

state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 1, 2022.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R07–OAR–2022–0075; FRL–9428–01–R7]

### Air Plan Approval; Kansas; 2015 Ozone NAAQS Interstate Transport Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with maintenance of air quality in other states. The State of Kansas made a submission to the Environmental Protection Agency (EPA or Agency) to address these requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). EPA is proposing to approve the submission for Kansas as meeting the requirement that the SIP contains adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

**DATES:** Written comments must be received on or before March 10, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2022–0075, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically 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). For additional submission

methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](https://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in [www.regulations.gov](https://www.regulations.gov). To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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#### I. Background

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).<sup>1</sup> 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).<sup>2</sup> One of these applicable

<sup>1</sup> 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.

<sup>2</sup> 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.

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 interstate transport of pollution. There are four so-called “prongs” within CAA section 110(a)(2)(D)(i); section 110(a)(2)(D)(i)(I) contains prongs 1 and 2. Under prongs 1 and 2 of the good neighbor provision, 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).<sup>3</sup>

We note that 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,<sup>4</sup> the Cross-State Air Pollution Rule Update (CSAPR Update) with respect to the 2008 ozone NAAQS, and, most recently, the Revised CSAPR Update for the 2008 ozone NAAQS.<sup>5 6</sup>

Through the development and implementation of CSAPR and other regional rulemakings pursuant to the good neighbor provision,<sup>7</sup> EPA, working

in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS: (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered “linked” and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering air-quality and cost factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values (DVs) for 2023 using a 2011 base year modeling platform, on which we requested public comment.<sup>8</sup> 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 ozone NAAQS.<sup>9</sup> On October 27, 2017, we released a memorandum (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 good neighbor obligations for the 2008 ozone NAAQS.<sup>10</sup> On March 27, 2018, we issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 ozone NAAQS at step 1 of the

four-step interstate transport framework.<sup>11</sup> The March 2018 memorandum also included the then newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems for the 2015 ozone NAAQS under step 2 of the interstate transport framework. EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing good neighbor SIP submissions for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 of the framework, and considerations for identifying downwind areas that may have problems maintaining the standard at step 1 of the framework.<sup>12</sup>

On October 30, 2020, in the Notice of Proposed Rulemaking for the Revised CSAPR Update, EPA released and accepted public comment on updated 2023 modeling that used a 2016 emissions platform developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project as the primary source for the base year and future year emissions data.<sup>13</sup> On March 15, 2021, EPA signed the final Revised CSAPR Update using the same modeling released at proposal.<sup>14</sup> Although Kansas relied on the modeling included in the March 2018 memorandum to develop their SIP submission as EPA had suggested, EPA now proposes to primarily rely on the updated and newly available 2016 base year modeling in evaluating this submission. By using the Revised CSAPR Update modeling results, EPA is using the most current and technically appropriate information as the primary basis for this

<sup>3</sup> See *North Carolina v. EPA*, 531 F.3d 896, 909–911 (2008).

<sup>4</sup> See 76 FR 48208 (August 8, 2011).

<sup>5</sup> In 2019, the D.C. Circuit Court of Appeals remanded the 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).

<sup>6</sup> The Revised Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (86 FR 23054 (April 30, 2021)) was signed by the EPA Administrator on March 15, 2021 and responded to the remand of the CSAPR Update (81 FR 74504 (October 26, 2016)) and the vacatur of a separate rule, the CSAPR Close-Out (83 FR 65878 (December 21, 2018)) by the D.C. Circuit. *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019); *New York v. EPA*, 781 F. App'x. 4 (D.C. Cir. 2019).

<sup>7</sup> In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport include the NO<sub>x</sub> SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

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

<sup>9</sup> 82 FR 1733, 1735 (January 6, 2017).

<sup>10</sup> 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, available in the docket for this action as “October 2017 Memorandum” or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notice>.

<sup>11</sup> 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, available in the docket for this action as “March 2018 Memorandum.”

<sup>12</sup> 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, available in the docket for this section as “Maintenance Receptors Memo\_Oct2018” or at <http://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>.

<sup>13</sup> See 85 FR 68964, 68981. The underlying modeling files are available for public review in the docket for the Revised CSAPR Update (EPA-HQ-OAR-2020-0272).

<sup>14</sup> See 86 FR 23054 at 23075, 23164 (April 30, 2021).

proposed rulemaking.<sup>15</sup> EPA's independent analysis evaluated the Revised CSAPR Update modeling data and historical and projected emissions trends for Kansas. Section III of this document and the Air Quality Modeling technical support document (TSD) included in the docket for this proposal contain additional detail on the Revised CSAPR Update modeling.<sup>16</sup>

In the CSAPR, CSAPR Update, and the Revised CSAPR Update, EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was "linked" at step 2 of the interstate transport framework and would, therefore, contribute to downwind nonattainment and maintenance sites identified in step 1. If a state's impact did not equal or exceed the one percent threshold, the upwind state was not "linked" to a downwind air quality problem, and EPA, therefore, concluded the state would not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's impact equaled or exceeded the one percent threshold, the state's emissions were further evaluated in step 3, considering both air quality and cost considerations, to determine what, if any, emissions might be deemed "significant" and, thus, must be eliminated under the good neighbor provision. EPA is relying on the one percent threshold for the purpose of evaluating Kansas's contribution to nonattainment or maintenance of the 2015 ozone NAAQS in downwind areas.

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).<sup>17</sup>

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).<sup>18</sup> 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 Agency, under the good neighbor provision, to assess downwind air quality by no later than the next applicable attainment date, including a Marginal area attainment date under CAA section 181 for ozone nonattainment.<sup>19</sup>

However, the Marginal area attainment date for the 2015 ozone NAAQS was August 3, 2021.<sup>20</sup> EPA does not believe it would be appropriate to focus its analysis on an attainment date that is wholly in the past because the Agency interprets the good neighbor provision as forward looking. See 86 FR 23054 at 23074; see also *Wisconsin*, 938 F.3d at 322. Consequently, as this action is being proposed after the 2021 attainment date (as well as after the end of the 2021 ozone season), EPA proposes to use 2023 as an appropriate analytic year in this action. The year 2023 contains the last full ozone season before the next downwind attainment date, which is the August 3, 2024, Moderate area attainment date.

<sup>17</sup> 938 F.3d 303, 313.

<sup>18</sup> *Maryland v. EPA*, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020).

<sup>19</sup> We note 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 good neighbor provision. Such circumstances are not at issue in the present proposal.

<sup>20</sup> 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 Aug. 3, 2018).

(Historically, EPA has considered the full ozone season prior to the attainment date as supplying an appropriate analytic year for assessing Kansas's good neighbor obligations.) EPA acknowledges that the first order directive for the timing of good neighbor compliance is "as expeditiously as practicable." See CAA section 181(a)(1); 938 F.3d at 313. EPA believes that an assessment of future air quality in the 2023 analytic year is as expeditiously as practicable. Should any emission reductions be required under the four-step interstate transport framework (though, to be clear, none are found to be necessary for Kansas in this proposal), EPA believes 2023 is the earliest ozone season by which such reductions would be possible. Therefore, EPA has analyzed projected ozone air quality and Kansas's emissions for purposes of the good neighbor provision using the 2023 analytic year.

## II. Kansas's Submission

On September 27, 2018, EPA received a SIP revision from the State of Kansas addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Kansas relied on the results of EPA's modeling for the 2015 ozone NAAQS contained in the March 2018 memorandum to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Kansas in the year 2023. These results indicated the State's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.77 ppb. Referencing the modeling results from the March 2018 memorandum, Kansas found this level of impact in Allegan, Michigan (monitoring site 260050003). Kansas compared this value to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS. Because Kansas's impacts to receptors in downwind states were projected to be greater than 0.70 ppb in 2023 but less than 1 ppb, the State cited EPA's August 2018 memorandum to argue that an alternative threshold of 1ppb was more appropriate than the one percent threshold.<sup>21</sup> The State concluded that

<sup>21</sup> The 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. Typically, 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, the EPA will evaluate whether the state provided a technically sound assessment of the appropriateness of using this alternative threshold

<sup>15</sup> EPA recently made available updated modeling results on its website but was not able to incorporate those results into this proposal prior to signature. See <https://www.epa.gov/air-emissions-modeling/2016v2-platform>. In any case, these results corroborate the prior EPA modeling on which this proposal relies with respect to Kansas.

<sup>16</sup> See "Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update," 86 FR 23054 (April 30, 2021), available in the docket for this action. This TSD was originally developed to support EPA's action in the Revised CSAPR Update, as relating to outstanding good neighbor obligations under the 2008 ozone NAAQS. While developed in this separate context, the data and modeling outputs, including interpolated design values for 2021, may be evaluated with respect to the 2015 ozone NAAQS and used in support of this proposal.

emissions from sources within Kansas will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

### III. EPA Evaluation of Kansas's Submission

Kansas's SIP submission relies on analysis of EPA's modeling for 2023 released in the March 2018 memorandum to conclude that the State does not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. As explained in section I of this proposal, EPA conducted updated modeling for the 2023 analytical year (using a 2016 base year platform) for the RCU and proposes to rely primarily on this updated modeling to evaluate Kansas's transport SIP submission. EPA's evaluation of the RCU modeling corroborates Kansas's conclusion that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.<sup>22</sup> While EPA has focused its analysis in this document on the year 2023, modeling data in the record for a future analytic year, 2028, confirm that no new linkages to downwind receptors are projected in later years. This is consistent with an overall, long-term downward trend in emissions from the State.

In step 1 of the four-step interstate framework, we identify locations where the Agency expects there to be nonattainment or maintenance receptors for the 2015 8-hour ozone NAAQS in the 2023 analytic future year, using the 2016 base year modeling platform. Where EPA's analysis shows that an area or site does not fall under the definition of a nonattainment or maintenance receptor in 2023, that site is excluded from further analysis under EPA's four step interstate transport framework. For areas that are identified as a nonattainment or maintenance receptor in 2023, we proceed to the next step of our four-step framework by identifying the upwind state's contribution to those receptors.

EPA's approach to identifying ozone nonattainment and maintenance receptors in this proposal is consistent with the approach used in previous transport rulemakings and is consistent

based on the facts and circumstances underlying its application in the particular SIP submission.

<sup>22</sup> See 86 FR 23054 (April 30, 2021). The results of this modeling are included in a spreadsheet in the docket for this action. The underlying modeling files are available for public access in the docket for the Revised CSAPR Update (EPA-HQ-OAR-2020-0272).

with the D.C. Circuit's direction in *North Carolina* to give independent consideration to both the "contribute significantly to nonattainment" and the "interfere with maintenance" prongs of CAA section 110(a)(2)(D)(i)(I).<sup>23</sup>

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 monitor nonattainment and that EPA projects will be in nonattainment in the future analytic year.<sup>24</sup>

In addition, in this proposal, EPA identifies a receptor to be a "maintenance" receptor for purposes of defining interference with maintenance, consistent with the method used in the 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).<sup>25</sup> Specifically, monitoring sites with a projected maximum design value in 2023 that exceeds the NAAQS are considered maintenance receptors. EPA's method of defining these receptors takes into account both measured data and projections based on modeling analysis.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, EPA often uses the term "maintenance-only" to refer to receptors that are not also nonattainment receptors. Consistent with the methodology described above, monitoring sites with a projected maximum design value that exceeds the NAAQS, but with a projected average design value that is below the NAAQS, are identified as maintenance-only receptors. In addition, those sites that are currently measuring ozone concentrations below the level of the applicable NAAQS, but are projected to be nonattainment based on the average design value and that, by definition, are

<sup>23</sup> 531 F.3d at 910–911 (holding that EPA must give "independent significance" to each prong of CAA section 110(a)(2)(D)(i)(I)).

<sup>24</sup> See 81 FR 74504 (October 26, 2016). Revised CSAPR Update also used this approach. See 86 FR 23054 (April 30, 2021). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. See 70 FR 25241 (January 14, 2005). See also *North Carolina*, 531 F.3d at 913–914 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

<sup>25</sup> See 76 FR 48208 (August 8, 2011). CSAPR Update and Revised CSAPR Update also used this approach. See 81 FR 74504 (October 26, 2016) and See 86 FR 23054 (April 30, 2021).

projected to have a maximum design value above the standard are also identified as maintenance-only receptors.

To evaluate future air quality in steps 1 and 2 of the interstate transport framework, EPA is using the 2016 and 2023 base case emissions developed under the EPA/MJO/state collaborative emissions modeling platform project as the primary source for base year and 2023 future year emissions data for this proposal.<sup>26</sup>

To quantify the contribution of emissions from specific upwind states on 2023 8-hour design values for the identified downwind nonattainment and maintenance receptors, EPA first performed nationwide, state-level ozone source apportionment modeling. The source apportionment modeling provided contributions to ozone from precursor emissions of anthropogenic nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) in each state, individually. Details on the source apportionment modeling and the methods for determining contributions are in the Air Quality Modeling TSD in the docket.

The design values and contributions were examined to determine if Kansas contributes at or above the threshold of one percent of the 2015 ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. The data<sup>27</sup> indicate that the highest contribution in 2023 from Kansas to downwind nonattainment or maintenance receptors is 0.60 ppb, below the one percent of the NAAQS screening threshold. Kansas contributes 0.49 ppb or less to 11 nonattainment receptors in five states and 0.60 ppb or less to seven maintenance receptors in five states. Although Kansas argued that an alternative contribution threshold of 1 ppb was a more appropriate threshold than a threshold of one percent of the NAAQS, updated EPA modeling supports the conclusion that the State is projected to contribute less than both the one percent and 1 ppb thresholds to downwind receptors. Therefore, EPA will not, in this proposal, evaluate whether the State provided a technically sound assessment of the appropriateness of using an alternative

<sup>26</sup> See 86 FR 23054 (April 30, 2021). The results of this modeling are included in a spreadsheet in the docket for this action. The underlying modeling files are available for public access in the docket for the Revised CSAPR Update (EPA-HQ-OAR-2020-0272).

<sup>27</sup> The data are given in the "Air Quality Modeling Technical Support Document for the Revised Cross-State Air Pollution Rule Update" and "Ozone Design Values and Contributions Revised CSAPR Update.xlsx," which are included in the docket for this action.

1 ppb threshold based on the facts and circumstances underlying its application in the particular SIP submission. This should not be understood to mean that EPA approves of the State's application of the 1 ppb threshold; rather, the State's use of the alternative threshold is inconsequential to EPA's evaluation of the State's submittal in this instance.

EPA also analyzed emissions trends for ozone precursors in Kansas to support the findings from the air quality analysis. EPA focused on state-wide emissions of NO<sub>x</sub> and VOC from anthropogenic sources.<sup>28</sup> Emissions from mobile sources, electric generating units ("EGUs"), industrial facilities, gasoline vapors, and chemical solvents represent the majority of the major anthropogenic sources of ozone precursors in Kansas. This evaluation looks at both past emissions trends, as well as projected trends.

As shown in Table 1, for Kansas, between 2011 and 2019, annual total NO<sub>x</sub> and VOC emissions from anthropogenic source categories have declined by 38 percent and 18 percent,

respectively. Between 2016 and 2023, annual NO<sub>x</sub> emissions are projected to decline by 30 percent as a result of the implementation of existing control programs that will continue to decrease NO<sub>x</sub> emissions in Kansas as indicated by EPA's most recent 2023 projected emissions.

As shown in Table 2, onroad and nonroad mobile source emissions collectively comprise a large portion of the State's total anthropogenic NO<sub>x</sub> and VOC. For example, in 2019, NO<sub>x</sub> emissions from mobile sources in Kansas comprised 45 percent of total NO<sub>x</sub> emissions and 16 percent of total VOC emissions.

The large decrease in NO<sub>x</sub> emissions between 2011 emissions and projected 2023 emissions in Kansas is primarily driven by reductions in emissions from onroad and nonroad mobile sources. EPA projects that the total anthropogenic NO<sub>x</sub> emissions and the highway and off highway VOC emissions will continue declining out to 2023 as newer vehicles and engines that are subject to the most recent, stringent

mobile source standards replace older vehicles and engines.<sup>29</sup>

In summary, there is no evidence to suggest that the overall emissions trend for Kansas demonstrated in Table 1 will suddenly reverse or spike in 2021 or 2022 compared to historical emissions levels or those projected for 2023. Further, there is no evidence that the projected NO<sub>x</sub> emissions trend out to 2023 and beyond would not continue to show a decline in emissions from Kansas. In addition, EPA's normal practice is to include in our modeling only changes in NO<sub>x</sub> or VOC emissions that result from final regulatory actions. Any potential changes in NO<sub>x</sub> or VOC emissions that may result from possible future or proposed regulatory actions are speculative.

This general downward trend in emissions in Kansas adds support to the air quality analyses presented above and indicates that the contributions from emissions from sources in the State to ozone receptors in downwind states will generally continue to decline and remain below one percent of the NAAQS.

TABLE 1—ANNUAL EMISSIONS OF NO<sub>x</sub> AND VOC FROM ANTHROPOGENIC SOURCES IN KANSAS

[Tons per year]<sup>30</sup>

	2011	2012	2013	2014	2015	2016	2017	2018	2019	Projected 2023
NO <sub>x</sub> .....	312,156	299,082	286,009	272,935	252,036	221,455	207,211	200,848	192,785	160,604
VOC .....	241,708	233,580	225,452	217,324	213,915	205,771	203,151	201,133	199,115	173,201

TABLE 2—ANNUAL EMISSIONS OF NO<sub>x</sub> AND VOC FROM ONROAD AND NONROAD VEHICLES COMBINED IN KANSAS

[Tons per year]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	Projected 2023
NO <sub>x</sub> .....	153,185	147,604	142,022	136,441	125,317	104,509	100,040	93,248	86,456	62,193
VOC .....	58,563	55,930	53,297	50,664	46,810	38,220	35,155	33,137	31,119	24,851

Thus, EPA's evaluation of measured and monitored data, and contribution values in 2023, as discussed in this section, is consistent with conclusions made by Kansas that emissions from sources in the State will not significantly contribute to nonattainment or interfere with

maintenance of the 2015 ozone NAAQS in any other state.

#### IV. Proposed Action

EPA is proposing to approve the October 1, 2018 SIP submittal as meeting the interstate transport requirements of CAA section

110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

The Agency is soliciting public comments on its proposed approval of the CAA section 110(a)(2)(D)(i)(I) element of Kansas's infrastructure SIP submittal for the 2015 ozone NAAQS. Significant comments will be considered before taking final action.

<sup>28</sup> This is because ground-level ozone is not emitted directly into the air but is formed by chemical reactions between ozone precursors, chiefly NO<sub>x</sub> and VOC, in the presence of sunlight. See 86 FR 23054, 23063.

<sup>29</sup> Tier 3 Motor Vehicle Emission and Fuel Standards (79 FR 23414, April 28, 2014); Mobile Source Air Toxics Rule (MSAT2) (72 FR 8428, February 26, 2007), Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002, January 18, 2001); Clean

Air Nonroad Diesel Rule (69 FR 38957, June 29, 2004); Locomotive and Marine Rule (73 FR 25098, May 6, 2008); Marine Spark-Ignition and Small Spark-Ignition Engine Rule (73 FR 59034, October 8, 2008); New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder Rule (75 FR 22895, April 30, 2010); and Aircraft and Aircraft Engine Emissions Standards (77 FR 36342, June 18, 2012).

<sup>30</sup> The annual emissions data for the years 2011 through 2019 were obtained from EPA's National

Emissions Inventory website: <https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data>. Note that emissions from miscellaneous sources are not included in the State totals presented in Table 1. The emissions for 2023 are based on the 2016 emissions modeling platform. See "2005 thru 2019\_2021\_2023\_2028 Annual State Tier1 Emissions\_v3" and the Emissions Modeling TSD in the docket for this action.

Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register** document.

## V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
  - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
  - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not

impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects in 40 CFR Part 52

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

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

Dated: February 1, 2022.

**Meghan A. McCollister,**  
Regional Administrator, Region 7.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart R—Kansas

- 2. In § 52.870, the table in paragraph (e) is amended by adding the entry “(47)” in numerical order to read as follows:

### § 52.870 Identification of plan.

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

## EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
<p>(47) Transport SIP for the 2015 Ozone Standard.</p>	Statewide .....	9/27/2018	[Date of publication of the final rule in the <b>Federal Register</b> , [Federal Register citation of the final rule].	[EPA–R07–OAR–2022–0075; FRL–9428–01–R7]. This transport SIP shows that Kansas does not significantly contribute to ozone nonattainment or maintenance in any other state. This submittal is approved as meeting the requirements of Clean Air Act section 110(a)(2)(D)(i)(I).