4.0 Two-Dimensional Mobile Barcode Promotion

4.1 Program Description and Scope

The two-dimensional mobile barcode promotion provides a three percent discount for presorted and automation mailings of First-Class Mail cards, letters, and flats and Standard Mail (including Nonprofit) letters and flats that include a two-dimensional mobile barcode when the mailpieces meet all the conditions in these standards. The promotion is valid for mailings entered from July 1, 2011 through August 31, 2011. Plant-verified drop shipment (PVDS) mailings meeting all relevant standards may qualify for participation in this promotion as follows:

a. PVDS mailings may be accepted at origin as early as June 26, 2011 if they are entered on or after July 1, 2011 at the destination.

b. PVDS mailings may be accepted at origin as late as August 31, 2011 if they are entered no later than September 15, 2011 at the destination.

4.2 Eligibility Standards

To be eligible for the three percent discount, mailpieces must be mailed under the following conditions:

a. A two-dimensional mobile barcode must be on each mailpiece, either on the outside or printed on the contents of the piece. One-dimensional barcodes do not qualify.

b. The barcode must be readable by a mobile smartphone with a two-dimensional barcode reader application. The barcode must be used for marketing, promotional or educational purposes and be relevant to the contents of the mailpiece. Barcodes with links that direct consumers to sites that encourage enrollment to online bill paying or paperless statement services are not considered marketing, promotional or educational for the purposes of this initiative and are not eligible for the discount. Mailpieces with mobile barcodes that convey postage information, destination, sender or machinable serial number for security also are not eligible for the discount.

c. The mailpieces with mobile barcodes must be one of the following:

1. Presorted or automation First-Class Mail cards, letters, or flats.

2. Standard Mail (including nonprofit) letters or flats.

d. Postage must be paid with a permit imprint, and the postage statement and mailing documentation must be submitted electronically. All pieces on a postage statement must contain a mobile barcode that qualifies for the discount.

e. Participating mailers must provide the acceptance unit with a sample of the mailpiece that contains a mobile barcode. Mailers must also retain, until October 31, 2011, a sample of each mailpiece claiming a discount.

f. Other than a full-service Intelligent Mail discount (see 705.23), no other incentives apply for mailpieces claiming a discount under this promotion.

4.3 Discount

Mailers must claim the three percent postage discount on the postage statement at the time the statement is electronically submitted. The electronic equivalent of the mailer's signature on the postage statement will certify that each mailpiece claimed on the postage statement contains a qualifying two-dimensional mobile barcode.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–14251 Filed 6–14–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0046; FRL–9318–1]

Approval and Promulgation of Implementation Plans; State of California; Regional Haze and Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (''CAA'' or ''Act''), EPA is approving a State Implementation Plan (''SIP'') revision submitted by the State of California on November 16, 2007, for the purpose of addressing the interstate transport provisions of 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. Specifically, EPA is finalizing approval of 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 these standards in any other State and to prohibit emissions that will interfere with maintenance of these standards by any other State. EPA proposed to approve these SIP revisions on March 17, 2011 (76 FR 14616).

DATES: *Effective Date:* This rule is effective on July 15, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0046 for this action. The index to the docket 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.,* confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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.

Table of Contents

I. Background

On July 18, 1997, EPA promulgated new standards for 8-hour ozone (62 FR 38856) and $PM_{2.5}$ (62 FR 38652). We are taking this action in response to the promulgation of these standards (the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS) to address the requirements of CAA section 110(a)(2)(D)(i)(I). This 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 the EPA Administrator 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 $PM_{2.5}$ standards (2006 Guidance).[1]

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).[2] Appendix C of the 2007 State Strategy, as modified by Attachment A,[3] 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). The State based its submittal on EPA's 2006 Guidance. As explained in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) require each State to submit a SIP that contains adequate provisions to prohibit emissions from sources within that State from adversely affecting another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this rulemaking EPA is addressing the first two elements: (1) Significant contribution to nonattainment of these NAAQS in any other State, and (2) interference with maintenance of these NAAQS by any other State.

II. Proposed Action

On March 17, 2011, EPA proposed to find that the California SIP is adequate to prevent significant contribution to nonattainment of, and interference with maintenance of, the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in any other State, as required by CAA section 110(a)(2)(D)(i)(I). *See* 76 FR 14616. Our proposed action did not address 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 these remaining elements of California's SIP submittal in separate actions, subject to notice and comment and publication in the **Federal Register.**

For a more detailed discussion of the 2007 Transport SIP, the requirements of CAA section 110(a)(2)(D)(i), and the rationale for our proposed action, please see our March 17, 2011 proposed rule (76 FR 14616) and related Technical Support Document, both of which can be found in the docket for today's action.

III. Public Comments and EPA Responses

The publication of EPA's proposed rule on March 17, 2011 (76 FR 14616) started a 30-day public comment period that ended on April 18, 2011. During this period, we received a comment letter from the Morongo Band of Mission Indians (Morongo) and a comment letter from the Pechanga Band of Luiseño Mission Indians (Pechanga). We have summarized the comments from the Morongo and Pechanga (collectively the ''Tribes'' or ''commenters'') and provided our responses below.

Comment #1: The Tribes assert that neither California nor EPA analyzed potential impacts of transported ozone and $PM_{2.5}$ air pollution on their respective reservations or on other Indian country immediately downwind of California nonattainment areas, and that EPA did not acknowledge their existence as affected, downwind governments. The Tribes assert that they are each ''comparable to a state'' with respect to the effect of upwind emission sources in California, which contribute overwhelmingly to nonattainment in their reservations, and that they are both in the process of seeking ''Treatment in the Same Manner as a State (TAS)'' under the CAA. The Tribes also assert that they have either received TAS or completed the application process for TAS under the Clean Water Act. Finally, the Tribes claim that, if EPA were to require that the California SIP ''treat the Tribe[s] equitably'' in addressing the provisions of CAA section 110(a)(2)(D)(i)(I), then additional control measures for the South Coast Air Basin would be needed to prohibit emissions that would contribute significantly to nonattainment of the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS or interfere with maintenance of these standards in their respective reservations, analogous to the prohibition against having such effect in any other State.

Response #1: Section 110(a)(2)(D)(i)(I) of the CAA requires that each SIP contain adequate provisions to prohibit any source or other type of emissions activity within the State from ''contribut[ing] significantly to nonattainment'' of the NAAQS or ''interfer[ing] with maintenance'' of the NAAQS in ''any other State.''[4] The commenters provide no specific factual or analytical support for their claim that emissions from California sources contribute significantly to nonattainment or interfere with maintenance of the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS in their respective reservations or other Indian country, nor do they provide any support for their assertion that evaluation of such impacts under CAA section 110(a)(2)(D)(i) for these standards would have resulted in a requirement for California to adopt additional control measures for sources in the South Coast Air Basin.[5] Nevertheless, in response to these comments, EPA has considered whether emissions from California sources could have the prohibited adverse impacts in the Morongo or Pechanga reservations in accordance with the methodologies we use to evaluate SIP submittals for these standards under section 110(a)(2)(D)(i) with respect to transport impacts on states. Based on this evaluation, we conclude that California's SIP currently contains adequate provisions to prohibit such impacts for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

We began our analysis by reviewing the ozone and $PM_{2.5}$ air quality monitors that we identified as ''receptor'' locations for purposes of evaluating SIPs submitted to address the requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS. As described in our proposed rule (76 FR 14616), 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, to

[1] 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.

[2] *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).

[3] *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).

[4] The term ''State'' is defined in the Clean Air Act as ''a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.'' CAA section 302(d).

[5] Both Tribes acknowledge that they do not currently have TAS status under the CAA. As described below, however, EPA has evaluated the sufficiency of the State's SIP submission in light of potential impacts on the Tribes' reservations from sources located in surrounding State areas. Thus, we do not need to address in this action the question whether CAA section 110(a)(2)(D)(i)(I) requires that a SIP address impacts on Indian country geographically located within the submitting State or how the TAS status of the potentially-affected Tribe(s) may be relevant to that issue. Similarly, we also do not need to address the Tribes' comment regarding TAS under the Clean Water Act as that does not affect the analysis of CAA requirements EPA conducted for this action.

determine which areas are predicted to be violating these NAAQS in 2012, and which areas are predicted potentially to have difficulty maintaining attainment as of that date. 76 FR 14616 at 14618. We identified as ''nonattainment receptors'' those monitoring sites that are projected to be violating the NAAQS in 2012, based on the average of these three overlapping periods. Id. Separately, we identified as ''maintenance receptors'' those monitoring sites that were violating the NAAQS based on the highest *single* three-year period during 2003–2007, but not over the average of the three periods. *Id.* at 14619, 14623. We described these ''maintenance receptors'' as those monitoring sites that remain at risk of slipping into nonattainment in 2012 if there are adverse variations in meteorology or emissions. *Id.*

These methodologies for identifying ''nonattainment receptors'' and ''maintenance receptors'' take into account historic variability of emissions at specific monitoring sites to analyze whether or not the relevant areas are expected to be violating or attaining the NAAQS in 2012. In both the 1998 NO_X SIP Call [6] and the 2005 Clean Air Interstate Rule,[7] EPA evaluated significant contribution to nonattainment as measured or predicted at monitors in a comparable fashion. EPA believes that this approach to evaluating significant contribution is correct under CAA section 110(a)(2)(D), and EPA's general approach to this threshold determination has not been disturbed by the courts.[8] As explained in the proposal, EPA is addressing interference with maintenance separately in order to address concerns that the Agency had not previously given sufficient independent meaning to that requirement.

Consistent with these methodologies, to determine whether emissions from California sources contribute significantly to nonattainment or interfere with maintenance of the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS in any other State, EPA evaluated air quality monitoring data from the eastern portion of the U.S. under consideration in EPA's Transport Rule Proposal (75 FR 45210) without regard to the jurisdictional status of different areas within each State. *See* 76 FR 14616 at 14618–14619. EPA conducted a similar analysis of air quality data for the western U.S. not covered by the Transport Rule Proposal. *Id.* This analysis for western States is embodied in the ''Timin Memo.'' [9] [10]

Although by its terms CAA section 110(a)(2)(D)(i)(I) explicitly addresses impacts on States, in response to the commenters' concerns, EPA reviewed air quality monitoring data from monitors located on the Morongo Reservation and on the Pechanga Reservation. For both reservations, EPA found that ozone and $PM_{2.5}$ air quality monitoring data is not available for the full 2003–2007 period, the time period that provided the basis for our evaluation methodology under CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.[11] Thus, neither reservation has a monitor for ozone or for $PM_{2.5}$ that EPA projected to be violating either NAAQS in 2012, based on the average of the three overlapping periods that EPA evaluated for these purposes (*i.e.,* 2003–2005, 2004–2006, and 2005–2007). Additionally, neither reservation has a monitor that EPA projected to remain at risk of slipping into nonattainment of either NAAQS in 2012, based on the highest *single* three-year period during 2003–2007. *Id.* EPA therefore did not identify any ''nonattainment receptors'' or ''maintenance receptors'' for these standards on either reservation.[12] [13]

Because neither the Morongo Reservation nor the Pechanga Reservation contains any ''nonattainment receptor'' or ''maintenance receptor'' appropriate for purposes of evaluating California's 2007 Transport SIP in accordance with the requirements of CAA section 110(a)(2)(D)(i)(I) and the analytical approach that EPA is using to evaluate potential transport impacts between states, we do not have a basis for concluding that emissions from California sources ''contribute significantly to nonattainment'' or ''interfere with maintenance'' of the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS in either reservation at this time. The Tribes' comments provide no specific information to support such a conclusion.

Furthermore, we note that the Morongo Reservation and most of the Pechanga Reservation are located within the geographic borders of the Los Angeles-South Coast Air Basin in southern California, which is currently designated and classified as an ''extreme'' nonattainment area for the 1997 8-hour ozone NAAQS. *See* 40 CFR 81.305; *see also* 75 FR 24409 (May 5, 2010) (reclassifying South Coast Air Basin from ''severe-17'' to ''extreme'' nonattainment for 8-hour ozone NAAQS but deferring reclassification of Indian country pertaining to Morongo and Pechanga).[14] As such, California is already subject to the most stringent air quality planning and control requirements for ozone nonattainment areas under subpart 2 of part D, title I of the CAA. For example, ''extreme'' ozone nonattainment areas are subject to the most stringent New Source Review regulatory threshold and offset ratio (CAA sections 182(e), 182(f)) and must require that certain electric utility and

[6] *See* ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' 63 FR 57356, 57371–57372 (October 27, 1998) (''NO_X SIP Call'').

[7] *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,'' 70 FR 25162 at 25167 (May 12, 2005) (''CAIR'').

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

[9] *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).

[10] In addition to relying upon these methodologies for identifying ''nonattainment receptors'' and ''maintenance receptors'' based on 2003–2007 monitoring data, EPA reviewed more recent, preliminary monitoring data for the 2007–2009 period available in EPA's Air Quality System (AQS) database from all ozone and $PM_{2.5}$ monitoring sites in Oregon, Nevada, and Arizona and found no violations of the 1997 8-hour ozone or 1997 $PM_{2.5}$ standards in these adjacent States during this period. See 76 FR 14616 at 14621, 14623, and 14625. These data further support our findings but are not a necessary basis for our conclusion that emissions from California sources do not have the prohibited adverse impacts on any other State for the 1997 8-hour ozone or 1997 $PM_{2.5}$ NAAQS.

[11] For the Morongo Reservation, EPA's AQS database contains ozone monitoring data starting in 2006. *See* U.S. EPA AQS, Quick Look Report for 8-hour ozone, Site ID TT–582–1016 (2003–2011). For the Pechanga Reservation, EPA's AQS database contains ozone monitoring data starting in 2008 and $PM_{2.5}$ monitoring data starting in 2010. *See* U.S. EPA AQS, Quick Look Report for 8-hour ozone and $PM_{2.5,}$ Site ID TT–586–0009 (2003–2011).

[12] *See* Timin Memo at Appendix A and Appendix B.

[13] We note that data from the ozone monitor on the Morongo Reservation during the more recent 2006–2011 period appear to indicate that the area is violating the 1997 8-hour ozone NAAQS (*see* U.S. EPA AQS, Quick Look Report for 8-hour ozone, Site ID TT–582–1016 (2003–2011)). However, EPA has not yet verified the validity of these data for regulatory purposes in accordance with section 2.5 of 40 CFR part 58, Appendix A. In the event that EPA confirms this data is valid and this monitor continues to show violations of the 1997 8-hour ozone NAAQS in the future, EPA may evaluate whether additional actions are appropriate or necessary under the CAA to bring this area into attainment, based upon subsequently available data and analyses.

[14] The entire Los Angeles-South Coast Air Basin, including Indian country located within its borders, is also designated and classified as ''extreme'' nonattainment for the 1-hour ozone NAAQS. 40 CFR 81.305.

industrial and commercial boilers either primarily burn low-polluting fuels or use advanced control technology to reduce emissions of NO_X (CAA section 182(e)(3)).

The Los Angeles-South Coast Air Basin is also designated as nonattainment for the 1997 $PM_{2.5}$ NAAQS and, therefore, subject to stringent air quality planning and control requirements for $PM_{2.5}$ nonattainment areas under subpart 1 of part D, title I of the CAA. For example, CAA section 172(c)(1) requires that California adopt and implement all reasonably available control measures (including, at a minimum, reasonably available control technology for stationary sources) that will provide for attainment of the $PM_{2.5}$ NAAQS in this area as expeditiously as practicable. *See* 40 CFR 51.1010. EPA is currently evaluating the nonattainment plans for the Los Angeles-South Coast Air Basin submitted by the State of California and the South Coast Air Quality Management District to meet these requirements of part D, title I of the CAA for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.

Although the fact that areas adjacent to the Morongo Reservation and Pechanga Reservation are subject to stringent planning and control requirements does not eliminate the possibility of pollution transport from these areas, the stringency of the control requirements in this particular geographic area would be an important element of EPA's analysis under CAA section 110(a)(2)(D)(i)(I). EPA evaluates ''significant contribution to nonattainment'' and ''interference with maintenance'' under section 110(a)(2)(D)(i)(I) by considering not only the potential for pollution transport and the amount of such transport if it exists, but also the level and cost of control in an upwind area that would be necessary to prohibit such transport to the downwind area. *See* Transport Rule Proposal, 75 FR 45210 at 45273–45274 (August 2, 2010) (citing *North Carolina* v. *EPA,* 531 F.3d 896 at 908, 917–920 (DC Cir. 2008), in which the court confirmed that EPA may use cost of control as a factor in evaluating interstate transport). Thus, a technical finding that pollutants from an upwind area are transported to a downwind area does not, in itself, constitute a finding of ''significant contribution to nonattainment'' or ''interference with maintenance'' for regulatory purposes under section 110(a)(2)(D)(i)(I) of the CAA. Given these considerations, even if we were to conclude that emissions from California sources adversely impact air quality at monitors suitable for treatment as nonattainment receptors or maintenance receptors in the Pechanga or Morongo Reservations, section 110(a)(2)(D)(i)(I) of the CAA would not necessarily require that California adopt additional control measures to address such pollution impacts. We could not disapprove California's SIP submission without having completed that analysis and concluded that the state needed to impose additional controls in order to eliminate significant contribution or prevent interference with maintenance, which is a determination which is partially dependent upon the cost of control.

In sum, although by its terms section 110(a)(2)(D)(i)(I) explicitly addresses States, in response to these specific comments from Morongo and Pechanga, we have conducted a preliminary evaluation of potential impacts on the Tribes' reservations based on our current methodology for evaluating SIPs submitted to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. Based on this evaluation and available air quality monitoring data, we have determined that California's SIP contains provisions adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I) for these NAAQS. This determination does not, however, apply to California's obligations to address interstate transport of pollution under CAA section 110(a)(2)(D)(i)(I) for other NAAQS, which EPA intends to evaluate in separate actions, in accordance with applicable requirements and available air quality monitoring data, as appropriate. Moreover, if subsequent facts or analyses indicate that further action is necessary in this area to address nonattainment throughout the South Coast Air Basin, EPA can act at a later time after the initial section 110(a)(2)(D) submissions to call for revisions of the SIP to provide for additional emissions controls if such action is warranted. EPA recognizes the commenters' concerns about the impacts of air pollutant emissions throughout the South Coast Air Basin and is committed to working with the Tribes and the State to address these air quality concerns.

Comment #2: The Tribes assert that EPA failed to consult with them regarding potential impacts on their reservations or other Federally recognized tribal lands immediately downwind of California nonattainment areas, referencing EPA's ''Proposed Final Policy on Consultation and Coordination With Indian Tribes,'' 75 FR 78198 (December 15, 2010) in support of this comment. The Tribes assert that this failure to consult or to consider the Tribes as ''affected 'state[s]' subject to overwhelming transport emissions from California'' is a major flaw in EPA's proposed rulemaking.

Response #2: EPA endeavors to consult with Federally recognized tribal governments when Agency actions and decisions may have ''tribal implications'' or affect tribal interests, pursuant to long-standing EPA policy on consultation and coordination with Indian Tribes. *See* ''EPA Policy for the Administration of Environmental Programs on Indian Reservations'' (November 8, 1984); Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' 65 FR 67249 (November 9, 2000); ''EPA Policy on Consultation and Coordination with Indian Tribes'' (May 4, 2011).

Because the California SIP is not approved to apply in Indian country located in the State, this action has no regulatory consequences for emission sources in Indian country and will not impose substantial direct costs on tribal governments or preempt tribal law. We note, however, that EPA is currently consulting with both Morongo and Pechanga in response to their requests for boundary changes to establish separate nonattainment areas or, in the alternative, to extend the boundaries of adjacent, lower-classified nonattainment areas to include the Tribes' Indian country. *See* 75 FR 24409, 24411 (May 5, 2010) (deferring reclassification of the Morongo and Pechanga Reservations within the South Coast Air Basin pending EPA's final decisions on the Tribes' boundary change requests). EPA has also initiated a process to consult with interested Indian Tribes on issues related to the Transport Rule Proposal (75 FR 45210, August 2, 2010) and will conclude this consultation before making final decisions on those issues. *See* 76 FR 1109 at 1118 (January 7, 2011) (requesting comment on options for allocating allowances to covered units that might in the future be constructed in Indian country located within the Transport Rule region).

Due to a court-ordered deadline to take final action on California's 2007 Transport SIP by May 10, 2011,[15] we are proceeding with this rulemaking action at this time. We encourage both Tribes, however, to participate in other processes that are already underway to address their concerns regarding cross-boundary air pollution impacts.

[15] *See WildEarth Guardians* v. *U.S. EPA* (Case No. 4:09–CV–02453–CW), Consent Decree dated November 10, 2009.

As to the Tribes' assertion that EPA's failure to consider them affected ''States'' subject to overwhelming transport of emissions from California is a major flaw in our proposed rule, we disagree for the reasons discussed above in Response #1.

IV. Final Action

Under CAA section 110(k)(3), EPA is fully approving 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 approving 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 find that the California SIP contains provisions adequate to prevent significant contribution to nonattainment of, and interference with maintenance of, these NAAQS.

EPA will address in separate actions, subject to notice and comment and publication in the **Federal Register**, 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 any other State.

V. Statutory and Executive Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 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* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 10, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(386)(ii)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(386) * * *

(ii) * * *

(A) * * *

(*3*) 2007 Transport SIP at pages 19–20 (Attachment A) (''Evaluation of Significant Contribution to Nonattainment or Interference with Maintenance of Attainment Standards in Another State'').

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■ 3. Section 52.283 is amended by adding paragraph (a)(2) to read as follows:

§ 52.283 Interstate Transport.

(a) * * *

(2) The requirements of CAA section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment of the 1997 standards in any other State and interference with maintenance of the 1997 standards by any other State.

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