

Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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. 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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address

"disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair

treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies." The AQCC did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 29, 2024.

KC Becker,

Regional Administrator, Region 8.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2021-0663; EPA-R07-OAR-2021-0851; FRL-11688-01-R7]

Air Plan Disapproval; Missouri; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA or the Agency) is proposing to disapprove a State Implementation Plan (SIP) revision submitted by Missouri (the State) on November 1, 2022 regarding interstate transport for the 2015 8-hour ozone national ambient air quality standards (NAAQS). The "good neighbor" or "interstate transport" provision requires that each State's SIP contain adequate provisions to prohibit emissions from within the State from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other States. This requirement is part of the broader set of "infrastructure" requirements designed to ensure that the structural components of each State's air quality management program are adequate to meet the State's responsibilities under the CAA. Missouri previously submitted a SIP revision regarding ozone transport for the 2015 8-hour ozone NAAQS (2015 ozone NAAQS) on June 10, 2019, which the EPA previously disapproved. Missouri submitted a second SIP submission, reanalyzing its good neighbor obligations and making revisions to its SIP, on November 1, 2022. In this document, the EPA proposes to disapprove the November 1, 2022, submission as inadequate to address Missouri's obligations. This disapproval, if finalized, will establish a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the relevant interstate transport requirements, unless the EPA approves a subsequent SIP submission that meets these requirements. Disapproval does not start a mandatory sanctions clock.

DATES: Written comments must be received on or before September 20, 2024. *Virtual public hearing:* The EPA will hold a virtual public hearing on August 21, 2024. The last day to pre-register to speak at the hearing will be August 19, 2024. On August 20, 2024,

the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at <https://www.epa.gov/mo/air-missouri>. If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 13, 2024.

For more information on the virtual public hearing, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2021–0851, 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 <https://www.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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: There are two dockets supporting this action, EPA–R07–OAR–2021–0851 and EPA–HQ–OAR–2021–0663. EPA–R07–OAR–2021–0851 contains information specific to Missouri, including the notice of proposed rulemaking. Docket ID No. EPA–HQ–OAR–2021–0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 ozone NAAQS that are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket ID No. EPA–R07–OAR–2021–0851. All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in <https://www.regulations.gov>.

To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at <https://www.epa.gov/mo/air-missouri>, or contact us via email at mcintyre.gerald@epa.gov. For more information on the virtual public hearing, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

William Stone, Environmental Protection Agency, Region 7 Office, Air Permitting and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7714; email address: stone.william@epa.gov.

SUPPLEMENTARY INFORMATION:

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

Virtual public hearing: The EPA is holding a virtual public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The EPA will hold a virtual public hearing to solicit comments on August 21, 2024.

The hearing will convene at 9 a.m. Central Time (CT) and will conclude at 3 p.m. CT. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details, including information on how to register for the virtual public hearing, on the virtual public hearing website at <https://www.epa.gov/mo/air-missouri>.

The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this document in the **Federal Register**. To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at <https://www.epa.gov/mo/air-missouri>, or contact us via email at mcintyre.gerald@epa.gov. The last day to pre-register to speak at the hearing will be August 19, 2024. On August 20, 2024, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at <https://www.epa.gov/mo/air-missouri>. Additionally, requests to speak will be taken on the day of the hearing as time allows.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to

run either ahead of schedule or behind schedule. Each commenter will have approximately 3 to 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically by including it in the registration form or emailing it to mcintyre.gerald@epa.gov. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the virtual public hearing. A transcript of the virtual public hearing, as well as copies of oral presentations submitted to the EPA, will be included in the docket for this action.

The EPA is asking all hearing attendees to pre-register, even those who do not intend to speak. The EPA will send information on how to join the public hearing to pre-registered attendees and speakers. Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/mo/air-missouri>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact us via email at mcintyre.gerald@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 13, 2024. The EPA may not be able to arrange accommodations without advance notice.

Preamble glossary of terms and abbreviations: The following are abbreviations of terms used in the preamble.

\$/ppb Dollar-per-ppb
 2016v1 2016-Based Emissions Modeling Platform Version 1
 2016v2 2016-Based Emissions Modeling Platform Version 2
 2016v3 2016-Based Emissions Modeling Platform Version 3
 AQAT Air Quality Analysis Tool
 CAA Clean Air Act
 CAIR Clean Air Interstate Rule
 CBI Confidential Business Information
 CSAPR Cross State Air Pollution Rule
 DV Design Value
 EGU Electric Generating Unit
 EPA Environmental Protection Agency
 FIP Federal Implementation Plan
 LADCO Lake Michigan Air Directors Consortium
 LMOS Lake Michigan Ozone Study

MDA8 Maximum Daily Average 8-Hour
 MoDNR Missouri Department of Natural
 Resources
 MOVES3 Motor Vehicle Emission
 Simulator Version 3
 MJO Multi-Jurisdictional Organization
 NAAQS National Ambient Air Quality
 Standards
 NO_x Nitrogen Oxides
 Non-EGU Non-Electric Generating Unit
 NODA Notice of Data Availability
 ppb Parts per Billion
 ppm Parts per Million
 RTC Response to Comments
 SCR Selective Catalytic Reduction
 SIP State Implementation Plan
 SNCR Selective Non-Catalytic Reduction
 SOA CC State of the Art Combustion
 Controls
 SSM Startup, Shutdown, and Malfunction
 TSD Technical Support Document

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I. Background

On October 1, 2015, the EPA promulgated a revision to the 2015 ozone NAAQS, lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm) for the 8-hour standard.¹ Section 110(a)(1) of the CAA requires States to submit, within three years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).² One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the "interstate transport" or "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 two so-called "prongs" within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another State (Prong 1) or interfere with maintenance of the NAAQS in another State (Prong 2). The 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

A. Executive Summary

In this notice of proposed rulemaking, the EPA is providing an opportunity for public comment on its proposed conclusion that the November 1, 2022 SIP submission (hereafter November 2022 Submission or Submission) from Missouri does not contain the necessary provisions to prohibit emissions from sources within the State from significantly contributing to nonattainment or interfering with maintenance of the 2015 ozone NAAQS in downwind areas as required by the CAA. The EPA is proposing to disapprove the November 2022 Submission as to both Prong 1 and 2 of

CAA section 110(a)(2)(D)(i)(I) as insufficient on the basis that it fails to adequately support its determination of Missouri's good neighbor obligations for the 2015 ozone NAAQS.

Previously, the EPA disapproved a prior submission provided by the Missouri Department of Natural Resources (MoDNR) to address these obligations. *See* 88 FR 9336 (February 13, 2023). Following the EPA's proposal to disapprove that submission and proposal for a Federal implementation plan (the proposed Good Neighbor Plan), signed and made public in February and March of 2022, respectively, the MoDNR developed this new Submission. Following review of a draft version of the submission, the EPA advised the MoDNR by letter in fall of 2022 regarding a number of concerns with respect to its approvability. The MoDNR made several adjustments purporting to address the EPA's comments and submitted the Submission as a SIP revision on November 1, 2022, several months after the close of the comment periods on the proposal to disapprove the prior submission and the proposed Good Neighbor Plan.

To evaluate this Submission, the EPA applied its longstanding approach to evaluating good neighbor obligations, the 4-step interstate transport framework (further detailed in section I.D. of this document) that the MoDNR itself used to organize its Submission. The MoDNR specifically worked from the EPA's proposed determinations regarding these obligations by applying the 4-step framework as set forth in the proposed Good Neighbor Plan, 87 FR 20036 (April 6, 2022), while presenting a series of arguments in support of a less stringent set of obligations.

The EPA proposes to find that the MoDNR's November 2022 Submission fails to provide an adequate technical and legal basis to demonstrate that Missouri's good neighbor obligations are adequately addressed, and it unreasonably concludes that only emissions improvements relying on existing control installations at certain identified power plants in the State (which are not, in fact, permanent or enforceable prohibitions, as explained in section III.D.) are sufficient to prohibit Missouri's significant contribution for the 2015 ozone NAAQS. The evidence indicates that additional, cost-effective emissions control opportunities are available across a number of Missouri's large emissions sources and that the MoDNR has not conducted a sufficient review of those emissions control opportunities or

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

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

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

its broader source inventory. See section III.C of this document.

The EPA would reach these conclusions regarding this Submission even in the absence of the Good Neighbor Plan; however, the record evidence that the EPA has developed in the course of developing the Good Neighbor Plan provides important information that assists in the evaluation of this Submission. The EPA always strongly encourages States to develop SIP revisions that can replace or forestall the need for FIPs. The EPA explained in the proposed Good Neighbor Plan that States remain free to develop SIP submissions, and consistent with prior good neighbor rulemakings such as the Clean Air Interstate Rule (CAIR) and the Cross-State Air Pollution Rule (CSAPR), the EPA provided States as much information as the Agency could supply at that time to support the ability of States to submit SIP revisions to achieve the emissions reductions that the EPA believed necessary to eliminate significant contribution. *Id.* at 20040. That proposal could not definitively establish or prejudice the necessary components of an approvable SIP; however, the EPA's discussion there provided notice to Missouri and other States of the EPA's own evidence concerning good neighbor impacts and available controls, and, therefore, the EPA's expected process for reviewing SIPs in light of that evidence. The MoDNR had that information available, and indeed worked from it, at the time it developed the Submission here.

Specifically, in the proposed Good Neighbor Plan, the EPA explained that States may select emissions reductions strategies that differ from the emissions controls included in the proposed FIP. The EPA went on to state that for a State to remove all FIP provisions through an approved SIP revision, a State would need to address all of the required reductions determined through the EPA's own review of the evidence and addressed by the FIP for that State, though the States could go about achieving those reductions differently. *Id.* at 20149. The EPA also stated in the proposal that if States were to regulate their Electric Generating Units (EGUs), in the case of SIP submissions not adopting the EGU trading program, the EPA would evaluate such a transport SIP based on the particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the identified emissions reductions (*i.e.*, reductions equal to or greater than what the Group 3 trading program will achieve) will be achieved. *Id.* at 20151. Similarly, for non-Electric Generating

Units (non-EGUs), the EPA stated that a State's SIP submission must provide adequate provisions to prohibit an equivalent or greater amount of nitrogen oxide (NO_x) emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other State. *Id.*⁴

The final Good Neighbor Plan signed on March 15, 2023, contained a discussion on SIP submissions similar to the proposal's discussion, which expanded on and clarified certain points in response to comments. There, the EPA reiterated that States remain free to adopt alternative approaches to addressing their significant contribution that differ from the FIP promulgated for that State. However, the EPA stated that, given the Agency's own extensive analysis, it did not anticipate revisiting its findings at Steps 1 or 2 of the transport framework. See 88 FR 36839. Further, the EPA explained that the level of reductions required by the FIP provides an "important benchmark" for States in evaluating possible replacement SIPs, and that we generally anticipated that a SIP seeking an alternative approach to eliminating its significant contributions would need to establish an equivalent level of emissions reductions to what the FIP requires at Step 3, and any such replacement SIP will need to comply with CAA section 110(j). *Id.*

The EPA recognizes that the MoDNR made this submission in November of 2022, several months after the proposed Good Neighbor Plan was published, and before the final Good Neighbor Plan was issued on March 15, 2023. The information provided to States regarding what the EPA anticipated would likely be needed to develop a SIP that satisfies the 2015 ozone NAAQS good neighbor obligations stated in the proposal was nonetheless available for the MoDNR to consider in developing this submission. This guidance was also consistent with the EPA's stated policies on approvable good neighbor SIPs across many prior transport rulemakings going back at least to the Clean Air Interstate Rule (CAIR) in 2005. *See, e.g.*, 87 FR 55692, 55693 (September 12, 2022); 86 FR 60602, 60607–08, 60610–11 (November 3, 2021); 86 FR 23054, 23147–48 (April 30, 2021); 81 FR 74504, 74569 (October 26, 2016); 76 FR 48208, 48326–28

⁴ The EPA clarifies that this language was not intended to suggest that states must regulate EGUs, or the same non-EGU industries identified in the Good Neighbor Plan. Because "significant contribution" is ultimately defined at the state level, a state may choose to regulate entirely different categories of sources from a transport FIP so long as the amount of emissions that constitutes "significant contribution" is prohibited.

(August 8, 2011); 70 FR 25162, 25259–62 (May 12, 2005).

As each of these prior notices make clear, when the EPA is evaluating and acting on SIP submissions following the promulgation of a final transport FIP, the EPA has recognized that the FIP can serve an important purpose in helping the EPA to evaluate the sufficiency of a SIP submission (even when the SIPs were submitted prior to the final FIP). However, the EPA will always carefully evaluate any alternative information or arguments a State puts forward in support of a different understanding of their good neighbor obligations. Thus, in disapproving SIP submissions from New York and New Jersey regarding good neighbor obligations for the 2008 ozone NAAQS, following the promulgation of the Revised CSAPR Update (which had been submitted prior to that rule even being proposed), the EPA explained that neither State had provided "a sufficient demonstration" that the permanent and enforceable measures adopted into the States' SIPs prohibited "significant contribution" in the manner that had been determined in the Revised CSAPR Update, nor "provided an alternative method for doing so." 86 FR 60607–08, 60610–11.

Similarly here, while the MoDNR has not followed the approach of adopting emissions control measures that are either identical or equivalent to the proposed (or final) Good Neighbor Plan, the EPA continues to recognize that States may submit an alternative approach to meeting their good neighbor obligations, and the EPA will approve such submissions as compliant with the Act's requirements assuming the State has set forth a technically and legally justifiable approach. Consistent with the EPA's approach as discussed in prior rulemakings, the EPA will evaluate such SIP submissions on a case-by-case basis. In the original CSAPR rulemaking, the EPA explained that where States do not adopt the specific control requirements of a Good Neighbor FIP, they still must "provide adequate provisions to prohibit . . . emissions that are determined in the Transport Rule to contribute significantly to nonattainment or interfere with maintenance in another State or States. EPA will review such a SIP on a case-by-case basis." *See, e.g.*, 76 FR 48328. In the final Good Neighbor Plan, the EPA explained that although there is not a fixed, mass-based emissions budget established for each State in that action, there are other objective metrics that can guide States in developing SIPs. *See* 88 FR 36842. While the State need not conduct its analysis or select emissions

control strategies in a manner identical to the EPA's approach, the end result must nonetheless be adequate to prohibit emissions that significantly contribute to nonattainment and interfere with maintenance.

Further, among the factors the EPA stated in 2018 that it would consider in evaluating alternative approaches is whether consistency in obligations is maintained among States given the "collective contribution" nature of the interstate ozone pollution problem. In a list of "guiding principles" that the EPA identified for States to consider in an appendix to the modeling memorandum issued in March 2018 (see note 14 *infra*), the EPA noted that consistency among States is "a particularly acute issue with respect to regional transport issues in which multiple States may be implicated." In addition, the EPA encouraged "collaboration among States linked to a common receptor and among linked upwind and downwind States in developing and applying a regionally consistent approach to identify and implement good neighbor obligations."

The MoDNR's submission does not reflect any evident collaboration with other States with whom it shares linked receptors, nor with the States in which those receptors are located. The approach the MoDNR set forward in its November 2022 submission would not achieve emissions reductions (or downwind air quality improvements) that are comparable to those the EPA found warranted to address Missouri's good neighbor obligations for the 2015 ozone NAAQS or those of the other States with which Missouri shares common receptor linkages. Nonetheless, the EPA is not proposing to disapprove this Submission simply due to a lack of equivalency with the Good Neighbor Plan. In this proposal, the EPA sets forth a thorough evaluation of all aspects of the MoDNR's November 2022 Submission to determine whether its analytic conclusions and regulatory approach could be technically or legally justified.

The MoDNR's Submission would, if approved, require a minimum level of emissions control performance from certain named EGUs based on the existing NO_x-control technologies installed at those units. This bears some similarity to the near-term emissions control strategies that the EPA found appropriate for EGUs in the Good Neighbor Plan for States linked in the 2023 analytic year. However, the EPA has found that the MoDNR's approach achieves fewer emissions reductions than the EPA has found could be cost-effectively achieved in the near term at EGUs in the State, the foregone

emissions reductions are not achieved through any other means, and the MoDNR has not justified this alternative level of stringency with respect to these strategies.

Further, even though Missouri remains linked to at least one receptor through the 2026 analytic year in the modeling it relies on in its Submission (notwithstanding the MoDNR's arguments that no such linkages exist in 2026, which the EPA is proposing to disapprove), the MoDNR has not imposed any additional emissions control strategies on its sources that could be implemented by that year. The MoDNR instead argues, using a "dollar-per-ppb" metric, that such reductions are not needed from its sources because they would not be cost-effective. However, setting aside a number of analytic challenges associated with using such a metric, Missouri did not consistently apply this metric within its own Submission nor demonstrate how this metric would apply across other linked upwind States so as to provide an equitable, workable, or consistent standard for defining significant contribution.

The MoDNR further argues that several particular named non-EGU sources in Missouri are already achieving a level of emissions control equivalent to what was proposed for these source types in the proposed Good Neighbor Plan. However, the MoDNR limited its analysis to the provisional list of sources in the proposed Good Neighbor Plan that the EPA was clear was not intended to be definitive, and the MoDNR conducted no comprehensive survey of the non-EGU industrial sources in Missouri. Despite using the proposed Good Neighbor Plan as its information source for identifying these potential emissions control requirements, the MoDNR did not establish that its non-EGU sources are controlled to a level equivalent to Missouri's Good Neighbor Plan FIP (either as finalized or proposed) or that its divergence from the EPA's conclusions was technically supported.

Thus, the November 2022 Submission at times makes technically unsupported departures from the detailed, comprehensive analytical findings in the proposed Good Neighbor Plan (such as the EPA's evaluation of near-term emissions control strategies at EGUs), while at other times unreasonably limits its own analysis solely to the proposed Good Neighbor Plan in areas the EPA was clear were not intended to be definitive considering their analytical purpose (such as the non-EGU screening evaluation).

Finally, the EPA has identified several reasons why the MoDNR's approach using certain "Consent Agreements" with particular named EGU sources is not approvable as the means for implementing those emissions control requirements that the MoDNR concedes would be appropriate to prohibit its significant contribution. Among other issues, these agreements are structured so that they are not yet in effect and will not take effect unless the EPA approves the Submission; however, if the EPA does not "fully approve" the Submission, then the covered sources can unilaterally withdraw from the Agreements. The Agreements additionally provide for their termination at any time by consent of the parties and include broad liability waivers. These provisions fail several important CAA requirements for SIPs, including that emissions reduction measures must be permanent and not subject to modification except through the prescribed processes in the Act.

With this general overview of the MoDNR's Submission in mind, the EPA has identified the following specific aspects of the MoDNR's November 2022 Submission that are inadequate and therefore render the Submission not approvable under CAA section 110(k)(3), because they do not meet the requirements of the good neighbor provision for the 2015 ozone NAAQS:

The EPA is disapproving the November 2022 Submission as a whole because the Agency has not identified any method by which the Submission may be partially approved or approved on a limited or conditional basis. Here, we summarize these bases for disapproval, as guided by our 4-step interstate transport framework (the EPA further explains its framework in section I.D.). The EPA's full evaluation of the November 2022 SIP Submission can be found in section III. of this document.

At Step 2, the EPA proposes to find that the MoDNR did not justify in the November 2022 Submission the use of a 1 ppb or 2 ppb contribution threshold for certain receptors to which it contributes in the 2016v2 modeling, and these same deficiencies in the MoDNR's analysis equally apply to the receptor linkages identified in the 2016v3 modeling. The MoDNR therefore incorrectly concluded that Missouri is not linked (*i.e.*, "contributing") to certain receptors in 2023 and no longer linked to any receptors in 2026. (The EPA notes that identical arguments were addressed in the SIP Disapproval Action with respect to Missouri's first SIP submission and in the Good Neighbor Plan, and the EPA is not reopening

those determinations in this action.) The EPA is not disapproving the Submission for using the 2016v2 modeling; however, the EPA's analysis is informed by the 2016v3 modeling and the "violating-monitor" maintenance-receptor methodology, which reflects substantial public input obtained through the SIP Disapproval and Good Neighbor Plan rulemakings, improves upon the 2016v2 modeling, and substantiates that Missouri is linked to at least one receptor through the 2026 analytic year.

At Step 3, the EPA proposes to find that the MoDNR conducted an inadequate analysis of its sources' emissions contribution to downwind receptors to determine what amount of those emissions "significantly contribute to nonattainment" or "interfere with maintenance" in the November 2022 Submission. The MoDNR purported to follow the multifactor Step 3 analysis in the proposed Good Neighbor Plan but then identified specific points where it reached alternative conclusions regarding its sources' emissions, thus resulting in the identification of a substantially smaller amount of emissions reduction than the EPA found necessary to eliminate significant contribution in the Good Neighbor Plan. These departures from the EPA's analysis are at odds with the data available to the EPA or are otherwise not adequately justified. The EPA's analysis confirms, consistent with the MoDNR's own methodology using the Air Quality Assessment Tool (AQAT), that the emissions reductions that would be achieved under the November 2022 Submission produce measurably less improvement in ozone levels at the downwind receptors to which Missouri is linked than the Good Neighbor Plan.

With respect to EGUs, the EPA finds that the MoDNR did not adequately explain why additional, near-term, cost-effective emissions reductions were not being required of its EGU sources. Further, the MoDNR did not adequately analyze further emissions control opportunities at its EGU sources or establish why these were not cost-effective. The MoDNR's use of a "dollar-per-ppb" metric to dismiss further emissions reductions from both EGUs and non-EGUs as not cost-effective was not adequately explained and rested on unsubstantiated assertions regarding emissions-control costs and downwind changes in ozone levels. In addition, this metric was applied inconsistently to sources within the State and was not coordinated with the obligations of States that share common receptor linkages with Missouri. The MoDNR's

additional analysis of its non-EGU sources was not based on a comprehensive inventory of industrial sources in the State but rather drew from a list of tentatively identified facilities from the EPA's proposed Good Neighbor Plan that the EPA was clear was not intended to be definitive. (The Good Neighbor Plan establishes applicability criteria to define source coverage rather than identifying each covered source by name; it also covers new in addition to existing units meeting those applicability criteria. *See* 88 FR 36685.) The MoDNR failed to examine whether there was cost-effective emissions control potential across the State's inventory of large non-EGU NO_x-emitting sources.

At Step 4, the EPA proposes that even as to those emissions reductions the MoDNR's November 2022 Submission purports to require, it is inadequate to meet good neighbor requirements for the 2015 ozone NAAQS and other requirements of the Act. First, the Consent Agreements with certain named EGUs are not an acceptable method for implementing the emissions control strategies the MoDNR identified, because these agreements are not in effect, the trigger by which they could come into effect is not appropriate and inconsistent with the timing requirements of the good neighbor provision, and their terms allow for modification or withdrawal of requirements through processes that conflict with several bedrock CAA requirements regarding SIP revisions. Second, the MoDNR's approach of regulating only certain named existing EGU sources, rather than regulating both existing and new sources on industry-wide bases, fails to analyze or address the potential for production and emissions shifting among sources, which the EPA has consistently identified is an important consideration in developing emissions control strategies to address transport obligations. *See, e.g.,* 70 FR 25261 (May 12, 2005).

Taken together, the deficiencies identified in this summary and further detailed in section III. lead the EPA to propose to conclude it cannot approve the MoDNR's November 2022 Submission as meeting the requirements of the good neighbor provision for the 2015 ozone NAAQS. The EPA is ready to work with the MoDNR and the State of Missouri and any other state to develop an approvable SIP submission to meet these requirements.

B. Description of the EPA's 4-Step Interstate Transport Regulatory Process

For decades, when evaluating SIPs and formulating FIPs, the EPA has consistently utilized the 4-step interstate transport framework (or 4-step framework), which was developed to give meaning to the critical statutory terms in CAA section 110(a)(2)(D)(i)(I) and to provide a reasonable organization to the analysis of the complex air quality challenge of interstate ozone transport. The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior NAAQS using the 4-step framework in several regulatory actions, including the CSAPR, which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,⁵ and the CSAPR Update⁶ and the Revised CSAPR Update,⁷ both of which addressed the 2008 ozone NAAQS.⁸ The EPA is using the 4-step framework to organize its evaluation of the MoDNR Air Pollution Control Program November 1, 2022, interstate transport SIP submission for the 2015 ozone NAAQS.

Shaped through the years by input from State air agencies⁹ and other stakeholders on the EPA's prior interstate transport rulemakings and SIP actions,¹⁰ as well as a number of court decisions, the EPA has developed and used the 4-step interstate transport framework to evaluate a State's obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone

⁵ Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

⁶ Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

⁷ Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021).

⁸ 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). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of the CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the "CSAPR Close-Out," 83 FR 65878 (December 21, 2018), in *New York v. EPA*, 781 F. App'x. 4 (D.C. Cir. 2019). The Revised CSAPR Update was upheld in *Midwest Ozone Group v. EPA*, 61 F.4th 187 (D.C. Cir. 2023).

⁹ *See* 63 FR 57356, 57361 (October 27, 1998).

¹⁰ In addition to CSAPR rulemakings, other regional rulemakings addressing ozone transport include the "NO_x SIP Call," 63 FR 57356 (October 27, 1998), and the "Clean Air Interstate Rule" (CAIR), 70 FR 25162 (May 12, 2005).

NAAQS: (1) identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.*, nonattainment and/or maintenance receptors); (2) identify States that impact those air quality problems in other (*i.e.*, downwind) States sufficiently such that the States are considered “linked” and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind State’s significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions. The EPA does not require States to use the 4-step framework in good neighbor SIP submissions, but it is a useful organizational tool that has been upheld by the Supreme Court as “permissible, workable, and equitable.” *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 524 (2014).

C. The EPA’s Ozone Transport Modeling

In general, the EPA has performed nationwide air quality modeling to project ozone design values (DV), which are used in combination with measured data to identify nonattainment and maintenance receptors at Step 1. To quantify the contribution of emissions from individual upwind States on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors at Step 2, the EPA has performed multiple iterations of nationwide, State-level ozone source apportionment modeling for 2023. The source apportionment modeling projected contributions to ozone at receptors from precursor emissions of anthropogenic NO_x and volatile organic compounds (VOCs) in individual upwind States.

The EPA has released several documents containing projected ozone design values, contributions, and information relevant to air agencies for evaluation of interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) in which the Agency requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.¹¹ In the NODA, the EPA

¹¹ See Notice of Availability of the Environmental Protection Agency’s Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

used the year 2023 as the analytic year for this preliminary modeling because this year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 ozone NAAQS.¹² On October 27, 2017, the EPA released a memorandum (October 2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments (RTC) on the NODA, and was intended to provide information to assist States’ efforts to develop SIP submissions to address interstate transport obligations for the 2008 ozone NAAQS.¹³ On March 27, 2018, the EPA issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 ozone NAAQS at Step 1 of the 4-step interstate transport framework.¹⁴ The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist States in evaluating their impact on potential downwind air quality problems for the 2015 ozone NAAQS under Step 2 of the 4-step interstate transport framework.¹⁵ The EPA notes that the MoDNR relied upon 2023 modeling contribution data released with the March 2018 memorandum in developing its 2019 SIP submission. The EPA subsequently issued two more memoranda in August and October 2018, providing additional information to States developing interstate transport SIP submissions for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step interstate transport framework, and considerations for identifying downwind areas that may have problems maintaining the

¹² 82 FR 1735 (January 6, 2017).

¹³ See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017 (October 2017 memorandum), available in Docket ID No. EPA–HQ–OAR–2021–0663.

¹⁴ See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (March 2018 memorandum), available in Docket ID No. EPA–HQ–OAR–2021–0663.

¹⁵ The March 2018 memorandum, however, provided, “While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states’ obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.”

standard at Step 1 of the 4-step interstate transport framework.¹⁶

Following the release of the modeling data shared in the March 2018 memorandum, the EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.*, 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/State collaborative project.¹⁷ This collaborative project was a multi-year joint effort by the EPA, MJOs, and States to develop a new, more recent emissions platform for use by the EPA and States in regulatory modeling as an improvement over the dated 2011-based platform that the EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. The EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the notice of proposed rulemaking for the Revised CSAPR Update, the EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.¹⁸ Although the Revised CSAPR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform were also useful for identifying downwind ozone problems and linkages with respect to the 2015 ozone NAAQS.¹⁹

Following the final Revised CSAPR Update, the EPA made further updates to the 2016-based emissions platform to include updated onroad mobile emissions from Version 3 of the EPA’s Motor Vehicle Emission Simulator (MOVES3) model²⁰ and updated

¹⁶ 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 Docket ID No. EPA–HQ–OAR–2021–0663.

¹⁷ The results of this modeling, as well as the underlying modeling files, are included in Docket ID No. EPA–HQ–OAR–2021–0663. The 2016v1 emissions modeling technical support document is available in Docket ID No. EPA–HQ–OAR–2020–0272–0187, and is included in this docket, Docket ID No. EPA–R07–2021–OAR–0851. Both dockets are available at <https://www.regulations.gov>.

¹⁸ See 85 FR 68964, 68981.

¹⁹ See the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in the Headquarters Docket ID No. EPA–HQ–OAR–2021–0663.

²⁰ Additional details and documentation related to the MOVES3 model can be found at <https://>

emissions projections for EGUs that reflected the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other inventory improvements. The EPA published these emissions inventories on its website in September of 2021 and invited initial feedback from States and other interested stakeholders.²¹ The construct of the updated emissions platform, 2016v2, is described in the “Technical Support Document (TSD): Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform,” hereafter known as the 2016v2 Emissions Modeling TSD, and is included in Docket ID No. EPA–HQ–OAR–2021–0663. The EPA performed air quality modeling using the 2016v2 emissions to provide projections of ozone design values and contributions in 2023 and 2026 that reflect the effects on air quality of the 2016v2 emissions platform. The EPA used the results of the 2016v2 modeling as part of our previous proposed evaluation of the MoDNR’s interstate transport SIP submission for the 2015 ozone NAAQS, submitted on June 10, 2019, with respect to Steps 1 and 2 of the 4-step interstate transport framework. *See* 87 FR 9533 (February 22, 2022).

The EPA invited and received comments on the 2016v2 emissions inventories and modeling used to support proposals, including the proposal on Missouri, related to interstate transport under the 2015 ozone NAAQS. In response to these comments, the EPA made a number of updates to the 2016v2 inventories and model design to construct a 2016v3 emissions platform that was used to update the air quality modeling. The EPA used this updated modeling to inform a final rulemaking taking final action on 21 interstate transport SIP submissions for the 2015 ozone NAAQS, which included the MoDNR’s June 2019 Submission, as well as a Federal implementation plan action covering 23 States, including Missouri.²² Details on the 2016v3 air quality modeling and the methods for projecting design values and determining contributions in 2023 and 2026 are described in the TSD titled “Air Quality Modeling (AQM) Final

Rule TSD—2015 Ozone NAAQS Good Neighbor Plan,” hereafter known as the Final Good Neighbor Plan AQM TSD.²³ Additional details related to the updated 2016v3 emissions platform are located in the TSD titled “Preparation of Emissions Inventories for the 2016v3 North American Emissions Modeling Platform,” hereafter known as the 2016v3 Emissions Modeling TSD, included in Docket ID No. EPA–HQ–OAR–2021–0668.²⁴

In this proposed action, the EPA primarily relies on modeling based on the updated 2016v3 emissions platform in evaluating the MoDNR’s November 2022 Submission with respect to Steps 1 and 2 of the 4-step interstate transport framework, which will generally be referenced within this action as the “2016v3 modeling” for 2023 and 2026. As discussed further in section I.D.2. of this document, the EPA is also applying its findings regarding violating-monitor maintenance-only receptors in 2023 using certified monitoring data and regulatory design values for 2021 and 2022. The EPA used the 2016v3 modeling to calculate contributions to these receptors.

Nonetheless, we note that the basis for the EPA’s disapproval of the November 2022 Submission is not affected by the choice of modeling between the 2016v3 modeling or the 2016v2 modeling on which the MoDNR based its Submission. Both sets of modeling demonstrated linkages between Missouri and multiple receptors above both a 1 percent of the NAAQS and a 1 ppb contribution threshold. The EPA does not propose to disapprove the MoDNR’s Submission due to its choice of modeling, but for failing to adequately analyze and prohibit those emissions that constitute “significant contribution” to nonattainment or maintenance receptors in other States.

By this action, the EPA is not reopening the determinations made for Missouri in the Good Neighbor Plan regarding the definition of good neighbor obligations through the EPA’s exercise of statutory responsibility under CAA section 110(c). Rather, this action is taken pursuant to the EPA’s statutory responsibility to act on SIP submissions pursuant to CAA section 110(k). Any comments that are not relevant to the EPA’s proposed basis for

the disapproval of Missouri’s November 2022 Submission will be treated as beyond the scope of this action.

D. The EPA’s Approach to Evaluating Interstate Transport SIPs for the 2015 Ozone NAAQS

The EPA proposes to apply a consistent set of policy judgments across all States for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submissions for the 2015 ozone NAAQS under CAA section 110(a)(2)(D)(i)(I). These policy judgments conform with relevant case law and past agency practice as reflected in the CSAPR and related rulemakings. Employing a nationally consistent approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO_x SIP Call have necessitated the application of a uniform framework of policy judgments to ensure an “efficient and equitable” approach. *See EME Homer City Generation, LP v. EPA*, 572 U.S. 489, 519 (2014). The EPA evaluates any State’s arguments for the use of alternative approaches or alternative sets of data with an eye to ensuring national consistency and avoiding inconsistent or inequitable results among upwind States and between upwind and downwind States.

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

1. Selection of Analytic Year

In this section, the EPA describes its process for selecting analytic years for air quality modeling and analyses performed to identify nonattainment and maintenance receptors and identify upwind State linkages. The EPA is retaining the 2023 and 2026 analytical years used to inform the obligations of the 23 States included in the Good Neighbor Plan, to ensure consistency and equitable treatment of all States. In the Good Neighbor Plan, the EPA evaluated air quality to identify receptors at Step 1 and evaluate interstate contributions at Step 2 for two analytic years: 2023 and 2026. These years are the last full ozone seasons²⁵

²⁵ Ozone seasons run each year from May 1–September 30, *see* 40 CFR 52.38(b)(1) and 52.40(c)(1).

www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves.

²¹ <https://www.epa.gov/air-emissions-modeling/2016v2-platform>.

²² “Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards,” 88 FR 9336 (February 13, 2023), and “Federal ‘Good Neighbor Plan’ for the 2015 Ozone National Ambient Air Quality Standards,” 88 FR 36654 (June 5, 2023).

²³ “Air Quality Modeling Final Rule Technical Support Document—2015 Ozone NAAQS Good Neighbor Plan” in Docket ID No. EPA–R08–OAR–2023–0375, and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

²⁴ “2016v3 Emissions Modeling TSD” in Docket ID No. EPA–HQ–OAR–2021–0668, and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

before the Moderate and Serious area attainment dates for the 2015 ozone NAAQS, which are August 3, 2024, and August 3, 2027.²⁶ To demonstrate attainment by these deadlines, downwind States would be required to rely on design values calculated using ozone data from 2021 through 2023 and 2024 through 2026, respectively. Areas that do not attain by the deadline may be “bumped up” to a higher nonattainment classification level per CAA sections 181 and 182, thereby incurring additional ongoing obligations. Thus, in the Good Neighbor Plan, consistent with each of its prior good neighbor rulemakings, the EPA focused its analysis in the years with the last full ozone seasons before the attainment dates (*i.e.*, 2023 and 2026).

Here, the MoDNR used the 2023 and 2026 analytic years in its Submission, and both the modeling it considered (2016v2) and the additional modeling the EPA took into account (2016v3) used those analytic years. Because both sets of modeling show that Missouri remains linked, the basis for the EPA’s action in this case is not in relation to the acceptability of the air quality modeling or analysis the MoDNR used at Steps 1 and 2, but rather in relation to our findings that the State’s approach to defining “significant contribution” is inadequate. Further, use of the 2023 and 2026 analytic years ensures consistency in the treatment of States. Where the need for parity among States or other jurisdictions in like circumstances warrants it, courts have recognized that it may be appropriate for agencies like the EPA to rely on prior datasets to ensure consistency in treatment. *See Bd. County Commissioners of Weld County v. EPA*, 72 F.4th 284, 290 (D.C. Cir. 2023) (upholding as reasonable the EPA’s determination that “greater parity among counties and faster turnaround [] make the original data a better choice than partial updating”). The importance of the use of a single, already-developed dataset focused on the years 2023 and 2026 to define good neighbor obligations for all States to ensure consistency among States and for “faster turnaround” to complete this rulemaking is, in the EPA’s judgment, sufficiently compelling to justify this approach here.

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

In Step 1, the EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023

analytic year. This approach reflects the EPA’s interpretation of the terms “nonattainment” and “maintenance” as used in the good neighbor provision in the context of the ozone NAAQS. *See* 88 FR 9341–42 (February 13, 2023). Where the EPA’s analysis shows that a site does not meet the definition of a nonattainment or maintenance receptor, the EPA excludes that site from further analysis under the EPA’s 4-step interstate transport framework. At Step 2 of the 4-step interstate transport framework, the EPA considers those sites identified as a nonattainment or maintenance receptor in 2023 and identifies which upwind States contribute to those receptors above the contribution threshold.

This approach gives independent consideration to both the “contribute significantly to nonattainment” and the “interfere with maintenance” prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit’s direction in *North Carolina*.²⁷ To summarize this methodology:

The 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 the EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that the EPA projects will be in nonattainment in the analytic year (*i.e.*, 2023).²⁸

In addition, the EPA identified 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) (*EME Homer City II*).²⁹ Specifically, the EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at

that receptor. The variability in air quality was determined by evaluating the “maximum” future design value at each receptor based on a projection of the maximum measured design value over the relevant period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.*, ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.*, dominant wind direction, temperatures, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area’s ability to maintain the NAAQS.

Nonattainment receptors are also, by definition, maintenance receptors, and so the EPA often uses the term “maintenance-only” to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described earlier, the EPA identifies “maintenance-only” receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values.³⁰ In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as “maintenance-only” receptors, even if they are currently measuring nonattainment based on the most recent official design values.

The Agency has looked closely at measured ozone levels at ambient monitoring sites in 2021 and 2022 for the purposes of informing the identification of potential additional receptors in 2023. As explained in more detail in the February 13, 2022, final action disapproving 19 States’ good neighbor SIP submissions, and partially approving and partially disapproving

³⁰ The Agency often uses the terms maintenance receptor and maintenance-only receptor interchangeably when discussing maintenance receptors that are not also nonattainment receptors.

²⁶ CAA section 181(a); 40 CFR 51.1303; 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

²⁷ *See North Carolina v. EPA*, 531 F.3d at 910–11 (holding that the EPA must give “independent significance” to each prong of CAA section 110(a)(2)(D)(i)(I)).

²⁸ *See* 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. *See* 70 FR 25241, 25249 (January 14, 2005); *see also North Carolina*, 531 F.3d at 913–14 (affirming as reasonable the EPA’s approach to defining nonattainment in CAIR).

²⁹ *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 86 FR 23054 (April 30, 2021).

two States' good neighbor SIP submissions (Disapproval Action), *see* 88 FR 9349–50, the EPA finds there is a basis to consider certain sites with elevated ozone levels that are not otherwise identified as receptors to be an additional type of maintenance-only receptor given the likelihood that ozone levels above the NAAQS could persist at those locations through at least 2023. These are referred to as violating-monitor maintenance-only receptors (violating-monitor receptors). In this action, the EPA proposes to use certified ambient monitoring data as an additional method to identify maintenance-only receptors. More specifically, violating-monitor receptors are monitoring sites with measured 2021 and 2022 design values and 2021 and 2022 fourth-highest (4th high) maximum daily average 8-hour (MDA8) ozone concentrations that exceed the NAAQS, despite having model-projected average and maximum design values for 2023 below the NAAQS.³¹ The EPA finds these sites are at continuing risk of failing to maintain the 2015 ozone NAAQS, which justifies categorizing these sites as maintenance-only receptors. By applying the criteria that certified 2021 and 2022 design values and 2021 and 2022 4th high MDA8 ozone concentrations must all exceed the NAAQS the EPA gives due consideration to both measured air quality data and its modeling projections. This reasonably identifies monitoring sites as receptors in 2023 using this methodology. If sites do not meet these criteria, then the EPA could reasonably anticipate these sites to not have a problem maintaining the 2015 ozone NAAQS in 2023 and should therefore not be considered receptors.

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

In Step 2, the EPA quantifies the contribution of each upwind State to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each State to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a State's contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.*, 0.70 parts per billion (ppb) for the 2015 ozone NAAQS), the upwind State is not "linked" to a downwind air quality problem, and the EPA therefore concludes that the State does not contribute significantly to

nonattainment or interfere with maintenance of the NAAQS in the downwind States. However, if a State's contribution equals or exceeds the 1 percent threshold, the State's emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed "significant" and, thus, must be eliminated pursuant to the requirements of CAA section 110(a)(2)(D)(i)(I).

In this proposed action, the EPA relies in the first instance on the 1 percent threshold for the purpose of evaluating a State's contribution to nonattainment or maintenance of the 2015 ozone NAAQS (*i.e.*, 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that the EPA applied in the Disapproval Action and in the Good Neighbor Plan. The EPA has acknowledged that States may be able to justify use of a different threshold at Step 2. For reasons explained in section III.A. of this document, the MoDNR did not successfully make this demonstration. In addition, the EPA explained in both the proposed and final Disapproval Action and Good Neighbor Plan that the need for consistent treatment of all States counsels against recognizing alternative thresholds on a state-by-state basis absent an adequate circumstance-specific justification. *See* 88 FR 9373–75. Likewise, maintaining continuity across ozone NAAQS through consistent application of a 1 percent of NAAQS threshold at Step 2 is appropriate, so that, as the NAAQS is revised and made more protective, the contribution threshold is correspondingly adjusted as well. *See* 88 FR 36712–17; 88 FR 9371–75. *See also* 86 FR 23085 (use of 1 percent threshold in the Revised CSAPR Update); 81 FR 74518 (basis for use of 1 percent threshold for the 2008 ozone NAAQS in the CSAPR Update); 76 FR 48237–38 (original determination to use 1 percent threshold for the 1997 ozone NAAQS in the CSAPR).

Therefore, application of a consistent contribution threshold is necessary to identify those upwind States that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind States also allows the EPA (and States) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next and helps

ensure that good neighbor obligations align with the stringency of the NAAQS.

The EPA addresses the MoDNR's arguments for the use of higher Step 2 thresholds in section III.A.; however, to the extent those arguments are identical to those considered and rejected in disapproving Missouri's previous SIP submission, the Agency is not reopening such determinations.

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

Consistent with the EPA's longstanding approach to eliminating significant contribution and interference with maintenance, at Step 3, a multifactor assessment of potential emissions controls is conducted for States linked at Steps 1 and 2. The EPA's analysis at Step 3 in prior Federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions that may be achieved by requiring such controls (if applied across all linked upwind States), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a State is linked; other factors may potentially be relevant if adequately supported. In general, where the EPA's or State-provided alternative air quality and contribution modeling establishes that a State is linked at Steps 1 and 2, it will be insufficient at Step 3 for a State merely to point to its existing rules requiring control measures as a basis for the EPA's approval of the SIP submission. The reason is that the emissions-reducing effects of all existing emissions control requirements are generally already reflected in the future year projected air quality results of the modeling for Steps 1 and 2. If the State is shown to still be linked to one or more downwind receptor(s) despite these existing controls, but that State believes it has no outstanding good neighbor obligations, the EPA expects the State to provide sufficient justification to support a conclusion that the State has adequate provisions prohibiting "any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will" "contribute significantly to nonattainment in, or interfere with maintenance by," any other State with respect to the NAAQS. CAA section 110(a)(2)(D)(i)(I). While the EPA has not prescribed a particular method for this assessment, the EPA expects States at a minimum to present a sufficient technical evaluation. This would

³¹ A design value is calculated using the annual 4th high MDA8 ozone concentration averaged over 3 years.

typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no additional emissions controls should be required.³²

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

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

II. Missouri SIP Submission Addressing Interstate Transport of Air Pollution for the 2015 Ozone NAAQS

A. Prior Submission

On June 10, 2019, the MoDNR Air Pollution Control Program made a SIP submission to address interstate transport of air pollution for the 2015 ozone NAAQS (June 2019 Submission). On February 22, 2022, the EPA proposed to disapprove the June 2019 Submission. 87 FR 9533. On January 31, 2023, the EPA signed a final rulemaking, finalizing disapproval of 19 SIP submissions, and partial approval and partial disapproval of two SIP submissions, for inadequately

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

addressing the good neighbor provision for the 2015 ozone NAAQS including Missouri. 88 FR 9336 (Feb. 13, 2023) (February 2023 Disapproval Action). The June 2019 Submission is not at issue in this proposed action, and the EPA is not reopening its disapproval of it.³³

B. Summary of Missouri's 2015 Ozone Interstate Transport SIP Submission From November 2022

On November 1, 2022, the MoDNR submitted another SIP submission to the EPA addressing the infrastructure requirements of CAA section 110(a)(2), specifically the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements, for the 2015 ozone NAAQS (November 2022 Submission). The November 2022 Submission is the subject of this proposed action. The November 2022 Submission was deemed complete by operation of law on May 1, 2023.

The November 2022 Submission contains the MoDNR's analysis of the State's impact on air quality in downwind States organized around the EPA's 4-step framework and based on the EPA's 2016v2 modeling at Steps 1 and 2.³⁴ Missouri asserts its current SIP is already addressing all of Missouri's good neighbor obligations under the 2015 ozone NAAQS.³⁵ The MoDNR then includes a Step 3 analysis and some potential ozone season emissions reductions at Step 4, which the MoDNR's submission provides will become effective only if the EPA approves the November 2022 Submission.³⁶

The MoDNR's November 2022 Submission provides background information on the EPA's 4-step interstate transport framework, the EPA's guidance for good neighbor SIPs for the 2015 ozone standard, the MoDNR's June 2019 Submission, the EPA's proposed disapproval of that Submission and the FIP that was proposed on April 6, 2022, and the MoDNR's decision to submit a new SIP

³³ The EPA's February 2023 Disapproval Action is currently under judicial review. *E.g.*, *State of Missouri v. EPA*, No. 23–1719 (8th Cir.); *Union Electric Company, d/b/a Ameren Missouri v. EPA*, No. 23–1751 (8th Cir.).

³⁴ November 2022 Submission at 9–37.

³⁵ *Id.* at 18.

³⁶ *Id.* at appendix A at 3, 14–15; appendix B at 3, 14–15; appendix C at 3, 16–17; appendix D at 3, 15–17; appendix E at 3, 13–14; appendix F at 3, 12–13.

submission addressing transport obligations for the 2015 ozone standard.³⁷

1. Information Provided at Steps 1 and 2

In the next portion of the November 2022 Submission, the MoDNR uses the EPA's 2016v2 modeling results to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in the State at Steps 1 and 2 of the 4-step interstate transport framework. In the 2016v2 modeling, Missouri contributes above 1 percent of the NAAQS to 4 receptors, including above 1 ppb to two of those receptors, see table 2.

Missouri compares its contributions in the EPA modeling released with the March 2018 memorandum with the EPA's 2016v2 modeling results for 2023 released in February 2022. In the EPA modeling released with the March 2018 memorandum, Missouri was linked to six nonattainment and maintenance receptors above one percent of the level of the 2015 ozone NAAQS (0.70 ppb). See table 1. In the 2016v2 modeling Missouri is not linked to those six receptors in 2023 but is identified as linked to four other receptors. See table 2. For the monitor (Site ID: 260050003) in Allegan, MI; the monitor (Site ID: 261630019) in Wayne, MI; the monitor (Site ID: 482011039) in Harris, TX; and the monitor (Site ID: 550790085) in Milwaukee, WI; the 2016v2 modeling indicates that these monitors' 2023 design values would not be above the NAAQS and therefore they were not identified as receptors at Step 1. The 2016v2 modeling indicates that Missouri's contribution to the receptor ID 480391004, Brazoria, TX, is below the 1 percent of the NAAQS threshold and so Missouri is not linked to it at Step 2. For the receptor (Site ID: 551170006) in Sheboygan, WI, the MoDNR notes that in the EPA's updated 2016v2 modeling, this monitor is still projected to be a nonattainment receptor, but the EPA did not calculate any upwind State contributions to it because there were fewer than five days where the model-predicted MDA8 was above 60 ppb.³⁸ Missouri is therefore not identified as being linked to this receptor in the 2016v2 modeling.

³⁷ *Id.* at 1–4.

³⁸ The EPA notes this is consistent with the EPA's Modeling Guidance.

TABLE 1—THE EPA’S MARCH 2018 MEMORANDUM—DOWNWIND RECEPTORS WITH MISSOURI CONTRIBUTIONS ABOVE 0.70 ppb

Site (monitor, county, State)	2023 Projected average DV (ppb)	2023 Projected maximum DV (ppb)	Missouri projected contribution (ppb)	Comments
260050003, Allegan, MI	69.0	71.7	2.61	Maintenance receptor.
261630019, Wayne, MI	69.0	71.0	0.92	Maintenance receptor.
484392003, Brazoria, TX	74.0	74.9	0.88	Nonattainment receptor.
482011039, Harris, TX	71.8	73.5	0.88	Nonattainment receptor.
550790085 Milwaukee, WI	71.2	73.0	0.93	Nonattainment receptor.
551170006, Sheboygan, WI	72.8	75.1	1.37	Nonattainment receptor.

TABLE 2—MISSOURI CONTRIBUTIONS ABOVE 0.70 ppb TO RECEPTORS BASED ON THE EPA’S 2016v2 MODELING

Receptor ID	Location	Nonattainment/maintenance	2023 Projected average design value (ppb)	2023 Projected maximum design value (ppb)	MO projected contribution (ppb)
550590025	Kenosha, Wisconsin	Maintenance	69.2	72.3	1.66
550590019	Kenosha, Wisconsin	Nonattainment	72.8	73.7	1.08
170317002	Cook, Illinois	Maintenance	70.1	73.0	0.94
551010020	Racine, Wisconsin	Nonattainment	71.3	73.2	0.92

Using what it describes as a “weight of evidence” approach, the State analyzed each of the four receptors in table 2 using 2016v2 contribution modeling results and the EPA’s August 2018 memorandum described in section I.C.

For the Racine, Wisconsin receptor (Site ID: 551010020), the MoDNR noted that Missouri’s projected contribution to this receptor is 0.92 ppb, which is less than 1 ppb. The MoDNR observed that the 1 ppb threshold would capture 67 percent of the total contribution from all upwind States and that the contribution captured by the 1 ppb threshold is 92.23 percent of the amount captured by the 0.70 ppb threshold at this receptor. The MoDNR asserted that the 1 ppb threshold would capture a substantial amount of total upwind States’ contribution to ozone concentrations at this receptor, which will lead to meaningful emissions reductions to ensure attainment of the NAAQS at this monitor in 2023. Therefore, the MoDNR relied on a 1 ppb threshold to conclude that its existing SIP sufficiently addresses the good neighbor obligation for the 2015 ozone NAAQS with respect to this receptor.

For the Kenosha-Chiwaukee, Wisconsin receptor (Site ID: 550590025), the MoDNR noted that its projected contribution to this receptor is 1.08 ppb, which is more than 1 ppb. The MoDNR observed that the 1 ppb threshold would capture 86.9 percent of the total upwind contributions and that a 2 ppb threshold would capture 71 percent of the total upwind State

contributions. The MoDNR also observed that an alternative 2 ppb threshold would capture 81.7 percent of the upwind State contributions captured under a 1 ppb threshold. Using these data, the MoDNR asserted that a 2 ppb threshold is appropriate because it would capture at least 70 percent of the total upwind State contributions and thus the burden should fall on States other than Missouri (*i.e.*, only on those States contributing above 2 ppb) to provide emissions reductions that will help ensure attainment of the NAAQS at the site. The MoDNR also asserted that the primary contributors to the projected ozone concentrations at the monitor in Kenosha-Chiwaukee include emissions from Illinois, Indiana, and Wisconsin. The MoDNR cited the EPA’s 2016v2 modeling projecting that emissions from these States would contribute a combined 30.79 ppb in 2023 to the Kenosha-Chiwaukee receptor. The MoDNR pointed to the Lake Michigan Air Directors Consortium’s (LADCO’s) interstate transport modeling results for the 2015 ozone NAAQS to support these claims. The MoDNR asserted that LADCO’s analysis indicates that the ozone levels at the Wisconsin shoreline of Lake Michigan are heavily affected by the emissions from Illinois, Indiana, and Wisconsin.³⁹

³⁹ See “Interstate Transport Modeling for the 2015 Ozone National Ambient Air Quality Standard, the TSD”, included in this docket, Docket ID No. EPA-R07-OAR-2021-0851. https://www.ladco.org/wp-content/uploads/Documents/Reports/TSDs/O3/LADCO_2015O3iSIP_TSD_13Aug2018.pdf.

The MoDNR further pointed out that two other monitoring sites in Wisconsin (Site IDs: 551270006 and 551330027) further inland from Lake Michigan have no projected problems with attaining and maintaining compliance with the 2015 ozone NAAQS. Based on its assessment of this information, the MoDNR concluded that its existing SIP sufficiently addresses its good neighbor obligations for the 2015 ozone NAAQS with respect to the Kenosha-Chiwaukee receptor based only on this Step 2 weight of evidence analysis.

For the Kenosha-Water Tower, Wisconsin Site receptor (Site ID: 550590019) the MoDNR noted that its projected contribution to this receptor is 1.66 ppb, which is more than 1 ppb. The MoDNR observed that the 1 ppb threshold would capture 88.5 percent of the total upwind contributions and that a 2 ppb threshold would capture 71.8 percent of the total upwind State contributions. The MoDNR also observed that an alternative 2 ppb threshold would capture 81.1 percent of the upwind State contributions captured under a 1 ppb threshold. Using these data, the MoDNR asserted that a 2 ppb threshold is appropriate because it would capture at least 70 percent of the total upwind State contributions and thus the burden should fall on States other than Missouri (*i.e.*, only on those States contributing above 2 ppb) to provide emissions reductions that will help ensure attainment of the NAAQS at the site. The MoDNR then noted that its projected contribution of 1.66 ppb is less than 2 ppb. The MoDNR also

asserted that the primary contributors to the projected ozone concentrations at the monitor in Kenosha-Water Tower include emissions from Illinois, Indiana, and Wisconsin. The MoDNR cited the EPA modeling projecting that emissions from these States would contribute a combined 28.47 ppb in 2023 to the Kenosha-Water Tower receptor.

The MoDNR again asserted its interpretation that the LADCO analysis indicates that the ozone levels at the Wisconsin shoreline of Lake Michigan are heavily affected by the emissions from Illinois, Indiana, and Wisconsin.

The MoDNR again pointed out that two other monitoring sites in Wisconsin (Site IDs: 551270006 and 551330027) further inland from Lake Michigan have no projected problems with attaining and maintaining compliance with the 2015 ozone NAAQS. The MoDNR concluded that the nonattainment receptor at Kenosha-Water Tower is heavily influenced by local transport emissions and lake breeze effects over Lake Michigan. Based on its assessment of this information, the MoDNR concluded that its existing SIP sufficiently addresses the good neighbor obligation for the 2015 ozone NAAQS with respect to the Kenosha-Water Tower receptor based only on this Step 2 weight of evidence analysis.

For the Cook County Chicago-Evanston, Illinois receptor (Site ID: 170317002), the MoDNR noted that its projected contribution to this receptor is 0.94 ppb, which is less than 1 ppb. The MoDNR observed that the 1 ppb threshold would capture 69.7 percent of the total contribution from all upwind States and that the contribution captured by the 1 ppb threshold is 92.9 percent of the amount captured by the 0.70 ppb threshold at this receptor. The MoDNR asserted that the 1 ppb threshold would capture a substantial amount of total upwind States' contribution to ozone concentrations at this receptor, thus the burden should fall on States other than Missouri (*i.e.*, only on those States contributing above 1 ppb) to provide meaningful emissions reductions to ensure attainment of the NAAQS at this site. Therefore, the MoDNR relied on a 1 ppb threshold to conclude that its existing SIP sufficiently addresses the good neighbor obligation for the 2015 ozone NAAQS with respect to this receptor.

The MoDNR further pointed out that the other nine receptors in Cook County, Illinois show 40 percent less impact from Missouri in the 2016v2 modeling than the County Chicago-Evanston, Illinois receptor. The MoDNR concluded that this difference indicates uncertainty on any conclusion that

emissions from Missouri are contributing significantly to this single monitor in Cook County, while at the same time not contributing significantly to any other monitor in Cook County.⁴⁰

The MoDNR cited a 2019 Lake Michigan Ozone Study (LMOS or the study) relating to high ozone monitor concentrations near Lake Michigan. According to the MoDNR, the study recommends a finer grid resolution to better characterize ozone concentrations near large bodies of water. The MoDNR interprets the study as showing that upwind States' NO_x emissions may have little to no impact on ground level ozone concentrations that are linked to downwind receptors because on high ozone level days the ozone concentrations in these areas are sensitive to emissions of VOCs and not NO_x. The MoDNR also contends that, based on information included in the EPA's "Air Quality Modeling for the 2016v2 Emissions Platform Modeling TSD" and the receptor specific data included in the EPA's document titled "CAMx 2016v2 MDA8 O3 Model Performance Stats by Site," the EPA's 2016v2 modeling is "severely underperforming" in this region of the country where all of Missouri's linked receptors in the EPA's 2016v2 modeling are located.⁴¹

For these reasons the MoDNR concludes that the weight of evidence analyses provided for these receptors in the November 2022 Submission shows that Missouri's current SIP is adequately addressing its good neighbor obligations with respect to each of these four receptors.⁴² In its conclusion of Steps 1 and 2, the MoDNR has stated it believes Missouri's good neighbor obligations are met at Steps 1 and 2 for the 2015 ozone NAAQS. However, in its submission, the MoDNR goes on to acknowledge there are uncertainties due to model performance and recent year NO_x emissions from Missouri EGUs that exceed the assurance levels of the CSAPR NO_x Ozone Season Trading Program. Consequently, the MoDNR developed a Step 3 analysis to address these uncertainties (*i.e.*, proceeding from an assumption that Missouri is linked at Step 2) and conducted an analysis of potential emissions control opportunities to ensure that the "good neighbor obligations are indeed satisfied."⁴³

⁴⁰ November 2022 Submission at 16.

⁴¹ *Id.* at 17.

⁴² *Id.* at 18.

⁴³ *Id.*

2. Information Provided at Step 3

In Step 3, the MoDNR begins by identifying controls that could be implemented at units for the 2023 ozone season. The MoDNR's evaluation at Step 3 gives some consideration to NO_x emitting sources at certain EGUs, as well as certain sources in certain non-EGU sectors, including cement and cement products manufacturing, glass and glass products manufacturing, and pipeline transportation of natural gas industries.

For 2023, the MoDNR made a list of 10 coal-fired EGUs currently equipped with Selective Catalytic Reduction (SCR) in the State. The MoDNR observed that four of these units have Prevention of Significant Deterioration permits requiring continuous operation of their NO_x control equipment (Hawthorn unit 5A, Iatan units 1 and 2, and John Twitty Energy Center unit 2). Based on the existence of these permits, the MoDNR stated that no additional NO_x control requirements would be cost-effective for these units.⁴⁴ The MoDNR observed that the six other units do not currently have enforceable requirements to ensure the continuous operation of their control equipment (*i.e.*, SCRs) during the ozone season. The MoDNR claims that, based on its assessment, substantial and timely emissions reductions are both available and cost-effective at five units and that the sixth unit could choose to operate their controls less efficiently or not at all.⁴⁵

The MoDNR also observes that there are two EGUs in Missouri that have Selective Non-Catalytic Reduction (SNCR) but do not currently have enforceable requirements to ensure the continuous operation of their control equipment during ozone season. The MoDNR determined that substantial and timely emissions reductions are both available and cost effective at these two units.

The MoDNR observed that there are nine remaining coal-fired EGUs that have no SCR or SNCR. At the time of submission, four of these units at two facilities (Rush Island and Meramec) are expected to retire by 2026, which is the next applicable attainment date under the 2015 ozone NAAQS following the 2023 deadline for Moderate areas.⁴⁶ The MoDNR also stated that the other five units (Labadie and Sikeston) are

⁴⁴ *Id.* at 19.

⁴⁵ *Id.*

⁴⁶ The EPA notes that the next attainment date after the Moderate attainment date is the Serious attainment date of August 3, 2027, but 2026 is the last year with a full ozone season before that date. CAA section 181(a); 40 CFR 51.1303; 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

expected to continue operating at least through 2026. The MoDNR claims that no timely reductions (*i.e.*, by 2023) are available for any of these nine units.⁴⁷ The MoDNR determined, however, that new enforceable requirements at the Labadie and Sikeston facilities to ensure the continued operation of the existing NO_x controls (*i.e.*, low NO_x burners, etc.) would help guard against potential backsliding and lock in the emissions reductions these facilities have already achieved.

To determine the new enforceable requirements at the coal-fired EGUs currently equipped with SCR (New Madrid, Thomas Hill facilities and John Twitty Unit 1), the MoDNR first analyzed historical NO_x emissions rates for each unit with SCR to determine what the starting point for a new limit should be. The MoDNR selected what it identified as the third best ozone season emissions rate for five of the units at these facilities, as the MoDNR determined those years to be reflective of continuous SCR operation. Next, the MoDNR took the average of what it identified as the third best emissions rates for these units, which was 0.102 lbs/mmBtu. The MoDNR then decided that a compliance margin of approximately 20 percent was appropriate for this limit, putting the limit at 0.12 lbs/mmBtu. The MoDNR claims that this numeric limit combined with a stipulation that the sources continuously run their controls during the ozone season were enough to ensure meaningful reductions were achieved.⁴⁸

The MoDNR attempted to use the same analysis for the units with SNCR, however the units only had one year of full operation using the control equipment. The MoDNR selected the larger emissions rate of the two units for that year and again added the 20 percent compliance margin to arrive at a numeric NO_x ozone season emissions rate of 0.18 lbs/mmBtu.⁴⁹ The MoDNR also used this historical emissions rate analysis with the 20 percent compliance margin to establish the limits for the units without SCR and SNCR to prevent backsliding, arriving at a 0.12 lbs/mmBtu rate for one facility and 0.13 lbs/mmBtu rate for a second facility.⁵⁰ The MoDNR acknowledged that for these units without existing post-combustion controls, this rate would not achieve new emissions reductions, but rather avoid potential increases in emissions.

The MoDNR estimated that these limits, combined (0.12 lbs/mmBtu on

coal-fired units with existing SCR, and 0.18 lbs/mmBtu on coal-fired units with existing SNCR, and anti-backsliding limits on coal-fired units without SCR or SNCR), would achieve ozone season NO_x reductions of 6,713 tons annually compared to emissions levels at these units in 2021, assuming these units operate at the limited rate.⁵¹

The MoDNR then used these new emissions reductions it claims would be achieved through these new NO_x emissions limits to evaluate the impact to linked downwind receptors. The MoDNR used the EPA's Ozone AQAT for this analysis.⁵² The MoDNR analyzed the cost of different control strategies for the EGUs discussed above to determine what controls it viewed as cost-effective.⁵³ The MoDNR evaluated annual costs for the operation of SCR at the six units with existing SCR described above that do not currently have limits requiring the operation of SCR. This did not include capital cost because the units already have SCR. The MoDNR performed the same analysis for the Sioux facility that is equipped with SNCR. Similar to the SCR units, these annual costs do not include capital costs because the units are already equipped with these controls. The MoDNR then summed these costs and divided the costs by the modeled improvement in ppb at each linked receptor. The MoDNR identified the cost per 1 ppb improvement at the linked receptors as the "cost effectiveness results."⁵⁴

The MoDNR states that it considered Missouri's modeled contribution to the four linked receptors relative to in-state and other upwind States contributions, the conclusions it drew at Step 2 of their November 2022 Submission, and the costs and the corresponding reduction of ozone concentrations at the four linked receptors resulting from the new NO_x emissions limits at certain facilities.⁵⁵ With consideration of those factors, the MoDNR asserts that the projected emissions reductions in 2023 from the new NO_x emissions limits would fully satisfy Missouri's good neighbor obligation for the 2015 ozone NAAQS.⁵⁶

The MoDNR also reviewed the cost of new post-combustion controls included in the proposed Good Neighbor Plan (87 FR 20036, April 6, 2022) for 2026. In the proposed Good Neighbor Plan, the additional emissions reductions required for EGUs in 2026 are based

primarily on the potential retrofit of additional post-combustion controls for NO_x on most coal-fired EGUs and a portion of oil/gas-fired EGUs that are currently lacking such controls. In the proposed Good Neighbor Plan, the EPA identified SCR retrofits for coal-fired EGUs as part of the strategy to eliminate significant contribution from States linked in the 2026 analytic year. The proposed Good Neighbor Plan also included new emissions limitations for non-EGU point sources including pipeline natural gas transportation, cement and concrete manufacturing, glass and glass product manufacturing, basic chemical manufacturing, petroleum and coal products manufacturing, and pulp, paper, and paperboard manufacturing. Because Missouri was among the States found linked through 2026 in the 2016v2 modeling, the EPA proposed in the Good Neighbor Plan to apply these requirements for non-EGU sources in the State.

In the MoDNR's submission, it acknowledges that the EPA's 2016v2 modeling results for 2026 show that Missouri continues to contribute above 1 percent of the NAAQS in 2026 to one nonattainment receptor, but less than 1 ppb, and also continues to contribute above 1 percent of the NAAQS in 2026 to three maintenance receptors: to two maintenance receptors above 1 percent of the NAAQS but less than 1 ppb and to one maintenance receptor above 1 ppb. However, the MoDNR asserts that the Kenosha, Wisconsin, receptor (Site ID: 550590025) will no longer be a maintenance receptor in 2026 due to emissions reductions under the Good Neighbor Plan and the new NO_x limits that would be implemented by Missouri if the November 2022 Submission is approved by the EPA.⁵⁷ The MoDNR concluded that Missouri has no remaining good neighbor obligations for the 2015 ozone NAAQS in 2026 because Missouri is projected to contribute less than 1 ppb to the other three receptors before considering the impact of the EPA's proposed Good Neighbor Plan in 26 States.⁵⁸

The MoDNR further claims that the cost-effectiveness of the retrofit of SCR at the Labadie facility and Sikeston facility using the expected remaining life of those units is more than ten times the average cost-effectiveness of the State's planned controls associated with

⁴⁷ *Id.* at 26–27.

⁴⁸ *Id.* at 27–28.

⁴⁹ *Id.* at 28–29.

⁵⁰ *Id.* at 29.

⁵¹ *Id.*

⁵² *Id.*

⁵⁷ November 2022 Submission at 30. *See also* appendix A at 3, 14–15; appendix B at 3, 14–15; appendix C at 3, 16–17; appendix D at 3, 15–17; appendix E at 3, 13–14; appendix F at 3, 12–13.

⁵⁸ *Id.* at 30. The EPA notes that Missouri is included in the 26 states covered by the proposed Good Neighbor Plan.

⁴⁷ November 2022 Submission at 21.

⁴⁸ *Id.* at 25.

⁴⁹ *Id.* at 26.

⁵⁰ *Id.*

better operation of controls at EGUs with existing SCR and SNCR. The MoDNR then divided the cost by the modeled improvement in ppb at each of the three receptors to which Missouri contributes above 1 ppb in 2023. The MoDNR used those values and cost-effectiveness to calculate the cost effectiveness of the SCR retrofits for each of the three receptors in maintenance or nonattainment in 2026.⁵⁹ The MoDNR asserted that SCR retrofits at existing coal-fired EGUs are not cost-effective, nor required for the purpose of satisfying Missouri's good neighbor obligations under the 2015 ozone NAAQS.⁶⁰

The MoDNR also purported to analyze the cost of controls included in the proposed Good Neighbor Plan for non-EGUs. According to the MoDNR, the EPA's proposed Good Neighbor Plan included proposed requirements for preheater/precalciner kilns at a limit of 2.8 lbs. NO_x/ton of clinker produced. The MoDNR indicated that the State's rule, *10 CSR 10-6.380 Control of NO_x Emissions from Portland Cement Kilns*, covers the cement kilns identified by the EPA in the "Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026" included in Docket ID No. EPA-HQ-OAR-2021-0668-0191.⁶¹ The MoDNR further asserts that the State's rule includes a more stringent requirement of 2.7 lbs NO_x/ton of clinker produced during the regulatory ozone season (May—September). The MoDNR concluded that no cost-effective emissions reductions in this source category in Missouri are available.⁶²

The MoDNR also observed that the proposed Good Neighbor Plan included new control requirements in the glass and glass product manufacturing industry. Two facilities in Missouri were listed in the "Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026" as potentially subject to these proposed requirements: Pittsburg Corning Corporation in Sedalia, Missouri, and Piramal Glass USA Inc. in Park Hills, MO. The MoDNR addressed these two facilities by first identifying that the Piramal plant in Park Hills, Missouri, was expected to close in

March of 2022.⁶³ The MoDNR then observed that the EPA estimated a total cost of \$5.8 million for the NO_x controls at the Pittsburg Corning Corporation in the proposed Good Neighbor Plan. The MoDNR further notes that the 2020 and 2021 NO_x emissions at this facility were 17 and 44 tons, respectively. The MoDNR concluded from this that emissions reductions for the glass manufacturing sector in Missouri are not cost effective and that no further requirements are needed under this source category to address Missouri's good neighbor obligations under the 2015 ozone NAAQS.⁶⁴

The MoDNR observed that the EPA identified four pipeline natural gas transportation facilities in Missouri as potentially subject to new controls in the proposed Good Neighbor Plan. The EPA projected the average annual cost per ton NO_x reduced for Missouri as \$5,452 for this industry category. The MoDNR calculated cost effectiveness values in terms of annual dollars spent in Missouri per 1 ppb improvement at the remaining three downwind linked monitors using the EPA's estimated cost per ton reduced figure from the proposed Good Neighbor Plan, similar to the analysis the MoDNR performed for the SCR retrofit for EGUs. The MoDNR concludes that emissions reductions for the pipeline natural gas transportation sector in Missouri are not cost-effective and that no further requirements are needed under this source category to address Missouri's good neighbor obligations under the 2015 ozone NAAQS.⁶⁵

3. Information Provided at Step 4

In Step 4, the MoDNR lists several EGU sources with which the State has developed "Consent Agreements" (Agreements or the Agreements) with NO_x emissions limits based on the MoDNR's Step 3 analysis.⁶⁶ First, the MoDNR explains the requirements for EGUs with SCR. The Agreements require each facility to operate the existing SCR system control devices at least 95 percent of the time during the ozone season when burning coal. The MoDNR asserts that the five percent allowance for non-operation of the SCR is necessary to account for operational issues that SCRs might experience such as catalyst maintenance, plugging issues, and potential supply issues of the SCR reagent.

Next, the MoDNR explains the numeric limits for the controlled units and how the State arrived at the limit of 0.120 pounds per million British Thermal Units (lbs./mmBtu) for the ozone season (see Step 3 discussion detailed earlier in this section). The MoDNR also states that the Agreements contain necessary monitoring, recordkeeping, and reporting to verify compliance with these limits.

Next the MoDNR explains several other additional terms in the Agreements. The terms include provisions for Startup, Shutdown, and Malfunction (SSM). The MoDNR explains what constitutes SSM for each facility and when the hours of operation may be excluded from the requirement to operate the SCR when burning coal at least 95 percent of the time in ozone season. The Agreement for the John Twitty plant defines startup as ending when the unit reaches minimum gross load offered to the Southwest Power Pool (the Regional Transmission Operator) and exempts those hours on the front end. For the New Madrid and Thomas Hill plants, the Agreements provide that they may exclude startup hours following the process in the State SSM rule, 10 CSR 10-6.050. All three facilities are subject to the process in the State SSM rule to exempt hours for shutdown and malfunction when determining compliance with the percent operating time requirement. The MoDNR clarified that the SSM exemptions do not apply to the numeric emissions rate limit of 0.120 lbs./mmBtu.

Next the MoDNR explained that the Agreements also include a "regulatory safety valve" that suspends the numeric emissions rate limits under certain circumstances. The MoDNR explains that the purpose of this provision is to provide regulatory relief in the event that the SCR system could not be operated, but the unit was needed to ensure electric grid reliability/stability. The Agreements have several notification and justification requirements to use this mechanism. The MoDNR asserts that the regulatory safety valve was designed for use only during rare, unexpected grid emergency situations.

In the next section, the MoDNR explains the requirements for EGUs with SNCR. The Agreement for the Sioux Energy Center is designed very similarly to the Agreements the MoDNR made for EGUs with SCR. The MoDNR asserted that the SNCR agreement stipulates a 90 percent operating time requirement as opposed to a 95 percent operating time requirement for the SCR control units, because it was necessary

⁵⁹ November 2022 Submission at 31.

⁶⁰ *Id.*

⁶¹ "Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026" is also found in Docket ID No. EPA-HQ-OAR-2021-0668 and included in this docket, Docket ID No. EPA-R07-OAR-2021-0851.

⁶² November 2022 Submission at 32.

⁶³ *Id.* at 33.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 34-37. The Agreements are included in the November 2022 Submission in Appendices A through F.

to allow for the weekly tuning procedures for the complementary over-fire air NO_x control system at the Sioux facility. The MoDNR determined that a numeric emissions rate limit for the SNCR controlled units of 0.18 lbs/mmBtu is appropriate based on analysis of historic emissions rates. The MoDNR added similar SSM provisions to the Agreement with the John Twitty facility described above. The MoDNR also included the same regulatory safety valve language for this Agreement as described above.

Next the MoDNR explained the Agreements with Labadie Energy Center and Sikeston Power station. These Agreements include numeric limits of 0.12 lbs/mmBtu and 0.13 lbs/mmBtu respectively. Both facilities are required to continuously operate their currently installed control technologies, generally consisting of combustion-control measures. The MoDNR explains that both Agreements have the same SSM provisions, but they do not include a regulatory safety valve like the Agreements for the SCR and SNCR controlled units because the State determined that they were not necessary.

III. The EPA's Evaluation of Missouri's November 2022 Submission

A. Evaluation of Information Provided by Missouri Regarding Steps 1 and 2

In the November 2022 Submission, the MoDNR provided its interpretation of the 2016v2 modeling results for 2023 and 2026 to eliminate receptors and its linkages identified in the prior modeling released with the March 2018 memorandum, and to identify projected nonattainment and maintenance receptors in 2023 and 2026 as well as Missouri's contributions to them.

The MoDNR utilized a 1 ppb or 2 ppb threshold at Step 2 as it found it needed to reach a conclusion that Missouri was not "linked" to particular downwind nonattainment or maintenance receptors. The EPA had suggested in its August 2018 memorandum that with appropriate additional analysis it may be acceptable for States to use a 1 ppb contribution threshold, instead of the 1 percent of the NAAQS threshold that the EPA has traditionally used, for the purposes of identifying linkages to appropriate downwind receptors, so long as appropriate circumstance-specific information and justification was included.

The MoDNR argued for application of an alternative 1 ppb or 2 ppb threshold, depending on whether Missouri's contributions were below 1 ppb or 2 ppb, by presenting the different

numerical percentages of collective contribution that the respective thresholds would capture, and then asserting that the percentages of upwind contribution captured from the 1 ppb or 2 ppb threshold would be sufficiently meaningful. Stated differently, the MoDNR's logic is that so long as the States contributing above these thresholds will shoulder the burden of implementing their own emissions reductions to eliminate significant contribution to the shared receptors, it is appropriate for Missouri to use these thresholds for the purpose of excluding Missouri's emissions sources from having any such obligations. (We note that no other States linked to these receptors included any emissions reductions in their interstate transport SIP submissions for the 2015 ozone NAAQS.)

The EPA proposes to find that the MoDNR did not justify the use of either an alternative contribution threshold of either 1 ppb or 2 ppb. As an initial matter, the MoDNR's theories for use of a 1 ppb or 2 ppb threshold repeat the same arguments that the EPA considered and rejected in acting on Missouri's first submission (June 2019 Submission). *See* 87 FR 9541–43 (February 22, 2022); 88 FR 9358 (February 13, 2023). The EPA is not reopening those determinations; they apply with equal force to the MoDNR's attempts to again justify a higher threshold here; and so are incorporated by reference.

Second, the EPA has, in the SIP Disapproval and Good Neighbor Plan actions carefully evaluated a variety of issues associated with the August 2018 memorandum and potentially recognizing alternative Step 2 contribution thresholds and found in these notice-and-comment rulemakings that, absent an adequate circumstance-specific justification, a 1 percent threshold is the most appropriate threshold for identifying States that "contribute" to downwind ozone receptors for the 2015 ozone NAAQS. 88 FR 9342; 88 FR 36678 (June 5, 2023).⁶⁷ Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less stringent ozone NAAQS), is

⁶⁷ The EPA identified the same concerns in proposing to disapprove Missouri's prior SIP submission (June 2019 Submission) and other states' submissions, *e.g.*, 87 FR 9541–43. The MoDNR had these considerations available to it when it developed the November 2022 Submission but did not address the concerns the EPA identified in continuing to put forward the use of higher thresholds in this Submission.

important. Continuing to use a 1 percent of the NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, to ensure an appropriately larger amount of total upwind-State contribution is captured for purposes of fully addressing interstate transport. *See* 88 FR 9370–72. *Accord* 76 FR 48237–38 (August 8, 2011). In addition, the Agency has explained through both its Disapproval Action and Good Neighbor Plan rulemakings that consistency and equity among States is an important consideration in addressing interstate ozone pollution, which weighs in favor of consistency absent a strong justification otherwise. *See* 88 FR 9371–75. Larger thresholds such as 1 ppb or 2 ppb would reduce the amount of cumulative upwind State emissions that would be captured, whereas the purpose of the threshold at Step 2 is simply to serve as a *de minimis* screening threshold, to screen in States for further evaluation of emissions control opportunities, or, stated differently, to screen out States with *de minimis* contributions from further analysis even if they do have cost-effective emissions reduction potential. *See* 88 FR 9371.

The EPA has not rescinded the August 2018 memorandum, but at the same time, the Agency does not view that memorandum as completely endorsing the use of a threshold higher than 1 percent of the NAAQS. Rather, the memorandum invited State agencies to provide technically sound analytical justifications for use of a 1 ppb or any other threshold based on state-specific circumstances. The MoDNR in this Submission has not advanced new arguments that have not already been considered. The need for consistency in application of a threshold is important. The EPA did not approve the use of a 1 ppb threshold for any State for the 2015 ozone NAAQS. 88 FR 9370–75. Further, it is now clear (to a degree that it may not have been in 2018–2019 when Missouri and other States were developing their SIP submissions) that no States linked even at the higher thresholds the MoDNR asserts are appropriate actually proposed to implement any emissions reductions to benefit these or any other receptors. States' use of the higher thresholds to avoid implementing emissions reductions is contrary to the August 2018 Memo, which provides that "the use of a 1 ppb threshold to identify linked upwind States still provides the potential, at Step 3, for meaningful emission reductions in linked upwind States in order to aid downwind States

with attainment and maintenance of the 2015 ozone NAAQS.”⁶⁸ As the EPA identified in the Disapproval Action, States’ reliance on incidental, hypothetical air quality benefits from other contributing States as a basis to justify use of a higher threshold to dismiss their own contribution is improper under the EPA’s longstanding approach to evaluating States’ obligations on a consistent and equitable basis. This would introduce an inter-dependency into the solution of the “collective contribution” problem that ozone pollution poses and is inconsistent with requiring each State to eliminate its own significant contribution. See Response to Comments at 295–297 in the final Disapproval Action docket (EPA–HQ–OAR–2021–0663). In the proposed and final Good Neighbor Plan, the EPA evaluated all other States linked to these same receptors to which Missouri is linked using the 1 percent of NAAQS threshold. See 88 FR 36678. For these reasons, the EPA proposes to find that the 1 percent threshold is appropriate to use to establish whether Missouri’s emissions “contribute” to other States’ ozone receptors, and the EPA proposes that Missouri’s November 2022 Submission did not adequately justify use of any higher thresholds.

In addressing Missouri’s linkages in 2026, the EPA notes that the 2016v2 modeling used by the MoDNR indicated four linkages above the 1 percent threshold to nonattainment or maintenance receptors in that year. The EPA finds the MoDNR’s dismissal of three of those linkages for being below a 1 ppb threshold is unsatisfactory for the same reasons described above regarding Missouri’s linkages in 2023. With respect to Missouri’s contribution of 1.53 ppb to the Kenosha–Chiwaukee receptor in 2026, the MoDNR argued that this site will not actually be a receptor, once the emissions reductions in the proposed Good Neighbor Plan are implemented, as well as the emissions controls the MoDNR purports to require in the current November 2022 Submission. This argument is flawed for several reasons. First, the EPA’s analysis in the proposed Good Neighbor Plan indicated that the Kenosha–Chiwaukee receptor would remain a maintenance receptor after the implementation of retrofits of post-combustion emissions controls at EGUs in the linked upwind States, including Missouri.⁶⁹ Thus, the

available evidence at the time of the MoDNR’s submission does not support the stated conclusion. Second, the MoDNR’s argument provides no justification why the other States linked to this receptor should be subject to the full stringency of the proposed Good Neighbor Plan (which would include post-combustion control retrofits at EGUs and the non-EGU control measures) while Missouri’s sources should enjoy the benefit of only implementing the near-term EGU emissions control strategies relying on existing installed control technologies that the MoDNR purports to require in its November 2022 Submission. (Note that even if the MoDNR’s reasoning were applied to the EPA’s 2016v3 (rather than 2016v2) modeling and the final (rather than proposed) Good Neighbor Plan (discussed further below), the EPA would reach the same conclusion: Missouri is linked to the Sheboygan receptor through 2026 with a 1.68 ppb contribution, and Sheboygan is projected to remain a receptor through 2026, even with the full implementation of the final Good Neighbor Plan emissions control strategies in all of the upwind States, including Missouri, linked to that receptor through 2026.⁷⁰)

The MoDNR presents further arguments identical to arguments provided by the MoDNR in public comment on the proposed disapproval of the MoDNR’s first submission:⁷¹ specifically, that due to claimed model underperformance in 2016v2 and other concerns the MoDNR has about modeling ozone near Lake Michigan, the weight of evidence analyses provided for these receptors in the November 2022 Submission shows that Missouri’s current SIP is adequately addressing its good neighbor obligations with respect to each of these newly identified four receptors in the 2016v2 modeling.

The EPA addressed the MoDNR’s assertions about the LMOS in responding to its comments on the proposed disapproval of Missouri’s June 2019 Submission, which were nearly verbatim to the November 2022 Submission on this topic.⁷² The EPA’s response to this comment can be found on pages 139 and 152 to 153 of the

Response to Comment document supporting the previous final SIP Disapproval Action.⁷³ The EPA is not reopening its determinations in the SIP Disapproval Action on this topic, and incorporates that analysis by reference.

As the EPA concluded in the final SIP Disapproval Action, the EPA’s 2016v3 modeling is reliable for evaluating good neighbor obligations for the 2015 ozone NAAQS. As stated above, the EPA invited and received comments on the 2016v2 emissions inventories and modeling. In response to these comments, the EPA made a number of updates to the 2016v2 emissions inventories and model design to construct a 2016v3 emissions platform, which was used to update the air quality modeling. Model performance issues noted by the MoDNR in the November 2022 Submission have been addressed in the EPA’s 2016v3 modeling. See 88 FR 9344–45.

The EPA found that model performance for 2016v3 modeling is improved over the performance for 2016v2 modeling and that the 2016v3 modeling performed well within the range of bias and error performance criteria recommended in the scientific literature, which alleviates the performance concerns in the Midwest asserted by the MoDNR in its November 2022 Submission.⁷⁴ The EPA is not reopening these determinations in this action and incorporates its prior analysis by reference.

To be clear, the EPA is not disapproving the November 2022 Submission for using the 2016v2 modeling. Under either the 2016v2 modeling or the 2016v3 modeling, Missouri would be linked to at least one receptor in another State. Therefore, the EPA proposes to find that Missouri is obligated to further evaluate its emissions to determine what portion of its contribution, if any, constitutes “significant” contribution. In fact, the MoDNR conducted such an analysis, as discussed and evaluated further in section III.C.

⁷³ See “2015 Ozone NAAQS Interstate Transport SIP Disapprovals—RTC Document” available in Docket ID No. EPA–HQ–OAR–2021–0663.

⁷⁴ See “Air Quality Modeling Technical Support Document 2015 Ozone NAAQS SIP Disapproval Final Action”, table B–3—Performance statistics for MDA8 ozone > 60 ppb for monitor plus modeled receptors. Page B–11.

⁷⁵ The EPA directly responded to model performance concerns raised by the MoDNR and others on the 2016v2 modeling in the final SIP Disapproval Action and considered these concerns in the development of the 2016v3 modeling. See 88 FR 9370–71. See also “2015 Ozone NAAQS Interstate Transport SIP Disapprovals—RTC Document” at 171–187, available in Docket ID No. EPA–HQ–OAR–2021–0663.

⁶⁸ August Memo at 4.

⁶⁹ See “Ozone Transport Policy Analysis TSD for the Proposed Rule”, Docket ID No. EPA–HQ–OAR–2021–0668–0133, at p.52 (table C–9) and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

⁷⁰ See “Ozone Transport Policy Analysis Final Rule TSD” included in Docket ID No. EPA–HQ–OAR–2021–0668–1080, p. 68 (table C–10) and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

⁷¹ The MoDNR’s comment letter on the proposed disapproval of Missouri’s first submission is included in Docket ID No. EPA–R07–OAR–2021–0851–0021 (“MoDNR Comment Letter”). The MoDNR raised this same issue in the November 2022 Submission in their comment letter at 7–9.

⁷² The MoDNR Comment Letter at 9–11.

B. Results of the EPA’s Step 1 and Step 2 Modeling and Findings for Missouri

As explained in section I., the EPA is relying on the EPA’s 2016v3 modeling and violating-monitor methodology for this action, which is the same set of data the EPA used for all other States in the final SIP Disapproval Action and the final Good Neighbor Plan, including for the State of Missouri.

To summarize what was found in these prior actions for Missouri: based on the EPA’s updated 2016v3 air quality modeling and considering contributions

to violating-monitor receptors, Missouri is projected to contribute more than 1 percent of the NAAQS (*i.e.*, 0.70 ppb), 1 ppb, and even 2 ppb, to multiple downwind nonattainment and maintenance receptors in 2023. Specifically, as shown in table 3, Missouri is projected to contribute 1.87 ppb to a nonattainment receptor in Sheboygan County, Wisconsin, (Site ID: 551170006) and 1.87, 1.39, and 1.01 ppb to three maintenance-only receptors, respectively, in Wisconsin and Illinois in the 2023 analytic year. As shown in

table 5, Missouri is also projected to contribute above 1 percent of the NAAQS to four violating-monitor receptors at locations in Michigan, and Wisconsin, in the 2023 analytic year. Furthermore, data for 2026 in table 4 indicate that emissions from Missouri will continue to contribute greater than 1 percent of the NAAQS to one maintenance-only receptor in Wisconsin. In addition, Missouri’s contribution exceeds 1 ppb at four receptors in 2023 and one receptor in 2026.

TABLE 3: PROJECTED MISSOURI LINKAGE RESULTS BASED ON THE EPA UPDATED 2023 MODELING

Receptor ID	Location	Nonattainment/maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	Missouri contribution (ppb)
551170006	Sheboygan, Wisconsin	Nonattainment	72.7	73.6	1.87
170317002	Cook, Illinois	Maintenance-Only	68.5	71.3	1.39
551010020	Racine, Wisconsin	Maintenance-Only	69.7	71.5	1.19
550590019	Kenosha, Wisconsin	Maintenance-Only	70.8	71.7	1.01

Source: Final Good Neighbor Plan AQM TSD

TABLE 4: PROJECTED MISSOURI LINKAGE RESULTS BASED ON THE EPA UPDATED 2026 MODELING

Receptor ID	Location	Nonattainment/maintenance	2026 Average design value (ppb)	2026 Maximum design value (ppb)	Missouri contribution (ppb)
551170006	Sheboygan, Wisconsin	Maintenance-Only	70.8	71.7	1.68

Source: Final Good Neighbor Plan AQM TSD.

TABLE 5: MISSOURI 2023 LINKAGE RESULTS BASED ON VIOLATING-MONITOR MAINTENANCE-ONLY RECEPTORS

Receptor ID	Location	2021 Design value (ppb)	2022 Design value (ppb)	2021 4th high (ppb)	2022 4th high (ppb)	Missouri modeled contribution (ppb)
261210039 ..	Muskegon, Michigan	74	79	75	82	2.95
260050003 ..	Allegan, Michigan	75	75	78	73	2.18
550890008 ..	Ozaukee, Wisconsin	71	72	72	72	1.64
550590025 ..	Kenosha, Wisconsin	72	73	72	71	1.54
481211032 ..	Denton, Texas	76	77	85	77	0.70

Source: Final Good Neighbor Plan AQM TSD.

C. Evaluation of Information Provided by Missouri Regarding Step 3

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

To evaluate effectively which emissions in the State should be

deemed “significant” and therefore prohibited, States generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential additional emissions reduction opportunities and resulting downwind air quality improvements. The EPA has consistently applied this general approach (*i.e.*, Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be “significant” (or interfere with maintenance) in each of its prior Federal, regional ozone transport

rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. *See EME Homer City*, 572 U.S. 489, 519 (2014). While the EPA has not directed States that they must conduct a Step 3 analysis in precisely the manner the EPA has done in its prior regional transport rulemakings, State implementation plans addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit “any source or other type of emissions activity within the State” from emitting air pollutants that will contribute significantly to downwind air quality problems. While the Good Neighbor

Plan has defined for purposes of a FIP the obligations for Missouri sources based on extensive modeling, analysis, and technical and policy determinations applied by the EPA, States including Missouri may submit, and the EPA will approve, alternative approaches to defining “significant contribution” that meet the Act’s requirement to determine whether and to what degree emissions from a State should be “prohibited” to eliminate emissions that will “contribute significantly to nonattainment” or “interfere with maintenance” of the NAAQS in any other State.

In this section, the EPA evaluates the information provided by the MoDNR in its submission, summarized in section II.B., in support of the conclusions the MoDNR draws at Step 3. Although the MoDNR has stated it believes its good neighbor obligations are met at Steps 1 and 2 for the 2015 ozone NAAQS (statements with which the EPA disagrees as explained in the preceding section), the MoDNR then goes on to state that there are uncertainties due to model performance. The MoDNR also acknowledges that there have been recent exceedances of the assurance levels of the CSAPR NO_x Ozone Season Trading Program by Missouri EGUs. *See* 88 FR 36797–98. Consequently, the MoDNR developed a Step 3 analysis to address these so-called “uncertainties” (*i.e.*, proceeding from an assumption that Missouri is linked at Step 2) and conducted an analysis of potential emissions control opportunities to ensure that its “good neighbor obligations are indeed satisfied.”⁷⁶

After reviewing the MoDNR’s Step 3 analysis, the EPA finds several shortfalls in the MoDNR’s analysis, including in its evaluation of improved emissions performance opportunities at EGUs with existing post-combustion controls, its evaluation of additional emissions control opportunities at EGUs, and its assessment of non-EGU emissions control opportunities, including its use of a “weighted” approach to identifying significant contribution applying a dollar-per-ppb (or “\$/ppb”) metric.

In general, the EPA observes that in the Good Neighbor Plan, the EPA as statutorily required pursuant to CAA section 110(c), and based on extensive record evidence, defined the amount of emissions that constitutes significant contribution from Missouri for purposes of the 2015 ozone NAAQS. In the Good Neighbor Plan, the EPA defined a level of emissions control under Step 3, based on strategies of optimizing existing post-combustion controls and installing or

upgrading combustion and post-combustion control equipment on EGU sources as well as installing certain controls on impactful non-EGU sources, and then, at Step 4, established through regulations particular implementation methods to achieve that level of emissions control. The EPA has acknowledged and continues to acknowledge that States are free to develop a SIP to replace a Good Neighbor Plan FIP that adopts a different suite of control measures if they meet good neighbor obligations for the 2015 ozone NAAQS. *See* 88 FR 36838–43 (discussing options for States to replace the FIP with a SIP).

The MoDNR’s submission pre-dates the final Good Neighbor Plan; however, in some respects, as discussed further below, the MoDNR modeled aspects of its analysis on the proposed Good Neighbor Plan. As noted further in this section, it is clear that the level of emissions control the MoDNR offers in the November 2022 Submission is less than the level of emissions control the EPA proposed and ultimately found necessary to meet good neighbor obligations in the final Good Neighbor Plan.⁷⁷ As such, the Submission is clearly not “equivalent” in achieving the elimination of an amount of emissions that the EPA determined constituted “significant contribution” in the Good Neighbor Plan. *See* 88 FR 36838–43 (discussing options for States to replace the FIP with a SIP). This is most clearly evident in the Submission’s failure to include additional emissions control strategies for EGUs and non-EGUs that the EPA found warranted for those States that remain linked to one or more out-of-state receptors through 2026, which, as noted in the previous section, Missouri is.

The EPA finds that this aspect of the November 2022 Submission runs counter to the guidance the EPA has provided States in the proposed and final Good Neighbor Plan (and prior interstate transport rulemakings dating back to at least 2005) that the FIP establishes an “important benchmark”

⁷⁷ The effectiveness of the Good Neighbor Plan in Missouri is currently administratively stayed by the EPA to comply with preliminary orders staying the EPA’s separate Disapproval Action, 88 FR 9336, pending judicial review. 88 FR 49295 (July 31, 2023). On June 27, 2024, the Supreme Court granted stay applications of the Good Neighbor Plan, *Ohio et al. v. EPA*, Nos. 23A349, 23A350, 23A351 and 23A384, 603 U.S. ___ (2024). However, the Good Neighbor Plan remains the EPA’s final determination of Missouri’s and 22 other states’ interstate transport obligations for the 2015 ozone NAAQS. Neither the Good Neighbor Plan nor the Disapproval Action have been vacated by any court, and at this time merits litigation is proceeding while the Good Neighbor Plan’s application in Missouri is stayed.

and that the EPA generally anticipates that SIP submissions that do not meet that benchmark are not likely to be approvable (see discussion in the Executive Summary of this document, section I.A.). However, recognizing that the MoDNR presented alternative arguments as to why its emissions reduction obligations to eliminate “significant contribution” should be less than what was finalized in the Good Neighbor Plan, and these arguments were developed before the EPA’s final action issuing the Good Neighbor Plan, the EPA will evaluate additional aspects of the technical, policy, and legal merits of the alternative approaches the MoDNR put forward. In doing so, the EPA will highlight where relevant methodological choices the MoDNR made are not sufficiently technically justified, create inconsistencies or are not reconciled with the good neighbor obligations that the EPA has set for other States linked to shared receptors, and/or otherwise result in a plan submission that does not meet good neighbor obligations for the 2015 ozone NAAQS. In the following subsections, the EPA will evaluate important factors considered by the MoDNR and/or the EPA within the Step 3 multifactor test. These include evaluation of levels of emissions controls on EGUs and non-EGUs in Missouri, potential air quality resulting from these levels of controls, and the MoDNR’s use of a “dollar-per-ppb” metric to assess cost effectiveness of controls.

1. Evaluation of Potential Level of Emissions Controls on Missouri EGUs

In Missouri’s November 2022 SIP Submission, the controls the State identified to eliminate significant contribution (from all sources in the State) is an “optimized” emissions rate of 0.12 lb/mmBtu for application to certain specifically-named coal-fired EGUs with SCR post-combustion controls and a 0.18 lb/mmBtu rate for coal-fired EGUs with SNCR post-combustion controls already installed. Optimization of existing post-combustion controls on coal-fired EGUs is a well-established strategy that the EPA has recently applied in multiple good neighbor rulemakings, including the CSAPR Update, the Revised CSAPR Update, and the Good Neighbor Plan. However, in the Good Neighbor Plan, the EPA identified that on an ozone-season average, fleetwide basis, sources with existing SCR controls are generally capable of achieving an emissions rate around 0.08 lb/mmBtu. *See* 88 FR 36721.

To understand this discrepancy, the EPA evaluated the level of EGU

⁷⁶ November 2022 Submission at 18.

emissions controls identified by the MoDNR as well as several alternatives based on emissions control opportunities evaluated in the final Good Neighbor Plan. The emissions control opportunities evaluated in the Good Neighbor Plan included optimizing existing SCR and SNCR post-combustion NO_x controls at units that currently have this technology and installing state of the art combustion controls (SOA CC) at units that currently lack them and retrofitting of SCR post-combustion controls at units that currently do not have those controls installed.

The EPA first evaluated the 0.12 lb/mmBtu rate identified by the MoDNR for coal-fired EGUs with SCR. Similar to the methodology described in the EPA's NO_x Mitigation Strategies Final Rule TSD, the EPA focused on the third-lowest ozone season emissions rate for the coal-fired EGUs with SCR systems in Missouri, and calculated a third best average rate, which it determined to be 0.086 lb/mmBtu specific to these units. This value is well below the 0.12 lb/mmBtu rate the MoDNR ultimately determined was appropriate for these units. The EPA then examined the third best average rate; however, the EPA did so for all units across the United States with cyclone boilers with SCR (similar to those in Missouri where the 0.12 lb/mmBtu rate would apply) and found a value of 0.073 lb/mmBtu. This value is also well below the 0.12 lb/mmBtu rate identified by the MoDNR.

Next, going beyond fleetwide average emissions rates, the EPA examined the historical operation of each individual unit for which the MoDNR proposed to apply the 0.12 lb/mmBtu rate to identify whether there was a justifiable reason for selecting an "optimized" rate well above the identified third best average rates (either using the sources included in the EPA's evaluation, or the subset of sources in Missouri that the MoDNR used). The EPA found that essentially all units have achieved emissions rates well below 0.12 lb/mmBtu, and in almost all cases below at least 0.08 lb/mmBtu on a monthly or seasonal basis.⁷⁸ Thus, in general, the emissions rate the MoDNR identified for these sources is roughly 33 percent less stringent than appears to be achievable based on the relevant data.

To investigate the source of this discrepancy further, the EPA revisited its assessment of all coal-fired EGUs with SCR for potential optimization completed for the Good Neighbor Plan.

⁷⁸ The lowest monthly rate that Thomas Hill Energy Center, oris code 2168 unit MB2 has achieved is 0.083 lb/mmBtu.

The EPA examined costs for full operation of SCR controls for units that already have this technology installed.⁷⁹ This includes the cost of catalyst replacement and disposal, the costs of reagent, and the cost for returning a partially operating SCR to full operation. The EPA evaluated nationwide coal-fired EGU NO_x ozone season emissions data from 2009 through 2021 and calculated an average NO_x ozone season emissions rate across the fleet of coal-fired EGUs with SCR for each of these thirteen years and considered the third best average emissions rate. The EPA did not consider the lowest or second-lowest NO_x emissions rates since these may reflect SCR systems that have all new components and therefore not representative of ongoing achievable NO_x emissions rates considering broken-in components and routine maintenance schedules. The units identified for control under Missouri's SIP submission are included in the subset used in the EPA analysis. The analysis, which includes the costs required to increase reagent and routine maintenance, resulted in an optimized rate of 0.08 lb/mmBtu. Based on the results of this assessment, we still do not find adequate justification for a 0.12 lb/mmBtu rate for these sources.

As discussed previously, the MoDNR initiated its analysis of Step 3 by focusing on improvements of existing SCR operation at certain coal-fired EGUs. The MoDNR follows an assessment similar to those developed by the EPA in evaluating optimization of SCRs at coal-fired EGUs in prior good neighbor rulemakings. In the development of its analysis to identify an emissions rate, however, the MoDNR excludes the best operating coal-fired units with SCRs in Missouri before considering the third best average emissions rate. In addition, in establishing the emissions rates in the Consent Agreements, the MoDNR added a 20 percent compliance margin, but the MoDNR's November 2022 Submission does not contain any analysis or data supporting this approach to allowing increased emissions far beyond the selected rate. Additionally, the Consent Agreements already include provisions addressing instances of variability from startup, shutdown, and malfunction of equipment. Thus, the identified emissions rate is inconsistent with a review of historical data for the subset of units the MoDNR considered for

⁷⁹ See "EGU NO_x Mitigation Strategies Final Rule TSD" in Docket ID No. EPA-HQ-OAR-2021-0668-1092, and included in this docket, Docket ID No. EPA-R07-OAR-2021-0851.

controls in the SIP Submission. The EPA's analysis of the data at the sources at which Missouri's November 2022 Submission proposes to apply the 0.12 lb/mmBtu limit shows that historical NO_x emissions rates ranging from 0.06–0.10 lb/mmBtu are attainable for these units.⁸⁰ Allowing increases above historical emissions rates by an additional 20–100 percent does not reflect an optimized emissions performance level for these coal-fired EGUs with SCR and in fact allows for degradation in emissions performance from observed achievable historical rates. The MoDNR provided no cost or feasibility information regarding why these rates that were previously achieved at these EGUs are not attainable at these EGUs going forward.

The MoDNR's analysis of near-term emissions control opportunities at EGUs was incomplete in certain other respects. The EPA agrees that Missouri EGUs do not have SOA CC potential upgrades available at this time.⁸¹ However, the MoDNR did not evaluate additional SCR optimization at oil and/or gas fired EGUs. The EPA's analysis suggests that there may be additional emissions reductions through cost-effective optimization of combined cycle units in Missouri available in the short-term, which the MoDNR did not consider.⁸² Finally, the Consent Agreements for Labadie and Sikeston include ozone season emissions rates of 0.12 lb/mmBtu and 0.13 lb/mmBtu, respectively. Historical ozone season emissions rates for Sikeston for the previous five years ranged from 0.10–0.12 lb/mmBtu and for Labadie was 0.09 lb/mmBtu for the same period.⁸³ While the MoDNR acknowledges in its submission that these rates would not necessarily achieve any reductions in emissions, instead serving as an assurance of the operation of controls at the units in these facilities, the emissions rates in the Consent Agreements actually represent an increase of their historical and consistently lower emissions rates.

Without adequate technical justification for applying the rates selected and included in the Consent

⁸⁰ See "Historical NO_x Seasonal Emission Rates for Units with SCR Final" in Docket ID No. EPA-HQ-OAR-2021-0668-1106, and included in this docket, Docket ID No. EPA-R07-OAR-2021-0851.

⁸¹ See "Appendix A: Final Rule State Emissions Budget Calculations and Engineering Analytics" in Docket ID No. EPA-HQ-OAR-2021-0668-1080 and included in this docket, Docket ID No. EPA-R07-OAR-2021-0851.

⁸² Id.

⁸³ See "Historical NO_x Seasonal Emissions Rates for Units with SCR Final" in Docket ID No. EPA-HQ-OAR-2021-0668-1106, and included in this docket, Docket ID No. EPA-R07-OAR-2021-0851.

Agreements, and with no additional emissions controls identified to eliminate a comparable amount of significant contribution in compensation for that reduced level of emissions control, the November 2022 Submission fails to eliminate the amount of emissions that the EPA has found achievable through near-term EGU control strategies and which comprises a portion of the amount of emissions that should be prohibited to eliminate significant contribution for the 2015 ozone NAAQS (as well as for the 2008 ozone NAAQS previously).

However, the EPA conducted further evaluation of the consequences of the application of this rate with respect to estimated total emissions reductions in

the State and the air quality effects of those reductions at downwind receptors.

The EPA applied the emissions rates identified by the MoDNR as well as the emissions rates the Agency identified in the final Good Neighbor Plan to the suite of units each agency identified and calculated the resulting ozone season State-level EGU emissions for the State (including the emissions from units whose emissions rates remained unchanged) at various levels of stringency based on 2021 emissions.⁸⁴ The resulting state-wide ozone season emissions levels for various levels of stringency based on the EGU fleet in 2023 and 2026 is shown in table 6. For 2023, both the emissions levels under

the MoDNR's emissions controls and the final Good Neighbor Plan represent a reduction in emissions from the base case. However, under the final Good Neighbor Plan an additional 784 tons are reduced beyond the emissions reductions identified by the MoDNR.

The difference is even more pronounced in 2026, with additional reductions accruing from emissions reductions commensurate with the installation of SCR controls under the Good Neighbor Plan. Such controls could achieve 4,518 additional tons of ozone-season emissions reductions, as under the final Good Neighbor Plan, beyond the level of reduction specified in the November 2022 Submission.

TABLE 6—2023 AND 2026 EGU OZONE SEASON NO_x EMISSIONS (TONS) AT VARIOUS LEVELS OF STRINGENCY

Year	Engineering analysis (EA) base case	Missouri consent Agreement NO _x limits (0.12–0.18 lb/mmBtu on existing units)	SNCR and SCR optimized (existing SCRs optimized at 0.08 lb/mmBtu rate)	New SCRs added and SCR optimized (existing SCRs and optimized to 0.08 lb/mmBtu rate)
2023	20,094	13,382	12,598	(not applicable)
2026	18,612	11,899	11,116	7,381

The EPA notes that these figures do not account for roughly an additional 2,065 tons of projected ozone-season NO_x emissions reductions that were identified in the Good Neighbor Plan associated with non-EGU emissions control strategies to eliminate significant contribution from the State of Missouri. The EPA addresses the non-EGU analysis provided in the Missouri SIP submission in section III.C.4.

Based on this evaluation, the EPA determines the information provided in the November 2022 Submission regarding the potential cost-effective emissions control strategies at EGU sources in Missouri is inadequate.

2. Evaluation of Projected NO_x Reductions on Downwind Linked Receptors

The effects of emissions control strategies on downwind receptors to which upwind States are linked is one of the important factors that States and the EPA typically assess at Step 3 for purposes of defining the amount of “significant contribution.” Further, while the EPA does not view achieving precisely the same degree of projected air quality improvement at receptors as its FIP achieves as necessarily required for a SIP to be approvable, the EPA

considers the Good Neighbor Plan's evaluation of air quality improvement to supply an important benchmark that allows for a reasonable assessment of the sufficiency of alternative programs States may put forward. The MoDNR included data in their submission showing the projected effect of its chosen emissions control strategies on ozone levels at the downwind receptors. While this data indicates that the MoDNR's proposed approach achieves some improvement in ozone levels at the identified receptors to which Missouri is linked, this amount of air quality improvement is less than the degree of improvement that occurs with the application of the level of emissions control that the EPA had determined in the Good Neighbor Plan is necessary to eliminate Missouri's significant contribution. This finding supports the EPA's proposed conclusion that the November 2022 Submission is not adequate to address Missouri's good neighbor obligations for the 2015 ozone NAAQS.

The EPA evaluated the air quality analysis conducted by the MoDNR that used the Air Quality Assessment Tool, or AQAT, from the proposed Good Neighbor Plan. The MoDNR utilized the AQAT to estimate the air quality effects

of Missouri's proposed emissions reductions on the receptors that the MoDNR identified as potential receptors in 2023. The EPA independently checked the emissions reductions projected to be achieved at the level of emissions control identified by the MoDNR and then using the same AQAT (from the proposed Good Neighbor Plan) confirmed that the MoDNR's results are accurate.

Next, since the final Good Neighbor Plan had updates to the air quality modeling that form the basis of the AQAT, we repeated the air quality analysis using the air quality modeling and AQAT from that rule. Starting with the 2021 emissions from the engineering analysis used in the final Good Neighbor Plan and applying the emissions rates identified by the MoDNR, we found slightly different emissions levels for 2023. We also found emissions levels for 2026, which included emissions changes due to retirements and/or other changes (see the Ozone Transport Policy Analysis Final Rule TSD from the final Good Neighbor Plan for details; also available in this docket). In addition to the emissions control level identified by the MoDNR, to ensure a thorough review, we evaluated several other emissions

⁸⁴ See “Ozone Transport Policy Analysis Final Rule TSD” in Docket ID No. EPA-HQ-OAR-2021-

0668–1080, and included in this docket, Docket ID No. EPA-R07-OAR-2021-0851.

levels using the engineering analysis from the final Good Neighbor Plan (*i.e.*, optimization levels for existing SCR controls of 0.08 lb/mmBtu (or better) as well as optimization of existing SNCR controls).⁸⁵ Additionally, we evaluated the potential effects of installing SCR controls with rates of 0.05 lb/mmBtu on all coal-fired units that are greater than 100 MW. The resulting analysis allows for a comparison of reduction in ozone levels that the MoDNR’s emissions reductions strategies for EGUs would achieve at downwind receptors as compared to what the final Good Neighbor Plan’s emissions reduction strategies would achieve. The comparative estimated air quality contributions to each of the potential

receptors resulting from these emissions stringency levels can be found in table 7.

We observe that the emissions reductions proposed by the MoDNR result in some air quality improvements for each receptor. However, we observe that for the stringency levels identified and selected to eliminate significant contribution in the final Good Neighbor Plan, there are more emissions reductions and that these emissions reductions result in more air quality improvements (through reductions in the amount of ozone to which Missouri’s emissions contribute) at the downwind receptors relative to the stringency level that has been adopted by the MoDNR in its November 2022

Submission. Based on an extensive record, the EPA had found the emissions reductions called for in the Good Neighbor Plan broadly cost-effective on industry-wide bases through national-scale analysis in light of the large geographic scale and persistent nature of the interstate ozone transport problem for the 2015 ozone NAAQS. As discussed here and throughout section III.C., the MoDNR has not put forward an adequate technical justification explaining why Missouri’s EGU and non-EGU sources should be subject to a substantially less stringent emissions control program delivering proportionately less air quality benefits to receptors in other States.

TABLE 7—2026 AIR QUALITY CONTRIBUTIONS (PPB) ESTIMATED USING AQAT TO EACH OF THE RECEPTORS TO WHICH MISSOURI CONTRIBUTES GREATER THAN OR EQUAL TO 0.70 PPB AT VARIOUS LEVELS OF EMISSIONS REDUCTIONS⁸⁶

Receptor ID #	State	County	AQ Model Base Case	Engineering Analysis (EA) Base Case	SNCR and SCR optimized to proposed Missouri NO _x limits ^a	SNCR and SCR optimized ^b	New SCRs added and SCR optimized ^c	New SCRs added and SCR optimized with Non-EGU reductions ^{d,e}
170317002	Illinois	Cook	1.258	1.316	1.242	1.233	1.192	1.169
550590019	Wisconsin	Kenosha	0.912	0.955	0.900	0.894	0.863	0.847
551010020	Wisconsin	Racine	1.061	1.125	1.043	1.033	0.988	0.963
551170006	Wisconsin	Sheboygan	1.689	1.778	1.664	1.650	1.587	1.552
260050003	Michigan	Allegan	1.969	2.068	1.942	1.927	1.857	1.818
261210039	Michigan	Muskegon	2.649	2.685	2.638	2.633	2.607	2.593
481211032	Texas	Denton	0.634	0.661	0.661	0.661	0.661	0.661
550590025	Wisconsin	Kenosha	1.381	1.449	1.362	1.352	1.303	1.276
550890008	Wisconsin	Ozaukee	1.479	1.551	1.459	1.448	1.397	1.369

^a Proposed limit is 0.12 lb/mmBtu on existing units.
^b Existing SCRs optimized at 0.08 lb/mmBtu rate.
^c Existing SCRs optimized to 0.08 lb/mmBtu rate.
^d Existing SCRs optimized to 0.08 lb/mmBtu rate.
^e This is the stringency set by the Good Neighbor Plan.

3. Evaluation of the MoDNR’s Use of a “Dollar-per-ppb” Metric

The EPA here evaluates the argument the MoDNR put forward as to why it did not believe any emissions reductions beyond the near-term EGU emissions control strategy it selected were needed using a “dollar-per-ppb” metric. Specifically, the MoDNR utilized a formula taking the estimated cost of emissions reductions from control technologies divided by the resulting air quality improvement to (implicitly) apportion responsibility between upwind States and to make assertions regarding whether particular controls are cost-effective on a dollar-per-unit-of-air quality-improvement basis. This approach would “weight” cost-effectiveness among States based on assumptions regarding the proportional amount of air quality benefit the same

emissions control strategies would deliver as coming from one State rather than another at each particular receptor. This is substantially different from the approach the EPA has taken in all of its prior good neighbor rules for ozone. The Supreme Court in *EME Homer* upheld the EPA’s decision not to allocate responsibility among upwind States proportionally to each State’s contribution. 572 U.S. 489, 514–19. Nonetheless, the Disapproval Action explained the EPA’s continuing openness to evaluating whether States could develop this or other alternative methods of allocating responsibility, though no other State has adopted this approach or demonstrated how it could be implemented in practice. 88 FR 9376. This experience accords with the EPA’s previously expressed views that this approach to defining significant

contribution would be highly analytically challenging and would require a highly-coordinated approach across multiple States to have a chance at being successful.

The EPA has previously evaluated Step 3 alternatives to the “uniform approach” the EPA has taken in the context of past good neighbor rulemakings, including an evaluation of methods similar to the “cost per level of air quality improvement” proposed by the MoDNR. The alternative methods, as well as potential issues that the Agency identified can be found in the “Alternative Significant Contribution Approaches Evaluated TSD” included in the CSAPR rulemaking docket,⁸⁷ and included in the docket for this action. In responding to comments in that rulemaking about similar cost per air

⁸⁵ See “Ozone Transport Policy Analysis Final Rule TSD” in Docket ID No. EPA–HQ–OAR–2021–0668–1080 and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

⁸⁶ This table displays contributions from Missouri to each of the nine receptors to which Missouri is

linked in 2023. Of these nine monitoring sites, the 2016v3 modeling indicates that only Sheboygan is projected to remain a receptor to which Missouri is linked in 2026. In this regard, the reduction in contributions in 2026 at sites other than the

Sheboygan receptor represent incidental air quality benefits.

⁸⁷ Docket ID No. EPA–HQ–OAR–2009–0491–0077, also included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

quality improvement approaches,⁸⁸ the Agency identified concerns that included, but were not limited to, requirements of an “extremely high level of accuracy in both the emissions modeling. . .and the air quality modeling” and that “finer-scale emissions data from all sectors....and fine-scale air quality modeling could be needed to resolve differences in cost per air quality impact.” The EPA explained that “these data and modeling techniques do not exist and/or are too computationally demanding to be operationally implemented.” The EPA continued, “A second challenge for this approach was to identify a single reduction requirement for a particular upwind State, since the reduction requirements relevant to different downwind receptors would vary significantly.”

The MoDNR has not presented a compelling argument to resolve these issues. Indeed, its own Step 3 analysis is internally inconsistent, since it only adopts a \$/ppb metric in evaluating emissions control opportunities available by the year 2026 and does not apply that metric consistently in evaluating the near-term reductions it has selected. Nor did the MoDNR offer any analytical basis on which to establish a threshold based on \$/ppb below which emissions reductions would be deemed cost-effective; in other words, the data provided in the Submission do not in themselves constitute a standard or definition of “significant contribution.” The MoDNR simply provided tables with these figures (without supporting analysis or technical justification) on pages 32 and 33 of the November 2022 Submission and claimed that these figures showed that the emissions reductions were not worth requiring. While the EPA uses a different Step 3 cost-effectiveness metric to inform “significant contribution” in the EPA’s good neighbor rules (\$/ton rather than \$/ppb), the EPA notes that its level of emissions stringency identified as necessary to eliminate significant contribution is less (often far less) than what would achieve a full 1 ppb increment in ozone air quality improvement at downwind receptors. In other words, the dollar-based figures the MoDNR cites are effectively meaningless without further context. Thus, the MoDNR’s presentation of this metric, without further technical justification, without coordination with other States that collectively contribute

to the same receptors impacted by Missouri, and without identification of an appropriate \$/ppb figure that could be consistently applied to define the amount of emissions that constitutes significant contribution, cannot be approved.

In addition to the fact that the use of this metric is inadequately supported on its own terms, the MoDNR has not conducted outreach or coordination with other States that have either primary responsibility for downwind receptor areas (*e.g.*, by virtue of being included in a designated nonattainment area), or with those upwind States that also contribute above threshold to those areas, with the goal of establishing a consistent methodology for defining significant contribution with respect to a shared ozone receptor. The need for regional consistency is critically important to ensure consistent decisions that achieve equity among States with responsibility for a shared ozone problem. 88 FR 9365; *see also* March 2018 Modeling Memo, Attachment A, at A–1⁸⁹). This is particularly the case where a State wishes to pursue a \$/ppb approach to defining the good neighbor obligation. With this approach, States that perceive themselves to have less culpability on a ppb-impact basis for a receptor would evade emissions control requirements, purportedly under the theory that ppb improvements can be achieved more cost-effectively (on a \$/ppb basis) by other States. However, the MoDNR’s analysis failed to evaluate what the comparative \$/ppb figures would be for other States linked to its receptors. The November 2022 Submission does not supply a sufficient basis to define what constitutes “significant contribution” using this metric.

The MoDNR also referenced cost-effectiveness values that it used in other programs (such as regional haze) as justification for why additional controls were not appropriate to apply in the context of good neighbor obligations for the 2015 ozone NAAQS. However, the MoDNR did not provide information on the derivation of the cost-effectiveness values or further analysis and justification for why those values would be appropriate for this purpose. The EPA has previously explained that application of cost-effectiveness determinations from other contexts must be analytically justified in relation to the specific CAA obligation in question. 88 FR 9359; *see also, e.g.*, 86 FR 23054, 23073–74 (April 30, 2021); 87 FR 9838, 9858 (February 22, 2022).

⁸⁹Included in the docket for this action, EPA–R07–OAR–2021–0851.

Further, the EPA cannot determine from the Submission what level of control the MoDNR considered when calculating its cost-effectiveness values. For example, in the case of EGUs, use of new add-on control equipment would allow emissions rate levels well below the 0.12 lb/mmBtu levels in the Missouri Consent Agreements, which would lower the cost per ton of emissions reduced by accounting for the greater emissions reductions achieved by those controls.

4. Evaluation of Conclusions Regarding Potential Controls for Non-EGUs

As noted in section II.B., the MoDNR’s submission included some information regarding potential control availability for non-EГУ sources. The MoDNR’s evaluation for non-EGUs is informed largely by the proposed Good Neighbor Plan, rather than its own comprehensive evaluation of non-EГУ NO_x emissions sources within the State of Missouri, potential controls for those sources, or the air quality effects of such controls at receptors. In a supporting memorandum for the proposed Good Neighbor Plan titled “Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EГУ Emissions Units for 2026” (the Screening Assessment), the EPA estimated potential facilities and emissions units located in Missouri in the cement and cement products manufacturing, glass and glass products manufacturing, and pipeline transportation of natural gas industries—as part of a larger analysis to identify industries and unit types for which the EPA proposed to establish emissions limits to eliminate significant contribution.⁹⁰ In its submission, the MoDNR provided some information about the current status of certain named, existing sources within the cement and cement products manufacturing and glass and glass products manufacturing industries but did not provide a like analysis concerning the pipeline transportation of natural gas industry’s sources in Missouri, or inventory or conduct any further assessment of industrial sources in the State. Stating that the certain named, existing cement or glass sources it identified were already controlled or closing, the MoDNR concluded that no additional cost-effective controls were

⁹⁰The memorandum is available in the docket for this action, Docket ID No. EPA–R07–2021–0851. See “Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EГУ Emissions Units for 2026” in EPA–HQ–OAR–0668–0150, also included in this docket, Docket ID No. EPA–R07–2021–0851.

⁸⁸ See page 743 of 3009 of the CSAPR “Transport Rule Primary RTC” document, Docket ID No. EPA–HQ–OAR–2009–0491–4513 and included in this docket, Docket ID No. EPA–R07–OAR–2021–0851.

available for its non-EGU industrial sources.

In determining whether any cost-effective reductions are available in the State, the EPA would expect, at a minimum, for the State to provide the EPA with a comprehensive inventory of point source emissions units, including non-EGUs. This is consistent with what the EPA indicated it would expect in a SIP submission in previous proposed disapproval actions (actions proposed prior to the SIP submission the EPA proposes action on here), where the EPA indicated that an effective evaluation of emissions deemed significant could be done, in general, through a statewide accounting of sources and other emissions activity and an assessment of potential, additional emissions reduction opportunities statewide, as well as an assessment of the downwind impact of those potential reductions (akin to the EPA's own Step 3 evaluation).⁹¹ In this submission, the MoDNR has not provided such an assessment.⁹²

Rather, in its assessment of non-EGU emissions reduction potential the MoDNR relied instead on the results of the EPA's Screening Assessment for the proposed Good Neighbor Plan. The EPA disagrees with this use of the Screening Assessment. The Screening Assessment reflected a multistate analysis of potential industries and emissions unit types that may have impactful, cost-effective emissions reduction opportunities. While the EPA finds the Screening Assessment was sufficient to inform the development of the EPA's Good Neighbor Plan, specifically to screen for potentially impactful industries and emissions unit types to focus on for further evaluation of cost-effective emissions control opportunities, the EPA does not find it appropriate in the context of developing a SIP to rely solely on the results of that Screening Assessment as the only source of data for a State to use in conducting an inventory of its own

emissions sources.⁹³ In the proposed Good Neighbor Plan, the EPA explained that there may be facilities and emissions units identified in the Screening Assessment that are not ultimately subject to the proposed rule under the proposed applicability criteria, and possibly some facilities and emissions units not identified in the Screening Assessment that ultimately become subject to the proposed rule under the proposed applicability criteria. The final Good Neighbor Plan reaffirms this point—specific emissions units subject to the final rule emissions limits may be different than those estimated in its final rule technical memorandum. In general, the Good Neighbor Plan is a rulemaking of general applicability that, like all prior good neighbor FIPs, regulates units by their type and size, rather than by specific, named identification, and it includes both new and existing sources in the scope of its coverage.⁹⁴ See section III.D.3. below for further discussion. Therefore, without a fuller evaluation of its own emissions-source inventory information, it was inadequate for the MoDNR to rely solely on the Screening Assessment to limit the sources it needed to evaluate in its assessment of non-EGU emissions reduction potential.

In addition, where a State's SIP is not simply adopting the requirements of the Good Neighbor Plan or adopting emissions control measures that are otherwise equivalent, the EPA would expect the State to fully conduct its own Step 3 analysis using inventory data, analysis, and emissions control measures specific to that State's industrial sources, which may extend beyond sources in those industrial categories covered by the Good Neighbor Plan to ensure the State has put forward a sufficiently technically supported alternative approach to addressing their significant contribution not already identified in the Good Neighbor Plan. The MoDNR's SIP submission does not provide any such evaluation. For example, the MoDNR's evaluation of whether there are cost-effective controls in the pipeline transportation of natural gas industry

only analyzed certain sources in the State, and, for the reasons described in section III.C.3. (identifying concerns with applying a dollar-per-ppb metric), was not adequately supported in dismissing emissions-control opportunities for that industry.

Without having completed a full assessment of emissions control opportunities for large, industrial sources in Missouri, the MoDNR has not provided the EPA with an adequate basis on which to conclude that existing emissions control measures are sufficient for the State to address its significant contribution. Indeed, the good neighbor provision is not limited even to large, industrial sources. See CAA section 110(a)(2)(D)(i) (calling for evaluation of "any source or other type of emissions activity" to ensure significant contribution is "prohibited"). See also 88 FR 36680–81 (June 5, 2023).

Although the EPA acknowledges that the MoDNR submitted this SIP prior to the EPA finalizing the Good Neighbor Plan, the Submission would not be approvable at Step 3 for the reasons described above under any scenario, whether evaluated against the proposed Good Neighbor Plan, or the final version, or in the absence of the Good Neighbor Plan altogether. The State must establish that it has evaluated its emissions sources comprehensively and has identified those emissions that constitute significant contribution. Here, the State has not met that burden. The EPA's evaluation at Step 3 identifies multiple unexplained discrepancies between the conclusions the MoDNR has reached and the evidence that is available to the State and the EPA regarding potential, cost-effective emissions control opportunities in Missouri at both EGUs and non-EGUs (e.g., the MoDNR's use of a "dollar-per-ppb" metric to reason out of control requirements for the pipeline transportation of natural gas industry and dismissal of post-combustion retrofit opportunities at several of its EGU sources. The EPA's evaluation of the MoDNR's use of this metric is further explained in section III.C.3). The State is by no means prohibited from regulating differently, including regulating different sources, than how the EPA has chosen to regulate in the Good Neighbor Plan. However, the extensive record the EPA developed for that rulemaking establishes an important benchmark to aid in the EPA's evaluation, one on which the MoDNR itself purported to rely. The November 2022 Submission's analysis of what emissions from the State constitute "significant contribution" is

⁹¹ See, e.g., "Air Plan Disapproval; Missouri Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards," 87 FR 9533, 9544.

⁹² The EPA provided comment on the MoDNR's draft SIP submission regarding the scope of sources evaluated by the State that questioned the approvability of the draft submission. The EPA encouraged the State to consider potential emissions reductions beyond the subset of EGU sources already equipped with SCRs. While we acknowledge that the scope of sources analyzed in its final submission was expanded, this concern has not been fully resolved, as described in this section. See "EPA Comments on Missouri State Implementation Plan Revision Addressing Interstate Transport for the 2015 Ozone Standard," at 3.

⁹³ See "Non-EGU Applicability Requirements versus Results from Non-EGU Screening Assessment for 2026" and the EPA's "Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026," at 3, available in this docket, Docket ID No. EPA-R07-OAR-2021-0851.

⁹⁴ See "Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs," at 8, available in Docket ID No. EPA-R07-OAR-2021-0851.

not a choice to regulate differently than the FIP, but an attempt to regulate substantially less stringently without adequate technical justification. As such, it is inadequate to meet the requirements of the Act and cannot be approved.

D. Evaluation of Information Provided by Missouri Regarding Step 4

To meet the CAA's requirement that SIPs "contain" "adequate provisions" to "prohibit" significant contribution to nonattainment or interference with maintenance of the NAAQS, Step 4 of the 4-step interstate transport framework calls for the development of permanent and enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3. These control measures must be contained in the State's SIP; *i.e.*, the State must revise its SIP to include these measures, such that if the EPA approves these measures into the SIP, they will become enforceable as a matter of Federal law. *See generally* CAA sections 110(a)(2)(A)–(E), 113, and 304. The MoDNR's November 2022 Submission includes Consent Agreements with six power plants, covering a total of thirteen EGUs. None of the Consent Agreements require the installation of new or additional control technologies. Rather, the Consent Agreements establish emissions-rate limits based on the operation of existing SCR controls at six units, the operation of existing SNCR controls at two units, and the operation of existing combustion-controls at five units. The Submission purports to incorporate these Consent Agreements into Missouri's SIP as a SIP revision and provides that these Consent Agreements will become effective and enforceable only if the EPA fully approves the Submission.

This section will address why, in addition to the November 2022 Submission's failure to adequately identify significant contribution at Step 3, the November 2022 Submission also fails to prohibit Missouri's significant contribution at Step 4, even with respect to those reductions Missouri's submission purports to require.

1. Evaluation of the Consent Agreements

There are several independent reasons why the Consent Agreements with certain power plants are not adequate at Step 4. The terms of these Agreements make clear that the emissions-control requirements they identify are neither permanent nor enforceable. They have not been codified into the law of the State and contain provisions that allow for the State and the affected sources to modify them without following the

statutorily-mandated process for SIP revisions and without requisite analysis by the EPA under CAA section 110(l). *See* CAA section 110(a)(2)(D); 110(i); 110(l). While the EPA will allow for consent agreements or permitting requirements to be incorporated by reference into a State's SIP to meet SIP requirements (50 CFR part 51, appendix V, para. 2.1(b)), it is important that the State provides that to the extent such provisions are approved and incorporated into the State's SIP, such provisions, as approved, cannot be modified by later changes made to the underlying agreements or permits outside of the SIP revision process. Once approved by the EPA into the SIP as meeting the applicable SIP requirements, only changes made through the statutory SIP revision process may modify the approved requirements of the State's SIP. In this instance, the terms of the Consent Agreements explicitly authorize the State and the affected sources to cancel the agreements in toto and without the EPA's approval of such a modification, which would in effect negate the emissions limitations in their entirety. This is antithetical to the requirement that SIP provisions be permanent and enforceable, and not changed except pursuant to the statutory and regulatory processes for SIP revisions.

The EPA commented extensively during the State level public comment period on the draft SIP submission and noted several issues with the Consent Agreements related to permanence and enforceability.⁹⁵ The EPA commented that all of the Consent Agreements contain a provision that would allow the sources to terminate the Agreement upon mutual written agreement of the MoDNR and the source.⁹⁶ In its Response to Comments, the MoDNR states that "Paragraph 5 of the Consent Agreements clearly state that after EPA approves the good neighbor SIP that includes the consent agreements, any future changes to the consent agreements will require EPA approval before going into effect. Should EPA approve the SIP revision that includes these consent agreements, and the agreements are not terminated pursuant to paragraph 13 of the agreements, then the requirements will become permanent, federally enforceable, and applicable until a revision to the SIP is submitted and approved by EPA."

However, there remain multiple problematic provisions of the Consent Agreements that render them non-permanent and unenforceable, and these are not addressed by the MoDNR's assertion above. It is this language in the Agreements themselves, rather than the possibility of a future modification to them, that renders them not approvable as a SIP revision addressing good neighbor obligations for the 2015 ozone NAAQS.

First, the Agreements are not yet even in effect. Paragraph 1 of the Agreements says that "the effective date of the approval of this Consent Agreement by EPA as a revision to the Missouri SIP" is the date from which the covered sources will begin complying with the Agreement. This is not approvable. The statute is clear that good neighbor obligations must be implemented as expeditiously as practicable and no later than the next attainment date. *See Wisconsin*, 938 F.3d at 313–20; *Maryland*, 958 F.3d at 1203–04. The next attainment date at the time the MoDNR developed and submitted its submission, and presently, is the August 3, 2024, Moderate area attainment date, and thus the relevant analytical year is 2023, and emissions requirements to eliminate significant contribution should be implemented no later than the 2023 ozone season. *See* Final Disapproval, 88 FR 9340–41. The control requirements under the Consent Agreements are premised on better operating existing installed emissions controls. The EPA has consistently found that such emissions control strategies are capable of being implemented in a matter of weeks (*e.g.*, 88 FR 36720–22; 86 FR 23088–89; 81 FR 74561). Thus, the MoDNR, in identifying these controls as necessary to eliminate its significant contribution or interference with maintenance, was obligated by the good neighbor provision to require these emissions reductions by the start of the 2023 ozone season. It did not do so, and it did not justify why it did not do so based on any analysis of necessity or impossibility. *See Wisconsin*, 938 F.3d at 320. Instead, the MoDNR tied the effectiveness of these emissions reductions to an event that is irrelevant to substantive compliance with the good neighbor provision, *i.e.*, the effective date of any final action by the EPA to approve the Consent Agreements into Missouri's SIP. This was improper; as a result of this provision, even at this point in time, Missouri has not yet imposed enforceable emissions control requirements that should have been in place by the 2023 ozone season and,

⁹⁵ *See* "Comments on Missouri State Implementation Plan Revision Addressing Interstate Transport for the 2015 Ozone Standard" (August 18, 2022), available in the docket for this action.

⁹⁶ *See* November 2022 Submission, appendices A–F, paragraph 12.

under the plain terms of the Consent Agreements, to this day the covered sources are under no obligation to comply with them.

This appears to be the sources' understanding of these Consent Agreements as well; otherwise, at least one source appears to have been in violation of its Agreement in 2023. The EPA analyzed the 2023 ozone season emissions for all coal-fired units with SCR control systems in Missouri.⁹⁷ Several units, including some from facilities subject to the Consent Agreements with the State, reached a NO_x rate of 0.05–0.08 lb/mmBtu. This range was also achieved on an average facility-wide level. Some units, however, did not achieve the emissions rate specified in the Consent Agreements. One facility did not achieve the emissions rate specified in the Consent Agreements, both at the unit level and on a facility-wide average basis. The EPA views this data as confirming its understanding that the Consent Agreements are not currently in effect or constitute binding and enforceable provisions of State law; otherwise, all sources would have presumably complied with the Agreements rather than risk committing a violation.

Further, the EPA is not in a position to take the triggering action (*i.e.*, approval) necessary to bring these agreements into effect, and it was improper for the State to attempt to place that onus on the Agency rather than comply with the attainment schedule of the CAA for itself. First, as explained elsewhere in this document, this November 2022 Submission is not fully approvable for multiple reasons. Second, for the reasons explained in the following paragraph, anything less than a full approval would, per the terms of the Consent Agreements, render them unenforceable.

The Consent Agreements include termination clauses that render them unenforceable depending on the nature of the action the EPA takes. For example, paragraph 13 contains four circumstances in which the sources could choose, unilaterally, to terminate the Agreements, each being a circumstance in which the EPA does not issue a “full approval” of the SIP revision or upon the effective date of a FIP for Missouri. Under Paragraph 13, if the EPA issues only a partial approval/disapproval or a limited approval, or issues a SIP Call, or upon the effective date of a FIP, then the sources can

unilaterally withdraw from the Consent Agreements.

These provisions place the EPA in a position that leaves it no choice but to propose to disapprove the November 2022 Submission in full. For the reasons explained elsewhere in section III. of this document, the EPA finds multiple grounds why it cannot fully approve this SIP submission. Even if the EPA could have explored the possibility of a limited or partial approval of this submission, it is not able to do this if doing so would render the emissions control measures established through the Consent Agreements unenforceable, by triggering the sources' ability to unilaterally withdraw from the Agreements. Nor does the EPA have discretion to partially approve the SIP submission by not including within its approval those provisions of the Consent Agreements such as Paragraph 13 (and others discussed later in this section) that are not approvable. To do so would be to render the SIP revision more stringent than the State intended, which the EPA is not authorized to do. *See Bethlehem Steel Corp. v. Gorsuch*, 742 F.2d 1028 (7th Cir. 1984). In effect, Paragraph 13 leaves the EPA with this choice: either approve the November 2022 Submission in full and never bring the Good Neighbor Plan into effect for Missouri—which, for the reasons explained elsewhere in this document would fail to adequately address Missouri's good neighbor obligations for the 2015 ozone NAAQS—or disapprove the November 2022 Submission in full, so that the Good Neighbor Plan can be brought into effect for Missouri and fill the gap in Missouri's SIP. *See Ass'n of Irrigated Residents v. U.S. EPA*, 686 F.3d 668, 675–76 (9th Cir. 2012); *Virginia v. EPA*, 108 F.3d 1397, 1408 (D.C. Cir. 1997). The EPA is obligated under the CAA to follow the latter course.

Further, the MoDNR did not make any revisions to Paragraph 12 of the Consent Agreements in response to the EPA's pre-submission comments. This provision allows for termination of the Agreement upon “mutual written agreement of” the source and the MoDNR. This provision violates the Act's prohibition on modification of SIPs outside of authorized SIP revision processes. See CAA section 110(i) and (l). SIP provisions cannot authorize a State to make changes in the EPA-approved and federally enforceable SIP requirements applicable to sources without going through the statutorily required SIP-revision process. The EPA refers to SIP provisions that purport to authorize States to make unilateral changes to existing SIP requirements as impermissible “director's discretion”

provisions. *See, e.g.*, 86 FR 15104, 15116 (March 22, 2021). However, the EPA interprets the CAA to allow two types of such provisions: (1) where the provision provides director's discretion for the State to make changes, but specifies that such changes have no effect for purposes of Federal law or alter SIP requirements unless and until the EPA approves the changes through a SIP revision pursuant to CAA requirements; or (2) where the provision provides director's discretion that is adequately bounded, such that at the time the EPA approves the SIP provision the Agency can evaluate it for compliance with applicable CAA requirements and evaluate the potential impacts of the State's exercise of that discretion. The EPA interprets CAA section 110(l) to allow SIP provisions with director's discretion of either type. In the case of an adequately bounded provision, the EPA considers such provisions consistent with section 110(l) because, at the time of initial approval into the SIP, the Agency will already have evaluated the provision for compliance with applicable requirements and evaluated the potential impacts from exercise of the discretion. *E.g.*, 86 FR 15116.

In *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024), the D.C. Circuit held that the EPA impermissibly issued a SIP call, under CAA section 110(k)(5), in its 2015 SSM SIP Action⁹⁸ for certain SIP provisions applicable to emissions during SSM events, including certain director's discretion type provisions that the EPA had previously approved. However, the Court did not foreclose that some director's discretion provisions may be so unbounded as to interfere with the Agency's ability to predict the impact on compliance with the CAA's requirements. *Id.* At 111. Further, *Enviro. Comm. Fl. Elec. Power* concerns the EPA's authority to issue a SIP call for certain provisions that it previously approved and not the EPA's authority to approve or disapprove a SIP submission in the first instance. *Compare* CAA section 110(k)(3) with (k)(5).

Here, Paragraph 12 of the Consent Agreements in effect provides unbounded discretion to the State to eliminate the requirements, even though the MoDNR has submitted these Consent Agreements as necessary to address Missouri's good neighbor obligations under CAA section 110(a)(2)(D)(i) for the 2015 ozone NAAQS. The EPA has explained the need for emissions reductions on each day of the ozone season, reflecting the

⁹⁷ See “Missouri EGU Units 2023 Ozone Season Data,” available in docket ID No. EPA-R07-OAR-2021-0851.

⁹⁸ See 80 FR 33840.

daily, but unpredictably recurring, nature of the air pollution problem, and it is important that emissions control programs will be in operation in a continuous manner to eliminate each upwind State's "significant contribution" throughout each day of each ozone season in perpetuity. See 88 FR 36676, 36686–87, 36752. Thus, Paragraph 12, which allows this upwind State and its sources to agree between themselves to terminate these emissions control requirements at any time for any reason, is unacceptably too unbounded to meet good neighbor obligations for the 2015 ozone NAAQS. Likewise, the EPA finds Paragraph 12 to be inconsistent with CAA section 110(i) and (l) because it permits the State not merely discretion to modify some provision within the overall operation of a broader regulatory scheme, but the ability to terminate the Agreements completely—*i.e.*, the entirety of the emissions control program the State has put forward—at will. The EPA agrees that emissions controls on these sources are necessary (albeit not sufficient, see section III.) for Missouri to meet its good neighbor obligations and it would be inappropriate for the EPA to approve as SIP provisions these Consent Agreements that the State could eliminate without undertaking the necessary SIP revision process mandated by the Act.

Despite the MoDNR's unenforceable assurances in the narrative portion of its Submission that it would not modify the Consent Agreements themselves without the EPA's approval, the operative language in the Agreements remains the same. Paragraph 12 remains an unambiguous statement authorizing termination of the Agreements upon agreement of the parties to them.⁹⁹ Therefore, the EPA concludes that if the source and the MoDNR chose to exercise their rights in Paragraph 12, the Consent Agreements would be terminated without review or approval from the EPA and the source would no longer be under any obligation to comply.

Further, Paragraph 12 violates the anti-backsliding provisions of section 110(l) of the CAA, which requires that the EPA shall not approve any revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress. 42 U.S.C. 7410(l). The

termination provision would allow a unilateral amendment to the SIP, potentially removing emissions and pollution control limits without an evaluation of whether the removal would be appropriate under the good neighbor provision, would interfere with attainment or reasonable further progress, or would interfere with any other applicable requirement of the Act.

Because the SIP submission is otherwise not approvable, the EPA need not further evaluate the SSM, regulatory safety valve, or the force majeure provisions of the Consent Agreements for compliance with the Act. Due to the identified flaws in the Consent Agreements as described above, the EPA proposes that it cannot approve these Agreements as a revision to Missouri's SIP.

2. Evaluation of Approach of Regulating Named Sources

The Consent Agreements only cover several specific identified sources. In all of the EPA's prior good neighbor rules, beginning with the NO_x SIP Call in 1998, to ensure a robust and durable remedy to the problem of interstate pollution, the EPA has regulated sources on industry-wide bases and has regulated all existing and new sources meeting applicability criteria within the covered industries. See 88 FR 36685 (discussing *Appalachian Power v. EPA*, 249 F.3d 1032, 1057–58 (D.C. Cir. 2001)); 40 CFR 51.121(f). The EPA continued this approach with the Good Neighbor Plan. By covering all new and existing emissions units meeting defined applicability criteria on an industry-wide basis, the EPA ensures against the risk of production (and thus, emissions) shifting from covered to uncovered units. 88 FR 36746–47; see also 70 FR 25261. In *EME Homer City*, the Supreme Court upheld the EPA's approach of applying a uniform level of emissions control stringency across all units in a given industry (there, power plants), because this approach brings all sources in covered States up to a standard level of emissions control, thus avoiding free riding and inequitable outcomes among States linked to the same downwind air quality problems. 572 U.S. 489, 519.

For example, the Group 3 trading program established for EGUs in the Good Neighbor Plan, as with all of the EPA's good neighbor rules covering EGUs, applies to all fossil-fuel fired EGUs over a certain size threshold. The EPA recognizes that certain units that were not identified in its Step 3 analysis, such as certain simple cycle combustion turbines, may have cost-effective emissions reduction

opportunities while also being sources to which production and thus emissions could shift. These units are included in the emissions trading program and therefore, as in prior transport rules, the Good Neighbor Plan program continues to subject them to an allowance holding requirement which will likely incentivize any available cost-effective NO_x reductions from these EGUs while forestalling the risk of mere emissions shifting rather than prohibition of significant contribution. 88 FR 36732.

While the EPA does not require States to follow its 4-step framework if an alternative approach can be shown to meet the statutory requirement to eliminate significant contribution, the EPA has consistently explained that SIPs seeking to demonstrate equivalency in eliminating significant contribution from power plants would need to be evaluated based on the particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the state-wide emissions reductions found to be necessary to eliminate significant contribution will be achieved. To address the applicable CAA requirements, the EPA has explained that for all EGUs in a State, the SIP revision should include the following general elements: (1) a comprehensive baseline 2023 statewide NO_x emissions inventory (which includes existing control requirements), which should be consistent with the 2023 emissions inventory that the EPA used to calculate the required State budget in this final rule (unless the State can explain the discrepancy); (2) a list and description of control measures to satisfy the State emissions reduction obligation and a demonstration showing when each measure would be implemented to meet the 2023 and successive control periods; (3) fully-adopted State rules providing for such NO_x controls during the ozone season; (4) for EGUs greater than 25 MWe, monitoring and reporting under 40 CFR part 75, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (see 40 CFR part 51, subpart K ("source surveillance" requirements)); and (5) a projected inventory demonstrating that State measures along with Federal measures will achieve the necessary emissions reductions in time to meet the 2023 and successive compliance deadlines (*e.g.*, enforceable reductions commensurate with installation of SCR on coal-fired EGUs by the 2027 ozone season). See 88 FR 36841–42. See also 76 FR 48326.

In this case, the MoDNR's approach of regulating only a subset of specific,

⁹⁹The courts would also likely interpret this language similarly to the EPA. See, *e.g.*, *New York v. U.S. EPA*, 525 F.Supp.3d 340, 356 (N.D.N.Y. 2021) ("[T]he scope of a consent decree must be discerned within its four corners . . ." (quoting *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 574 (1984))).

named EGU facilities at Step 4 (rather than regulating all EGUs in the State on an industry-wide basis) fails to include a sufficient analysis of the factors identified above to demonstrate that these measures effectively and durably prohibit the “amount” of emissions that is necessary to eliminate significant contribution from “any source or other type of emissions activity within” the State of Missouri. CAA section 110(a)(2)(D).

Therefore, the EPA proposes to find that the Consent Agreements included in the State SIP are not permanent and enforceable and do not constitute “adequate provisions” to ensure that emissions constituting “significant contribution” from Missouri have been “prohibited.” CAA section 110(a)(2)(D).

IV. Proposed Action

The EPA is proposing to disapprove the November 2022 Submission from Missouri pertaining to interstate transport of air pollution that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other States. The EPA has already disapproved Missouri’s first submission related to these requirements. See 88 FR 9336 (Feb. 13, 2023). That action is currently stayed as to Missouri pending judicial review. Missouri’s November 2022 Submission presents a new analysis of Missouri’s understanding of what the good neighbor provision requires for purposes of the 2015 ozone NAAQS. For the reasons explained in this proposed action, the EPA has identified numerous shortcomings in the State’s analysis with respect to these mandatory obligations under the Act, and so the EPA is proposing to disapprove the Submission. Under CAA section 110(c)(1)(B), this disapproval, if finalized, would establish a 2-year deadline for the EPA to promulgate a FIP for Missouri to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2015 ozone NAAQS in other States, unless the EPA first approves a SIP that meets these requirements. See *Ass’n of Irrigated Residents v. U.S. EPA*, 686 F.3d 668, 675–76 (9th Cir. 2012). Accordingly, if the EPA finalizes a disapproval of Missouri’s November 2022 Submission, the EPA’s obligation to promulgate a FIP pursuant to CAA section 110(c) could be satisfied through requirements like those in the Good Neighbor Plan for Missouri or other appropriate action, which would be the subject of additional rulemaking action.

Disapproval does not start a mandatory sanctions clock for Missouri.

V. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. This action proposes to disapprove the State submission as not meeting Federal requirements and does not impose additional requirements. For that reason, this 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 mandates 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color,

national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” The MoDNR did not evaluate EJ considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Determinations Under CAA section 307(b)(1) and (d): Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (1) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (2) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion to decide whether to invoke the exception in (2).¹⁰⁰

¹⁰⁰In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

If the EPA finalizes this proposed rulemaking, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action, which would be locally or regionally applicable, is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), the EPA interprets and applies section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. This proposal, if finalized, would be based on several determinations of nationwide scope or effect, each of which has the purpose of ensuring consistency and equity in implementing the good neighbor provision for ozone across all States, including: (1) the determination that use of the same 2023 and 2026 analytical year air quality modeling and monitoring analytics (including the use of the violating-monitor receptor identification methodology) that were used in the Disapproval Action and the Good Neighbor Plan are appropriate for purposes of evaluating Missouri’s November 2022 Submission; (2) the determination that 1 percent of NAAQS is the appropriate contribution threshold at Step 2 of the four-step framework nationwide; and (3) the determination that the MoDNR’s Step 3 analysis and Step 4 implementation approach are inconsistent with and not adequate to replace the EPA’s nationwide findings and the emissions control programs in the Good Neighbor Plan for sources in Missouri and 19 other similarly situated States that remain linked through the 2026 analytic year.

These determinations would provide important bases for the action, if finalized, and are needed to ensure consistency and equity in the treatment of all States in addressing the multistate problem of interstate ozone pollution under the good neighbor provision for the 2015 ozone NAAQS. Missouri seeks by its November 2022 Submission to avoid the implementation of the Good Neighbor Plan in Missouri, through a set of emissions control requirements that are demonstrably and substantially less stringent than what the EPA determined was needed to eliminate “significant contribution” for the 2015 ozone NAAQS in the Good Neighbor Plan. The

Good Neighbor Plan is designed as a “collective approach” to effectively address the nationwide problem of interstate ozone transport in an equitable and consistent manner across the covered States. *See Kentucky Energy and Environment Cabinet v. EPA*, No. 23–3605 (6th Cir. Nov. 9, 2023), Order at 8. The determinations underlying this proposed disapproval would, if finalized, have nationwide scope and effect, among other reasons, because they would ensure that the Good Neighbor Plan (until replaced by SIPs meeting the statutory requirements) may be implemented on a consistent basis for all covered States, including Missouri, and may deliver the full amount of relief from upwind emissions that the EPA has found downwind jurisdictions are due.¹⁰¹ For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1).¹⁰²

This action is subject to the provisions of CAA section 307(d). CAA section 307(d)(1)(V) of the CAA provides that the provisions of section 307(d) apply to “such other actions as the administrator may determine.” Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of CAA section 307(d).

List of Subjects in 40 CFR Part 52

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

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

Michael S. Regan,
Administrator.

[FR Doc. 2024–15826 Filed 8–5–24; 8:45 am]

BILLING CODE 6560–50–P

¹⁰¹ In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.G.A.N. 1402–03.

¹⁰² If the EPA takes a consolidated, single final action on this and any other proposed SIP actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS, that action may be nationally applicable, and the EPA would also anticipate that in that instance, in the alternative, the Administrator would make and publish a finding that such final action is based on a determination of nationwide scope or effect.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2023–0182;
FXES1111090FEDR–245–FF09E21000]

RIN 1018–BF92

Endangered and Threatened Wildlife and Plants; Endangered Status for the Eastern Regal Fritillary, and Threatened Status With Section 4(d) Rule for the Western Regal Fritillary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the eastern regal fritillary (*Argynnis idalia idalia*) as an endangered species and to list the western regal fritillary (*A. i. occidentalis*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the regal fritillary, as these two subspecies make up the entire species. After a review of the best available scientific and commercial information, we find that listing both subspecies is warranted. Accordingly, we propose to list the eastern subspecies as endangered and the western subspecies as threatened with protective regulations issued under section 4(d) of the Act (a “4(d) rule”). We find that designation of critical habitat for both subspecies is not determinable at this time.

DATES: We will accept comments received or postmarked on or before October 7, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 20, 2024.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–R6–ES–2023–0182, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”