



2451 Crystal Drive  
Suite 1000  
Arlington, VA 22202-4804  
202-467-2900  
www.PublicPower.org

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U.S. Environmental Protection Agency

Mail Code 28221T

Docket ID No. EPA-HQ-OAR-2025-0192

1200 Pennsylvania Ave. NW

Washington, D.C. 20460

**RE: Comments of the American Public Power Association on the Proposed Interstate Transport Plan Review for the 2015 Ozone NAAQS; Docket ID. No. EPA-HQ-OAR-2025-0192, 91 Fed. Reg. 4,026 (January 30, 2026)**

Dear Administrator Zeldin:

The American Public Power Association (APPA) submits the enclosed comments on the Environmental Protection Agency's (EPA or Agency) proposed Phase 1 reconsideration of the Interstate Transport Plan Review of the 2015 Ozone National Ambient Air Quality Standards (NAAQS).<sup>1</sup>

APPA is a trade association composed of not-for-profit, community-owned utilities that provide electricity to 2,000 towns and cities nationwide. APPA protects the interests of nearly 55 million people served by public power utilities and the 96,000 people they employ. APPA advocates and advises on electricity policy, technology, trends, training, and operations. APPA members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power. APPA and our members have been and continue to be dedicated to clean air in our communities and to protecting the environment.

APPA members own and operate fossil fuel-fired electricity generating units (EGUs) in all ten states addressed in the Proposed Rule. Over the last two decades, these APPA members have been subject to and have complied with nitrogen oxide (NO<sub>x</sub>) emission-reduction requirements imposed on EGUs to address concerns regarding interstate transport with respect to the attainment and maintenance of the ozone NAAQS in downwind states. Over this period, APPA members and other owners and operators of EGUs in the eastern half of the United States have achieved reductions in EGUs' ozone-season NO<sub>x</sub> and year-round NO<sub>x</sub> emissions.

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<sup>1</sup> 91 Fed. Reg at 4,026 (January 30, 2026) (Proposed Rule).

APPA and some of its members have filed extensive comments on EPA’s proposed interstate transport federal implementation plan (FIP) for the 2015 8- hour ozone NAAQS and EPA’s subsequent supplemental proposal interstate transport FIP.<sup>2</sup> As such, we have an express interest in the Proposed Rule.

EPA proposes to resolve interstate transport obligations for the 2015 8-hour ozone NAAQS for ten states. The Proposal reassesses previous state implementation plan (SIP) disapprovals and proposed error corrections in light of recent court decisions (*Kentucky v. EPA* and *Texas v. EPA*).<sup>3</sup> EPA now concludes that each of these states does not significantly contribute to downwind nonattainment or interfere with maintenance of the ozone standard. EPA is proposing to approve eight SIPs and withdraw prior proposed disapprovals and error correction actions for two additional states. APPA supports EPA’s proposal to reconsider the Interstate Transport Plan Review for the 2015 ozone national ambient air quality standards (NAAQS).

## Background

On October 1, 2015, the EPA revised the primary and secondary 8-hour ozone National Ambient Air Quality Standards (NAAQS) to 70 parts per billion. Under the Clean Air Act (CAA), states were required to submit infrastructure State Implementation Plans (SIPs) addressing interstate transport obligations for the 2015 ozone NAAQS by October 1, 2018. These SIPs must include provisions sufficient to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states, consistent with CAA section 110(a)(2)(D)(i)(I), commonly referred to as the “good neighbor” provision.

In 2018, EPA provided guidance on how to address interstate transport for the 2015 ozone NAAQS. EPA released modeling based on a 2011 base year and a 2023 analytic year and subsequently advised that it may be reasonable and appropriate for states to use a 1 part per billion (ppb) contribution threshold as an alternative to a 1 percent of the NAAQS threshold. Many states—including those addressed in this Proposal relied on EPA’s guidance and modeling when developing and submitting their SIPs.

In 2023, however, EPA departed from that guidance when acting on certain SIP submissions by placing greater weight on updated modeling and applying a 1 percent contribution threshold. As a result, EPA disapproved SIP submissions from numerous states and proposed additional disapprovals and error corrections affecting other states’ previously approved SIPs.

Several of these actions were challenged in court and stayed. The U.S. Court of Appeals for the Fifth Circuit vacated and remanded EPA’s disapproval of Mississippi’s SIP, finding that EPA improperly relied on updated modeling in an outcome-determinative manner.<sup>4</sup> Similarly, the U.S. Court of Appeals for the Sixth Circuit vacated and remanded EPA’s disapproval of Kentucky’s

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<sup>2</sup> [EPA-HQ-OAR-2021-0668-0394](#); EPA-HQ-OAR-2023-0402-0102.

<sup>3</sup> *Kentucky v. EPA*, 123 F.4th 447 (6<sup>th</sup> Cir. 2024); *Texas v. EPA*, 132 F. 4<sup>th</sup> 808 (5<sup>th</sup> Cir. 2025).

<sup>4</sup> *Texas v. EPA*, 132 F.4th 808 at 862 (5<sup>th</sup> Cir. 2025).

SIP, concluding that EPA failed to adequately account for the state's reliance on EPA's prior guidance.<sup>5</sup> Challenges to EPA's disapprovals of SIP submissions from Alabama, Minnesota, and Nevada remain pending but are currently held in abeyance.

Given these judicial decisions and further agency review, EPA now proposes to reevaluate the relevant SIP submissions in light of the courts' interpretation of the 2018 guidance. In the Proposed Rule, EPA describes two main changes to its review of ozone good neighbor SIPs. First, EPA proposes to revise which modeling versions it uses to determine whether an upwind state has met its good neighbor obligations. Second, EPA applies a 1 ppb screening threshold to determine whether upwind states are linked to downwind nonattainment or maintenance receptors.

### **Reliance on Modeling Used for Each State**

APPA strongly supports EPA's decision to rely primarily on the modeling states used when developing their SIPs. This approach appropriately respects the CAA's cooperative federalism structure, under which states have primary responsibility and broad discretion to determine how to meet the NAAQS, while EPA plays a secondary review role. Meaningful state discretion depends on a stable analytical baseline; states cannot reasonably exercise that discretion if the standards used to judge their SIPs change after submission. By evaluating SIPs against the modeling available to states at the time of development, EPA provides the predictability necessary for compliance and avoids the procedural chaos that would result from outcome determinative reliance on post submission modeling. Courts found that EPA had improperly relied on newer modeling (2016v3) in a way that was "outcome determinative," contrary to reasonable state reliance on EPA's March 2018 modeling (2011 base-year, 2023 analytic year). The Proposed Rule evaluates each state's chosen modeling. EPA consults newer modeling only to confirm that any potential linkages do not persist. EPA finds that, even when checked using EPA's updated models, states' linkages do not exceed 1 ppb.

Although EPA is not statutorily required to provide states with guidance on meeting their interstate transport obligations, many states lack the resources to develop independent modeling. As a result, EPA's modeling and guidance were essential to supporting those states' analyses. Once EPA provides guidance, it is reasonable—and expected—for states to rely on it in preparing their SIPs.

### **APPA Supports the 1 ppb Significance Threshold**

Courts have held that EPA's 2018 guidance created a "presumptively acceptable" 1 ppb threshold for Step 2 of the interstate transport framework.<sup>6</sup> Applying this threshold, all 10 states have maximum contributions below 1 ppb to any downwind nonattainment or maintenance receptor.

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<sup>5</sup> *Kentucky v. EPA*, 123 F.4th at 471 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

<sup>6</sup> 91 Fed. Reg. at 4,033.

Therefore, none of the states are “linked” for purposes of requiring additional emission reductions. Had EPA acted within the Clean Air Act’s required 18-month timeframe for reviewing SIP submissions, EPA would have been compelled to approve the interstate transport SIPs for all of the states addressed in the Proposed Rule. At that time, the only available modeling was the 2011-based modeling provided by EPA in the March 2018 Memorandum.<sup>7</sup>

EPA’s use of the 1 ppb contribution threshold is supported by states’ reasonable reliance on the August 2018 Memorandum.<sup>8</sup> However, the Agency could strengthen the Proposed Rule by more clearly explaining the scientific and technical basis for this threshold. EPA could clarify why contributions below 1 ppb do not meaningfully affect air quality downwind, why the threshold is appropriate for all downwind receptors, and how it satisfies the CAA’s requirement to address emissions that “contribute significantly” to nonattainment. This explanation should address modeling uncertainty, including whether contributions at this level can be reliably distinguished from inherent variability in the model. EPA should also clarify that the 1 ppb level is only a screening threshold, and that SIPs may still be approvable when—based on a weight-of-evidence analysis—they reasonably determine that contributions above 1 ppb are insignificant.

EPA should also discuss the practical significance of sub-1 ppb contributions for areas struggling to attain the 70 ppb ozone NAAQS and explain why such minimal contributions do not justify additional upwind emissions controls. In doing so, EPA could place these contributions in context by comparing them to other sources of ozone, such as local boundary conditions, biogenic emissions, and wildfires. EPA should also evaluate the role of international emissions in influencing ozone concentrations as an additional factor demonstrating the relative insignificance of interstate transport below 1 ppb. Finally, EPA should explain how the 1 ppb threshold promotes administrative efficiency by focusing agency and state resources on the most significant interstate transport relationships. Providing a more detailed, record-based justification in this rulemaking would enhance the durability and transparency of EPA’s approach.

### **APPA Supports the Retention of the 2023 Analytical Year**

EPA maintains consistency with the modeling platform and analytic year used when states developed their SIPs, and consistent with court findings on reliance interests. As EPA explains in the Proposal, the selection of any analysis year later than 2023 would occur solely due to the timing of the Agency’s action, and it “makes sense to conduct this re-evaluation using the existing information in the record, rather than become trapped in a cycle of constantly shifting analysis and output.”<sup>9</sup> Retaining the 2023 analytical year, therefore, promotes consistency with

<sup>7</sup> 91 Fed. Reg. at 4,028; See EPA-HQ-OAR-2025-0192.

<sup>8</sup> See Memorandum from Peter Tsirigotis, Director, to Regional Air Division Directors, “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” at 3 (Aug. 31, 2018) (“August 2018 Memorandum”).

<sup>9</sup> 91 Fed. Reg. 4,031.

prior EPA actions, state interstate transport SIP submissions, and previous interstate transport decisions.

APPA agrees this approach is reasonable for these states but cautions that it may not be appropriate for other states or future interstate transport rulemakings. In the anticipated Phase 2 rulemaking, for example, EPA may determine that a different screening threshold is warranted. EPA should therefore clarify that the consistency rationale underlying this rulemaking is case-specific and does not reflect broader policy judgments about the Agency's authority or approach. EPA should also avoid creating expectations of automatic carryover that could pressure the Agency to extend this framework beyond its appropriate context. Finally, even where EPA favors consistency, states retain authority under the CAA to take reasonable approaches to assessing and satisfying their SIP obligations. Taken together, this framework ensures consistency where appropriate without constraining EPA's or the states' discretion in future rulemakings.

### **Conclusion**

APPA supports EPA's Proposal to approve state transport SIPs for the 2015 ozone NAAQS based on modeling and the analytical framework available to states when they developed their SIPs. Should the agency have questions regarding these comments, please contact Ms. Carolyn Slaughter (202) 467-2900 or [CSlaughter@PublicPower.org](mailto:CSlaughter@PublicPower.org).

Sincerely,

A handwritten signature in black ink that reads "Carolyn Slaughter". The signature is written in a cursive, flowing style.

Senior Director, Environmental Policy

American Public Power Association