on (a) the cost and efficiency of distribution proceedings and (b) the likelihood of achieving settlements to resolve both Allocation Phase and Distribution Phase controversies.

In addition, the Judges inquire as to the need for mechanisms and standards to resolve any disputes as to the identity of participants seeking to represent a particular Allocation Phase category in an Allocation Phase proceeding.

B. The Identification of Invalid Claims

The Judges are in agreement with the CRT observation that its 1980 ruling with respect to ineligible claims ''may not necessarily control any subsequent distribution proceeding.'' *1978 Proceeding* at 63042 (emphasis added). Therefore, the Judges also revisit the identification and treatment of funds that are unclaimed because a filed claim is invalid or not validly represented in a distribution proceeding (invalid claims). The Judges request that commenters provide an adequate factual record to support their positions as to the necessity and feasibility of proposed approaches to the identification and treatment of invalid claims, and the consonance of their proposed approaches with the establishment of relative value. Commenters should address how the treatment of invalid claims may interrelate with the establishment of Allocation Phase categories. For instance, one rationale for intra-category re-apportionment of royalties attributable to invalid claims (the status quo) is that the invalidly-claimed programs have more in common in terms of value creation with the validly-claimed programs in the same category than with the validly-claimed programs in the other categories (which also implicates the above-stated inquiry regarding whether the categories should be claimant-centric or program-centric). If the former, the argument for maintaining intra-category re-allocations of invalid claims may be weaker, because claimant-centric categorization is based on common representation, not common relative program value.

The Judges also inquire as to the likely impact any proposed rule for the identification and treatment of ineligible claims may have on (a) the cost and efficiency of distribution proceedings and (b) the likelihood of achieving settlements to resolve both Allocation Phase and Distribution Phase controversies.

III. Submissions

With respect to both of the subjects of inquiry, commenters should provide narrative responses and proposed regulatory language amending 37 CFR part 351. Commenters should include relevant facts, legal and economic analyses, and citation to authority for each proposed regulatory provision. After considering the proposals, the Judges intend to publish a formal notice of proposed rulemaking in accordance with the provisions of the Administrative Procedures Act.

Dated: December 20, 2019.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2019–27970 Filed 12–27–19; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0156; FRL–10003–69–Region 4]

Air Plan Approval; AL, FL, GA, NC, SC, TN; Interstate Transport (Prongs 1 and 2) for the 2015 8-Hour Ozone Standard

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 have certain adverse air quality effects in other states. The Environmental Protection Agency (EPA or Agency) is proposing to approve State Implementation Plan (SIP) revisions from Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee (collectively, Southeast States) addressing the Clean Air Act (CAA or Act) good neighbor interstate transport infrastructure SIP requirements for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is proposing to approve the submission as meeting the requirement that each SIP contain 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 January 29, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0156 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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 the disclosure of which 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.*

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.*

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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).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in section 110(a)(2)(D)(i)(I), otherwise known as the good neighbor provision, which generally requires SIPs

[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 110(a)(2) are referred to as infrastructure requirements.

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, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This action addresses the first two prongs under section 110(a)(2)(D)(i)(I). 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 from interfering with maintenance of the NAAQS in another state (prong 2). Under section 110(a)(2)(D)(i)(I) of the CAA, EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under section 110(a)(2)(D)(i)(I).[3]

EPA notes that the Agency 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, and the Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (CSAPR Update).[4] These actions only addressed interstate transport in the eastern United States [5] and did not address the 2015 ozone NAAQS.

Through the development and implementation of CSAPR, the CSAPR Update, and previous regional rulemakings pursuant to the good neighbor provision,[6] 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:[7] (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 cost and air quality 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 for 2023, on which EPA requested comment.[8] The year 2023 was used as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas.[9] On October 27, 2017, EPA released a memorandum (2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA.[10] Although the 2017 memorandum also released data for a 2023 modeling year, EPA specifically stated that the modeling may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS but did not address the 2015 ozone NAAQS. Additionally, on March 27, 2018, EPA issued a memorandum (March 2018 memorandum) indicating the same 2023 modeling data released in the 2017 memorandum would also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step framework).

The March 2018 memorandum included newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems (step 2 of the four-step framework) in their efforts to develop good neighbor SIPs for the 2015 ozone NAAQS to address their interstate transport obligations.[11] EPA subsequently issued two more memoranda in August and October 2018, providing guidance to states developing good neighbor SIPs for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 and considerations for identifying downwind areas that may have problems maintaining the standard (under prong 2 of the good neighbor provision) at step 1 of the framework.[12]

The March 2018 memorandum describes the process and results of the updated photochemical and source apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by state impacts on those concentrations. The March 2018 memorandum also explains that the selection of the 2023 analytic year aligns with the 2015 ozone NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the 2017 and March 2018 memoranda, EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (*i.e.,* monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 memorandum presents design values calculated in two ways: First, following EPA's historic ''3 x 3''

[3] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–911 (D.C. Cir. 2008).

[4] *See* 76 FR 48208 (August 8, 2011) (*i.e.,* CSAPR) and 81 FR 74504 (October 26, 2016) (*i.e.,* CSAPR Update).

[5] For purposes of CSAPR and the CSAPR Update action, the Western U.S. (or the West) was considered to consist of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Eastern U.S. (or the East) was considered to consist of the 37 states east of the 11 Western states.

[6] 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).

[7] The four-step interstate framework has also been used to address requirements of the good neighbor provision for some previous particulate matter and ozone NAAQS, including in the Western United States. *See, e.g.,* 83 FR 30380 (June 28, 2018) and 83 FR 5375, 5376–77 (February 7, 2018).

[8] *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).

[9] *See* 82 FR 1735.

[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, available at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[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, available at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[12] *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 at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

approach to evaluating all sites; and second, following a modified approach for coastal monitoring sites in which ''overwater'' modeling data were not included in the calculation of future year design values (referred to as the ''no water'' approach).[13]

For purposes of identifying potential nonattainment and maintenance receptors in 2023, EPA applied the same approach used in the CSAPR Update, wherein EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, EPA identified nonattainment receptors as those monitoring sites with measured values[14] exceeding the NAAQS that also have projected (*i.e.,* in 2023) average design values exceeding the NAAQS. EPA identified maintenance receptors as those monitoring sites with projected maximum design values exceeding the NAAQS. This included sites with measured values below the NAAQS but with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in Attachment B to the March 2018 memorandum.

After identifying potential downwind nonattainment and maintenance receptors, EPA next performed nationwide, state-level ozone source apportionment modeling to estimate the expected impact from each state to each nonattainment and maintenance receptor.[15] EPA included contribution information resulting from the source-apportionment modeling in Attachment C to the March 2018 memorandum. For more specific information on the modeling and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents.

In the CSAPR and the 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 four-step 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 will 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, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

As noted previously, on August 31, 2018, EPA issued a memorandum (the August 2018 memorandum) providing guidance concerning potential contribution thresholds that may be appropriate to apply with respect to the 2015 ozone NAAQS in step 2. Consistent with the process for selecting the one percent threshold in CSAPR and the CSAPR Update, the memorandum included analytical information regarding the degree to which potential air quality thresholds would capture the collective amount of upwind contribution from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 memorandum indicated that, based on EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable, overall, to the amount captured using a threshold equivalent to one percent of the 2015 ozone NAAQS. Accordingly, EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.[16]

While the March 2018 memorandum presented information regarding EPA's latest analysis of ozone transport following the approaches EPA has taken in prior regional rulemaking actions, EPA has not made any final determinations regarding how states should identify downwind receptors with respect to the 2015 ozone NAAQS at step 1 of the four-step framework. Rather, EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

II. Southeast States' Submissions and EPA's Analysis of the Southeast States' Submissions

The following discussion summarizes EPA's analyses for the submissions from the Southeast States intended to meet prongs 1 and 2 requirements of 110(a)(2)(D)(i)(I) for the 2015 8-hour Ozone NAAQS.

A. Analysis Related to All Southeast States

EPA is proposing to rely on the 2023 modeling data identifying downwind receptors and upwind state contributions, as released in the March 2018 memorandum, to evaluate the Southeast States' good neighbor obligation with respect to the 2015 ozone NAAQS. On September 13, 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *Wisconsin* v. *EPA* addressing legal challenges to the CSAPR Update, in which EPA partially addressed certain upwind states' good neighbor obligations for the 2008 ozone NAAQS. 938 F.3d 303. While the court generally upheld the rule as to most of the challenges raised in the litigation, the court remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contributions in accordance with the attainment dates found in CAA section 181 by which downwind states must come into compliance with the NAAQS. *Id.* at 313. In light of the court's decision, EPA is providing further explanation regarding why it proposes to find that it is appropriate and consistent with the statute—as well as the legal precedent—to use the 2023 analytic year for assessing good neighbor obligations for the 2015 ozone NAAQS.

EPA believes that 2023 is an appropriate year for analysis of good neighbor obligations for the 2015 ozone NAAQS because the 2023 ozone season is the last relevant ozone season during

[13] *See* March 2018 memorandum, p. 4, for more detail on modeling approach. For the no water approach, EPA eliminated from the design value calculations those modeling data in grid cells that are dominated by water (*i.e.,* more than 50 percent of the area in the grid cell is water) and that do not contain a monitoring site (*i.e.,* if a grid cell is more than 50 percent water but contains an air quality monitor, that cell would remain in the calculation). For this action, EPA used no water averages to identify each state's impact on any downwind nonattainment or maintenance receptor, which can be found in Attachment C of the March 2018 memorandum.

[14] EPA used 2016 ozone design values, based on 2014–2016 measured data, which were the most current data at the time of the analysis. *See* attachment B of the March 2018 memorandum, p. B–1.

[15] As discussed in the March 2018 memorandum, EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

[16] *See* August 2018 memorandum, p. 4.

which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 2, 2024 Moderate area attainment date for the 2015 ozone NAAQS. EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS is August 2, 2021, which currently applies in several downwind nonattainment areas evaluated in EPA's modeling.[17] However, as explained below, EPA does not believe that either the statute or applicable case law requires the evaluation of good neighbor obligations in a future year aligned with the attainment date for nonattainment areas classified as Marginal.

The good neighbor provision instructs EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. CAA section 110(a)(2)(D)(i); *see also North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (D.C. Cir. 2008). This consistency instruction follows the requirement that plans ''contain adequate provisions prohibiting'' certain emissions in the good neighbor provision. As the D.C. Circuit held in *North Carolina,* and more recently in *Wisconsin,* the good neighbor provision must be applied in a manner consistent with the designation and planning requirements in title I that apply in downwind states and, in particular, the timeframe within which downwind states are required to implement specific emissions control measures in nonattainment areas and submit plans demonstrating how those areas will attain, relative to the applicable attainment dates. *See North Carolina,* 896 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I); *Wisconsin,* 938 F.3d at 313–18.

While EPA recognizes, as the court held in *North Carolina* and *Wisconsin,* that upwind emissions-reduction obligations therefore must generally be aligned with downwind receptors' attainment dates, unique features of the statutory requirements associated with the Marginal area planning requirements and attainment date under CAA section 182 lead EPA to conclude that it is more reasonable and appropriate to require the alignment of upwind good neighbor obligations with later attainment dates applicable for Moderate or higher classifications. Under the CAA, states with areas designated nonattainment are generally required to submit, as part of their state implementation plan, an ''attainment demonstration'' that shows, usually through air quality modeling, how an area will attain the NAAQS by the applicable attainment date. *See* CAA section 172(c)(1).[18] Such plans must also include, among other things, the adoption of all ''reasonably available'' control measures on existing sources, a demonstration of ''reasonable further progress'' toward attainment, and contingency measures, which are specific controls that will take effect if the area fails to attain by its attainment date or fails to make reasonable further progress toward attainment. *See, e.g.,* CAA section 172(c)(1); 172(c)(2); 172(c)(9). Ozone nonattainment areas classified as Marginal are excepted from these general requirements under the CAA—unlike other areas designated nonattainment under the Act (including for other NAAQS pollutants), Marginal ozone nonattainment areas are specifically exempted from submitting an attainment demonstration and are not required to implement *any* specific emissions controls at existing sources in order to meet the planning requirements applicable to such areas. *See* CAA section 182(a) (''The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area.'') [19] Marginal ozone nonattainment areas are also exempted from demonstrating reasonable further progress towards attainment and submitting contingency measures. *See* CAA section 182(a) (does not include a reasonable further progress requirement and specifically notes that ''Section [172(c)(9)] of this title (relating to contingency measures) shall not apply to Marginal Areas'').

Existing regulations—either local, state, or federal—are typically a part of the reason why ''additional'' local controls are not needed to bring Marginal nonattainment areas into attainment. As described in EPA's record for its final rule defining area classifications for the 2015 ozone NAAQS and establishing associated attainment dates, history has shown that the majority of areas classified as Marginal for prior ozone standards attained the respective standards by the Marginal area attainment date (*i.e.,* without being re-classified to a Moderate designation). *See* 83 FR 10376. As part of a historical lookback, EPA calculated that by the relevant attainment date for areas classified as Marginal, 85 percent of such areas attained the 1979 1–hour ozone NAAQS, and 64 percent attained the 2008 ozone NAAQS.[20] Based on these historical data, EPA expects that many areas classified Marginal for the 2015 ozone NAAQS will also attain by the relevant attainment date as a result of emissions reductions that are already expected to occur through implementation of existing local, state, and federal emissions reduction programs. To the extent states have concerns about meeting their attainment date for a Marginal area, the CAA under section 181(b)(3) provides authority for them to voluntarily request a higher classification for individual areas, if needed.

Areas that are classified as Moderate typically have more pronounced air quality problems than Marginal areas or have been unable to attain the NAAQS under the minimal requirements that apply to Marginal areas. *See* CAA sections 181(a)(1) (classifying areas based on the degree of nonattainment relative to the NAAQS) and (b)(2) (providing for reclassification to the next highest designation upon failure to attain the standard by the attainment date). Thus, unlike Marginal areas, the statute explicitly requires a state with an ozone nonattainment area classified as Moderate or higher to develop an attainment plan demonstrating how the state will address the more significant air quality problem, which generally requires the application of various control measures to existing sources of emissions located in the nonattainment

[17] The Marginal area attainment date is not applicable for nonattainment areas already classified as Moderate or higher, such as the New York Metropolitan Area. For the status of all nonattainment areas under the 2015 ozone NAAQS, see U.S. EPA, 8-Hour Ozone (2015) Designated Area/State Information, *https://www3.epa.gov/airquality/greenbook/jbtc.html* (last updated Sept. 30, 2019).

[18] Part D of title I of the CAA provides the plan requirements for all nonattainment areas. Subpart 1, which includes section 172(c), applies to all nonattainment areas. Congress provided in subparts 2–5 additional requirements specific to the various NAAQS pollutants that nonattainment areas must meet.

[19] States with Marginal nonattainment areas are required to implement new source review permitting for new and modified sources, but the purpose of those requirements is to ensure that potential emissions increases do not interfere with progress towards attainment, as opposed to reducing existing emissions. Moreover, EPA acknowledges that states within ozone transport regions must implement certain emission control measures at existing sources in accordance with CAA section 184, but those requirements apply regardless of the applicable area designation or classification.

[20] *See* Response to Comments on Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach (February 26, 2018), at section A.2.4, available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0122.*

area. *See generally* CAA sections 172(c) and 182(b)–(e).

Given that downwind states are not required to demonstrate attainment by the attainment date or impose additional controls on existing sources in a Marginal nonattainment area, EPA believes that it would be inconsistent to interpret the good neighbor provision as requiring EPA to evaluate the necessity for upwind state emissions reductions based on air quality modeled in a future year aligned with the Marginal area attainment date. Rather, EPA believes it is more appropriate and consistent with the nonattainment planning provisions in title I to evaluate downwind air quality and upwind state contributions, and, therefore, the necessity for upwind state emissions reductions, in a year aligned with an area classification in connection with which downwind states are also required to demonstrate attainment and implement controls on existing sources—*i.e.,* with the Moderate area attainment date, rather than the Marginal area date. With respect to the 2015 ozone NAAQS, the Moderate area attainment date will be in the summer of 2024, and the last full year of monitored ozone-season data that will inform attainment demonstrations is, therefore, 2023.

EPA's interpretation of the good neighbor requirements in relation to the Marginal area attainment date is consistent with the *Wisconsin* opinion. For the reasons explained below, the court's holding does not contradict EPA's view that 2023 is an appropriate analytic year in evaluating good neighbor SIPs for the 2015 ozone NAAQS. The court in *Wisconsin* was concerned that allowing upwind emission reductions to be implemented after the applicable attainment date would require downwind states to obtain more emissions reductions than the Act requires of them, to make up for the absence of sufficient emissions reductions from upwind states. *See* 938 F.3d at 316. As discussed previously, however, this equitable concern only arises for nonattainment areas classified as Moderate or higher for which downwind states are required by the CAA to develop attainment plans securing reductions from existing sources and demonstrating how such areas will attain by the attainment date. *See, e.g.,* CAA section 182(b)(1) & (2) (establishing ''reasonable further progress'' and ''reasonably available control technology'' requirements for Moderate nonattainment areas). Ozone nonattainment areas classified as Marginal are not required to meet these same planning requirements, and thus the equitable concerns raised by the *Wisconsin* court do not arise with respect to downwind areas subject to the Marginal area attainment date.

The distinction between planning obligations for Marginal nonattainment areas and higher classifications was not before the court in *Wisconsin.* Rather, the court was considering whether EPA, in implementing its obligation to promulgate federal implementation plans under CAA section 110(c), was required to fully resolve good neighbor obligations by the 2018 *Moderate* area attainment date for the 2008 ozone NAAQS. *See* 938 F.3d at 312–13. Although the court noted that petitioners had not ''forfeited'' an argument with respect to the Marginal area attainment date, *see id.* at 314, the court did not address whether its holding with respect to the 2018 Moderate area date would have applied with equal force to the Marginal area attainment date because that date had already passed. Thus, the court did not have the opportunity to consider these differential planning obligations in reaching its decision regarding EPA's obligations relative to the then-applicable 2018 Moderate area attainment date because such considerations were not applicable to the case before the court.[21] For the reasons discussed here, the equitable concerns supporting the *Wisconsin* court's holding as to upwind state obligations relative to the Moderate area attainment date also support EPA's interpretation of the good neighbor provision relative to the Marginal area attainment date. Thus, EPA proposes to conclude that its reliance on an evaluation of air quality in the 2023 analytical year for purposes of assessing good neighbor obligations with respect to the 2015 ozone NAAQS is based on a reasonable interpretation of the CAA and legal precedent.

As previously discussed, the March 2018 memorandum identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the ''3 x 3'' and the ''no water'' approaches to calculating future year design values. The March 2018 memorandum identifies 57 potential nonattainment and maintenance receptors in the West in Arizona (2), California (49), and Colorado (6).[22] The March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating the Southeast States' 2015 ozone NAAQS interstate transport SIP submission, we propose that, at least where a state's impacts are less than one percent to downwind nonattainment and maintenance sites, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.[23]

Further, EPA notes that—due to large distance and a general prevailing west to east wind flow—there is no evidence that any of the Southeastern States will impact potential receptors in the West.[24]

B. Alabama

On August 20, 2018, Alabama submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Alabama relied on the results of EPA's modeling for the 2015 ozone NAAQS, contained in the March

[21] The D.C. Circuit, in a short judgment, subsequently vacated and remanded EPA's action purporting to fully resolve good neighbor obligations for certain states for the 2008 ozone NAAQS, referred to as the CSAPR Close-Out, 83 FR 65878 (Dec. 21, 2018). *New York* v. *EPA,* No. 19–1019 (Oct. 1, 2019). That result necessarily followed from the *Wisconsin* decision, because as EPA conceded, the Close-Out ''relied upon the same statutory interpretation of the Good Neighbor Provision'' rejected in *Wisconsin. Id.* slip op. at 3. In the Close-Out, EPA had analyzed the year 2023, which was two years after the Serious area attainment date for the 2008 ozone NAAQS and not aligned with any attainment date for that NAAQS. *Id.* at 2. In *New York,* as in *Wisconsin,* the court was not faced with addressing specific issues associated with the unique planning requirements associated with the Marginal area attainment date.

[22] The number of receptors in the identified western states is 57, irrespective of whether the ''3 x 3'' or ''no water'' approach is used. Further, although EPA has indicated that states may have flexibilities to apply a different analytic approach to evaluating interstate transport, including identifying downwind air quality problems, because EPA is also concluding in this proposed action that the Southeast States will have an insignificant impact on any potential receptors identified in its analysis, these Southeast States need not definitively determine whether the identified monitoring sites should be treated as receptors for the 2015 ozone standard.

[23] As further discussed below, because none of Southeast States' impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[24] See footnote 5, above, regarding states considered to be in the West.

2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Alabama. The Alabama Department of Environmental Management (ADEM) reviewed EPA's preliminary 2023 modeling and determined that the future year projections are appropriate for the purposes of evaluating Alabama's impact on nonattainment and maintenance receptors in other states. Alabama concurred with EPA's preliminary photochemical modeling results, which indicate that Alabama does not contribute above one percent to any downwind nonattainment and maintenance sites. The August 20, 2018, submittal from Alabama also included additional programs that have led to the reduction of ozone in the state. Therefore, ADEM concluded that emissions from Alabama sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Alabama's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.37 ppb and 0.49 ppb, respectively.[25] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[26] and as a result, demonstrate that emissions from Alabama are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from Alabama will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from Alabama will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

C. Florida

On September 18, 2018,[27] Florida submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Florida 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 Florida. Based on Florida's review of EPA's modeling assumptions and model performance evaluation, Florida determined that EPA's future year projections were appropriate for purposes of evaluating Florida impact on attainment and maintenance of the 2015 ozone NAAQS in other states. For example, Florida found that EPA's modeling used emissions inventory projections that were reasonable considering the projected future decline in Florida NO_X emissions. Thus, Florida concurred with EPA's photochemical modeling results that indicate Florida's greatest impacts on any potential downwind nonattainment or maintenance receptor would be 0.21 ppb and 0.53 ppb, respectively.[28] Florida compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because none of Florida's impacts exceed this threshold, emissions from Florida sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. Additionally, Florida's submission identifies SIP-approved regulations that both directly and indirectly regulate sources of ozone precursor emissions that contribute to ozone concentrations in ambient air.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Florida's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.21 ppb and 0.53 ppb, respectively.[29] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[30] and as a result, demonstrate that emissions from Florida are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from Florida will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from Florida will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

D. Georgia

On September 19, 2018,[31] the Georgia Environmental Protection Division (GA EPD) submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Georgia 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 Georgia.[32] Based on Georgia's review of EPA's modeling assumptions and model performance evaluation, Georgia determined that EPA's future year projections were appropriate for purposes of evaluating Georgia's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, Georgia concurred with EPA's photochemical modeling results that indicate Georgia's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.26

[25] EPA's analysis indicates that Alabama will have a 0.37 ppb impact at the potential nonattainment receptor in Tarrant, Texas (Site ID 484392003), which has a 2023 projected average design value of 72.5 ppb, a 2023 projected maximum design value of 74.8 ppb, and had a 2014–2016 design value of 73 ppb. EPA's analysis further indicates that Alabama will have a 0.49 ppb impact at a potential maintenance receptor in Denton, Texas (Site ID 481210034), which has which has a projected 2023 average design value of 69.7 ppb, a 2023 projected maximum design value of 72.0 ppb, and had a 2014–2016 design value of 80 ppb. *See* the March 2018 memorandum, attachment C.

[26] Because none of Alabama's impacts equal or exceed 0.70 ppb, they necessarily also do not equal or exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[27] EPA notes that the Florida submission was received by EPA on September 26, 2018.

[28] EPA's analysis indicates that Florida will have a 0.21 ppb impact at the potential nonattainment receptor in Brazoria, Texas (Site ID 480391004), which has a 2023 projected average design value of 74.0 ppb, a 2023 projected maximum design value of 74.9 ppb, and had a 2014–2016 design value of 75 ppb. EPA's analysis further indicates that Florida will have a 0.53 ppb impact at a potential maintenance receptor in Harris, Texas (Site ID 482011034), which has which has a projected 2023 projected average design value of 70.8 ppb, a 2023 projected maximum design value of 71.6 ppb, and had a 2014–2016 design value of 73 ppb. *See* the March 2018 memorandum, attachments C.

[29] EPA's analysis indicates that Florida will have a 0.21 ppb impact at the potential nonattainment receptor in Brazoria, Texas (Site ID 480391004), which has a 2023 projected average design value of 74.0 ppb, a 2023 projected maximum design value of 74.9 ppb, and had a 2014–2016 design value of 75 ppb. EPA's analysis further indicates that Florida will have a 0.53 ppb impact at a potential maintenance receptor in Harris, Texas (Site ID 482011034), which has which has a projected 2023 projected average design value of 70.8 ppb, a 2023 projected maximum design value of 71.6 ppb, and had a 2014–2016 design value of 73 ppb. *See* the March 2018 memorandum, attachments B, C.

[30] Because none of Florida's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[31] EPA notes that the Georgia submission was received by EPA on September 24, 2018.

[32] *See* Table A–1 and Table A–2 in Appendix A of Georgia's submittal. EPD highlights Georgia's impact to nonattainment and maintenance sites in the East. They also note that all values are less than the defined threshold of 0.70 ppb.

ppb and 0.34 ppb, respectively. Georgia compared these values to a screening threshold and concluded that emissions from Georgia sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. Additionally, the Georgia submittal identified regulations that have been approved into the Georgia SIP to provide for the control of NO_X and VOCs, which are precursors that contribute to ambient ozone concentrations.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Georgia's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.26 ppb and 0.34 ppb, respectively.[33] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[34] and as a result, demonstrate that emissions from Georgia are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from Georgia will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from Georgia will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

E. North Carolina

On September 27, 2018, North Carolina submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. North Carolina 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 North Carolina. Based on North Carolina's review of EPA's modeling assumptions, the State determined that EPA's future year projections were conservative for purposes of evaluating North Carolina's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, North Carolina concurred with EPA's photochemical modeling results that indicate North Carolina's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.43 ppb and 0.42 ppb, respectively. North Carolina compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because North Carolina's impacts to neighboring states are projected to be less than 0.70 ppb, emissions from North Carolina sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. North Carolina further performed back trajectory analyses to confirm that North Carolina did not significantly contribute to ozone exceedances at ozone monitors in the East, and identified SIP-approved regulations that both directly and indirectly impact ozone concentrations in the State.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that North Carolina's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.43 ppb and 0.42 ppb, respectively.[35] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[36] and as a result, demonstrate that emissions from North Carolina are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from North Carolina will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from North Carolina will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

F. South Carolina

On September 7, 2018, South Carolina submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. South Carolina 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 South Carolina. Based on South Carolina's review of EPA's modeling assumptions, techniques, and data, South Carolina determined that EPA's future year projections were appropriate for purposes of evaluating South Carolina's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, South Carolina concurred with EPA's photochemical modeling results that indicate South Carolina's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.12 and 0.14 ppb, respectively. South Carolina compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because none of South Carolina's impacts exceed this threshold, emissions from South Carolina sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The South Carolina SIP also includes several regulations that address the attainment, nonattainment and maintenance of the ozone NAAQS.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that South Carolina's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.12 ppb and 0.14 ppb, respectively.[37]

[33] EPA's analysis indicates that Georgia will have a 0.26 ppb impact at the potential nonattainment receptor in Tarrant, Texas (Site ID 484392003), which has a 2023 projected average design value of 72.5 ppb, a 2023 projected maximum design value of 74.8 ppb, and had a 2014–2016 design value of 73 ppb. EPA's analysis further indicates that Georgia will have a 0.34 ppb impact at a potential maintenance receptor in Denton, Texas (Site ID 481210034), which has which has a projected 2023 projected average design value of 69.7 ppb, a 2023 projected maximum design value of 72.0 ppb, and had a 2014–2016 design value of 80 ppb. *See* the March 2018 memorandum, attachments B, C.

[34] Because none of Georgia's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[35] EPA's analysis indicates that North Carolina will have a 0.43 ppb impact at the potential nonattainment receptor in Fairfield, Connecticut (Site ID 90019003), which has a 2023 projected average design value of 73.0 ppb, a 2023 projected maximum design value of 75.9 ppb, and had a 2014–2016 design value of 85.0 ppb. EPA's analysis further indicates that North Carolina will have a 0.42 ppb impact at a potential maintenance receptor in Harford, Maryland (Site ID 240251001), which has which has a projected 2023 projected average design value of 70.9 ppb, a 2023 projected maximum design value of 73.3 ppb, and had a 2014–2016 design value of 73.0 ppb. *See* the March 2018 memorandum, attachments B, C.

[36] Because none of North Carolina's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[37] EPA's analysis indicates that South Carolina will have a 0.12 ppb impact at the potential nonattainment receptor in Fairfield, Connecticut (Site ID 90019003), which has a 2023 projected average design value of 73.0 ppb, a 2023 projected maximum design value of 75.9 ppb, and had a 2014–2016 design value of 85 ppb. EPA's analysis further indicates that South Carolina will have a 0.14 ppb impact at a potential maintenance receptor in Harris, Texas (Site ID 482010024), which has which has a projected 2023 projected average design value of 70.4 ppb, a 2023 projected maximum design value of 72.8 ppb and had a 2014–

These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[38] and as a result, demonstrate that emissions from South Carolina are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from South Carolina will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from South Carolina will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

G. Tennessee

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 ozone NAAQS. Tennessee 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 Tennessee. Based on Tennessee's review of EPA's modeling assumptions, Tennessee determined that EPA's future year projections were appropriate for purposes of evaluating Tennessee's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, Tennessee concurred with EPA's photochemical modeling results that indicate Tennessee's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.31 ppb and 0.65 ppb, respectively. Tennessee compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because none of Tennessee's impacts exceed this threshold, emissions from Tennessee sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. Additionally, the Tennessee SIP includes several regulations that address the attainment, nonattainment, and maintenance of the ozone NAAQS.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Tennessee's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.31 ppb and 0.65 ppb, respectively.[39] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[40] and as a result, demonstrate that emissions from Tennessee are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from Tennessee will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from Tennessee will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

III. Proposed Actions

As discussed in the previous sections, each of the Southeast States (Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee) concluded that emissions from sources in the states will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. EPA's evaluation of the Southeast States' submissions, discussed above, confirms this finding. Therefore, EPA is proposing to approve the interstate transport portions of the infrastructure SIP submissions from Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee as meeting CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 ozone NAAQS. EPA is requesting comments on the proposed approvals.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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, these actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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, for Alabama, Florida, Georgia, North Carolina, and Tennessee, the SIP is not approved to apply on any Indian reservation land or in any other

2016 design value of 79 ppb. *See* the March 2018 memorandum, attachments B, C.

[38] Because none of South Carolina's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[39] EPA's analysis indicates that Tennessee will have a 0.31 ppb impact at three potential nonattainment receptors: Fairfield, Connecticut (Site ID 90013007), which has a 2023 projected average design value of 71.0 ppb, a 2023 projected maximum design value of 75.0 ppb, and had a 2014–2016 design value of 81 ppb; Milwaukee, Wisconsin (Site ID 550790085), which has a 2023 projected average design value of 71.2 ppb, a 2023 projected maximum design value of 73 ppb and had a 2014–2016 design value of 71 ppb; and Sheboygan, Wisconsin (Site ID 551170006), which has a 2023 projected average design value of 72.8 ppb, a 2023 projected maximum design value of 75.1 ppb and had a 2014–2016 design value of 79 ppb. EPA's analysis further indicates that Tennessee will have a 0.65 ppb impact at a potential maintenance receptor Allegan, Michigan (Site ID 260050003), which has which has a projected 2023 projected average design value of 69.0 ppb, a 2023 projected maximum design value of 71.7 ppb and had a 2014–2016 design value of 75 ppb. *See* the March 2018 memorandum, attachments B, C.

[40] Because none of Tennessee's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the 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).

For South Carolina, because this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this proposed action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

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: December 12, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–27695 Filed 12–27–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0321; FRL–10003–74–Region 9]

Air Plan Conditional Approval and Disapproval; Arizona; Maricopa County; Power Plants, Fuel Burning Equipment, and Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve two revisions to the Maricopa County portion of the Arizona State Implementation Plan (SIP) concerning fuel-burning equipment and internal combustion engines. The EPA is also proposing to disapprove one revision to the Maricopa County portion of the Arizona SIP concerning power plants. We are proposing action on Maricopa County rules that regulate these emission sources under the Clean Air Act (CAA or the ''Act''). We are taking comments on these proposals and plan to follow with final actions.

DATES: Any comments must arrive by January 29, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0321 at *http://www.regulations.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The 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. The 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at *gong.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

On June 22, 2017, the Arizona Department of Environmental Quality (ADEQ, or the ''State'') electronically submitted a SIP revision from the Maricopa County Air Quality Department (MCAQD, or the ''County'') revising several rules. Table 1 lists the rules on which the EPA is proposing action, with the dates they were revised by the MCAQD, the dates they were submitted by the ADEQ, and the type of action that the EPA is proposing in this notice.

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Revised	Submitted	Proposed action
322	Power Plant Operations	November 2, 2016	June 22, 2017	Disapproval.
323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	November 2, 2016	June 22, 2017	Conditional Approval.
324	Stationary Reciprocating Internal Combustion Engines (RICE).	November 2, 2016	June 22, 2017	Conditional Approval.