

TTD (312) 751-4701,
Marguerite.Dadabo@rrb.gov.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board (Board) proposes to amend its disability regulations to allow video teleconferencing technology (VTT) to be used to conduct a psychological or a psychiatric consultative examination in a case where such technology permits proper evaluation of a claimant. A VTT consultative examination is an examination conducted through a telecommunications system that allows the examining physician or psychologist and the claimant to see and hear each other for the purpose of communication in real time. A VTT consultative examination must comply with all requirements for consultative examinations in subpart G of Part 220 of the Board's regulations, 20 CFR part 220, subpart G. In addition, the following requirements must be followed if a VTT consultative examination is used. The examining physician or psychologist must be currently licensed in the state in which the provider practices.

The examining physician or psychologist must have the training and experience to perform the type of examination requested. The examining physician or psychologist must have access to VTT, and the claimant must live in the same state in which the provider practices. The claimant shall have the right to refuse a VTT consultative examination without penalty.

Regulatory Requirements

*Executive Order 12866, as
Supplemented by Executive Order
13563*

We consulted with the Office of Management and Budget (OMB) and determined that this proposed rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

Executive Order 13132 (Federalism)

This proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Board believes that this proposed rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

We certify that this proposed rule would not have a significant economic impact on a substantial number of small entities because the proposed rule affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This proposed rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

List of Subjects in 20 CFR Part 220

Disability benefits, railroad employees, railroad retirement.

For the reasons discussed in the Preamble, the Railroad Retirement Board proposes to amend 20 CFR part 220 as follows:

PART 220—DETERMINING DISABILITY

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

■ 2. Amend § 220.57 by adding paragraph (c) to read as follows:

§ 220.57 Types of purchased examinations and selection of sources.

* * * * *

(c) *Use of Video Teleconferencing Technology.* Video teleconferencing technology (VTT) may be used for a psychological or a psychiatric consultative examination provided that the following requirements are met:

(1) The examining physician or psychologist is currently state-licensed in the state in which the provider practices;

(2) The examining physician or psychologist has the training and experience to perform the type of examination requested;

(3) The examining physician or psychologist has access to video teleconferencing technology;

(4) The examining physician or psychologist is permitted to perform the exam in accordance with state licensing laws and regulations;

(5) The protocol for the examination does not require physical contact;
(6) The claimant has the right to refuse a VTT examination without penalty; and

(7) The VTT examination complies with all requirements in this Subpart governing consultative examinations.

Dated: January 27, 2022.

For the Board

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2022-02065 Filed 2-2-22; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2021-0678; FRL-9299-01-R8]

Air Plan Approval; Montana; 2015 Ozone NAAQS Interstate Transport Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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

DATES: Written comments must be received on or before March 7, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2021-0678, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number: (303) 312-6728, email address: schmitt.ellen@epa.gov.

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

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, SIP submissions meeting the applicable requirements of section 110(a)(2).² One of these applicable

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)

requirements is found in section 110(a)(2)(D)(i)(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. Under prongs 1 and 2 of the good neighbor provision, a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).³

We note that EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,⁴ the Cross-State Air Pollution Rule Update (CSAPR Update) with respect to the 2008 ozone NAAQS, and, most recently, the Revised CSAPR Update for the 2008 ozone NAAQS.⁵ ⁶

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

of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

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

⁴ See 76 FR 48208 (August 8, 2011).

⁵ In 2019, the D.C. Circuit Court of Appeals remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin v. EPA*, 938 F.3d 303, 313 (D.C. Cir. 2019).

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

⁷ In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport

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

EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values (DVs) for 2023 using a 2011 base year modeling platform, on which we requested public comment.⁸ In the NODA, EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 ozone NAAQS.⁹ On October 27, 2017, we released a memorandum (2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address good neighbor obligations for the 2008 ozone NAAQS.¹⁰ On March 27, 2018, we issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the 2017 memorandum could also be useful for identifying potential downwind air

include the NO_x SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

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

⁹ 82 FR 1733, 1735 (January 6, 2017).

¹⁰ See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action as “October 2017 Memorandum” or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices>.

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

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

appropriate information as the primary basis for this proposed rulemaking.¹⁵ EPA's independent analysis, which evaluated historical monitoring data, recent DVs, and emissions trends, in addition to the Revised CSAPR Update modeling, provides support and further substantiates the results of the 2011 platform modeling relied on by Montana. Section III of this document and the Air Quality Modeling technical support document (TSD) included in the docket for this proposal contain additional detail on Revised CSAPR Update modeling.¹⁶

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

Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin v. EPA*,

remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a).¹⁷

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland v. EPA* that cited the *Wisconsin* decision in holding that EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for EPA's denial of a petition under CAA section 126(b).¹⁸ The court noted that "section 126(b) incorporates the Good Neighbor Provision," and, therefore, "EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the next downwind attainment deadline. Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date." *Id.* at 1204 (emphasis added). EPA interprets the court's holding in *Maryland* as requiring the Agency, under the good neighbor provision, to assess downwind air quality by no later than the next applicable attainment date, including a Marginal area attainment date under CAA section 181 for ozone nonattainment.¹⁹

However, the Marginal area attainment date for the 2015 ozone NAAQS was August 3, 2021.²⁰ EPA does not believe it would be appropriate to focus its analysis on an attainment date that is wholly in the past because the Agency interprets the good neighbor provision as forward looking. *See* 86 FR 23054 at 23074; *see also Wisconsin*, 938 F.3d at 322. Consequently, as this action is being proposed after the 2021 attainment date (as well as after the end of the 2021 ozone season), EPA proposes to use 2023 as an appropriate

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 in the docket for this action as "March 2018 Memorandum."

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, available in the docket for this action as "Maintenance Receptors Memo Oct2018" or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>.

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

¹⁴ See 86 FR 23054 at 23075, 23164 (April 30, 2021).

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

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

¹⁷ 938 F.3d 303, 313.

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

¹⁹ We note that the court in *Maryland* did not have occasion to evaluate circumstances in which EPA may determine that an upwind linkage to a downwind air quality problem exists at steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See Wisconsin*, 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the good neighbor provision. Such circumstances are not at issue in the present proposal.

²⁰ CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

analytic year in this action. The year 2023 contains the last full ozone season before the next downwind attainment date, which is the August 3, 2024, Moderate area attainment date.

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

II. Montana Submission

On October 1, 2018, EPA received a SIP revision from the State of Montana addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Montana 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 Montana in the year 2023. These results indicated the State's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.10 ppb. Referencing the March 2018 memorandum modeling, this level of impact from Montana was found in Brazoria, Texas (monitoring site 480391004), Tarrant, Texas (monitoring site 484392003), and Milwaukee, Wisconsin (monitoring site 550790085). Montana compared this value to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS. Because Montana's impacts to receptors in downwind states are projected to be less than 0.70 ppb in 2023, the State concluded that emissions from sources within Montana will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

Montana's October 2018 good neighbor SIP submission also lists the

State's regulations for controlling ozone precursors. These rules and regulations are included in ARM Title 17, Chapter 8, subchapters 7, 8, 9, 10, 16, and 17.

III. EPA Evaluation of Montana's Submission

Montana's SIP submission relies on analysis of the year 2023 (using a 2011 base year platform) to show that the State does not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. As explained in Section I of this proposal, EPA has conducted an updated analysis for the 2023 analytical year (using a 2016 base year platform) and proposed to rely primarily on this updated modeling to evaluate Montana's transport SIP submission. This updated modeling corroborates Montana's conclusion that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.²¹ While EPA has focused its analysis in this document on the year 2023, modeling data in the record for a future analytic year, 2028, confirm that no new linkages to downwind receptors are projected in later years. This is consistent with an overall, long-term downward trend in emissions from the State.

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

EPA's approach to identifying ozone nonattainment and maintenance receptors in this proposal is consistent with the approach used in previous transport rulemakings and is consistent with the D.C. Circuit's direction in *North Carolina* to give independent consideration to both the "contribute significantly to nonattainment" and the

²¹ See 86 FR 23054 (April 30, 2021). The results of this modeling are included in a spreadsheet in the docket for this action. The underlying modeling files are available for public access in the docket for the Revised CSAPR Update (EPA-HQ-OAR-2020-0272).

"interfere with maintenance" prongs of CAA section 110(a)(2)(D)(i)(I).²²

For the purpose of this proposal, EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that EPA projects will be in nonattainment in the future analytic year.²³

In addition, in this proposal, EPA identifies a receptor to be a "maintenance" receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 136 (D.C. Cir. 2015).²⁴ Specifically, monitoring sites with a projected maximum design value in 2023 that exceeds the NAAQS are considered maintenance receptors. EPA's method of defining these receptors takes into account both measured data and projections based on modeling analysis.

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

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

²³ See 81 FR 74504 (October 26, 2016). Revised CSAPR Update also used this approach. See 86 FR 23054 (April 30, 2021). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. See 70 FR 25241 (January 14, 2005). See also *North Carolina*, 531 F.3d at 913–914 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

²⁴ See 76 FR 48208 (August 8, 2011). CSAPR Update and Revised CSAPR Update also used this approach. See 81 FR 74504 (October 26, 2016) and See 86 FR 23054 (April 30, 2021).

To evaluate future air quality in steps 1 and 2 of the interstate transport framework, EPA is using the 2016 and 2023 base case emissions developed under the EPA/MJO/state collaborative emissions modeling platform project as the primary source for base year and 2023 future year emissions data for this proposal.²⁵

To quantify the contribution of emissions from specific upwind states on 2023 8-hour design values for the identified downwind nonattainment and maintenance receptors, EPA first performed nationwide, state-level ozone source apportionment modeling. The source apportionment modeling provided contributions to ozone from precursor emissions of anthropogenic nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in each state, individually. Details on the source apportionment modeling and the methods for determining contributions are in the Air Quality Modeling TSD in the docket.

The design values and contributions were examined to determine if Montana contributes at or above the threshold of one percent of the 2015 ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. The data²⁶ indicate that the highest contribution in 2023 from Montana to downwind nonattainment or maintenance receptors is 0.08 ppb, well below the one percent of the NAAQS screening threshold. Montana contributes 0.08 ppb to two nonattainment receptors in Connecticut (monitoring site 90013007 in Fairfield County and monitoring site 90099002 in New Haven County) and to one maintenance receptor in Illinois (monitoring site 170314201 in Cook County).

EPA also analyzed emissions trends for ozone precursors in Montana to

support the findings from the air quality analysis. We focused on state-wide emissions of NO_x and VOC.²⁷ Emissions from mobile sources, electric generating units (“EGUs”), industrial facilities, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. This evaluation looks at both past emissions trends, as well as projected trends. EPA notes that the projected VOC emissions are greater than historical emissions in recent years according to NEI data. However, EPA also notes that NO_x emissions are the primary contributor to regional ozone formation in ozone transport, and for Montana, NO_x emissions are projected to continue to decline. As a result of these NO_x emissions reductions, Montana is projected to contribute below the one percent threshold in 2023 to projected nonattainment and maintenance receptors and is projected to continue to contribute below one percent in 2028, despite the greater projected VOC emissions. Projected ozone design values and contributions data for 2021, 2023, and 2028 can be found in the file “Ozone Design Values and Contributions Revised CSAPR Update.xlsx” in the docket for this action.

As shown in Table 1, for Montana, between 2015 and 2019, annual total NO_x and VOC emissions have declined by 19 percent and 21 percent, respectively. Between 2016 and 2023, annual NO_x emissions are projected to decline by 30 percent as a result of the implementation of existing control programs that will continue to decrease NO_x in Montana as indicated by EPA’s most recent 2023 projected emissions.

As shown in Table 2, onroad and nonroad mobile source emissions collectively comprise a large portion of the State’s total anthropogenic NO_x and

VOC. For example, in 2019, NO_x emissions from mobile sources in Montana comprised 63 percent of total NO_x emissions and 25 percent of total VOC emissions.

The large decrease in NO_x emissions between 2016 emissions and projected 2023 emissions in Montana is primarily driven by reductions in emissions from onroad and nonroad mobile sources. EPA projects that the total anthropogenic NO_x emissions and the highway and off highway VOC emissions will continue declining out to 2023 as newer vehicles and engines that are subject to the most recent, stringent mobile source standards replace older vehicles and engines.²⁸

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

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

TABLE 1—ANNUAL EMISSIONS OF NO_x AND VOC FROM ANTHROPOGENIC SOURCES IN MONTANA [tons per year]²⁹

	2011	2012	2013	2014	2015	2016	2017	2018	2019	Projected 2023
NO _x	108,605	108,895	109,184	109,474	103,417	92,623	88,663	85,882	84,040	64,567

²⁵ See 86 FR 23054 (April 30, 2021). The results of this modeling are included in a spreadsheet in the docket for this action. The underlying modeling files are available for public access in the docket for the Revised CSAPR Update (EPA-HQ-OAR-2020-0272).

²⁶ The data are given in the “Air Quality Modeling Technical Support Document for the Revised Cross-State Air Pollution Rule Update” and “Ozone Design Values and Contributions Revised CSAPR Update.xlsx,” which are included in the docket for this action.

²⁷ This is because ground-level ozone is not emitted directly into the air but is formed by

chemical reactions between ozone precursors, chiefly NO_x and VOC, in the presence of sunlight. See 86 FR 23054, 23063.

²⁸ Tier 3 Motor Vehicle Emission and Fuel Standards (79 FR 23414, April 28, 2014); Mobile Source Air Toxics Rule (MSAT2) (72 FR 8428, February 26, 2007), Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002, January 18, 2001); Clean Air Nonroad Diesel Rule (69 FR 38957, June 29, 2004); Locomotive and Marine Rule (73 FR 25098, May 6, 2008); Marine Spark-Ignition and Small Spark-Ignition Engine Rule (73 FR 59034, October 8, 2008); New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder Rule (75 FR

22895, April 30, 2010); and Aircraft and Aircraft Engine Emissions Standards (77 FR 36342, June 18, 2012).

²⁹ The annual emissions data for the years 2011 through 2019 were obtained from EPA’s National Emissions Inventory website: <https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data>. Note that emissions from miscellaneous sources are not included in the State totals presented in Table 1. The emissions for 2023 are based on the 2016 emissions modeling platform. See “2005 thru 2019_2021_2023_2028 Annual State Tier1 Emissions_v3” and the Emissions Modeling TSD in the docket for this action.

TABLE 1—ANNUAL EMISSIONS OF NO_x AND VOC FROM ANTHROPOGENIC SOURCES IN MONTANA—Continued
[tons per year]²⁹

	2011	2012	2013	2014	2015	2016	2017	2018	2019	Projected 2023
VOC	100,778	104,768	108,759	112,750	103,312	91,612	83,660	82,432	81,204	92,076

TABLE 2—ANNUAL EMISSIONS OF NO_x AND VOC FROM ONROAD AND NONROAD VEHICLES IN MONTANA
[tons per year]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	Projected 2023
NO _x	75,883	75,352	74,821	74,289	69,640	60,254	57,701	55,182	52,662	41,261
VOC	31,108	30,865	30,622	30,379	28,059	23,477	22,644	21,416	20,188	16,631

Thus, EPA’s evaluation of measured and monitored data, and contribution values in 2023, as discussed in this section, is consistent with conclusions made by Montana that emissions from sources in the State will not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

IV. Proposed Action

EPA is proposing to approve the October 1, 2018 SIP submittal as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. At this time, EPA is not proposing action on the remaining infrastructure elements included in Montana’s submittal and will act on those elements in a future action.

The Agency is soliciting public comments on its proposed approval of the CAA section 110(a)(2)(D)(i)(I) element of Montana’s infrastructure SIP submittal for the 2015 ozone NAAQS. Significant comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the ADDRESSES section of this Federal Register.

V. Statutory and Executive Order Reviews

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

imposed by state law. For that reason, this proposed action:

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

tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: January 27, 2022.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2022–02111 Filed 2–2–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–30; RM–11916; DA 22–66; FR ID 69356]

**Television Broadcasting Services
Vernon, Alabama**

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Alabama Educational Television Commission (Petitioner), requesting the allotment of reserved noncommercial educational channel *4 at Vernon, Alabama, as the community’s first local service.

DATES: Comments must be filed on or before March 7, 2022 and reply comments on or before March 21, 2022.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45