



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2018-0824; FRL-10004-49-Region 10]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Clean Air Act (CAA or the Act) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. On September 26, 2018, the State of Idaho made a submission to the Environmental Protection Agency (EPA) to address these requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The 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 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2018-0824 at <https://www.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 electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

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**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA. This supplementary information section is arranged as follows:

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### **I. Background**

On October 1, 2015, the 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, SIPs meeting the applicable requirements of section

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<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.

110(a)(2).<sup>2</sup> One of these applicable requirements is found in section 110(a)(2)(D)(i), otherwise known as the good neighbor 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, 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, the 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).<sup>3</sup>

We note that the 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, and the Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (CSAPR

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

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

Update).<sup>4</sup> These actions only addressed interstate transport in the eastern United States<sup>5</sup> 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,<sup>6</sup> the 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:<sup>7</sup> (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.

The EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) with preliminary interstate ozone transport

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<sup>4</sup> See 76 FR 48208 (August 8, 2011) (*i.e.*, CSAPR) and 81 FR 74504 (October 26, 2016) (*i.e.*, CSAPR Update).

<sup>5</sup> 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.

<sup>6</sup> 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>7</sup> 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).

modeling with projected ozone design values for 2023, on which we requested comment.<sup>8</sup> 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.<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.<sup>10</sup> Although the 2017 memorandum also released data for a 2023 modeling year, we 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. And, on March 27, 2018, we 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.<sup>11</sup> The EPA subsequently issued two more

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<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 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 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 or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notice>.

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.<sup>12</sup>

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, the 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 the EPA’s historic “3 x 3” approach<sup>13</sup> 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).

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<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 action or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>.

<sup>13</sup> See March 2018 memorandum, p. 4

For purposes of identifying potential nonattainment and maintenance receptors in 2023, the EPA applied the same approach used in the CSAPR Update, wherein the 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, the EPA identified nonattainment receptors as those monitoring sites with measured values<sup>14</sup> exceeding the NAAQS that also have projected (i.e., in 2023) average design values exceeding the NAAQS. The 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. The 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, the EPA next performed nationwide, state-level ozone source-apportionment modeling to estimate the expected impact from each state to each nonattainment and maintenance receptor.<sup>15</sup> The 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

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<sup>14</sup> The 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.

<sup>15</sup> As discussed in the March 2018 memorandum, the 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.

and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this action.

In the CSAPR and the CSAPR Update, the 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 the 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, the 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 the 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,

the 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.<sup>16</sup>

While the March 2018 memorandum presented information regarding the EPA's latest analysis of ozone transport following the approaches the EPA has taken in prior regional rulemaking actions, the 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, the EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than the EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

## **II. State Submission**

On September 26, 2018, Idaho submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Idaho's submission included a review of the state's ozone monitoring data and an analysis of ozone precursor emissions contributions and trends (nitrogen oxides and volatile organic compounds). Idaho's submission also reviewed programs and regulations that reduce ozone precursor emissions in the state. Idaho 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 Idaho. Based on Idaho's review of EPA's methodology, emissions reductions, and modeling assumptions, Idaho

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<sup>16</sup> See August 2018 memorandum, p. 4.

determined that EPA's future year projections were appropriate for purposes of evaluating Idaho's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, Idaho concurred with the EPA's photochemical modeling results that indicate Idaho's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.19 ppb. Idaho compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because Idaho's impacts to neighboring states are projected to be less than 0.70 ppb, emissions from Idaho sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

Idaho also evaluated potential ozone transport to the Fort Hall Reservation, located in southeast Idaho. The EPA approved the Shoshone-Bannock Tribes of the Fort Hall Reservation to be treated as an affected downwind state for CAA sections 110(a)(2)(D) and 126. The nearest ozone monitor to the Fort Hall Reservation is in Butte County, Idaho, in the Idaho Falls area (Site ID 160230101), approximately 85 km northeast of the Fort Hall Reservation. Idaho noted that the ozone concentrations at the Idaho Falls monitor have been below the 2015 ozone NAAQS. Idaho's submission also included findings from its 2017 photochemical modeling study of an 81-day episode during summer 2013, with unusually high ozone concentrations throughout Idaho, including the Fort Hall Reservation. Idaho concluded that Idaho emissions do not contribute significantly to nonattainment or interfere with maintenance on the Fort Hall Reservation.

### **III. EPA Evaluation**

The 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 Idaho's good neighbor obligation with respect to the 2015 ozone NAAQS. On September 13, 2019, the

D.C. Circuit issued its decision in *Wisconsin v. EPA* addressing legal challenges to the CSAPR Update, in which the 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, the 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.

The 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 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. The 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 the EPA's modeling.<sup>17</sup> However, as explained below, the EPA does not believe that either the statute or applicable case law requires the

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<sup>17</sup> 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 September 30, 2019).

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 the 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 the 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 the 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 Clean Air Act, states with areas designated nonattainment are generally required to submit, as part of their SIP, 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).<sup>18</sup> 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.”)<sup>19</sup> 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

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<sup>18</sup> Part D of title I of the Clean Air Act 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.

<sup>19</sup> 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, the 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.

“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 the 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). 83 FR 10376 (March 9, 2018). As part of a historical lookback, the 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. *See* Response to Comments, section A.2.4.<sup>20</sup> Based on these historical data, the EPA expects that many areas classified as 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

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<sup>20</sup> Available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0122>.

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 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, the EPA believes that it would be inconsistent to interpret the good neighbor provision as requiring the 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, the 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.

The 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 the 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 the 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 the 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.<sup>21</sup> 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 the EPA’s interpretation of the good neighbor provision relative to the Marginal area attainment date. Thus, the 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).<sup>22</sup> The March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating Idaho’s 2015 ozone NAAQS interstate transport

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<sup>21</sup> The D.C. Circuit, in a short judgment, subsequently vacated and remanded the 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 (December 21, 2018). *New York v. EPA*, No. 19-1019 (October 1, 2019). That result necessarily followed from the *Wisconsin* decision, because as the 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, the 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.

<sup>22</sup> 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 the 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 the EPA is also concluding in this proposed action that Idaho will have an insignificant impact on any potential receptors identified in its analysis, Idaho need not definitively determine whether the identified monitoring sites should be treated as receptors for the 2015 ozone standard.

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. This is consistent with our prior action on Idaho's SIP with respect to the 2008 ozone NAAQS<sup>23</sup> and with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update. The 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 the EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.

The EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Idaho's largest impact on any potential downwind nonattainment and maintenance receptor in any other Western state is 0.18 ppb and 0.19 ppb, respectively.<sup>24</sup> These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),<sup>25</sup> and as a result, demonstrate that emissions from Idaho are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. The projected impacts from Idaho to

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<sup>23</sup> 80 FR 78981 (December 18, 2015).

<sup>24</sup> The EPA's analysis indicates that Idaho will have a 0.18 ppb impact at the potential nonattainment receptor in Douglas, Colorado (Site ID 80350004), which has a 2023 projected average design value of 71.1 ppb, a 2023 projected maximum design value of 73.2 ppb, and had a 2014-2016 design value of 77 ppb. The EPA's analysis further indicates that Idaho will have a 0.19 ppb impact at a potential maintenance receptor in Arapahoe, Colorado (Site ID 80050002), which has which has a projected 2023 average design value of 69.3 ppb, and a 2023 projected maximum design value of 71.3 ppb. *See* the March 2018 memorandum, attachment C.

<sup>25</sup> Because none of Idaho'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.

potential receptors in the East is even lower. Accordingly, we propose to conclude that emissions from Idaho 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.

The EPA has also assessed Idaho's analysis of potential transport to the Fort Hall Reservation in southeast Idaho. As discussed previously, the EPA's modeling did not identify receptors in Idaho. Additionally, the ozone monitoring sites in Idaho are projected to remain below the current standard in 2023. The Idaho Falls area monitoring site (Site ID 160230101), which is nearest to the Fort Hall Reservation, had a 2014-2016 design value of 60 ppb and the EPA's modeling projects a 2023 maximum design value of 60.2 ppb and a 2023 average design value of 59.6 ppb, both below the 70 ppb standard. The Boise area monitoring site with the highest 2023 projected ozone concentrations (Site ID 160010017) had a 2014-2016 design value of 67 ppb and the EPA's modeling projects a 2023 maximum design value of 59.8 ppb and a 2023 average design value of 59.4 ppb.<sup>26</sup> We therefore propose to find that emissions from Idaho will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS at the Fort Hall Reservation.

#### **IV. Proposed Action**

As discussed in section II of this preamble, Idaho concluded 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. The EPA's evaluation of Idaho's submission, discussed in section III of this preamble, confirms this finding. We are proposing to approve the Idaho

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<sup>26</sup> In attachment A of the 2017 memorandum, the EPA provided the projected ozone design values at individual monitoring sites nationwide. The data for the Idaho monitors is presented on page A-10.

submission as meeting CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 ozone NAAQS. The EPA is requesting comments on the proposed approval.

## **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, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 (Public Law 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 it does not involve technical standards; and
- Does not provide the 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).

The proposed SIP would not be 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 6, 2020.

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Chris Hladick,  
Regional Administrator,  
Region 10.

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