

Permit Application Requirements. EPA has made the preliminary determination that Alabama's SIP and practices adequately provide for permitting fees related to the 1997 8-hour ozone NAAQS when necessary.

14. 110(a)(2)(M) *Consultation/participation by affected local entities:* ADEM coordinates with local governments affected by the SIP. Alabama's SIP also includes a description of the public participation process for SIP development. Alabama has consulted with local entities for the development of transportation conformity and has worked with the Federal Land Managers as a requirement of its regional haze rule. More specifically, Alabama adopted State-wide consultation procedures for the implementation of transportation conformity which includes the consideration of the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. These consultation and participation procedures have been approved in the Alabama SIP as non-regulatory provisions, "Alabama Interagency Transportation Conformity Memorandum of Agreement" and "Conformity SIP for Birmingham and Jackson County." These provisions were approved on May 11, 2000 and March 26, 2009, respectively. See 65 FR 30362 and 74 FR 13118. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and are required to provide public involvement for their activities including the analysis which shows how they meet transportation conformity requirements. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate consultation/by affected local entities related to the 1997 8-hour ozone NAAQS when necessary.

IV. Proposed Action

As described above, ADEM has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Alabama. EPA is proposing to approve Alabama's infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this proposed 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 proposed 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 CAA; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 7, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0046; FRL-9282-9]

Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference With Maintenance Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of California for the purpose of addressing the interstate transport provisions of Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 fine particulate matter (PM_{2.5}) NAAQS. Section 110(a)(2)(D)(i) of the CAA requires that each state have adequate provisions to prohibit air emissions from adversely affecting air quality in other states through interstate transport. EPA is proposing to approve California's SIP revision for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) to prohibit emissions that will contribute significantly to nonattainment of the these standards in any other state and to prohibit emissions that will interfere with maintenance of these standards by any other state.

DATES: Written comments must be received on or before April 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R09-OAR-2011-0046, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: mays.rory@epa.gov.

3. Fax: 415-947-3579.

4. Mail or deliver: Rory Mays (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3227, mays.rory@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, the terms "we," "us," and "our" refer to EPA.

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IV. Proposed Action

V. Statutory and Executive Order Reviews

I. Background

On July 18, 1997, EPA promulgated new standards for 8-hour ozone¹ and fine particulate matter² (PM_{2.5}). This proposed action is in response to the promulgation of these standards (the 1997 8-hour ozone NAAQS and 1997 PM_{2.5} NAAQS). This proposed action does not address the requirements of the 2006 PM_{2.5} NAAQS or the 2008 8-hour ozone NAAQS; those standards will be addressed in future actions.

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 a guidance memorandum that provides recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 PM_{2.5} standards (2006 Guidance).³

¹ See 62 FR 38856. The level of the 1997 8-hour ozone NAAQS is 0.08 parts per million (ppm). 40 CFR 50.10. The 8-hour ozone standard is met when the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentrations is 0.08 ppm or less (i.e., less than 0.085 ppm based on the rounding convention in 40 CFR part 50 Appendix I). This 3-year average is referred to as the "design value."

² See 62 FR 38652. The level of the 1997 PM_{2.5} NAAQS are 15.0 micrograms per cubic meter (µg/m³) (annual arithmetic mean concentration) and 65 µg/m³ (24-hour average concentration). 40 CFR 50.7. The annual standard is met when the 3-year average of the annual mean concentrations is 15.0 µg/m³ or less (i.e., less than 15.05 µg/m³ based on the rounding convention in 40 CFR part 50 Appendix N Section 4.3). The 24-hour standard is met when the 3-year average annual 98th percentile of 24-hour concentrations is 65 µg/m³ or less (i.e., less than 65.5 µg/m³ based on the rounding convention in 40 CFR part 40 Appendix N Section 4.3). Id. These 3-year averages are referred to as the annual PM_{2.5} and 24-hour PM_{2.5} "design values," respectively.

³ Memorandum from William T. Harnett entitled "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour ozone and PM_{2.5} National Ambient Air Quality Standards," August 15, 2006.

The transport SIP provisions in section 110(a)(2)(D)(i) (also called "good neighbor" provisions) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this rulemaking, EPA is addressing the first two elements of this section. This proposed action does not apply to the remaining two elements of CAA section 110(a)(2)(D)(i) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. We intend to evaluate and act upon the 2007 Transport SIP for purposes of these additional requirements of CAA section 110(a)(2)(D)(i) in separate actions.

The first element of section 110(a)(2)(D)(i) requires that a state's SIP for a new or revised NAAQS must contain adequate measures to prohibit emissions from sources within the state from "contribut[ing] significantly to nonattainment" of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i) requires that a state's SIP must prohibit any source or other type of emissions activity in the state from emitting pollutants that will "interfere with maintenance" of the applicable NAAQS in any other state.

The CAA does not specifically mandate how to determine significant contribution to nonattainment or interference with maintenance. Therefore, EPA has interpreted these terms in past regulatory actions, such as the 1998 NO_x SIP Call, in which EPA took action to remediate emissions of nitrogen oxides (NO_x) that significantly contributed to nonattainment of, or interfered with maintenance of, the then applicable ozone NAAQS through interstate transport of NO_x and the resulting ozone.⁴ The NO_x SIP Call was the mechanism through which EPA evaluated whether or not the NO_x emissions from sources in certain states had such prohibited interstate impacts, and if they had such impacts, required the states to adopt substantive SIP revisions to eliminate the NO_x emissions, whether through participation in a regional cap and trade program or by other means.

⁴ See 63 FR 57356 (October 27, 1998). EPA's general approach to section 110(a)(2)(D) in the NO_x SIP Call was upheld in *Michigan v. EPA*, 663 (DC Cir. 2000), cert denied, 532 U.S. 904 (2001). However, EPA's approach to interference with maintenance in the NO_x SIP Call was not explicitly reviewed by the court. See, *North Carolina v. EPA*, 531 F.3d 896, 907-09 (DC Cir. 2008).

After promulgation of the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS, EPA again recognized that regional transport was a serious concern throughout the eastern United States and therefore developed the 2005 Clean Air Interstate Rule (CAIR) to address emissions of sulfur dioxide (SO₂) and NO_x that exacerbate ambient ozone and PM_{2.5} levels in many downwind areas through interstate transport.⁵ Within CAIR, EPA interpreted the term “interfere with maintenance” as part of the evaluation of whether or not the emissions of sources in certain states had such impacts on areas that EPA determined would either be in violation of the NAAQS, or would be in jeopardy of violating the NAAQS, in a modeled future year unless action were taken by upwind states to reduce SO₂ and NO_x emissions. Through CAIR, EPA again required states that had such interstate impacts to adopt substantive SIP revisions to eliminate the SO₂ and NO_x emissions, whether through participation in a regional cap and trade program or by other means.

EPA’s 2006 Guidance addressed CAA section 110(a)(2)(D)(i) requirements for the 1997 8-hour ozone NAAQS and 1997 PM_{2.5} NAAQS. For those states subject to CAIR, EPA indicated that compliance with CAIR would meet the two requirements of section 110(a)(2)(D)(i)(I) for these NAAQS. For states outside of the CAIR region, the 2006 Guidance recommended various methods by which states might evaluate whether or not their emissions significantly contribute to nonattainment of the 1997 8-hour ozone or the 1997 PM_{2.5} NAAQS in another state. Among other methods, EPA recommended consideration of available EPA modeling conducted in conjunction with the CAIR, or in the absence of such EPA modeling, consideration of other information such as the amount of emissions, the geographic location of violating areas, meteorological data, or various other forms of information that would be relevant to assessing the likelihood of significant contribution to violations of the NAAQS in another state.

The assessment of significant contribution to nonattainment is not restricted to impacts upon areas that are formally designated nonattainment. Consistent with EPA’s approach in CAIR and recently in the Transport Rule Proposal, as discussed further below, this impact must be evaluated with

respect to monitors showing a violation of the NAAQS.⁶ Furthermore, although relevant information other than modeling may be considered in assessing the likelihood of significant contribution to nonattainment of the 8-hour ozone or PM_{2.5} NAAQS in another state, 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 nonattainment of the 1997 8-hour ozone or 1997 PM_{2.5} NAAQS in another state.

As to the second element of section 110(a)(2)(D)(i), for states not within the CAIR region, EPA recommended that states evaluate whether or not emissions from their sources would “interfere with maintenance” in other states following the conceptual approach adopted by EPA in CAIR. After recommending various types of information that could be relevant for the technical analysis to support the SIP submission, such as the amount of emissions and meteorological conditions in the state, EPA further indicated that it would be appropriate for the state to assess impacts of its emissions on other states using considerations comparable to those used by EPA “in evaluating significant contribution to nonattainment in the CAIR.”⁷ EPA did not make specific recommendations for how states should assess interfere with maintenance separately, and discussed the first two elements of section 110(a)(2)(D)(i) together without explicitly differentiating between them.

In 2008, the U.S. Court of Appeals for the DC Circuit found that CAIR and the related CAIR federal implementation plans were unlawful.⁸ Among other issues, the court held that EPA had not correctly addressed the second element of section 110(a)(2)(D)(i)(I) in CAIR and noted that “EPA gave no independent significance to the ‘interfere with maintenance’ prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance.”⁹ EPA’s approach, the court reasoned, would leave areas that are “barely meeting attainment” with “no recourse” to address upwind emissions sources.¹⁰ The court therefore concluded that a plain language reading of the statute requires EPA to give independent meaning to the interfere with

maintenance requirement of section 110(a)(2)(D)(i) and that the approach used by EPA in CAIR failed to do so. In addition to affecting CAIR directly, the court’s decision in the *North Carolina* case indirectly affects EPA’s recommendations to states in the 2006 Guidance with respect to the interfere with maintenance element of section 110(a)(2)(D)(i) because the agency’s guidance suggested that states use an approach comparable to that used by EPA in CAIR.

To address the judicial remand of CAIR, EPA has recently proposed a new rule to address interstate transport of air pollution pursuant to section 110(a)(2)(D)(i), the “Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone” (Transport Rule Proposal).¹¹ As part of the Transport Rule Proposal, EPA specifically reexamined the section 110(a)(2)(D)(i)(I) requirements that emissions from sources in a state must not “contribute significantly to nonattainment” or “interfere with maintenance” of the 1997 8-hour ozone NAAQS and 1997 PM_{2.5} NAAQS in other states. In the proposal, EPA developed an approach to identify areas that it predicts to be violating the 1997 8-hour ozone and PM_{2.5} NAAQS, and areas that it predicts to be close to the level of these NAAQS and therefore at risk to become nonattainment unless emissions from sources in other states are appropriately controlled. This approach starts by identifying those specific geographic areas for which further evaluation is appropriate, and differentiates between areas where the concern is significant contribution to nonattainment as opposed to interference with maintenance.

As described in more detail below, EPA evaluated data from existing monitors over three overlapping 3-year periods (*i.e.*, 2003–2005, 2004–2006, and 2005–2007), as well as air quality modeling data, in order to determine which areas are predicted to be violating the 1997 8-hour ozone and PM_{2.5} NAAQS in 2012, and which areas are predicted potentially to have difficulty maintaining attainment as of that date. In essence, if an area’s projected data for 2012 indicates that it would be violating the NAAQS based on the average of these three overlapping periods, then this monitor location is appropriate for comparison for purposes of the significant contribution to nonattainment element of section 110(a)(2)(D)(i). If, however, an area’s projected data indicate that it would be violating the NAAQS based on the

⁶ See 63 FR 57371 (October 27, 1998), NO_x SIP Call; 70 FR 25172 (May 12, 2005), CAIR; and 75 FR 45210 (August 2, 2010), Transport Rule Proposal.

⁷ 2006 Guidance at 5.

⁸ See *North Carolina v. EPA*, 531 F.3d 896 (DC Circuit 2008).

⁹ 531 F.3d at 909.

¹⁰ *Ibid.*

¹¹ See 75 FR 45210 (August 2, 2010).

⁵ See “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule,” at 70 FR 25162 at 25263–69 (May 12, 2005).

highest single period, but not over the average of the three periods, then this monitor location is appropriate for comparison for purposes of the interfere with maintenance element of the statute.¹²

By this method, EPA has identified those areas with monitors that are appropriate “nonattainment receptors” or “maintenance receptors” for evaluating whether the emissions from sources in another state could significantly contribute to nonattainment in, or interfere with maintenance in, that particular area. EPA believes that this new approach for identifying areas that are predicted to be nonattainment or to have difficulty maintaining the NAAQS is appropriate to evaluate a state’s submission in relation to the elements of CAA section 110(a)(2)(D)(i)(I) pertaining to significant contribution to nonattainment and interference with maintenance.¹³ EPA’s 2006 Guidance did not provide this specific recommendation to states, but in light of the court’s decision on CAIR, EPA will itself follow this approach in acting upon the California submission.¹⁴

As explained in the 2006 Guidance, EPA does not believe that section 110(a)(2)(D)(i) SIP submissions from all states necessarily need to follow precisely the same analytical approach of CAIR. In the 2006 Guidance, EPA stated that: “EPA believes that the contents of the SIP submission required by section 110(a)(2)(D) may vary,

depending upon the facts and circumstances related to the specific NAAQS. In particular, the data and analytical tools available at the time the state develops and submits a SIP for a new or revised NAAQS necessarily affects the contents of the required submission.”¹⁵ EPA also indicated in the 2006 Guidance that it did not anticipate that sources in states outside the geographic area covered by CAIR were significantly contributing to nonattainment, or interfering with maintenance, in other states.¹⁶ As noted in the Transport Rule Proposal, EPA continues to believe that the more widespread and serious transport problems in the eastern United States are analytically distinct.¹⁷ For the 1997 8-hour ozone and PM_{2.5} NAAQS, EPA believes that nonattainment and maintenance problems in the western United States are relatively local in nature with only limited impacts from interstate transport. In the Transport Rule Proposal, EPA did not calculate the portion of predicted ozone or PM_{2.5} concentrations in any downwind state that would result from emissions from individual western states, such as California.

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

II. What is the State process to submit these materials to EPA?

CAA sections 110(a)(1) and (2) and section 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

On November 16, 2007, the California Air Resources Board (CARB) submitted the “Proposed State Strategy for California’s 2007 State Implementation Plan” to attain the 1997 8-hour ozone and PM_{2.5} NAAQS (2007 State Strategy).¹⁸ Appendix C of the 2007 State Strategy, as modified by Attachment A,¹⁹ contains California’s SIP revision to address the Transport SIP requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and PM_{2.5} NAAQS (2007 Transport SIP). CARB’s November 16, 2007 submittal includes public process documentation for the 2007 State Strategy, including the 2007 Transport SIP. In addition, the SIP revision includes documentation of a duly noticed public hearing held on September 27, 2007 on the proposed 2007 State Strategy.

We find that the process followed by CARB in adopting the 2007 Transport SIP complies with the procedural requirements for SIP revisions under CAA section 110 and EPA’s implementing regulations.

III. What is EPA’s evaluation of the State’s submission?

A. Evaluation of Significant Contribution to Nonattainment

This proposed approval addresses the significant contribution to nonattainment element of section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS in several ways. It takes into account California’s 2007 Transport SIP, in which the state explains that meteorological and other characteristics

¹² A memorandum in the docket for this action provides the information EPA used to identify monitors that are receptors for evaluation of significant contribution or interference with maintenance for certain states in the western United States. See Memorandum from Brian Timin, EPA Office of Air Quality Planning and Standards, “Documentation of Future Year Ozone and Annual PM_{2.5} Design Values for Monitors in Western States,” August 23, 2010 (Timin Memo).

¹³ To begin this analysis, EPA first identifies all monitors projected to be in nonattainment or, based on historic variability in air quality, projected to have maintenance problems in 2012. Monitors projected to be in nonattainment are those with future year design values that violate the standard, based on the projection of 5-year weighted average concentrations. Monitors projected to have maintenance problems are those at risk of not staying in attainment because the air quality data is close enough to the level of the 1997 8-hour ozone and PM_{2.5} NAAQS that minor variations in weather or emissions could result in violations of the NAAQS in 2012.

¹⁴ By letter dated January 26, 2011, CARB acknowledged that the 2008 remand of CAIR and EPA’s Transport Rule Proposal would affect EPA’s review of the 2007 Transport SIP. The letter states that based on EPA’s findings in the Timin Memo regarding pollution transport in the western states, ARB staff concludes that pollutants from California do not contribute to nonattainment or maintenance problems in other states. See letter dated January 26, 2011, from Douglas Ito, Chief, Air Quality and Transportation Planning Branch, CARB to Lisa Hanf, Chief, Air Planning Office, EPA Region 9.

¹⁵ 2006 Guidance at 4.

¹⁶ *Ibid.* at 5.

¹⁷ See Transport Rule Proposal, 75 FR 45210 at 45227 (August 2, 2010).

¹⁸ See transmittal letter dated November 16, 2007, from James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, with enclosures, and CARB Resolution No. 07–28 (September 27, 2007).

¹⁹ See “Technical and Clarifying Modifications to April 26, 2007 Revised Draft Air Resources Board’s Proposed State Strategy for California’s 2007 State Implementation Plan and May 7, 2007 Revised Draft Appendices A through G,” included as Attachment A to CARB’s Board Resolution 07–28 (September 27, 2007).

in California and in the surrounding areas reduce the likelihood that emissions from sources in California contribute significantly to nonattainment of the 1997 8-hour ozone or PM_{2.5} NAAQS in any downwind state. In addition, EPA has supplemented the state's analysis with its own evaluation of the evidence to assess whether emissions sources in California contribute significantly to nonattainment of the 1997 8-hour ozone or PM_{2.5} NAAQS in other states. First, EPA has evaluated the potential for ozone transport from California to specific locations identified in the Transport Rule Proposal by reviewing ozone back-trajectory analyses and other relevant information. Second, EPA has considered information in the Brian Timin Memo, which provides projected future year ozone and annual PM_{2.5} design values for monitors in the western U.S. based on the air quality modeling carried out in support of the Transport Rule Proposal. Finally, EPA has reviewed recent ozone and PM_{2.5} monitoring data for the states bordering California to consider whether California emissions could contribute to violations of the 1997 8-hour ozone or PM_{2.5} NAAQS in those states. Based on these analyses, we propose to conclude that emissions from California do not contribute significantly to nonattainment in any other state for the 1997 8-hour ozone or PM_{2.5} NAAQS, consistent with the requirements of CAA section 110(a)(2)(D)(i)(I).

1. Significant Contribution to Nonattainment Evaluation for the 1997 8-Hour Ozone NAAQS

To address whether emissions from California sources significantly contribute to nonattainment of the 1997 8-hour ozone NAAQS in another state, California argued in the 2007 Transport SIP that meteorological conditions within the State and its existing air pollution control programs support a finding that emissions from California sources "[do] not significantly affect nonattainment areas in other states."²⁰ Specifically, the State's submittal argues that ozone episodes in the southwestern U.S. are normally associated with meteorology that results in stagnant conditions (i.e., not conducive to ozone transport) and that, on occasion, those conditions are weakly impacted by migrating low pressure systems over the Pacific Ocean that push air high above the surface eastward.²¹ Even though acknowledging the occasional possibility of ozone being transported

over long distances, the State asserted in the 2007 Transport SIP that California's existing air quality programs (e.g., its motor vehicle emissions control program, consumer product regulations, stationary source permit programs, and other control measures) greatly reduce the likelihood that emissions from California sources will contribute significantly to nonattainment in any downwind state.²²

Also in support of its conclusion, the State's 2007 Transport SIP references language in the preamble to CAIR citing EPA's own statement that, given geography, meteorology, and topography in the western U.S., "PM_{2.5} and 8-hour ozone nonattainment problems are not likely to be affected significantly by pollution transported across [the western] states' boundaries."²³ In sum, the State argues in the 2007 Transport SIP that EPA's statement in the CAIR rulemaking with respect to the likelihood of transport in western states, together with the meteorological and other information provided in California's submittal, support the finding that emissions from California sources do not significantly affect nonattainment areas in other states.

EPA does not agree with California's assessment in the 2007 Transport SIP that these factors alone demonstrate that emissions from California sources do not contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS in other states. Therefore, EPA is supplementing the State's submittal with additional information in order to assess this issue more fully, and in light of more recent information. As noted above, EPA is evaluating the 2007 Transport SIP taking into account the methodologies and analyses developed in the Transport Rule Proposal in response to the judicial remand of CAIR, as well as EPA's projections of future air quality at monitors in western states in the Timin Memo and preliminary air quality data from monitors in the states bordering California.

The Transport Rule Proposal includes an approach to determining whether emissions from a state contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS in other states. Specifically, EPA used existing monitoring data and modeling to project future concentrations of ozone at monitors to identify areas that are expected to be violating the 1997 8-hour ozone NAAQS in 2012, based on the 5-year weighted average design value.

²² *Ibid.*

²³ See *ibid.* (quoting CAIR proposal, 69 FR 4566 at 4581, January 30, 2004).

We call these monitors "nonattainment sites" or "nonattainment receptors." To identify the states with emissions that may contribute significantly to ozone nonattainment in other states, the Transport Rule Proposal models the states' contributions to ambient ozone levels at these nonattainment receptors.²⁴ Because the Transport Rule Proposal does not model the contribution of emissions from California (and other western states not fully inside the Transport Rule Proposal's modeling domain) to 8-hour ozone nonattainment receptors in other states, our assessment in this proposed action relies on a weight of evidence approach that considers relevant information from the Transport Rule Proposal pertaining to states within its modeling domain and additional material such as back-trajectory analyses, geographical and meteorological factors, EPA's projections of future air quality at monitors in western states in the Timin Memo, and EPA's Air Quality System (AQS)²⁵ monitoring data. Although each of the factors considered in the following analysis are not in and of themselves determinative, consideration of these factors together provides a reliable qualitative conclusion that emissions from California sources are not likely to contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS at monitors in other states.

Our analysis begins by assessing California's contribution to the closest nonattainment receptors for the 1997 8-hour ozone standard. The Transport Rule Proposal identifies, within its modeling domain (consisting of 37 states east of the Rocky Mountains, and the District of Columbia), 11 nonattainment receptors for the 1997 8-hour ozone standard. Of these, the nonattainment receptors closest to California are seven receptors in the Dallas-Fort Worth and Houston-Galveston-Brazoria 8-hour ozone nonattainment areas in eastern Texas. The remaining four nonattainment receptors for the 1997 8-hour ozone NAAQS are in Louisiana, New York, and Pennsylvania.²⁶

The nonattainment receptors in Dallas-Fort Worth and Houston-Galveston-Brazoria areas are over 900 miles from the easternmost border of California, and the monitors in Louisiana, New York, and Pennsylvania

²⁴ Transport Rule Proposal, 75 FR 45210 at 45253–45273.

²⁵ AQS is EPA's database repository of monitored ambient air quality data. See <http://www.epa.gov/ttn/airs/airsaqs/>.

²⁶ See Transport Rule Proposal, Table IV.C–11, 75 FR 45210 at 45252.

²⁰ 2007 State Strategy, Attachment A, page 20.

²¹ *Ibid.*

are significantly farther away. Although distance alone is not determinative in the analysis of potential ozone transport, with increasing distance there are greater opportunities for ozone and NO_x dispersion and/or removal from the atmosphere due to the effect of winds or chemical sink processes. Moreover, the intervening Rocky Mountains act as a natural barrier to air pollution transport. These factors together support a conclusion that California sources do not contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS in the nearest areas with nonattainment receptors identified in the Transport Rule Proposal.

In order to evaluate the potential impact of emissions from California sources on the nonattainment receptors identified in the Transport Rule Proposal, EPA evaluated air parcel pathways from California to these monitoring sites. Specifically, EPA reviewed the analysis of ozone transport by the Texas Commission on Environmental Quality for each exceedance day in 2007, 2008, and 2009 for the seven nonattainment receptors in the Dallas-Fort Worth and Houston-Galveston-Brazoria 8-hour ozone nonattainment areas in eastern Texas.²⁷ Exceedance days were identified using the AQS Database. Back-trajectories²⁸ were run for all of the days during the 2007–2009 period when ozone concentrations at these receptors exceeded the 1997 8-hour ozone NAAQS (*i.e.*, monitored ozone concentrations were 85 parts per billion (ppb) or above). These back-trajectory maps indicate that air parcel pathways to nonattainment receptors in eastern Texas do not originate in California.

Because back-trajectory analysis results map pathways of air parcels that may or may not transport pollutants, they cannot be considered determinative as to the transport of ozone and its precursors or the absence of such transport from California emission sources. However, the fact that the air parcel trajectories do not directly connect California to the nonattainment receptors in eastern Texas strongly supports the conclusion that emissions of ozone and its precursors from California are not likely to contribute significantly to nonattainment of the

1997 8-hour ozone NAAQS at these receptors.

To assist in the evaluation of the potential for ozone transport among western states not included in the modeling domain for the Transport Rule Proposal, EPA also developed an additional analysis in the Timin Memo identifying monitors projected to record violations of the 1997 8-hour ozone NAAQS within a modeling domain that includes the western states.²⁹ The Timin Memo identified numerous nonattainment sites for the 1997 8-hour ozone NAAQS in southern and central California.³⁰ This analysis did not, however, identify any projected nonattainment receptors for the 1997 8-hour ozone NAAQS in any other western state. EPA's analysis for western states therefore supports our proposal to conclude that California sources do not contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS in other western states.

Finally, in addition to the information in the 2007 Transport SIP, our review of air parcel pathways to the nearest nonattainment receptors identified from the modeling analyses conducted for the Transport Rule Proposal, and EPA's projections of future air quality in the western states in the Timin Memo, EPA evaluated preliminary air quality monitoring data for the areas in states bordering California that are designated nonattainment for the 1997 8-hour ozone NAAQS. Although significant contribution must be measured not just against designated nonattainment areas but also against areas with monitors showing violations of the NAAQS, nonattainment areas are a convenient starting point for the analysis. The 2007 Transport SIP identifies two areas in states bordering California that are currently designated nonattainment for the 1997 8-hour ozone standard: The Las Vegas area in Clark County, Nevada, and the Phoenix-Mesa area in Arizona. EPA designated both of these areas as nonattainment for the 1997 8-hour ozone standard in 2004. *See* 69 FR 23858 (April 30, 2004); 40 CFR 81.303 and 81.329. Both of these areas, however, have current design values indicating attainment of the 1997 8-hour ozone NAAQS. Our review of preliminary monitoring data for the 2007–2009 period available in EPA's AQS Database indicates that the 8-hour ozone design values for Las Vegas and Phoenix-Mesa during this period were

78 ppb and 76 ppb, respectively.³¹ Thus, we believe it is reasonable to conclude that California sources are not contributing significantly to nonattainment of the 1997 8-hour ozone NAAQS in either the Las Vegas, Nevada or Phoenix-Mesa, Arizona nonattainment areas. No other area in the states bordering California (Oregon, Nevada, or Arizona) is currently designated nonattainment for the 1997 8-hour ozone NAAQS.

As mentioned above, EPA considers not only significant contribution to designated nonattainment areas, but also to areas with monitor readings showing violations of the NAAQS. A review of the AQS monitoring data for adjacent states shows that it is highly unlikely that emissions from California contribute significantly to violations of the 1997 8-hour ozone NAAQS in any downwind state. Specifically, EPA's observed maximum design values at monitors in the western states during the 2003–2007 period were generally well below the 1997 ozone NAAQS (except in California), and the 2012 modeling results at these western monitors (where a future year design value could be estimated) show a downward trend in ozone.³²

Additionally, we evaluated ozone monitoring data from the 2007–2009 period from each of the ozone monitoring sites in Oregon, Nevada, and Arizona, to determine whether the ozone levels in any of these states violate or potentially violate the 1997 8-hour ozone NAAQS.³³ The highest ozone design value at these monitoring sites during the 2007–2009 period was 78 ppb (in the Las Vegas, Nevada area), and most monitors recorded significantly lower ozone levels.³⁴ We have found no violations of the 1997 8-hour ozone NAAQS at any of the monitors in states bordering California, nor any indication that emissions from California sources contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS in these adjacent states.

The fact that monitors in these nearby areas are not registering violations of the NAAQS does not in itself conclusively establish that emissions from California could not contribute in the aggregate to violations in any other state. But this fact combined with our evaluation of the nearest nonattainment receptors in

²⁷ *See* Technical Support Document, California 2007 Transport SIP, Evaluation of Significant Contribution to Nonattainment and Interference with Maintenance for the 1997 8-hour Ozone NAAQS, U.S. EPA Region 9, February 25, 2011.

²⁸ Trajectories for each monitor were run backwards in time for 72 hours (three days), using a trajectory height at the starting point of 1,500 meters above ground level.

²⁹ *See* fn. 12 above.

³⁰ *See* Timin Memo at Appendix B (“Base year 2003–2007 and Future Year 2012 8-Hour Average Ozone Design Values—Western States”).

³¹ *See* U.S. EPA AQS, “Preliminary Design Value Report,” 2007–2009, for Nevada, Arizona.

³² *See* Timin Memo at Appendix B (“Base year 2003–2007 and Future Year 2012 8-Hour Average Ozone Design Values—Western States”).

³³ *See* U.S. EPA AQS, “Preliminary Design Value Report,” 2007–2009, for Oregon, Nevada, Arizona.

³⁴ *Ibid.*

eastern Texas, taking into account distance, topographical barriers, and typical meteorological conditions, supports California's conclusion that emissions from its sources do not contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS in other states, in accordance with section 110(a)(2)(D)(i)(I).

2. Significant Contribution to Nonattainment Evaluation for the 1997 PM_{2.5} NAAQS

In its 2007 Transport SIP, California argues that distance to the nearest designated PM_{2.5} nonattainment area, topographical features and meteorology support a finding that California sources do not significantly contribute to nonattainment of the 1997 PM_{2.5} NAAQS in another state. The 2007 Transport SIP also references EPA's technical support document (TSD) for the PM_{2.5} NAAQS nonattainment designations (PM_{2.5} Designations TSD),³⁵ which identifies Libby, Montana (in Lincoln County), as the area closest to California that is designated nonattainment for the 1997 PM_{2.5} standards.³⁶ As EPA noted in the PM_{2.5} Designations TSD, PM_{2.5} in Libby is predominantly local in origin (*e.g.*, residential wood-burning stoves during the winter time, when frequent and persistent temperature inversions occur, were specifically identified as a key source of particulate emissions in the area). Thus, California correctly noted that EPA concluded that PM_{2.5} pollution in Libby is a localized problem.³⁷

The fact that nonattainment in a given area is primarily the result of local emissions sources does not exclude the possibility of significant contribution to nonattainment from interstate transport. This fact and other evidence, however, support the conclusion that emissions from California sources are not significantly contributing to violations in Libby, Montana. That area is more than 900 miles away from California and is on the other side of the Sierra Nevada Mountains, a 400-mile-long north-south range of mountains that act as a natural barrier to air movement between California and Montana.³⁸ In addition, Libby is not in the predominant direction of winds from California, as transport winds generally flow from west to east, and not toward the north. Given the relatively long distance between California and Libby, Montana, the intervening mountainous topography, the localized nature of the PM_{2.5} nonattainment problem in Libby, and the general west-to-east direction of transport winds across California, EPA believes it is reasonable to conclude that California sources do not contribute significantly to nonattainment of the 1997 PM_{2.5} NAAQS in Libby, Montana. We note also that preliminary data available in EPA's AQS Database for the 2007–2009 period indicate that the Libby, Montana nonattainment area is currently attaining the 1997 PM_{2.5} standards.³⁹

EPA does not agree with California's assessment in the 2007 Transport SIP that these factors alone demonstrate that emissions from California sources do not contribute significantly to nonattainment of the 1997 PM_{2.5} NAAQS in any other states. Therefore, EPA is supplementing the state's submission with additional information in order to assess this issue more fully, and in light of more recent information. As noted above, EPA is evaluating the 2007 Transport SIP taking into account the methodologies and analyses developed in the Transport Rule Proposal in response to the judicial remand of CAIR, as well as EPA's

projections of future air quality at monitors in western states in the Timin Memo and preliminary air quality data from monitors in the states bordering California.

Specifically, we identified the nonattainment receptors for the 1997 annual PM_{2.5} NAAQS closest to California to evaluate whether emissions from California sources contribute significantly to nonattainment of the 1997 PM_{2.5} NAAQS in any other state.⁴⁰ For the 1997 annual PM_{2.5} NAAQS, the nonattainment receptors closest to California that EPA identified from the modeling analyses conducted for the Transport Rule Proposal are all east of the Mississippi River.⁴¹ Given the significant distance between California and these nonattainment receptors, and the intervening mountainous terrain, we believe it is reasonable to conclude that California sources do not contribute significantly to nonattainment of the 1997 annual PM_{2.5} NAAQS in any of these areas.

To address the potential for impacts on states not included in the modeling domain for the Transport Rule Proposal, we also evaluated whether there are monitors suitable for consideration as nonattainment receptors in western states outside of the geographic area covered by the Transport Rule Proposal. We note that EPA's analysis in the Timin Memo for western states identified numerous nonattainment sites for the 1997 annual PM_{2.5} NAAQS in southern and central California.⁴² This analysis did not, however, identify any projected nonattainment receptors for the 1997 annual PM_{2.5} NAAQS in any other western state. Thus, we believe it is reasonable to conclude that California sources do not contribute significantly to nonattainment of the 1997 PM_{2.5} NAAQS in other states.

The analysis for the Transport Rule Proposal did not identify any nonattainment receptors for the 1997

³⁵ See Technical Support for State and Tribal Air Quality Fine Particle (PM_{2.5}) Designations, "EPA 9-Factor Analyses for Montana for the Designation of PM_{2.5} Nonattainment Areas," Chapter 6.8.1, December 17, 2004.

³⁶ EPA designated this area as nonattainment for the 1997 PM_{2.5} NAAQS in 2005. 70 FR 944 (January 5, 2005) and 40 CFR 81.305.

³⁷ "Factor 6" of this 9-Factor Analysis describes the meteorology in the Libby area as follows: "Libby Montana is located in the northwestern part of the state in a narrow north-south oriented valley. The ridgetops surrounding Libby are approximately 4,000 feet higher than the town. There are no other towns or large emissions sources immediately upwind, so transport of high background concentrations into Libby is considered unlikely. The highest PM_{2.5} concentrations in Libby generally occur during the months of November through February. During the summer months concentrations typically average less than half the level of the annual PM_{2.5} NAAQS, while winter concentrations may double the NAAQS. The much higher concentrations in winter are related to stagnant weather conditions dominated by light winds and strong temperature inversions. These meteorological conditions may trap emissions within the valley for many days. No recent meteorological data is available for Libby, however, data from Kalispell, MT show calm wind conditions occur 35 percent of the time in the winter months and only 15 percent of the time in the spring and summer. Vertical temperature soundings at Great Falls in Western MT also show a very high

frequency of surface temperature inversions in the winter.

Due to the meteorology conditions in the town and surrounding vicinity of Libby and due to the topographical features within Lincoln County and more specifically around Libby, that create stagnant weather conditions, EPA feels the adjacent counties do not impact the PM_{2.5} monitor located at the Libby Courthouse Annex and that the nonattainment problem is a localized PM_{2.5} problem." PM_{2.5} Designations TSD at Chapter 6.8.1.

³⁸ See PM_{2.5} Designations TSD at Chapter 6.8.1.

³⁹ This data indicates the annual PM_{2.5} design value for the Libby, Montana area during the 2007–2009 period was 12.2 µg/m³. See U.S. EPA AQS, "Preliminary Design Value Report," 2007–2009, for Montana.

⁴⁰ For PM_{2.5}, the Transport Rule Proposal identified nonattainment receptors for the 1997 annual PM_{2.5} NAAQS and the 2006 24-hour PM_{2.5} NAAQS. See 75 FR 45210 at 45212. Because our proposal on California's 2007 Transport SIP addresses requirements of CAA section 110(a)(2)(D)(i) only for purposes of the 1997 ozone and PM_{2.5} NAAQS, for PM_{2.5} purposes we consider only the nonattainment receptors for the 1997 annual PM_{2.5} NAAQS identified in the Transport Rule Proposal.

⁴¹ Specifically, the nonattainment sites for the 1997 annual PM_{2.5} standard are located in Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. See Transport Rule Proposal, 75 FR 45210 at 45247–45248 (August 2, 2010).

⁴² See Timin Memo at Appendix A ("Base year 2003–2007 and Future Year 2012 Annual Average PM_{2.5} Design Values—Western States").

24-hour PM_{2.5} NAAQS in the portions of the U.S. covered by the Transport Rule Proposal modeling domain (*i.e.*, the 12 kilometer (km) grid covering the continental U.S. east of the Rockies).⁴³ Recent monitoring data in EPA's Air Quality System (2007–2009 design values that are under final EPA review) indicate that the highest 24-hour PM_{2.5} design value in the 47 states of the continental U.S. (excluding California) is 50 µg/m³,⁴⁴ which is well below the level of the 1997 24-hour PM_{2.5} NAAQS of 65 µg/m³. This data further supports our proposed finding that California sources do not contribute significantly to nonattainment of the 1997 24-hour PM_{2.5} NAAQS in any other state.

Finally, EPA evaluated PM_{2.5} air quality data for areas in the states bordering California to determine whether California sources might contribute significantly to violations of the 1997 PM_{2.5} NAAQS in these nearby areas. No areas in Oregon, Nevada, or Arizona are currently designated nonattainment for the 1997 PM_{2.5} NAAQS. As mentioned above, however, EPA considers not only significant contribution to designated nonattainment areas, but also to areas with monitoring data showing violations of the NAAQS. A review of the AQS monitoring data for adjacent states shows that it is highly unlikely that emissions from California contribute significantly to violations of the 1997 annual PM_{2.5} NAAQS in any downwind state.

Specifically, we reviewed preliminary PM_{2.5} monitoring data for the 2007–2009 period available in EPA's AQS Database from all PM_{2.5} monitoring sites in Oregon, Nevada, and Arizona, to determine whether the PM_{2.5} design values in any of these states potentially violate the 1997 annual PM_{2.5} NAAQS.⁴⁵ During this period only one monitor in these adjoining states, the "Cowntown" monitor in Casa Grande, Arizona (monitor ID 04–021–3013), has a PM_{2.5} design value exceeding the 1997 annual standard of 15.0 µg/m³.⁴⁶ EPA has separately determined, however, that this monitor is not suitable for determining compliance with the 1997

annual PM_{2.5} standard because the monitor functions as a population-oriented microscale (*i.e.*, localized hot spot) monitor.⁴⁷ No other PM_{2.5} monitor in the three states bordering California recorded a violation of the 1997 annual or 24-hour PM_{2.5} NAAQS during the 2007–2009 period.⁴⁸

The fact that monitors in these nearby areas are not registering violations of the 1997 PM_{2.5} NAAQS does not in itself conclusively establish that emissions from California could not contribute in the aggregate to violations in other states. But this fact combined with our evaluation of the nearest nonattainment receptors in states east of the Mississippi River, taking into account distance, topographical barriers, and typical meteorological conditions, supports California's conclusion on PM_{2.5} contribution for the 1997 NAAQS.

3. Conclusion Regarding Significant Contribution to Nonattainment

Based on the weight of evidence discussed above, including the location of the nearest projected nonattainment sites, distance to the nearest designated PM_{2.5} nonattainment area, meteorology, topography, and recent air quality monitoring data, we propose to determine that California's 2007 Transport SIP is adequate to ensure that emissions from California do not significantly contribute to nonattainment in any other state for the 1997 8-hour ozone or 1997 PM_{2.5} NAAQS, consistent with the requirements of CAA section 110(a)(2)(D)(i)(I). Thus, we propose to determine that California's SIP includes the measures necessary to prevent such prohibited interstate transport impacts for these NAAQS.

B. Evaluation of Interference With Maintenance

California's 2007 Transport SIP relies upon the recommendations in EPA's 2006 Guidance and does not provide a specific analysis of the interference with maintenance element of section 110(a)(2)(D)(i). Given the court decision on CAIR in the interim, however, EPA believes that it is necessary to evaluate

the submission for section 110(a)(2)(D)(i)(I) in such a way as to assure that the interference with maintenance element of the statute is given independent meaning and is appropriately evaluated using the types of information that EPA recommended in the 2006 Guidance. To accomplish this, in this proposed action, EPA has supplemented California's analysis with an approach comparable to that of the Transport Rule Proposal in order to adequately evaluate whether emissions from California sources interfere with maintenance of these NAAQS in other states. As with the significant contribution to nonattainment analysis, we have evaluated the potential for transport of emissions from California sources to specific locations identified in the Transport Rule Proposal, EPA's projected future year ozone and PM_{2.5} design values in the Timin Memo for monitors in the western U.S., and preliminary air quality data from monitors in the states bordering California. Based on these analyses, we propose to conclude that emissions from California sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS or 1997 PM_{2.5} NAAQS in any other state, consistent with the requirements of CAA section 110(a)(2)(D)(i)(I).

1. Interfere With Maintenance Evaluation for the 8-Hour Ozone NAAQS

As discussed above, in the Transport Rule Proposal, EPA projected future concentrations of ozone at monitors to identify areas that are expected to be violating the NAAQS or to have difficulty maintaining compliance with the NAAQS in 2012. For purposes of the interfere with maintenance evaluation, EPA projected future concentrations of ozone at monitors to identify areas that are expected to have a maximum design value (based on a single 3-year period) that exceeds the 1997 8-hour ozone NAAQS and by 2012. EPA anticipates that these "maintenance receptors" or "maintenance sites" will have difficulty in maintaining attainment of the NAAQS if there are adverse variations in meteorology or emissions.

To identify the states with emissions that may cause interference with attainment of the NAAQS at the maintenance receptors, the Transport Rule Proposal models the states' contributions to ambient ozone levels at these maintenance receptors.⁴⁹ Because the Transport Rule Proposal does not model the contribution of emissions

⁴³ 75 FR 45210 at 45249–45251 (August 2, 2010).

⁴⁴ These values were recorded at monitors in Liberty-Clairton, Pennsylvania and Provo, Utah. See <http://epa.gov/airtrends/pdfs/PM2.5%202007-2009%20design%20value%20update.pdf>. Data from EPA's Air Quality System can be viewed at <http://www.epa.gov/ttn/airs/airsaqs/>.

⁴⁵ See U.S. EPA AQS, "Preliminary Design Value Report," 2007–2009, for Oregon, Nevada, and Arizona.

⁴⁶ The Cowntown monitor had a PM_{2.5} design value of 18.8 µg/m³. See U.S. EPA AQS, "Preliminary Design Value Report," 2007–2009, for Arizona.

⁴⁷ See 76 FR 6056 (February 3, 2011); see also "Technical Support Document for Determination that the Cowntown Monitor is Ineligible for Comparison with the Annual PM_{2.5} NAAQS," April 26, 2010.

⁴⁸ Our review of AQS data for the 2007–2009 period in the three states bordering California indicated the highest valid annual PM_{2.5} design value was 12.8 µg/m³ (monitor ID 04–023–0004 in Nogales, Arizona) and the highest valid 24-hour PM_{2.5} design value was 47 µg/m³ (monitor ID 41–035–0004 in Klamath Falls, Oregon). See U.S. EPA AQS, "Preliminary Design Value Report," 2007–2009, for Oregon, Nevada, and Arizona.

⁴⁹ See Transport Rule Proposal, 75 FR 45210 at 45253–45273.

from California (and other western states not fully inside the Transport Rule Proposal's modeling domain) to 8-hour ozone maintenance receptors in other states, our assessment relies on a weight of evidence approach that considers relevant information from the Transport Rule Proposal pertaining to states within its modeling domain and additional information such as back-trajectory analyses, geographical and meteorological factors, EPA's projections of future air quality at monitors in western states in the Timin Memo, and AQS monitoring data. Although each of the factors considered in the following analysis is not in and of itself determinative, consideration of these factors together provides a reliable qualitative conclusion that emissions from California are not likely to interfere with maintenance of the 1997 8-hour ozone NAAQS at monitors in other states.

Our analysis begins by assessing California's contribution to the closest maintenance receptors for the 1997 8-hour ozone standard. The Transport Rule Proposal identifies 16 maintenance receptors for the 1997 8-hour ozone standard within its modeling domain (consisting of 37 states east of the Rocky Mountains, and the District of Columbia). Of these, the receptors closest to California are eight receptors in the Dallas-Fort Worth and Houston-Galveston-Brazoria 8-hour ozone nonattainment areas in eastern Texas. The remaining eight maintenance sites are located in Connecticut, Georgia, New York and Pennsylvania.⁵⁰

As discussed above in section III.A.1, the Dallas-Fort Worth and Houston-Galveston-Brazoria areas are over 900 miles from the easternmost border of California. The maintenance receptor monitors located in Connecticut, Georgia, New York and Pennsylvania are significantly farther away. Although distance alone is not determinative in the analysis of potential ozone transport, with increasing distance there are greater opportunities for ozone and NO_x dispersion and/or removal from the atmosphere.

To evaluate further the potential for California emissions to interfere with maintenance at the closest maintenance receptor locations, EPA conducted an analysis of ozone transport for each exceedance day in 2005 and 2006 for the eight maintenance receptors in the Dallas-Fort Worth and Houston-Galveston-Brazoria 8-hour ozone

nonattainment areas in eastern Texas.⁵¹ Exceedance days were identified using the AQS Database, EPA's repository of monitored ambient air quality data. EPA ran back-trajectories⁵² for those days during the 2005–2006 period when ozone concentrations at these receptors exceeded the 1997 8-hour ozone NAAQS (*i.e.*, monitored ozone concentrations were 85 ppb or above). These back-trajectory maps indicate that air parcel pathways to maintenance receptors in eastern Texas do not originate in California.

Because back-trajectory analysis results map pathways of air parcels that may or may not transport pollutants, they cannot be considered determinative as to the transport of ozone and its precursors or the absence of such transport from California emission sources. However, the fact that the air parcel trajectories do not connect California directly to the maintenance receptors in eastern Texas strongly supports the conclusion that emissions of ozone and its precursors from California sources are not likely to interfere with maintenance of the 1997 8-hour ozone NAAQS at these receptors. The maintenance receptors for the 1997 ozone standard identified in the Transport Rule Proposal are in similar locations relative to California as are the nonattainment receptors discussed above in section III.A.1, and the same considerations regarding distance, topography, and meteorology therefore support our proposal to determine that emissions from California sources do not interfere with maintenance at the maintenance receptor sites. Thus, EPA believes it is reasonable to conclude that California sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS in any other state.

We note that EPA's analysis in the Timin Memo, for western states not included in the modeling domain for the Transport Rule Proposal, identified four maintenance sites for the 1997 8-hour ozone NAAQS in southern and central California.⁵³ This analysis did not, however, identify any projected maintenance receptors for the 1997 8-hour ozone NAAQS in any other western state. The absence of monitors even suitable for comparison for this

purpose indicates that emissions from California sources do not have such an impact in western states. Thus, EPA's analysis for western states also supports our proposal to conclude that California sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS in other states.

Finally, as discussed above in section III.A.1, EPA's observed maximum design values at monitors in the western states during the 2003–2007 period were generally well below the 1997 ozone NAAQS, and the 2012 modeling results at these western monitors (where a future year design value could be estimated) show a downward trend in ozone.⁵⁴ Additionally, we evaluated ozone monitoring data from the 2007–2009 period from each of the ozone monitoring sites in Oregon, Nevada, and Arizona, and found no violations of the 1997 8-hour ozone NAAQS at any of these monitors during this period.⁵⁵ The fact that monitors in these nearby areas are not registering violations of the NAAQS does not in itself conclusively establish that emissions from California could not interfere with maintenance of the 1997 8-hour ozone NAAQS in any other state. But this fact combined with our evaluation of the nearest maintenance receptors in eastern Texas, taking into account distance, topographical barriers, and typical meteorological conditions, in addition to the back-trajectory analyses conducted to evaluate air parcel pathways to eastern Texas, support our proposal to conclude that California sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS in any other state.

2. Interfere With Maintenance Evaluation for the 1997 PM_{2.5} NAAQS

The Transport Rule Proposal identifies, within its modeling domain, 16 maintenance receptors for the 1997 annual PM_{2.5} NAAQS. Of these, the closest to California is one receptor located in the Harris County PM_{2.5} nonattainment area in eastern Texas. The remaining 15 maintenance receptors for the 1997 annual PM_{2.5} NAAQS are all located in states east of the Mississippi River.⁵⁶

As discussed above in section III.A.1, the Dallas-Fort Worth and Houston-

⁵¹ See Technical Support Document, California 2007 Transport SIP, Evaluation of Significant Contribution to Nonattainment and Interference with Maintenance for the 1997 8-hour Ozone NAAQS, U.S. EPA Region 9, February 25, 2011.

⁵² For each monitor, EPA ran the trajectories backwards in time for 72 hours (three days), using a trajectory height at the starting point of 1,500 meters above ground level.

⁵³ See Timin Memo at Appendix B ("Base year 2003–2007 and Future Year 2012 8-Hour Average Ozone Design Values—Western States").

⁵⁴ See Timin Memo at Appendix B ("Base year 2003–2007 and Future Year 2012 8-Hour Average Ozone Design Values—Western States").

⁵⁵ See U.S. EPA AQS, "Preliminary Design Value Report," 2007–2009, for Oregon, Nevada, and Arizona.

⁵⁶ Specifically, the remaining 15 maintenance sites for the 1997 annual PM_{2.5} NAAQS are located in Illinois, Kentucky, New York, Ohio, Pennsylvania, and West Virginia.

⁵⁰ See Transport Rule Proposal, Table IV.C–12, 75 FR 45210 at 45252–45253.

Galveston-Brazoria areas are over 900 miles from the easternmost border of California, and states with maintenance receptors east of the Mississippi River are even farther away. Because the maintenance receptors for the 1997 PM_{2.5} standard identified in the Transport Rule Proposal are in similar locations relative to California as are the nonattainment receptors discussed above in sections III.A.1 and A.2, the same considerations regarding distance, topography, and meteorology support our proposal to determine that emissions from California sources do not interfere with maintenance at the maintenance receptor sites. EPA therefore believes it is reasonable to conclude that California sources do not interfere with maintenance of the 1997 PM_{2.5} NAAQS in any other state.

We note that EPA's analysis in the Timin Memo, for western states not included in the modeling domain for the Transport Rule Proposal, identified numerous maintenance sites for the 1997 annual PM_{2.5} NAAQS in southern and central California.⁵⁷ This analysis did not, however, identify any projected maintenance receptors for the 1997 annual PM_{2.5} NAAQS in any other western state. Thus, we believe it is reasonable to conclude that California sources do not interfere with maintenance of the 1997 PM_{2.5} NAAQS in other states.

Finally, as discussed above in section III.A.2, EPA reviewed PM_{2.5} monitoring data for the 2007–2009 period from all PM_{2.5} monitoring sites in states bordering California (Oregon, Nevada, and Arizona) and found no violations of the 1997 annual PM_{2.5} standard. The fact that monitors in these nearby areas are not registering violations of the NAAQS does not in itself conclusively establish that emissions from California could not interfere with maintenance of the 1997 annual PM_{2.5} NAAQS in any other state. But this fact combined with our evaluation of the nearest maintenance receptor in eastern Texas, taking into account distance, topographical barriers, and typical meteorological conditions, supports our proposal to conclude that California sources do not interfere with maintenance of the 1997 PM_{2.5} NAAQS in any other state.

The analysis for the Transport Rule Proposal did not identify any maintenance receptors for the 1997 24-hour PM_{2.5} NAAQS in the portions of the U.S. covered by the Transport Rule

Proposal modeling domain.⁵⁸ Recent monitoring data in EPA's AQS Database (2007–2009 design values that are under final EPA review) indicate that the highest 24-hour PM_{2.5} design value in the 47 states of the continental U.S. (excluding California) is 50 µg/m³, which is well below the level of the 1997 24-hour PM_{2.5} NAAQS of 65 µg/m³.⁵⁹ This data further supports our proposed finding that California emission sources do not interfere with maintenance of the 1997 PM_{2.5} NAAQS in any other state.

3. Conclusion Regarding Interference With Maintenance

Based on the weight of evidence, including the location of the nearest projected maintenance sites, taking into account distance, meteorology, topography, and recent air quality monitoring data, as discussed above, we propose to determine that California's 2007 Transport SIP is adequate and that emissions from California do not interfere with maintenance in any other state for the 1997 8-hour ozone or 1997 PM_{2.5} NAAQS, consistent with the requirements of CAA section 110(a)(2)(D)(I). Thus, we propose to determine that California's SIP includes the measures necessary to prevent such prohibited interstate transport impacts for these NAAQS.

IV. Proposed Action

Under section 110(k) of the Clean Air Act, EPA is proposing to approve the 2007 Transport SIP submitted by CARB on November 17, 2007, as adequate to prohibit emissions from California sources that will contribute significantly to nonattainment of the 1997 8-hour ozone or 1997 PM_{2.5} NAAQS in any other state, as required by CAA section 110(a)(2)(D)(i)(I). EPA is also proposing to approve the 2007 Transport SIP as adequate to prohibit emissions from California sources that will interfere with maintenance of these NAAQS by any other state, as required by section 110(a)(2)(D)(i)(I). Accordingly, we propose to find that the California SIP contains provisions adequate to prevent significant contribution to nonattainment of, and interference with maintenance of, these NAAQS and does not require any additional measures for this purpose at this time. This proposed action does not apply to the remaining two elements of CAA section 110(a)(2)(D)(i) regarding interference with measures required to prevent

significant deterioration of air quality or to protect visibility in another state. We intend to evaluate and act upon the 2007 Transport SIP for purposes of these additional requirements of CAA section 110(a)(2)(D)(i) in separate actions.

EPA is soliciting public comments on this proposal and will accept comments until the date noted in the "DATES" section above.

V. Statutory and Executive Order Reviews

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

⁵⁷ See Timin Memo at Appendix A ("Base year 2003–2007 and Future Year 2012 Annual Average PM_{2.5} Design Values—Western States").

⁵⁸ 75 FR 45210 at 45249–45251 (August 2, 2010). See also fn. 40 and fn. 48.

⁵⁹ Data from EPA's Air Quality System can be viewed at <http://www.epa.gov/ttn/airs/airsaqs/>.

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 11, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011-6302 Filed 3-16-11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-0426-201030; FRL-9282-6]

Approval and Promulgation of Implementation Plans; Kentucky; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Division of Air Quality (DAQ) of the Kentucky Environmental and Public Protection Cabinet, now called the Energy and Environment Cabinet, as demonstrating that the Commonwealth meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an "infrastructure" SIP. Kentucky certified that the Kentucky SIP contains provisions that ensure the 1997 8-hour

ozone NAAQS are implemented, enforced, and maintained in Kentucky (hereafter referred to as "infrastructure submission"). Kentucky's infrastructure submission, provided to EPA on December 13, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

DATES: Written comments must be received on or before April 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2009-0426, by one of the following methods:

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

2. *E-mail:* benjamin.lynora@epa.gov.

3. *Fax:* (404) 562-9140.

4. *Mail:* "EPA-R04-OAR-2009-0426," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Lynora Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2009-0426. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA

recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., 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 in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT:

Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can also be reached via electronic mail at ward.nacosta@epa.gov.

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I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour