

not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely

proposes to disapprove a SIP submission as not meeting the CAA.

K. CAA Section 307(b)(1)

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) When the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).³⁷

If the EPA takes final action on this proposed rulemaking the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action (to the extent a court finds the action to be locally or regionally applicable) is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), the EPA interprets and applies section 110(a)(2)(d)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, the EPA is applying here (and in other proposed actions related to the same obligations) the same, nationally consistent 4-step framework for assessing good neighbor obligations for the 2015 ozone NAAQS. The EPA relies on a single set of updated, 2016-base year photochemical grid modeling results of the year 2023 as the primary basis for its assessment of air quality conditions and contributions at steps 1 and 2 of that framework. Further, the EPA proposes to determine and apply a set of nationally consistent policy judgments to apply the 4-step framework. The EPA

³⁷ In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

has selected a nationally uniform analytic year (2023) for this analysis and is applying a nationally uniform approach to nonattainment and maintenance receptors and a nationally uniform approach to contribution threshold analysis.³⁸ For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on one or more determinations of nationwide scope or effect for purposes of CAA section 307(b)(1).³⁹

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: February 9, 2022.

Meghan A. McCollister,
Regional Administrator, Region 7.

[FR Doc. 2022–03183 Filed 2–18–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0841; EPA–HQ–OAR–2021–0663; FRL–9421–01–R4]

Air Plan Disapproval; AL, MS, TN; Interstate Transport Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and withdrawal of proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA or Agency) is proposing to disapprove State Implementation Plan (SIP) submittals from Alabama, Mississippi,

³⁸ A finding of nationwide scope or effect is also appropriate for actions that cover states in multiple judicial circuits. In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.A.N. 1402–03.

³⁹ The EPA may take a consolidated, single final action on all of the proposed SIP disapproval actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Should EPA take a single final action on all such disapprovals, this action would be nationally applicable, and the EPA would also anticipate, in the alternative, making and publishing a finding that such final action is based on a determination of nationwide scope or effect.

and Tennessee regarding the interstate transport requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS or standard). The “Good Neighbor” or “Interstate Transport” provision requires that each state’s implementation plan contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader set of “infrastructure” requirements, which are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA. These disapprovals, if finalized, will establish a 2-year deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the relevant interstate transport requirements, unless EPA approves a subsequent SIP submittal that meets these requirements. Disapproval does not start a mandatory sanctions clock.

DATES: Comments. Comments on this proposed rule must be received on or before April 25, 2022.

Withdrawal: As of February 22, 2022, the proposed rule published December 30, 2019, at 84 FR 71854, is withdrawn.

ADDRESSES: You may submit comments, identified by Docket No. EPA–R04–OAR–2021–0841, through the Federal eRulemaking Portal at <https://www.regulations.gov> following the online instructions for submitting comments.

Instructions: All submissions received must include the Docket No. EPA–R04–OAR–2021–0841 for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. The Docket Center staff also continues to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit EPA online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Evan Adams of the Air Regulatory Management Section, Air Planning and

Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by telephone at (404) 562–9009, or via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION: Public Participation: Submit your comments, identified by Docket No. EPA–R04–OAR–2021–0841, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system).

There are two dockets supporting this action, EPA–R04–OAR–2021–0841 and EPA–HQ–OAR–2021–0663. Docket No. EPA–R04–OAR–2021–0841 contains information specific to Alabama, Mississippi, and Tennessee, including this notice of proposed rulemaking. Docket No. EPA–HQ–OAR–2021–0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 8-hour ozone NAAQS which are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket No. EPA–R04–OAR–2021–0841. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. The Docket Center staff also continues to provide remote customer service via email, phone, and webform. For further information and updates on EPA Docket Center services, please visit EPA online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and

Prevention (CDC), local area health departments, and Federal partners so that EPA can respond rapidly as conditions change regarding COVID–19.

The indices to Docket No. EPA–R04–OAR–2021–0841 and Docket No. EPA–R04–OAR–2021–0841 are available electronically at www.regulations.gov. While all documents in each docket are listed in their respective index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

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I. Background

The following provides background for EPA’s proposed actions related to the interstate transport requirements for the 2015 8-hour ozone NAAQS for the states of Alabama, Mississippi, and Tennessee.

A. Description of Statutory Background

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 8-hour ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).¹ Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).² One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the “good neighbor” or “interstate transport” provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to

¹ National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

² SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

interstate transport of pollution. There are two so-called “prongs” within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).³

B. Description of EPA’s Four Step Interstate Transport Regulatory Process

EPA is using the 4-step interstate transport framework (or 4-step framework) to evaluate the states’ implementation plan submittals addressing the interstate transport provision for the 2015 8-hour ozone NAAQS. EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,⁴ the Cross-State Air Pollution Rule Update (CSAPR Update)⁵ and the Revised CSAPR Update, both of which addressed the 2008 ozone NAAQS.⁶

Through the development and implementation of the CSAPR rulemakings and prior regional rulemakings pursuant to the interstate transport provision,⁷ EPA, working in

partnership with states, developed the following 4-step interstate transport framework to evaluate a state’s obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.*, nonattainment and/or maintenance receptors); (2) identify states that impact those air quality problems in other (*i.e.*, downwind) states sufficiently such that the states are considered “linked” and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind state’s significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

C. Background on EPA’s Ozone Transport Modeling Information

In general, EPA has performed nationwide air quality modeling to project ozone design values which are used in combination with measured data to identify nonattainment and maintenance receptors. To quantify the contribution of emissions from specific upwind states on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors, EPA performed nationwide, state-level ozone source apportionment modeling for 2023. The source apportionment modeling provided contributions to ozone at receptors from precursor emissions of anthropogenic nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in individual upwind states.

EPA has released several documents containing projected design values, contributions, and information relevant to evaluating interstate transport with respect to the 2015 8-hour ozone NAAQS. First, on January 6, 2017, EPA published a notice of data availability (NODA) in which the Agency requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.⁸ In the NODA, EPA used the year 2023 as the analytic year for

this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 8-hour ozone NAAQS.⁹ On October 27, 2017, EPA released a memorandum (October 2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address interstate transport obligations for the 2008 ozone NAAQS.¹⁰ On March 27, 2018, EPA issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 8-hour ozone NAAQS at Step 1 of the 4-step interstate transport framework.¹¹ The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist states in evaluating their impact on potential downwind air quality problems for the 2015 8-hour ozone NAAQS under Step 2 of the 4-step interstate transport framework.¹² EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 8-hour ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step interstate transport framework, and considerations for identifying downwind areas that may have problems maintaining the standard at

⁹ See 82 FR 1733, 1735 (January 6, 2017).

¹⁰ See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017 (“October 2017 memorandum”), available in Docket No. EPA–HQ–OAR–2021–0663 or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notice>.

¹¹ See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (“March 2018 memorandum”), available in Docket No. EPA–HQ–OAR–2021–0663 or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notice>.

¹² The March 2018 memorandum, however, provided, “While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states’ obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.”

³ See *North Carolina v. EPA*, 531 F.3d 896, 909–11 (D.C. Cir. 2008).

⁴ See Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

⁵ Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

⁶ In 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin v. EPA*, 938 F.3d 303, 313 (D.C. Cir. 2019). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the “CSAPR Close-Out,” 83 FR 65878 (December 21, 2018), in *New York v. EPA*, 781 F. App’x. 4 (D.C. Cir. 2019).

⁷ In addition to CSAPR rulemakings, other regional rulemakings addressing ozone transport include the “NO_x SIP Call,” 63 FR 57356 (October

27, 1998), and the “Clean Air Interstate Rule” (CAIR), 70 FR 25162 (May 12, 2005).

⁸ See Notice of Availability of the Environmental Protection Agency’s Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

Step 1 of the 4-step interstate transport framework.¹³

Since the release of the modeling data shared in the March 2018 memorandum, EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.*, 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project.¹⁴ This collaborative project was a multi-year joint effort by EPA, MJOs, and states to develop a new, more recent emissions platform for use by EPA and states in regulatory modeling as an improvement over the dated 2011-based platform that EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the Notice of Proposed Rulemaking for the Revised CSAPR Update, EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.¹⁵ Although the Revised CSAPR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform are also useful for identifying downwind ozone problems and linkages with respect to the 2015 8-hour ozone NAAQS.¹⁶

Following the Revised CSAPR Update final rule, EPA made further updates to the 2016 emissions platform to include mobile emissions from EPA's Motor Vehicle Emission Simulator (MOVES) model¹⁷ and updated emissions projections for electric generating units (EGUs) that reflect the emissions reductions from the Revised CSAPR Update, recent information on plant

closures, and other sector trends. The construct of the updated emissions platform, 2016v2, is described in the Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform technical support document (TSD) for this proposed rule and is included in Docket No. EPA-HQ-OAR-2021-0663. EPA performed air quality modeling of the 2016v2 emissions using the most recent public release version of the Comprehensive Air Quality Modeling with Extensions (CAMx) photochemical modeling, version 7.10.¹⁸ EPA proposes to primarily rely on modeling based on the updated and newly available 2016v2 emissions platform in evaluating these submissions with respect to Steps 1 and 2 of the 4-step interstate transport framework. By using the updated modeling results, EPA is using the most current and technically appropriate information for this proposed rulemaking. Section II of this notice and the Air Quality Modeling TSD included in Docket No. EPA-HQ-OAR-2021-0663 for this proposal contain additional detail on the modeling performed using the 2016v2 emissions modeling.

In this notice, EPA is accepting public comment on this updated 2023 modeling, which uses the 2016v2 emissions platform. Details on the air quality modeling and the methods for projecting design values and determining contributions in 2023 are described in the Air Quality Modeling TSD for 2015 8-hour ozone NAAQS Transport SIP Proposed Actions. Comments on EPA's air quality modeling should be submitted in Docket No. EPA-R04-OAR-2021-0841. Comments are not being accepted in Docket No. EPA-HQ-OAR-2021-0663.

States may have chosen to rely on the results of EPA modeling and/or alternative modeling performed by states or Multi-Jurisdictional Organizations (MJOs) to evaluate downwind air quality problems and contributions as part of their submissions. In Section II, EPA evaluates how Alabama, Mississippi, and Tennessee used air quality modeling information in their submissions.

D. EPA's Approach to Evaluating Interstate Transport SIPs for the 2015 8-Hour Ozone NAAQS

EPA proposes to apply a consistent set of policy judgments across all states for purposes of evaluating interstate transport obligations and the

approvability of interstate transport SIP submittals for the 2015 8-hour ozone NAAQS. These policy judgments reflect consistency with relevant case law and past agency practice as reflected in CSAPR and related rulemakings. Nationwide consistency in approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO_x SIP Call have necessitated the application of a uniform framework of policy judgments in order to ensure an "efficient and equitable" approach. *See EME Homer City Generation, LP v. EPA*, 572 U.S. 489, 519 (2014).

In the March, August, and October 2018 memoranda, EPA recognized that states may be able to establish alternative approaches to addressing their interstate transport obligations for the 2015 8-hour ozone NAAQS that vary from a nationally uniform framework. EPA emphasized in these memoranda, however, that such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular state's submittal. In general, EPA continues to believe that deviation from a nationally consistent approach to ozone transport must be substantially justified and have a well-documented technical basis that is consistent with relevant case law. Where states submitted SIPs that rely on any such potential concepts as may have been identified or suggested in the past, EPA will evaluate whether the state adequately justified the technical and legal basis for doing so.

EPA notes that certain potential concepts included in an attachment to the March 2018 memorandum require unique consideration, and these ideas do not constitute agency guidance with respect to transport obligations for the 2015 8-hour ozone NAAQS. Attachment A to the March 2018 memorandum identified a "Preliminary List of Potential Flexibilities" that could potentially inform SIP development.¹⁹ However, EPA made clear in that attachment that the list of ideas were not suggestions endorsed by the Agency but rather "comments provided in various forums" on which EPA sought "feedback from interested stakeholders."²⁰ Further, Attachment A stated, "EPA is not at this time making any determination that the ideas discussed below are consistent with the requirements of the CAA, nor is EPA specifically recommending that states

¹³ See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 ("August 2018 memorandum"), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018 ("October 2018 memorandum"), available in Docket No. EPA-HQ-OAR-2021-0663 or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>.

¹⁴ The results of this modeling, as well as the underlying modeling files, are included in Docket No. EPA-HQ-OAR-2021-0663.

¹⁵ See 85 FR 68964, 68981 (October 30, 2020).

¹⁶ See the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in Docket No. EPA-HQ-OAR-2021-0663.

¹⁷ Additional details and documentation related to the MOVES3 model can be found at <https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves>.

¹⁸ Ramboll Environment and Health, January 2021, www.camx.com.

¹⁹ March 2018 memorandum, Attachment A.

²⁰ *Id.* at A-1.

use these approaches.”²¹ Attachment A to the March 2018 memorandum, therefore, does not constitute agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. To the extent states sought to develop or rely on these ideas in support of their SIP submittals, EPA will thoroughly review the technical and legal justifications for doing so.

The remainder of this section describes the EPA’s proposed framework with respect to analytic year, definition of nonattainment and maintenance receptors, selection of contribution threshold, and multifactor control strategy assessment.

1. Selection of Analytic Year

In general, the states and EPA must implement the interstate transport provision in a manner “consistent with the provisions of [title I of the CAA.]” See CAA section 110(a)(2)(D)(i). This requires, among other things, that these obligations are addressed consistently with the timeframes for downwind areas to meet their CAA obligations. With respect to ozone NAAQS, under CAA section 181(a), this means obligations must be addressed “as expeditiously as practicable” and no later than the schedule of attainment dates provided in CAA section 181(a)(1).²² Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin v. EPA*, remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). See 938 F.3d 303, 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland v. EPA* that cited the *Wisconsin* decision in holding that EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for EPA’s denial of a petition under CAA section 126(b). *Maryland v. EPA*, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020). The court noted that “section 126(b) incorporates

the Good Neighbor Provision,” and, therefore, “EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the next downwind attainment deadline. Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.” *Id.* at 1204 (emphasis added). EPA interprets the court’s holding in *Maryland* as requiring the states and the Agency, under the good neighbor provision, to assess downwind air quality as expeditiously as practicable and no later than the next applicable attainment date,²³ which is now the Moderate area attainment date under CAA section 181 for ozone nonattainment. The Moderate area attainment date for the 2015 8-hour ozone NAAQS is August 3, 2024.²⁴ EPA believes that 2023 is now the appropriate year for analysis of interstate transport obligations for the 2015 8-hour ozone NAAQS, because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024, Moderate area attainment date for the 2015 8-hour ozone NAAQS.

EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 8-hour ozone NAAQS was August 3, 2021. Under the *Maryland* holding, any necessary emissions reductions to satisfy interstate transport obligations should have been implemented by no later than this date. At the time of the statutory deadline to submit interstate transport SIPs (October 1, 2018), many states relied upon EPA modeling of the year 2023, and no state provided an alternative analysis using a 2021 analytic year (or the prior 2020 ozone season). However, EPA must act on SIP submittals using the information available at the time it takes such action. In this circumstance, EPA does not believe it would be appropriate to evaluate states’ obligations under CAA section 110(a)(2)(D)(i)(I) as of an attainment date that is wholly in the

past, because the Agency interprets the interstate transport provision as forward looking. See 86 FR 23054, 23074; see also *Wisconsin*, 938 F.3d at 322. Consequently, in this proposal EPA will use the analytical year of 2023 to evaluate each state’s CAA section 110(a)(2)(D)(i)(I) SIP submission with respect to the 2015 8-hour ozone NAAQS.

2. Step 1 of the 4-Step Interstate Transport Framework

In Step 1, EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. Where EPA’s analysis shows that a site does not fall under the definition of a nonattainment or maintenance receptor, that site is excluded from further analysis under EPA’s 4-step interstate transport framework. For sites that are identified as a nonattainment or maintenance receptor in 2023, EPA proceeds to the next step of the 4-step interstate transport framework by identifying the upwind state’s contribution to those receptors.

EPA’s approach to identifying ozone nonattainment and maintenance receptors in this action is consistent with the approach used in previous transport rulemakings. EPA’s approach gives independent consideration to both the “contribute significantly to nonattainment” and the “interfere with maintenance” prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit’s direction in *North Carolina v. EPA*.²⁵

For the purpose of this proposal, EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that EPA projects will be in nonattainment in the future analytic year (*i.e.*, 2023).²⁶

In addition, in this proposal, EPA identifies a receptor to be a “maintenance” receptor for purposes of

²¹ *Id.*

²² For attainment dates for the 2015 8-hour ozone NAAQS, refer to CAA section 181(a), 40 CFR 51.1303, and Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

²³ EPA notes that the court in *Maryland* did not have occasion to evaluate circumstances in which EPA may determine that an upwind linkage to a downwind air quality problem exists at Steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. See *Wisconsin*, 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the interstate transport provision.

²⁴ See CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

²⁵ See *North Carolina v. EPA*, 531 F.3d 896, 910–11 (D.C. Cir. 2008) (holding that EPA must give “independent significance” to each prong of CAA section 110(a)(2)(D)(i)(I)).

²⁶ See 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. See 70 FR at 25241, 25249 (January 14, 2005); see also *North Carolina*, 531 F.3d at 913–14 (affirming as reasonable EPA’s approach to defining nonattainment in CAIR).

defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 136 (D.C. Cir. 2015).²⁷ Specifically, EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the “maximum” future design value at each receptor based on a projection of the maximum measured design value over the relevant period. EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.*, ozone conducive meteorology). EPA also recognizes that previously experienced meteorological conditions (*e.g.*, dominant wind direction, temperatures, air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area’s ability to maintain the NAAQS.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, the EPA often uses the term “maintenance-only” to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described above, the EPA identifies “maintenance-only” receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as “maintenance-only” receptors, even if they are currently measuring nonattainment based on the most recent official design values.

3. Step 2 of the 4-Step Interstate Transport Framework

In Step 2, EPA quantifies the contribution of each upwind state to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each state to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a state’s contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.*, 0.70 ppb for the 2015 8-hour ozone NAAQS), the upwind state is not “linked” to a downwind air quality problem, and EPA, therefore, concludes that the state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state’s contribution equals or exceeds the 1 percent threshold, the state’s emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed “significant” and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

EPA is proposing to rely in the first instance on the 1 percent threshold for the purpose of evaluating a state’s contribution to nonattainment or maintenance of the 2015 8-hour ozone NAAQS (*i.e.*, 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS. EPA continues to find 1 percent to be an appropriate threshold. For ozone, as EPA found in the CAIR, CSAPR, and CSAPR Update, a portion of the nonattainment problems from anthropogenic sources in the U.S. result from the combined impact of relatively small contributions from many upwind states, along with contributions from in-state sources and, in some cases, substantially larger contributions from a subset of particular upwind states. EPA’s analysis shows that much of the ozone transport problem being analyzed in this proposed rule is still the result of the collective impacts of contributions from many upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent

of the NAAQS as the screening metric to evaluate collective contribution to many upwind states also allows EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. *See* 81 FR at 74518; *see also* 86 FR at 23085 (reviewing and explaining rationale from CSAPR, 76 FR at 48237–38, for selection of 1 percent threshold).

(a) EPA’s Experience With Alternative Step 2 Thresholds

EPA’s August 2018 memorandum recognized that in certain circumstances, a state may be able to establish that an alternative contribution threshold of 1 ppb is justifiable. Where a state relies on this alternative threshold, and where that state determined that it was not linked at Step 2 using the alternative threshold, EPA will evaluate whether the state provided a technically sound assessment of the appropriateness of using this alternative threshold based on the facts and circumstances underlying its application in the particular SIP submission.

EPA here shares further evaluation of its experience since the issuance of the August 2018 memorandum regarding use of alternative thresholds at Step 2. This experience leads the Agency to now believe it may not be appropriate to continue to attempt to recognize alternative contribution thresholds at Step 2. The August 2018 memorandum stated that “it may be reasonable and appropriate” for states to rely on an alternative threshold of 1 ppb threshold at Step 2.²⁸ (The memorandum also indicated that any higher alternative threshold, such as 2 ppb, would likely not be appropriate.) However, EPA also provided that “air agencies should consider whether the recommendations in this guidance are appropriate for each situation.” Following receipt and review of 49 good neighbor SIP submittals for the 2015 8-hour ozone NAAQS, EPA’s experience has been that nearly every state that attempted to rely on a 1 ppb threshold did not provide sufficient information and analysis to support a determination that an alternative threshold was reasonable or appropriate for that state.

For instance, in nearly all submittals, the states did not provide EPA with analysis specific to their state or the receptors to which its emissions are potentially linked. In one case, the proposed approval of Iowa’s SIP submittal, EPA expended its own

²⁷ *See* 76 FR 48208 (August 8, 2011). The CSAPR Update and Revised CSAPR Update also used this approach. *See* 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

²⁸ *See* August 2018 memorandum at 4.

resources to attempt to supplement the information submitted by the state, in order to more thoroughly evaluate the state-specific circumstances that could support approval.²⁹ It was at EPA's sole discretion to perform this analysis in support of the state's submittal, and the Agency is not obligated to conduct supplemental analysis to fill the gaps whenever it believes a state's analysis is insufficient. The Agency no longer intends to undertake supplemental analysis of SIP submittals with respect to alternative thresholds at Step 2 for purposes of the 2015 8-hour ozone NAAQS.

Furthermore, EPA's experience since 2018 is that allowing for alternative Step 2 thresholds may be impractical or otherwise inadvisable for a number of additional policy reasons. For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. Based on its review of submittals to-date and after further consideration of the policy implications of attempting to recognize an alternative Step 2 threshold for certain states, the Agency now believes the attempted use of different thresholds at Step 2 with respect to the 2015 8-hour ozone NAAQS raises substantial policy consistency and practical implementation concerns.³⁰ The availability of different thresholds at Step 2 has the potential to result in inconsistent application of good neighbor obligations based solely on the strength of a state's implementation plan submittal at Step 2 of the 4-step interstate transport framework. From the perspective of ensuring effective regional implementation of good neighbor obligations, the more important analysis is the evaluation of the emissions reductions needed, if any, to address a state's significant contribution after consideration of a multifactor analysis at Step 3, including a detailed evaluation that considers air quality factors and cost. Where alternative thresholds for purposes of Step 2 may be "similar" in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of

an alternative threshold would allow certain states to avoid further evaluation of potential emission controls while other states must proceed to a Step 3 analysis. This can create significant equity and consistency problems among states.

Further, it is not clear that national ozone transport policy is best served by allowing for less stringent thresholds at Step 2. EPA recognized in the August 2018 memorandum that there was some similarity in the amount of total upwind contribution captured (on a nationwide basis) between 1 percent and 1 ppb. However, EPA notes that while this may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3 (e.g., roughly 7 percent of total upwind state contribution was lost according to the modeling underlying the August 2018 memorandum;³¹ in EPA's updated modeling, the amount lost is 5 percent). Considering the core statutory objective of ensuring elimination of all significant contribution to nonattainment or interference of the NAAQS in other states and the broad, regional nature of the collective contribution problem with respect to ozone, there does not appear to be a compelling policy imperative in allowing some states to use a 1 ppb threshold while others rely on a 1 percent of the NAAQS threshold.

Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less stringent ozone NAAQS), is also important. Continuing to use a 1 percent of NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, so as to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport. *See* 76 FR 48208, 48237–38 (August 8, 2011).

Therefore, notwithstanding the August 2018 memorandum's recognition of the potential viability of alternative Step 2 thresholds, and in particular, a potentially applicable 1 ppb threshold, EPA's experience since the issuance of that memorandum has revealed substantial programmatic and policy difficulties in attempting to implement this approach. Nonetheless, EPA is not at this time rescinding the August 2018 memorandum. As

discussed further below, the basis for disapproval of Alabama, Mississippi, and Tennessee's SIP submissions with respect to the Step 2 analysis is, in the Agency's view, warranted even under the terms of the August 2018 memorandum. EPA invites comment on this broader discussion of issues associated with alternative thresholds at Step 2. Depending on comment and further evaluation of this issue, EPA may determine to rescind the August 2018 memorandum in the future.

4. Step 3 of the 4-Step Interstate Transport Framework

Consistent with EPA's longstanding approach to eliminating significant contribution or interference with maintenance, at Step 3, states linked at Steps 1 and 2 are generally expected to prepare a multifactor assessment of potential emissions controls. EPA's analysis at Step 3 in prior Federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions that may be achieved by requiring such controls (if applied across all linked upwind states), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a state is linked; other factors may potentially be relevant if adequately supported. In general, where EPA's or alternative air quality and contribution modeling establishes that a state is linked at Steps 1 and 2, it will be insufficient at Step 3 for a state merely to point to its existing rules requiring control measures as a basis for approval. In general, the emissions-reducing effects of all existing emissions control requirements are already reflected in the air quality results of the modeling for Steps 1 and 2. If the state is shown to still be linked to one or more downwind receptor(s), states must provide a well-documented evaluation determining whether their emissions constitute significant contribution or interference with maintenance by evaluating additional available control opportunities by preparing a multifactor assessment. While EPA has not prescribed a particular method for this assessment, EPA expects states at a minimum to present a sufficient technical evaluation. This would typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no

²⁹ Air Plan Approval; Iowa; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard, 85 FR 12232 (March 2, 2020). The Agency received adverse comment on this proposed approval and has not taken final action with respect to this proposal.

³⁰ EPA notes that Congress has placed on EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. *See* CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

³¹ *See* August 2018 memorandum at 4.

additional emissions controls should be required.³²

5. Step 4 of the 4-Step Interstate Transport Framework

At Step 4, states (or EPA) develop permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. For a state linked at Steps 1 and 2 to rely on an emissions control measure at Step 3 to address its interstate transport obligations, that measure must be included in the state's implementation plan so that it is permanent and federally enforceable. See CAA section 110(a)(2)(D) ("Each such [SIP] shall . . . contain adequate provisions . . ."). See also CAA section 110(a)(2)(A); *Committee for a Better Arvin v. EPA*, 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by a state to meet CAA requirements must be included in the SIP).

II. SIP Submissions and EPA's Evaluation

A. Alabama

The following section provides information related to Alabama's SIP submission addressing interstate transport requirements for the 2015 8-hour ozone NAAQS, and EPA's analysis of Alabama's submission.

1. Summary of Alabama's 2015 Ozone Interstate Transport SIP Submission

On August 20, 2018,³³ Alabama submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) good neighbor interstate transport requirements for the 2015 8-hour ozone NAAQS.³⁴ The SIP submission provided Alabama's analysis of its impact to downwind states and concluded that emissions from the State will not significantly contribute to nonattainment or interfere with

maintenance of the 2015 8-hour ozone NAAQS in other states, based on modeling results included in EPA's March 2018 memorandum. Alabama's submission relied on the results of EPA's modeling of 2023 using a 2011 base year, as contained in the March 2018 memorandum (which the State attached to its submittal), to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in the State at Step 1 of the 4-step framework.³⁵

Alabama Department of Environmental Management (ADEM) reviewed this modeling, concurred with the results, and determined that the future year projections were appropriate for the purposes of evaluating Alabama's impact on nonattainment and maintenance receptors in other states at Step 1. Alabama used this information to find that emissions from Alabama would not contribute above 1 percent of the NAAQS at any projected nonattainment or maintenance receptors at Step 2 of the 4-step framework (using EPA's approach to defining such receptors).

Alabama's August 20, 2018, submittal also identified existing SIP-approved regulations and Federal programs³⁶ that ADEM noted regulate ozone-precursor emissions from sources in the State, including CSAPR trading programs.³⁷ Alabama's submission acknowledges that CSAPR does not address interstate transport for the 2015 ozone standard but does provide residual NO_x emissions reductions and notes the adoption of CSAPR NO_x ozone season trading programs into the Alabama SIP

³⁵ EPA notes that Alabama's SIP submission is not organized around EPA's 4-step framework for assessing good neighbor obligations, but EPA summarizes the submission using that framework for clarity here.

³⁶ Alabama's submission cites the following SIP approved regulations: Administrative Code Rule 335–3–6, "Control of Organic Emissions", 335–3–8, "Control of Nitrogen Oxides Emissions", 335–3–14–.01, "General Provisions", 335–3–14–.02, "Permit Procedures", 335–3–14–.03, "Standards for Granting Permits", 335–3–14–.04, "Air Permits Authorizing Construction in or Near Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)]" and 335–3–14–.05, "Air Permits Authorizing Construction in or Near Nonattainment Areas." Alabama's Submission cites the following Federal Rules: EPA's Tier 1 and 2 mobile source rules, EPA's nonroad Diesel Rule, EPA's 2007 Heavy-duty Highway Rule, New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and CSAPR.

³⁷ Alabama's SIP references CSAPR, which covers the NO_x ozone season trading program established in EPA's 2011 CSAPR, 76 FR 48208 (August 8, 2011). In addition, Alabama's submittal includes a reference to the SIP-approved rules that adopted the CSAPR Update, 81 FR 74504 (October 26, 2016). See 82 FR 46674 (October 6, 2017).

on August 31, 2016, and October 6, 2017.³⁸ Alabama notes that the implementation of the existing SIP-approved regulations and Federal programs provide for a decline in ozone precursors emissions in the State. Alabama also stated that ozone-precursor emissions would continue to decline in the State.

Based on the information from Alabama's transport SIP, ADEM concluded that emissions from Alabama sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state.

2. Prior Notices Related to Alabama's SIP Submission

Previously, EPA proposed approval of Alabama's interstate transport provisions for the 2015 8-hour ozone NAAQS as addressed in Alabama's August 20, 2018 SIP submission and based on the contribution modeling provided in the March 2018 memorandum. See 84 FR 71854 (December 30, 2019). When EPA completed updated modeling of 2023 in 2020 using a 2016-based emissions modeling platform (2016v1), it became evident that Alabama was projected to be linked to downwind nonattainment and maintenance receptors (see footnote 40 below). As a result, EPA deferred acting on Alabama's SIP submittal when it published a supplemental proposal in 2021 to approve four other southeastern states' good neighbor SIP submissions using the updated 2023 modeling. See 86 FR 37942, 37943 (July 19, 2021). The updated 2023 modeling using an updated 2016-based emissions modeling platform (2016v2) confirms the prior 2016-based modeling of 2023 in that it continues to show Alabama is linked to at least one downwind nonattainment or maintenance receptor. Based on this updated modeling using the 2016-based emissions modeling platform, discussed in section I.C above, EPA is now withdrawing its 2019 proposed approval on Alabama's September 13, 2018, interstate transport SIP as published on December 30, 2019, at 84 FR 71854.

3. EPA's Evaluation of Alabama's 2015 Ozone Interstate Transport SIP Submission

EPA is proposing to find that Alabama's August 20, 2018, SIP submission does not meet Alabama's obligations with respect to prohibiting emissions that contribute significantly

³⁸ See 81 FR 59869 (August 31, 2016), 82 FR 46674 (October 6, 2017) (adopting Alabama Administrative Code Rule 335–3–8, "Control of Nitrogen Oxides Emissions" and adopting revisions to Rule 335–3–8 into the SIP).

³² As examples of general approaches for how such an analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51; CSAPR, 76 FR 48208, 48246–63; CAIR, 70 FR 25162, 25195–229; or the NO_x SIP Call, 63 FR 57356, 57399–405. See also Revised CSAPR Update, 86 FR 23054, 23086–23116. Consistently across these rulemakings, EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

³³ The August 20, 2018, SIP submission provided by ADEM was received by EPA on August 27, 2018.

³⁴ On August 20, 2018, Alabama submitted multiple SIP revisions under one cover letter. EPA is only acting on Alabama's 2015 ozone good neighbor interstate transport SIP requirements in this notice.

to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state based on EPA's evaluation of the SIP submission using the 4-step interstate transport framework, and EPA is therefore proposing to disapprove Alabama's SIP submission.

(a) Results of EPA's Step 1 and Step 2 Modeling and Findings for Alabama

As described in section I, EPA performed updated air quality modeling to project design values and contributions for 2023. These data were examined to determine if Alabama contributes at or above the threshold of 1 percent of the 2015 8-hour ozone

NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. As shown in Table 1, the data³⁹ indicate that in 2023, emissions from Alabama contribute greater than 1 percent of the standard to a nonattainment receptor in Harris County, Texas (ID#: 482010055) and a maintenance-only receptor in Denton County, Texas (ID#: 481210034).⁴⁰

TABLE 1—ALABAMA LINKAGE RESULTS BASED ON EPA UPDATED 2023 MODELING

Receptor ID	Location	Nonattainment/maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	Alabama contribution (ppb)
482010055	Harris County, Texas	Nonattainment	71.0	72.0	0.88
481210034	Denton County, Texas	Maintenance	70.4	72.2	0.71

(b) Evaluation of Information Provided by Alabama Regarding Step 1

At Step 1 of the 4-step interstate transport framework, Alabama relied on EPA modeling included in the March 2018 memorandum to identify nonattainment and maintenance receptors in 2023. As described in section II.A.3.a, EPA has recently updated this modeling using the most current and technically appropriate information. EPA proposes to rely on EPA's most recent modeling to identify nonattainment and maintenance receptors in 2023. That information establishes that there are two receptors to which Alabama is projected to be linked in 2023.

(c) Evaluation of Information Provided by Alabama Regarding Step 2

At Step 2 of the 4-step interstate transport framework, Alabama relied on EPA modeling released in the March 2018 memorandum to identify upwind state linkages to nonattainment and maintenance receptors in 2023. As described in section I.C of this notice, EPA has recently updated modeling to identify upwind state contributions to nonattainment and maintenance receptors in 2023. In this action, EPA proposes to rely on the Agency's most recently available modeling to identify upwind contributions and "linkages" to downwind air quality problems in 2023 using a threshold of 1 percent of the NAAQS. See section I.D for a general explanation of the use of 1 percent of the NAAQS.

As shown in Table 1, updated EPA modeling identifies Alabama's maximum contribution to downwind nonattainment and maintenance receptors as greater than 1 percent of the standard (*i.e.*, 0.70 ppb). Therefore, the State is linked to a downwind air quality problem at Steps 1 and 2. Because the entire technical basis for Alabama's interstate transport SIP submission is that Alabama is not linked at Step 2, and thus Alabama's SIP contains the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state, EPA proposes to disapprove Alabama's SIP submission based on EPA's finding that such a linkage does exist.⁴¹

Although Alabama did not rely on the 1 ppb threshold in its SIP submittal, EPA recognizes that the most recently available EPA modeling at the time Alabama submitted its SIP submittal indicated that Alabama did not contribute above 1 percent of the NAAQS to a projected downwind nonattainment or maintenance receptor. Therefore, Alabama may not have considered analyzing the reasonableness and appropriateness of a 1 ppb threshold at Step 2 of the 4-step interstate transport framework per the August 2018 memorandum. However, EPA's August 2018 memorandum provided that whether use of a 1 ppb threshold is appropriate must be based on an evaluation of state-specific circumstances, and no such evaluation

was included in the submittal. EPA's experience with the alternative Step 2 thresholds is further discussed in section I.D.3.a. As discussed there, EPA is considering withdrawing the August 2018 memorandum.

(d) Evaluation of Information Provided by Alabama Regarding Step 3

At Step 3 of the 4-step interstate transport framework, a state's emissions are further evaluated, in light of multiple factors, including air quality and cost considerations, to determine what, if any, emissions significantly contribute to nonattainment or interfere with maintenance and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

To effectively evaluate which emissions in the state should be deemed "significant" and therefore prohibited, states generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential, additional emissions reduction opportunities and resulting downwind air quality improvements. EPA has consistently applied this general approach (*i.e.*, Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be "significant" (or interfere with maintenance) in each of its prior Federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. See *EME Homer City*,

³⁹ The ozone design values and contributions at individual monitoring sites nationwide are provided in the file "2016v2_DVs_state_contributions.xlsx" which is included in Docket No. EPA-HQ-OAR-2021-0663.

⁴⁰ These modeling results are consistent with the results of a prior round of 2023 modeling using the

2016v1 emissions platform which became available to the public in the fall of 2020 in the Revised CSAPR Update, as noted in section I. That modeling showed that Alabama had a maximum contribution greater than 0.70 ppb to at least one nonattainment or maintenance-only receptor in 2023. These modeling results are included in the file "Ozone Design Values And Contributions Revised CSAPR

Update.xlsx" in Docket No. EPA-HQ-OAR-2021-0663.

⁴¹ To the extent that Alabama's submittal included information regarding emissions controls that could be interpreted as relevant to a step 3 analysis, EPA evaluates that information in section II.A.3.d.

572 U.S. 489, 519 (2014). While EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner EPA has done in its prior regional transport rulemakings, state implementation plans addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit “any source or other type of emissions activity within the State” from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, states must complete something similar to EPA’s analysis (or an alternative approach to defining “significance” that comports with the statute’s objectives) to determine whether and to what degree emissions from a state should be “prohibited” to eliminate emissions that will “contribute significantly to nonattainment in or interfere with maintenance of” the NAAQS in any other state. Alabama did not conduct such an analysis in its SIP submission.

Based on Alabama’s finding that emissions from Alabama do not contribute above 1 percent of the NAAQS at any monitors that are projected to be in nonattainment or maintenance, the SIP submission identified SIP-approved provisions and Federal programs in the context that no further emissions reductions were necessary, and determined that the SIP contained adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state. However, the State did not analyze total ozone precursors that continue to be emitted from sources and other emissions activity within the State, evaluate the emissions reduction potential of any additional controls using cost or other metrics, nor evaluate any resulting downwind air quality improvements that could result from such controls.

Among the Federal programs referenced in Alabama’s submission was the NO_x ozone season trading program of CSAPR for the 2008 ozone standard, which ADEM adopted into the Alabama SIP.⁴² This reference suggests that Alabama may have intended to rely on its electric generating units (EGUs) being subject to CSAPR Update (which reflected a stringency at the nominal marginal cost threshold of \$1,400/ton (in 2011 dollars) for the 2008 8-hour ozone NAAQS) to argue that it has

already implemented all cost-effective emissions reductions at EGUs.

EPA does not support the concept that reliance on CSAPR Update is appropriate to conclude that no further emissions reductions are necessary under Step 3 for the 2015 8-hour ozone NAAQS. First, CSAPR Update did not regulate non-electric generating units (non-EGUs), and thus this analysis, even for the 2008 ozone NAAQS, was incomplete, and EPA acknowledged at the time that CSAPR Update was not a full remedy for interstate transport under that NAAQS. *See Wisconsin*, 938 F.3d at 318–20. Second, relying on CSAPR Update’s (or any other CAA program’s) determination of cost-effectiveness without further Step 3 analysis is not approvable. Cost-effectiveness must be assessed in the context of the specific CAA program; assessing cost-effectiveness in the context of ozone transport should reflect a more comprehensive evaluation of the nature of the interstate transport problem, the total emissions reductions available at several cost thresholds, and the air quality impacts of the reductions at downwind receptors. While EPA has not established a benchmark cost-effectiveness value for 2015 8-hour ozone NAAQS interstate transport obligations, it is reasonable to expect control measures or strategies to address interstate transport under this NAAQS to reflect higher marginal control costs because the 2015 8-hour ozone NAAQS is a more stringent and more protective air quality standard. As such, the marginal cost threshold of \$1,400/ton for the CSAPR Update (which addresses the 2008 ozone 8-hour NAAQS and is in 2011 dollars) is not an appropriate cost threshold and cannot be approved as a benchmark to use for interstate transport SIP submissions for the 2015 8-hour ozone NAAQS. In addition, the updated EPA modeling captures all existing CSAPR trading programs in the baseline, and that modeling confirms that these control programs were not sufficient to eliminate the Alabama’s linkage at Steps 1 and 2 under the 2015 8-hour ozone NAAQS even if the CSAPR Update provisions had been adopted into Alabama’s SIP. The State was therefore obligated at Step 3 to assess *additional* control measures using a multifactor analysis.

As mentioned above, EPA has newly available information that indicates sources in Alabama are linked to downwind air quality problems for the 2015 ozone standard. Therefore, EPA proposes to disapprove Alabama’s August 20, 2018, interstate transport SIP submission on the separate, additional basis that the SIP submittal did not

assess additional emissions control opportunities.

(e) Evaluation of Information Provided by Alabama Regarding Step 4

Step 4 of the 4-step interstate transport framework calls for development of permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. As mentioned in section II.A.3.d, Alabama’s SIP submission did not contain an evaluation of additional emissions control opportunities (or establish that no additional controls are required), thus, no information was provided at Step 4. As a result, EPA proposes to disapprove Alabama’s August 20, 2018, submittal on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(d)(i)(I).

4. Conclusion for Alabama

Based on EPA’s evaluation of Alabama’s SIP submission and after consideration of updated EPA modeling using the 2016-based emissions modeling platform, EPA is proposing to find that the 2015 8-hour ozone NAAQS good neighbor interstate transport portion of Alabama’s August 20, 2018, SIP submission addressing CAA section 110(a)(2)(D)(i)(I) does not meet the State’s interstate transport obligations because it fails to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state.

B. Mississippi

The following section provides information related to Mississippi’s SIP submission addressing interstate transport requirements for the 2015 8-hour ozone NAAQS, and EPA’s analysis of Mississippi’s submission.

1. Summary of Mississippi’s 2015 Ozone Interstate Transport SIP Submission

On September 3, 2019, the Mississippi Department of Environmental Quality (MDEQ) submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 8-hour ozone NAAQS.⁴³ The SIP

⁴² See 81 FR 59869 (August 31, 2016), 82 FR 46674 (October 6, 2017) (adopting Alabama Administrative Code Rule 335–3–8, “Control of Nitrogen Oxides Emissions” and adopting revisions to Rule 335–3–8 into the SIP).

⁴³ The September 3, 2019, SIP submission provided by MDEQ was received by EPA on September 6, 2019.

submission provided Mississippi's analysis of its impact to downwind states and concluded that emissions from the State will not significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states.

MDEQ's submission relied on the results of EPA's modeling for the 2015 8-hour ozone NAAQS, contained in the March 2018 memorandum, to identify projected downwind nonattainment and maintenance receptors and contribution linkages in 2023 that may be impacted by emissions from sources in Mississippi at Steps 1 and 2 of the 4-step interstate transport framework,⁴⁴ respectively. MDEQ reviewed EPA's March 2018 modeling and found that the modeled contributions for Mississippi were below 1 percent of the NAAQS for all nonattainment and maintenance receptors, except the Deer Park nonattainment receptor in Harris County, Texas (Monitor ID: 482011039). The SIP submission identified Mississippi as linked to the Deer Park receptor with an upwind contribution of 0.79 ppb.

In its submittal, MDEQ discussed EPA's August 2018 memorandum, explaining that 0.79 ppb is 1.12 percent of the 2015 8-hour ozone NAAQS, which is greater than the 1 percent contribution threshold of 0.70 ppb but less than a 1 ppb alternative contribution threshold. The SIP submission also states that the Deer Park receptor design value was projected to be greater than the 2015 ozone standard in 2023, but that the actual 2015–2017 design value was below the NAAQS at 68 ppb. Based on the modeling in the March 2018 memo, along with application of a 1 ppb alternative contribution threshold and information regarding 2015–2017 monitored values at the Deer Park receptor, MDEQ concluded that sources in Mississippi were not linked to downwind nonattainment or maintenance receptors at Step 2, and therefore, the State does not significantly contribute to nonattainment in another state for the 2015 ozone standard. Further, MDEQ stated that the SIP contains adequate provisions to prohibit sources and other types of emissions activities within the State from contributing to nonattainment in another state with respect to the 2015 8-hour ozone NAAQS.

In its submission, MDEQ treated the Deer Park receptor as a maintenance

receptor because the most recent measured design value at the time of its submission (*i.e.*, the 2017 design value of 68 ppb) was below the level of the NAAQS at this monitor. Based on MDEQ's interpretation of EPA's October 19, 2018, memorandum, the State eliminated the Deer Park monitor site in Harris County, Texas, as a maintenance receptor in 2023 (although EPA's modeling of 2023 released with the October 2017 memorandum had identified this monitoring site as a nonattainment receptor).

To support eliminating the Deer Park monitor as a receptor, MDEQ's demonstration included: (1) Evaluating ozone season temperatures in the period 2014–2017 in Harris County to determine if conditions were conducive for ozone formation; (2) assessing monitored ozone design values from 2011–2017 at the Deer Park monitor; and (3) reviewing ozone precursor emission trends in the Houston Area, Texas (statewide), and Mississippi (statewide). In its demonstration, MDEQ stated that temperatures in 2015 and 2016 were above average, and in 2014 and 2017 temperatures were near normal. Based on this information, MDEQ concluded that conditions were conducive to ozone formation during this three-year time period (*i.e.*, 2015 to 2017). MDEQ's submission also states that design values from 2011 to 2017 at the Deer Park receptor showed a downward trend and that design values have been meeting the 2015 8-hour ozone NAAQS since 2015. Further, according to the submittal, ozone precursor emissions in Texas and Mississippi both showed a downward trend based on data from 2008, 2011, and 2014. Based on the downward trend in emissions and the fact that the Deer Park monitor was measuring attainment in 2015, 2016, and 2017, MDEQ determined that the Deer Park receptor should be eliminated as a maintenance receptor. Thus, based on the elimination of the Deer Park receptor, along with application of a 1 ppb threshold, Mississippi concluded that the State did not significantly interfere with maintenance (prong 2) in another state for the 2015 ozone standard.

In summary, MDEQ concluded that sources in the State do not significantly contribute to nonattainment or interfere with maintenance in another state, that no further emission reductions were necessary, and that Mississippi's SIP contains adequate provisions to prevent sources and other types of emissions activities within the State from contributing significantly to nonattainment or interfering with maintenance in another state with

respect to the 2015 8-hour ozone NAAQS.

2. EPA's Evaluation of Mississippi's 2015 Ozone Interstate Transport SIP Submission

EPA is proposing to find that Mississippi's September 3, 2019, SIP submission does not meet Mississippi's obligations with respect to prohibiting emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state based on EPA's evaluation of the SIP submission using the 4-step interstate transport framework, and EPA is therefore proposing to disapprove Mississippi's submission.

(a) Evaluation of Information Provided by Mississippi Regarding Step 1

At Step 1 of the 4-step interstate transport framework, MDEQ relied on EPA modeling released in the March 2018 memorandum to identify nonattainment and maintenance receptors in 2023.

In its submittal, MDEQ attempted to utilize the October 2018 memorandum along with 2014 to 2017 ozone design values (the most recent data available at the time of submittal) to eliminate the Deer Park receptor in Harris County, Texas (Monitor ID: 482011039) as a maintenance receptor. Table 2 of the submittal correctly indicates that this monitoring site was a projected nonattainment receptor, not a maintenance-only receptor, in 2023 based on the EPA's modeling data included in the March 2018 memorandum. However, in its submittal, the State relied on the 2014 to 2017 design values at the Deer Park receptor (*i.e.*, 69 ppb, 67 ppb, and 68 ppb, respectively) as the basis for stating that this receptor met EPA's definition of a maintenance receptor. Based on this information, the State applied an alternative definition of a maintenance receptor utilizing the potential concepts included in the October 2018 memorandum. This memorandum included a description of the approach that EPA has historically used to identify maintenance-only receptors⁴⁵ and identified potential alternate ways to define maintenance receptors based on certain criteria suggested in the memorandum including an evaluation of meteorology conducive to ozone formation, review of ozone monitored concentrations, and precursor emissions trends.

⁴⁵ See section I.D, above for a discussion of EPA's approach to identify maintenance receptors.

⁴⁴ EPA notes that Mississippi's September 2, 2019, SIP submission is not organized around EPA's 4-step interstate transport framework for assessing good neighbor obligations, but EPA summarizes the submission using that framework for clarity here.

EPA recognized in the October 2018 memorandum that states could potentially, with sufficient justification, establish an approach to addressing maintenance receptors that gives independent significance to prong 2 in some manner different than EPA's approach. In addition, the October 2018 memorandum identified two potential concepts that states could use to identify maintenance receptors: (1) States may, in some cases, eliminate a site as a maintenance receptor if the site is currently measuring clean data, or (2) in some cases, use a design value from the base period that is not the maximum design value. For either of these alternative methods, to adequately consider areas struggling to meet the NAAQS, EPA also indicated that it expects states to include with their SIP demonstration technical analyses showing that the following three criteria are met:

- Meteorological conditions in the area of the monitoring site were conducive to ozone formation during the period of clean data or during the alternative base period design value used for projections;⁴⁶
- Ozone concentrations have been trending downward at the site since 2011 (and ozone precursor emissions of NO_x and VOC have also decreased); and
- Emissions are expected to continue to decline in the upwind and downwind states out to the attainment date of the receptor.

EPA's October 2018 memorandum explained that the intent of these analyses is to demonstrate that monitoring sites that would be identified as maintenance receptors under EPA's historical approach could nonetheless be shown to be very unlikely to violate the NAAQS in the future analytic year.

However, the analysis provided by Mississippi in its submission has not met the criteria laid out in the guidance. With respect to the first criterion (meteorological conditions), MDEQ assessed ozone design values at the Deer Park site in Houston from 2014 to 2017

and anomalies (*i.e.*, difference compared to the long-term mean) of average temperatures in June, July, and August, summarized from EPA's October 2018 memorandum, to determine whether particular summers had ozone-conducive or unconducive meteorology during the period of clean data. MDEQ stated that temperatures were above average in 2015 and 2016 when the Deer Park monitor measured ozone concentrations below the 2015 8-hour ozone NAAQS and near normal in 2014 and 2017. However, MDEQ's review of meteorological conditions in the vicinity of the Deer Park monitor was limited to temperature anomalies and did not discuss or consider how other meteorological factors identified in the October 2018 memorandum (such as humidity, solar radiation, vertical mixing, and/or other meteorological indicators such as cooling-degree days) confirm whether conditions affecting the monitor may have been conducive to ozone formation in 2015 and 2016 and unconducive in 2014 and 2017.

With respect to the second criterion, MDEQ's submission included information related to ozone design values and ozone precursors. Specifically, the submission included an assessment of ozone design values at the Deer Park monitor from 2011 to 2017, which showed a downward trend in ozone concentrations. However, MDEQ's SIP submission did not include a discussion of the 2018 design value, which showed a violation of the 2015 standard at 71 ppb, even though that data was available and could have been considered in the State's analysis at the time of the submission in 2019.⁴⁷ In addition, the 2019 and 2020 design values, 75 ppb and 78 ppb, respectively, also exceeded the NAAQS. The preliminary design value for 2021 is 74 ppb.⁴⁸ Although not available at the time of the SIP submission, these more recent data suggest a continuous trend in measured ozone concentrations above the 2015 ozone standard at the Deer Park monitor. Even though MDEQ's review of ozone monitoring data may have shown a decrease in measured concentration from 2011 to 2017, EPA notes a significant increase between the 2017 and 2018 4th highest daily maximum concentration, from 68 ppb to 85 ppb. MDEQ's SIP submission did not consider the 2018 4th highest daily maximum concentration as part of its

trends analysis even though the information was available at the time the SIP was submitted to EPA. Thus, at the time of the submission, the Deer Park monitor had a 3-year design value of 71 ppb, which violated the 70 ppb ozone standard. Thus, under the terms of the October 2018 memorandum, Mississippi's SIP submission does not adequately establish a basis for eliminating the Deer Park monitoring site as an ozone transport receptor.

MDEQ also assessed total ozone precursor emissions data in 2008, 2011, and 2014, which MDEQ claimed indicated a decrease in ozone precursor (NO_x and VOC) emissions in the Houston metropolitan statistical area, Texas (statewide), and Mississippi (statewide). While EPA acknowledges the general downward trends in NO_x and VOC emissions, the Deer Park monitor ozone concentrations design values through 2020 show recent measured ozone concentrations that exceed the 2015 ozone standard. Further, even accounting for emissions trends, EPA's latest air quality modeling, as presented below, shows that there are now three receptors to which Mississippi contributes in 2023, not just one. Thus, the apparent downward trend in ozone precursors in Texas and Mississippi alone cannot support elimination of either the Deer Park monitor as a receptor (under the information Mississippi relied on) or the three Texas receptors to which EPA now finds Mississippi to be contributing. See section II.B.2.c and Table 2 below for results of EPA's 2016v2 Step 1 and Step 2 modeling and findings for Mississippi.

With respect to the third criterion, MDEQ stated that, "[b]ased on national and regional emissions trends, and current regulations on point sources and mobile sources, emissions are expected to continue to decline in the upwind and downwind states." However, the State did not cite any specific regulations controlling sources of ozone precursors or mobile sources or quantify the NO_x emission reduction potential of current regulations for point and mobile sources.

Based on the reasons stated above, EPA does not believe Mississippi's SIP submission provided sufficient justification to eliminate the Deer Park monitor as a maintenance receptor.

(b) Evaluation of Information Provided by Mississippi Regarding Step 2

At Step 2 of the 4-step interstate transport framework, Mississippi relied on EPA's modeling released in the March 2018 memorandum to identify upwind state linkages to nonattainment and maintenance receptors in 2023.

⁴⁶ See Attachment A of EPA's October 2018 memorandum formation to assess whether particular summers had ozone-conducive or unconducive meteorology within the 10-year period 2008 through 2017. The memorandum states that meteorological conditions including temperature, humidity, winds, solar radiation, and vertical mixing affect the formation and transport of ambient ozone concentrations. The memorandum suggests generally that above average temperatures are an indication that meteorology is conducive to ozone formation and below average temperatures indicate that conditions are unconducive to ozone formation. Within a particular summer season, the degree that meteorology is conducive for ozone formation can vary from region to region and fluctuate with time within a particular region.

⁴⁷ The data are given in "2010_thru_2020 Ozone Design Values.xlsx," which is included in Docket No. EPA-HQ-OAR-2021-0663.

⁴⁸ This is based on preliminary 2021 data available from the Air Quality System (AQS) as of January 3, 2022. The design values for 2021 have not been certified by state agencies.

As described in section I.C of this notice, EPA has recently updated modeling to identify upwind state contributions to nonattainment and maintenance receptors in 2023. In this proposal, EPA relies on the Agency's most recently available modeling to identify upwind contributions and "linkages" to downwind air quality problems in 2023 using a threshold of 1 percent of the NAAQS. See section I.D for general explanation of the use of 1 percent of the NAAQS. As shown in Table 2, updated EPA modeling identifies Mississippi's maximum contribution to downwind nonattainment and maintenance receptors to be greater than 1 percent of the standard (*i.e.*, 0.70 ppb). Therefore, the State is linked to a downwind air quality problem at Steps 1 and 2.

MDEQ relied on EPA's August 2018 memorandum in an attempt justify using a 1 ppb alternative contribution threshold at Step 2 as a basis to assert that Mississippi would not be "linked" to any projected downwind nonattainment or maintenance receptors. As discussed in EPA's August 2018 memorandum, EPA had suggested that, with appropriate additional analysis, it may be reasonable for states to use a 1 ppb contribution threshold, as an alternative to a 1 percent threshold, at Step 2 of the 4-step interstate transport framework, for the purposes of identifying linkages to downwind receptors. However, based on EPA's updated modeling, the State is projected to contribute greater than both the 1 percent and alternative 1 ppb thresholds. While EPA does not, in this action, approve of the State's application of the 1 ppb threshold, based on its linkages greater than 1 ppb to projected downwind nonattainment or maintenance receptors, the State's use of this alternative threshold at Step 2 of the 4-step interstate framework is inconsequential to EPA's proposed action on this SIP.

In addition, MDEQ's SIP does not include a technical analysis to sufficiently justify use of an alternative 1 ppb threshold at the Deer Park monitor. Echoing EPA's August 2018 memorandum, MDEQ stated that the amount of upwind collective contribution captured with the 1 percent and 1 ppb thresholds is *generally* comparable. In this memorandum, EPA also determined

that by capturing a percentage of upwind state emissions comparable to the amount captured at 1 percent, the alternative threshold *may* be appropriate, indicating that a more determinative conclusion of appropriateness would require further analysis. In this regard, MDEQ did not provide any further technical justification to make that determination.

MDEQ also referred to an EPA Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program ("SILs Guidance") as additional justification for use of a 1 ppb threshold. However, MDEQ did not provide discussion or analysis containing information specific to Mississippi or the receptors to which its emissions are potentially linked, which is necessary to thoroughly evaluate the state-specific circumstances that could support approval. In addition, the State did not explain the relevance or applicability of a SILs Guidance to which it made reference. EPA's SILs guidance relates to a different provision of the CAA regarding implementation of the prevention of significant deterioration (PSD) permitting program, *i.e.*, a program that applies in areas that have been designated attainment⁴⁹ or unclassifiable for the NAAQS, and it is not applicable to the good neighbor provision, which requires states to eliminate significant contribution or interference with maintenance of the NAAQS at known and ongoing air quality problem areas in other states.

The analytical gaps identified indicate that the submittal's use of a 1 ppb threshold for the State is not approvable. EPA's experience with the

alternative Step 2 thresholds is further discussed in section I.D.3.a. As discussed there, EPA is considering withdrawing the August 2018 memorandum.

Despite the linkage EPA determines exists at Step 2, the State argued in its submittal that it should not be considered to significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. EPA finds that conclusion is not approvable at Steps 1 or 2. Therefore, based on EPA's evaluation of the information submitted by Mississippi, and based on EPA's most recent modeling results for 2023, EPA proposes to find that Mississippi is linked at Steps 1 and 2 and has an obligation to assess potential emissions reductions from sources or other emissions activity at Step 3 of the 4-step framework.

(c) Results of EPA's 2016v2 Step 1 and Step 2 Modeling and Findings for Mississippi

As described in section I, EPA performed air quality modeling using the 2016v2 emissions platform to project design values and contributions for 2023. These data were examined to determine if Mississippi contributes at or above the threshold of 1 percent of the 2015 8-hour ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. As shown in Table 2, the data⁵⁰ indicate that in 2023, emissions from Mississippi contribute greater than 1 percent of the standard to nonattainment or maintenance-only receptors in Denton County, Texas (Monitor ID: 481210034), Harris County, Texas (Monitor ID: 482010055), and Brazoria County, Texas (Monitor ID: 480391004).⁵¹ Note that each of these monitors is currently measuring nonattainment based on 2020 design values of 72 ppb, 76 ppb, and 73 ppb at the Denton County, Harris County, and Brazoria County receptors, respectively.

⁵⁰ The ozone design values and contributions at individual monitoring sites nationwide are provided in the file "2016v2_DVs_state_contributions.xlsx" which is included in Docket No. EPA-HQ-OAR-2021-0663.

⁵¹ These modeling results are consistent with the results of a prior round of 2023 modeling using the 2016v1 emissions platform that became available to the public in the fall of 2020 in the Revised CSAPR Update, as noted in section I.

⁴⁹ Pursuant to section 107(d) of the CAA, EPA must designate areas as either "nonattainment," "attainment," or "unclassifiable." Historically for ozone, the EPA has designated most areas that do not meet the definition of nonattainment as "unclassifiable/attainment." This category includes areas that have air quality monitoring data meeting the NAAQS and areas that do not have monitors but for which the EPA has no evidence that the areas may be violating the NAAQS or contributing to a nearby violation. In the designations for the 2015 ozone NAAQS, the EPA reversed the order of the label to be "attainment/unclassifiable" to better convey the definition of the designation category and so that the category is more easily distinguished from the separate unclassifiable category. An "attainment" designation is reserved for a previous nonattainment area that has been redesignated to attainment as a result of the EPA's approval of a CAA section 175A maintenance plan submitted by the state air agency.

TABLE 2—MISSISSIPPI LINKAGE RESULTS BASED ON EPA UPDATED 2023 MODELING

Receptor ID	Location	Nonattainment/ maintenance	2023 average design value (ppb)	2023 maximum design value (ppb)	Mississippi contribution (ppb)
481210034	Denton County, Texas	Maintenance	70.4	72.2	1.14
482010055	Harris County, Texas	Nonattainment	71.0	72.0	1.04
480391004	Brazoria County, Texas	Maintenance	70.1	72.3	0.92

(d) Evaluation of Information Provided by Mississippi Regarding Step 3

At Step 3 of the 4-step interstate transport framework, a state's emissions are further evaluated, in light of multiple factors, including air quality and cost considerations, to determine what, if any, emissions significantly contribute to nonattainment or interfere with maintenance and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

To effectively evaluate which emissions in the state should be deemed "significant," and therefore prohibited, states generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential, additional emissions reduction opportunities and resulting downwind air quality improvements. EPA has consistently applied this general approach (*i.e.*, Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be "significant" (or interfere with maintenance) in each of its prior Federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. *See EME Homer City*, 572 U.S. 489, 519 (2014). While EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner EPA has done in its prior regional transport rulemakings, state implementation plans addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit "any source or other type of emissions activity within the State" from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, states must complete something similar to the EPA's analysis (or an alternative approach to defining "significance" that comports with the statute's objectives) to determine whether and to what degree emissions from a state should be "prohibited" to eliminate emissions that will "contribute significantly to nonattainment in or interfere with maintenance of" the NAAQS in any other state. Mississippi did not conduct

such an analysis in its SIP submission. Mississippi did not include an accounting of sources or other emissions activity in the State along with an analysis of potential NO_x emissions control technologies, their associated costs, estimated emissions reductions, and downwind air quality improvements.

EPA's evaluation of Mississippi's submittal, in conjunction with its 2016-based modeling of 2023, indicates that ozone-precursor emissions from Mississippi are linked to downwind air quality problems for the 2015 ozone standard at Steps 1 and 2. However, Mississippi's SIP submittal does not include a Step 3 analysis. EPA proposes to find that Mississippi was required to analyze emissions from the sources and other emissions activity from within the State to determine whether its contributions were significant, and EPA proposes to disapprove its submission because Mississippi's submittal failed to do so.

(e) Evaluation of Information Provided by Mississippi Regarding Step 4

Step 4 of the 4-step interstate transport framework calls for development of permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. As mentioned previously, Mississippi's SIP submittal did not contain an evaluation of additional emission control opportunities (or establish that no additional controls are required), thus, no information was provided at Step 4. As a result, EPA proposes to disapprove Mississippi's submittal on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(d)(i)(I).

3. Conclusion for Mississippi

Based on EPA's evaluation of Mississippi's SIP submission, EPA is proposing to find that Mississippi's September 3, 2019, SIP submission

addressing CAA section 110(a)(2)(D)(i)(I) does not meet the State's interstate transport obligations because it fails to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state.

C. Tennessee

The following section provides information related to Tennessee's SIP submission addressing interstate transport requirements for the 2015 8-hour ozone NAAQS, and EPA's analysis of Tennessee's submission.

1. Summary of Tennessee's 2015 Ozone Interstate Transport SIP Submission

On September 13, 2018, Tennessee submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 8-hour ozone NAAQS.^{52 53} The SIP submission provided Tennessee's analysis of its impact to downwind states and concluded that emissions from the State will not significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states. Tennessee's submission relied on EPA's modeling results for the 2015 8-hour ozone NAAQS, contained in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in the State at Steps 1 and 2 of the 4-step framework.⁵⁴ The Tennessee Department of Environmental Control (TDEC) reviewed EPA's 2023 modeling, concurred with the results, and determined that EPA's future year NO_x projections were reasonable and account

⁵² The September 13, 2019, SIP submission provided by TDEC was received by EPA on September 17, 2018.

⁵³ On September 18, 2018, Tennessee submitted multiple SIP revisions under one cover letter. EPA is only acting on Tennessee's 2015 ozone good neighbor interstate transport SIP requirements in this notice.

⁵⁴ EPA notes that Tennessee's SIP submission is not organized around EPA's 4-step framework for assessing good neighbor obligations, but EPA summarizes the submission using that framework for clarity here.

for source shutdowns, new controls, and fuel switches. TDEC summarized the State's upwind contribution to 26 nonattainment and maintenance receptors and noted Tennessee's largest impact on any potential downwind receptor in 2023 would be 0.31 ppb and 0.65 ppb, respectively. Tennessee found that—based on EPA's 2023 modeling—emissions from Tennessee do not contribute above 1 percent of the NAAQS or above 1 ppb at any monitors that are projected to be in nonattainment or maintenance.

Tennessee's September 13, 2018, SIP submittal asserted that NO_x emissions are considered the primary cause of formation of ozone in the southeast United States, and emphasized a significant reduction in NO_x emissions reductions from coal-fired EGUs and other large NO_x sources leading to improvements in air quality, including reductions attributable to previous transport rulemakings.⁵⁵ Additionally, TDEC identifies existing SIP-approved provisions, Federal regulations and programs, court settlements, and statewide source shutdowns that TDEC believes limit ozone precursor emissions in the State.⁵⁶

Based on the information contained in Tennessee's transport SIP, TDEC concluded that Tennessee does not significantly contribute to nonattainment or interfere with maintenance in another state of the 2015 8-hour ozone NAAQS, and that the SIP

provides for adequate measures to control ozone precursor emissions.

2. Prior Notices Related to Tennessee's SIP Submission

Previously, EPA proposed approval of Tennessee's interstate transport provisions for the 2015 8-hour ozone NAAQS as addressed in Tennessee's September 13, 2018, SIP submission and based on the contribution modeling provided in the March 2018 memorandum. *See* 84 FR 71854 (December 30, 2019). When EPA completed updated modeling of 2023 in 2020 using a 2016-based emissions modeling platform (2016v1), it became evident that Tennessee was projected to be linked to downwind nonattainment and maintenance receptors (see footnote 57 below). As a result, EPA deferred acting on Tennessee's SIP submittal when it published a supplemental proposal in 2021 to approve four other southeastern states' good neighbor SIP submissions, using the updated 2023 modeling. *See* 86 FR 37942, 37943 (July 19, 2021). The updated 2023 modeling presented in this proposal using an updated 2016-based emissions modeling platform (2016v2) confirms the prior 2016-based modeling of 2023 in that it continues to show Tennessee is linked to at least one downwind nonattainment or maintenance receptor. Based on this updated modeling using the 2016-based emissions modeling platform, discussed in section I.C above, EPA is now withdrawing its 2019 proposed approval

on Tennessee's September 13, 2018, interstate transport SIP as published on December 30, 2019 at 84 FR 71854.

3. EPA's Evaluation of Tennessee's 2015 Ozone Interstate Transport SIP Submission

EPA is proposing to find that Tennessee's September 13, 2018, SIP submission does not meet the State's obligations with respect to prohibiting emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state based on EPA's evaluation of the SIP submission using the 4-step interstate transport framework, and EPA is therefore proposing to disapprove Tennessee's SIP submission.

(a) Results of EPA's Step 1 and Step 2 Modeling and Findings for Tennessee

As described in section I, EPA performed updated air quality modeling to project design values and contributions for 2023. These data were examined to determine if Tennessee contributes at or above the threshold of 1 percent of the 2015 8-hour ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. As shown in Table 3, the data⁵⁷ indicate that in 2023, emissions from Tennessee contribute greater than 1 percent of the standard to the maintenance-only receptor in Denton County, Texas (ID#: 481210034).⁵⁸

TABLE 3—TENNESSEE LINKAGE RESULTS BASED ON EPA UPDATED 2023 MODELING

Receptor ID	Location	Nonattainment/maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	Tennessee contribution (ppb)
481210034	Denton County, Texas	Maintenance	70.4	72.2	0.94

(b) Evaluation of Information Provided by Tennessee Regarding Step 1

At Step 1 of the 4-step interstate transport framework, Tennessee relied on EPA modeling included in the March 2018 memorandum to identify nonattainment and maintenance receptors in 2023. As described previously in section II.C.3.a, EPA has

recently updated this modeling using the most current and technically appropriate information. EPA proposes to rely on EPA's most recent modeling to identify nonattainment and maintenance receptors in 2023. That information establishes that there is one receptor to which Tennessee is projected to be linked in 2023.

(c) Evaluation of Information Provided by Tennessee Regarding Step 2

At Step 2 of the 4-step interstate transport framework, Tennessee relied on EPA modeling released in the March 2018 memorandum to identify upwind state linkages to nonattainment and maintenance receptors in 2023. As described in section I.C of this notice,

⁵⁵ The Tennessee SIP revision specifically cites the Federal NO_x Budget Trading Program, CAIR, and CSAPR. In addition, the Tennessee SIP revision discusses Tennessee rule 1200–03–27–12 (NO_x SIP Call requirements for Stationary Boilers and Combustion Turbines), which had not been approved into the SIP at the time of the September 13, 2018, submittal. EPA finalized approval of TAPR 1200–03–27–12 into the Tennessee SIP on March 2, 2021. *See* 86 FR 12092.

⁵⁶ *See* page 9 through 12 of Tennessee's September 13, 2018, SIP submission for a list of

SIP-approved State rules and Federal rules. This can be found in Docket No. EPA–R04–OAR–2021–0841.

⁵⁷ The ozone design values and contributions at individual monitoring sites nationwide are provided in the file “2016v2_DVs_state_contributions.xlsx” which is included in Docket No. EPA–HQ–OAR–2021–0663.

⁵⁸ These modeling results are consistent with the results of a prior round of 2023 modeling using the 2016v1 emissions platform which became available

to the public in the fall of 2020 in the Revised CSAPR Update, as noted in section I. That modeling showed that Tennessee had a maximum contribution greater than 0.70 ppb to at least one nonattainment or maintenance-only receptor in 2023. These modeling results are included in the file “Ozone Design Values And Contributions Revised CSAPR Update.xlsx” in Docket No. EPA–HQ–OAR–2021–0663.

EPA has recently updated modeling to identify upwind state contributions to nonattainment and maintenance receptors in 2023. In this proposal, EPA relies on the Agency's most recently available modeling to identify upwind contributions and "linkages" to downwind air quality problems in 2023 using a threshold of 1 percent of the NAAQS. See section I.D for a general explanation of the use of 1 percent of the NAAQS.

As shown in Table 3, updated EPA modeling identifies Tennessee's maximum contribution to a downwind maintenance receptor as greater than 1 percent of the standard (*i.e.*, 0.70 ppb). Therefore, the State is linked to a downwind air quality problem at Steps 1 and 2. Because the entire technical basis for Tennessee's submittal is that the State is not linked at Step 2, EPA proposes to disapprove Tennessee's SIP submission based on EPA's finding that a linkage does exist.⁵⁹

Tennessee references a 1 ppb threshold in its submittal, citing to EPA's SILs Guidance as justification for the use of a 1 ppb threshold. However, Tennessee did not provide additional discussion or analysis containing information specific to Tennessee or the receptors to which its emissions are potentially linked, which is necessary to evaluate the state-specific circumstances that could support approval of an alternative threshold. Nevertheless, EPA recognizes that the most recently available EPA modeling at the time Tennessee submitted its SIP submittal indicated the State did not contribute above 1 percent of the NAAQS to a projected downwind nonattainment or maintenance receptor. Therefore, the State may not have considered conducting an in-depth analysis as to the reasonableness and appropriateness of a 1 ppb threshold at Step 2 of the 4-step interstate transport framework per the August 2018 memorandum. However, EPA's August 2018 memorandum provided that whether use of a 1 ppb threshold is appropriate must be based on an evaluation of state-specific circumstances. Tennessee provided no such analysis. Further, the State did not explain the relevance of the SILs Guidance to which it made reference. This guidance relates to a different provision of the CAA regarding implementation of the PSD permitting program, *i.e.*, a program that applies in areas that have been designated

attainment⁶⁰ or unclassifiable for the NAAQS, and it is not applicable to the good neighbor provision, which requires states to eliminate significant contribution or interference with maintenance of the NAAQS at known and ongoing air quality problem areas in other states.

EPA's experience with the alternative Step 2 thresholds is further discussed in section I.D.3.a above. As discussed there, EPA is considering withdrawing the August 2018 memorandum.

(d) Evaluation of Information Provided by Tennessee Regarding Step 3

At Step 3 of the 4-step interstate transport framework, a state's emissions are further evaluated, in light of multiple factors, including air quality and cost considerations, to determine what, if any, emissions significantly contribute to nonattainment or interfere with maintenance and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I).

To effectively evaluate which emissions in the state should be deemed "significant" and therefore prohibited, states generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential, additional emissions reduction opportunities and resulting downwind air quality improvements. EPA has consistently applied this general approach (*i.e.*, Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be "significant" (or interfere with maintenance) in each of its prior Federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. See *EME Homer City*, 572 U.S. 489, 519 (2014). While the EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner the EPA has done in its prior regional transport rulemakings, state implementation plans addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit "any source or other type of emissions activity within the State" from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, states must complete something similar to the EPA's analysis (or an alternative approach to defining "significance" that comports with the statute's objectives) to determine whether and to what degree emissions from a state should be "prohibited" to eliminate emissions that will

"contribute significantly to nonattainment in or interfere with maintenance of" the NAAQS in any other state. Tennessee did not conduct such an analysis in its SIP submission.

The State did not analyze total ozone precursors that continue to be emitted from sources and other emissions activity within the State, evaluate the emissions reduction potential of any additional controls using cost or other metrics, nor evaluate any resulting downwind air quality improvements that could result from such controls. Instead, Tennessee included in its submittal a list of existing emissions control programs and measures in the State. However, EPA's modeling already takes account of such measures. Despite these existing emissions controls, the State is projected in the most recent modeling to be linked to at least one downwind nonattainment or maintenance receptor. The State was therefore obligated at Step 3 to assess *additional* control measures using a multifactor analysis.

As mentioned above, EPA has newly available information that indicates sources in Tennessee are linked to downwind air quality problems for the 2015 ozone standard. Therefore, EPA proposes to disapprove Tennessee's September 18, 2018, SIP submission on the separate, additional basis that the SIP submittal did not assess additional emissions control opportunities.

(e) Evaluation of Information Provided by Tennessee Regarding Step 4

Step 4 of the 4-step interstate transport framework calls for development of permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. As mentioned in section II.C.3.d, Tennessee's SIP submission did not contain an evaluation of additional emissions control opportunities (or establish that no additional controls are required), thus, no information was provided at Step 4. As a result, EPA proposes to disapprove Tennessee's September 18, 2018, submittal on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(d)(i)(I).

4. Conclusion for Tennessee

Based on EPA's evaluation of Tennessee's SIP submission and after consideration of updated EPA modeling using the 2016-based emissions

⁵⁹ To the extent the Tennessee submittal included information regarding emissions controls that could be interpreted as relevant to a Step 3 analysis, EPA evaluates that information in section II.C.3.d.

⁶⁰ See footnote 49.

modeling platform, EPA is proposing to find that the portion of Tennessee's September 13, 2018, SIP submission addressing CAA section 110(a)(2)(D)(i)(I) does not meet the State's interstate transport obligations because it fails to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state.

III. Proposed Actions

EPA is proposing to disapprove the 2015 ozone good neighbor interstate transport SIP revisions from Alabama, dated August 20, 2018; from Mississippi, dated September 3, 2019; and from Tennessee, dated September 13, 2018. Under CAA section 110(c)(1), if finalized, these disapprovals would establish a 2-year deadline for EPA to promulgate a FIP for Alabama, Mississippi, and Tennessee to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2015 8-hour ozone NAAQS in other states, unless EPA approves a SIP that meets these requirements. However, under the CAA, a good neighbor SIP disapproval does not start a mandatory sanctions clock.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

These proposed actions are not significant regulatory actions and were therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

These proposed actions do not impose an information collection burden under the PRA because they do not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

These actions merely propose to disapprove SIP submissions as not meeting the CAA for Alabama, Mississippi, and Tennessee. EPA certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*)

D. Unfunded Mandates Reform Act (UMRA)

These proposed actions do not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and do not significantly or

uniquely affect small governments. These proposed actions impose no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

These proposed actions do not have federalism implications. They will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

These proposed actions do not have tribal implications as specified in Executive Order 13175. These proposed actions do not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to these actions.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. These proposed actions are not subject to Executive Order 13045 because they merely propose to disapprove SIP submissions from Alabama, Mississippi, and Tennessee as not meeting the CAA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

These proposed actions are not subject to Executive Order 13211, because they are not significant regulatory actions under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by these proposed actions will not have potential disproportionately high and adverse

human health or environmental effects on minority, low-income or indigenous populations. These proposed actions merely propose to disapprove SIP submissions as not meeting the CAA.

K. CAA Section 307(b)(1)

Section 307(b)(1) of the CAA governs judicial review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) When the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to EPA complete discretion whether to invoke the exception in (ii).⁶¹

EPA anticipates that this proposed rulemaking, if finalized, would be “nationally applicable” within the meaning of CAA section 307(b)(1) because it would take final action on SIP submittals for the 2015 8-hour ozone NAAQS for the states of Alabama, Mississippi, and Tennessee, which are located in three different Federal judicial circuits (the Eleventh Circuit, the Fifth Circuit, and the Sixth Circuit, respectively). It would apply uniform, nationwide analytical methods, policy judgments, and interpretation with respect to the same CAA obligations, *i.e.*, implementation of good neighbor requirements under CAA section 110(a)(2)(D)(i)(I) for the 2015 8-hour ozone NAAQS for states across the country, and final action would be based on this common core of determinations, described in further detail below.

If EPA takes final action on this proposed rulemaking, in the alternative, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action (to the extent a court finds the action to be locally or regionally applicable) is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1). Through this

⁶¹ In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), EPA interprets and applies section 110(a)(2)(d)(i)(I) of the CAA for the 2015 8-hour ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, EPA is applying here (and in other proposed actions related to the same obligations) the same, nationally consistent 4-step framework for assessing good neighbor obligations for the 2015 8-hour ozone NAAQS. EPA relies on a single set of updated, 2016-base year photochemical grid modeling results of the year 2023 as the primary basis for its assessment of air quality conditions and contributions at Steps 1 and 2 of that framework. Further, EPA proposes to determine and apply a set of nationally consistent policy

judgments to apply the 4-step framework. EPA has selected a nationally uniform analytic year (2023) for this analysis and is applying a nationally uniform approach to nonattainment and maintenance receptors and a nationally uniform approach to contribution threshold analysis.⁶² For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on one or more determinations of nationwide

⁶² A finding of nationwide scope or effect is also appropriate for actions that cover states in multiple judicial circuits. In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the "nationwide scope or effect" exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.A.N. 1402–03.

scope or effect for purposes of CAA section 307(b)(1).⁶³

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: February 3, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

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⁶³ EPA may take a consolidated, single final action on all of the proposed SIP disapproval actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 8-hour ozone NAAQS. Should EPA take a single final action on all such disapprovals, this action would be nationally applicable, and EPA would also anticipate, in the alternative, making and publishing a finding that such final action is based on a determination of nationwide scope or effect.