk for maintenance of the NAAQS, EPA also projected to 2012 each of the three design values for the base periods noted

<sup>1</sup> Similarly, in our response to the same WG comments in our action finalizing the proposed rule action of September 17, 2010 for the North Dakota "interference with maintenance" requirement, we address WG's comments as if they were directed to the proposed rule action for North Dakota (75 FR 56928).

<sup>2</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 text and 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 in this action.

<sup>3</sup> 531 F.3d at 910.

<sup>4</sup> Id.

<sup>5</sup> Id. at 910–11.

<sup>6</sup> The process that defines the monitors at risk for maintenance was summarized in the September 17, 2010 proposed rule action for the Colorado Interstate Transport SIP (75 FR 56938).

above. If the maximum of the three was above the NAAQS, then monitoring site was identified as at risk for maintenance of the NAAQS, or as a “maintenance receptor.”<sup>7</sup> 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 proposal (75 FR 5210, Aug. 2, 2010) to identify nonattainment and maintenance receptors. In the Transport Rule 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 we 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 we 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*. It gives independent meaning to the “interfere with maintenance” prong of 110(a)(2)(D)(i) and provides 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 difficulty maintaining the standard.<sup>8</sup>

EPA used this same approach to identify any potential maintenance receptors for purposes of evaluating Colorado’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*.

*Comment No. 2*—In its comments under section B., “Even Under EPA’s Definition of Maintenance, Maintenance Receptors are not Consistently Defined,” WG argues that EPA’s approach to evaluating interference with maintenance is inappropriate because it did not take into account current high ambient concentrations in certain places. The commenter thus contends that EPA’s identification of maintenance receptors is inconsistently applied. The commenter identifies several areas that it believes should have been considered as at risk for maintenance for the 1997 8-hour ozone NAAQS. WG specifies the Wasatch Front and Uintah County in Utah, the Phoenix area in Arizona, portions of western Wyoming, and San Juan County in New Mexico, as areas appropriate for an assessment of whether emissions from Colorado interfere with their difficulty (in the commenter’s view) in maintaining the 1997 8-hour ozone NAAQS.<sup>9</sup>

*EPA Response*—EPA shares the commenter’s concern about areas presently affected by elevated ozone concentrations, but disagrees with the commenter’s assertion that the September 17, 2010, proposed rule action for the Colorado SIP “overlooked areas impacted by Colorado that are projected to barely attain the 1997 ozone NAAQS.” First, the underlying issue raised in this comment is 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 time. 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*.

Second, EPA has developed in the Transport Rule Proposal of August 2, 2010 an approach that necessarily requires 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) to evaluate whether there is interference with maintenance to meet the statutory requirement of section 110(a)(2)(D)(i).<sup>10</sup> To assist in the evaluation of whether states’ emissions interfere with maintenance of the NAAQS in western states, EPA has developed, independent of the Transport Rule Proposal, a modeling analysis using an approach similar to the Transport Rule Proposal for the identification of monitors at risk for maintenance of the NAAQS within a modeling domain that includes the western states. The analysis is presented in the August 23, 2010 memo, “Documentation of Future Year Ozone and Annual PM<sub>2.5</sub> Design Values for Western States” (Western States Design Values).<sup>11</sup> Because none of the areas of concern to the commenter was identified by EPA as a maintenance receptor through that analysis,<sup>12</sup> it was appropriate for the September 17, 2010 proposed rule not to assess whether emissions from Colorado sources impact the areas noted by the commenter, such as Uintah County and Wasatch Front in Utah, the Phoenix area in Arizona, portions of western Wyoming, and San Juan County in New Mexico. In short, based on EPA’s analysis, none of the areas named by the commenter is appropriate for consideration as a maintenance receptor at this time.

EPA also notes that, except for Uintah County, the commenter provides no specific facts—such as the location of monitoring receptors, ozone concentrations, or time span during which high ozone concentrations were monitored—to support its arguments concerning these areas. Thus, WG has not identified any reasons that EPA

<sup>10</sup> 75 FR 45210.

<sup>11</sup> A memorandum in the docket for this action provides the information EPA used in order to identify monitors that are receptors for evaluation of interference with maintenance for certain states in the western United States. See, Memorandum from Brian Timin of EPA’s Office of Air Quality Planning and Standards, Air Quality Modeling Group entitled “Documentation of Future Year Ozone and Annual PM<sub>2.5</sub> Design Values for Western States,” under “Memorandum to Docket EPA–R08–OAR–2007–1035,” EPA, August 23, 2010.

<sup>12</sup> Design Values for Western States, EPA (August 23, 2010).

<sup>8</sup> Id. at 45246.

<sup>9</sup> This comment also argues about the Denver Metropolitan Area/North Front Range (DMA/NFR) area as at risk for maintenance for the 1997 8-hour ozone NAAQS. We are examining this part of the comment within EPA’s final rulemaking action for the North Dakota Interstate Transport SIP, since the issue of the DMA/NFR area as at risk for maintenance does not affect our September 17, 2010 proposed rule assessment of whether Colorado’s emissions interfere with maintenance of the NAAQS by any other states.

<sup>7</sup> 75 FR 45210, at 45246.

should consider these areas as maintenance receptors, making it difficult for EPA to address properly WG's concerns about interference with maintenance in the Wasatch Front, the Phoenix area in Arizona, portions of western Wyoming, or San Juan County in New Mexico. As for the commenter's reference to Uintah County, where in February 2010 monitors in Ouray and Red Wash registered ozone concentrations above 120 ppb, EPA notes that the two monitors were installed as recently as July 2009, and therefore their data does not provide the historical variability background that is an essential component for the identification of maintenance receptors.<sup>13</sup> EPA is concerned about the ambient levels of ozone in this area, but at present EPA does not have the necessary years of data to evaluate whether this area is appropriate for use as a maintenance receptor for the 1997 8-hour ozone NAAQS in accordance with the Agency's approach to this requirement.<sup>14</sup>

*Comment No. 3*—In its comment under section C., “EPA has not Assessed New Mexico’s [sic] Interference with Maintenance in the Present,” WG asserts that EPA’s analysis ignores whether Colorado is, at the present, interfering with maintenance in other States. It argues EPA erred by considering only whether emissions from Colorado will interfere with maintenance of the 1997 8-hour ozone NAAQS in areas that would be considered “maintenance receptors” as of 2012.

WG argues that this approach is inconsistent with the approach taken in a previous action regarding significant contribution to nonattainment in other states (citing 75 FR 33174–90). The commenter agrees that “EPA should ensure that Colorado does not interfere with maintenance or contribute significantly to nonattainment in other states in the future” but argues that “the agency’s duties under Section 110(a)(2)(D)(i)(I) apply both in the present and the future.” EPA’s approach

is flawed, WG concludes, because EPA identifies maintenance areas likely to exist by 2012 and does not identify interference with maintenance that currently exists. WG also asserts that EPA’s approach ignores whether Colorado is presently interfering with maintenance of the 1997 8-hour ozone NAAQS in downwind states.<sup>15</sup>

*EPA Response*—EPA disagrees with the commenter concerning the evaluation of significant contribution versus interference with maintenance. Section 110(a)(2)(D)(i)(I) of the Clean Air Act requires that a state SIP “contain adequate provisions prohibiting \* \* \* any source or other type of emission activities within the state from emitting any air pollutants in amount which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any [ ] national primary or secondary ambient air quality standard.”

In determining the appropriate year to analyze to determine whether emissions from Colorado 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 WG 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. In the prior action cited by WG, EPA’s evaluation of whether emissions would significantly contribute to nonattainment in other states was based on the data available at the time of that evaluation and before EPA had developed its approach for evaluating interference with maintenance. 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)(i) that EPA developed to be consistent with the direction given to EPA in *North Carolina v. EPA*.

Finally, we note that comments on the validity or reasonableness of the approach to determining significant contribution in prior actions are not directly relevant to this rulemaking. This rulemaking addresses only the “interfere with maintenance” requirement of section 110(a)(2)(D)(i). EPA published a prior proposal (75 FR 16032) and final rule (75 FR 31306) analyzing the Colorado SIP submission for the “significant contribution” prong of section 110(a)(2)(D)(i).

### III. Final Action

EPA is partially approving the Interstate Transport SIP submitted by the State of Colorado on June 18, 2009. Specifically, in this action EPA is approving the portions of that SIP submission that address the requirement of Section 110(a)(2)(D)(i)(I) that emissions from sources in that State do not “interfere with maintenance” of the 1997 8-hour ozone NAAQS by any other state. EPA has concluded that the State’s submission, and additional evidence evaluated by EPA, establish that

<sup>13</sup> See above, in EPA Response to Comment No. 1, the methodology used for the identification of maintenance monitors in the August 2, 2010 Transport Rule Proposal, and the August 23, 2010 Western States Design Values memo. The monitor in Ouray is identified as Site ID number 49–047–2003, and in Red Wash as Site ID number 49–047–2002.

<sup>14</sup> EPA notes that the installation and operation expenses for the Ouray and Red Wash monitoring stations referenced above were funded by several companies because of court orders resulting from litigation initiated by EPA, affected states and tribes. See, for example, the Consent Decree signed by Kerr-McGee Corporation and EPA on May 8, and May 16, 2007, lodged May 17, 2007, and entered by the court on March 26, 2008.

<sup>15</sup> Before addressing the substantive issues raised in this comment, we would like to clarify that we presume that the reference to New Mexico in the commenter’s title is a clerical error, and that the commenter intended to refer to either Colorado or North Dakota.

emissions from Colorado sources do not have such an impact on other states for purposes of the 1997 8-hour ozone NAAQS. Therefore, the State's SIP does not need to include additional substantive controls to reduce emissions for purposes of section 110(a)(2)(D)(i)(I) for these NAAQS. In a **Federal Register** action of June 3, 2010 EPA approved those portions of the Interstate Transport SIP submitted by the State of Colorado on June 18, 2009 addressing the requirement of Section 110(a)(2)(D)(i)(I) that emissions from sources in that State do not "significantly contribute" to violations of the 1997 8-hour ozone NAAQS in any other state.

#### IV. Statutory and Executive Order Review

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 9, 2010.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart G—Colorado

■ 2. Section 52.352 is revised to read as follows:

##### § 52.352 Interstate transport.

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

[FR Doc. 2010-29245 Filed 11-19-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-HQ-OAR-2009-0443; FRL-9230-4]

RIN-2060-AP78

### Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes air quality designations for certain areas in the United States for the 2008 lead (Pb) National Ambient Air Quality Standards (NAAQS). Based on air quality monitoring data, EPA is issuing this rule to identify areas that do not meet the 2008 Pb NAAQS and areas that contribute to Pb air pollution in a nearby area that does not meet the Pb NAAQS. EPA is deferring designation for all other areas of the United States, including Indian country, pending collection and review of additional data from recently deployed Pb monitors. The Clean Air Act (CAA) requires areas designated nonattainment by this rule to undertake certain planning and pollution control activities to attain the standards as quickly as reasonably possible.