businesses and to furnish the notice of opportunity to submit comments. The Agency's decision to follow this course was made in recognition of the administrative difficulty and impracticality of directly contacting potentially thousands of individual businesses.

4. Submission of Your Response in the English Language

All responses to this notice must be in the English language.

5. The Effect of Failure To Respond to This Notice

In accordance with 40 CFR 2.204(e)(1) and 2.205(d)(1), EPA will construe your failure to furnish timely comments in response to this notice as a waiver of your business's claim(s) of business confidentiality for any information in the types of documents identified in this notice.

6. What To Include in Your Comments

If you believe that any of the information contained in the types of documents which are described in this notice and which are currently, or may become, subject to FOIA requests, is entitled to business confidential treatment, please specify which portions of the information you consider business confidential. Information not specifically identified as subject to a business confidentiality claim may be disclosed to the requestor without further notice to you.

For each item or class of information that you identify as being subject to your claim, please answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as business confidential, *e.g.,* until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for business confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as business confidential be protected for the time period specified in your answer to question no. 1?

3. What measures have you taken to protect the information claimed as business confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered business confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available data bases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

5. Has any governmental body made a determination as to the business confidentiality of the information? If so, please attach a copy of the determination.

6. For each category of information claimed as business confidential, explain with specificity why and how release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, please explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your business confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as business confidential, you must mark the response ''BUSINESS CONFIDENTIAL'' or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of, the procedures set forth in, 40 CFR part 2, subpart B. If you fail to claim the information as business confidential, it may be made available to the requestor without further notice to you.

III. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through *http://www.regulations.gov* or email. Please submit this information by mail to the address identified in the **ADDRESSES** section of today's notice for inclusion in the non-public CBI docket. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2, subpart B. In addition to the submission of one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the notice by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

Dated: January 4, 2017.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2017–01101 Filed 1–18–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OAR–2016–0596; FRL–9958–48–OAR]

RIN 2060–AT22

Response to December 9, 2013, Clean Air Act Section 176A Petition From Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed action on petition.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to deny the Clean Air Act (CAA or Act) petition filed on December 9, 2013 (and amended on December 17, 2013), by the states of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont. The petition requested that the EPA add the states of

Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, West Virginia and Virginia to the Ozone Transport Region (OTR). As a result of this denial, the geographic scope or requirements of the OTR will remain unchanged.

DATES: *Comments.* Comments must be received on or before February 21, 2017.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by January 30, 2017, we will hold a public hearing. Additional information about the hearing would be published in a subsequent **Federal Register** notice. For updates and additional information on a public hearing, please check the EPA's Web site for this notice at *https://www.epa.gov/implementation-2008-national-ambient-air-quality-standards-naaqs-ozone-state.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0596, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not 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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Questions concerning this proposed notice should be directed to Ms. Gobeail McKinley, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539–01, Research Triangle Park, NC 27711, telephone (919) 541–5246; email at *mckinley.gobeail@epa.gov.*

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, (C504–01), Research Triangle Park, NC 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email at: *long.pam@epa.gov* (preferred method of contact).

SUPPLEMENTARY INFORMATION:

I. General Information

Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the U.S. EPA.

The information in this Supplementary Information section of this preamble is organized as follows:

I. General Information

A. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this document will be posted at *https://www.epa.gov/implementation-2008-national-ambient-air-quality-standards-naaqs-ozone-state.*

B. What acronyms, abbreviations and units are used in this preamble?

APA Administrative Procedures Act
CAA or Act Clean Air Act
CFR Code of Federal Regulations
CH_4 Methane
D.C. Circuit United States Court of Appeals for the District of Columbia Circuit
EGU Electric Generating Unit
EPA U.S. Environmental Protection Agency
FIP Federal Implementation Plan
FR Federal Register
NAAQS National Ambient Air Quality Standard
NEI National Emissions Inventory
NESHAP National Emission Standard for Hazardous Air Pollutants
NO_X Nitrogen Oxides
NSPS New Source Performance Standard
NSR New Source Review
OMB Office of Management and Budget
OTAG Ozone Transport Assessment Group
OTC Ozone Transport Commission
OTR Ozone Transport Region
PM Particulate Matter
RACT Reasonably Available Control Technology
SIP State Implementation Plan
SO_2 Sulfur Dioxide
UMRA Unfunded Mandates Reform Act
VOC Volatile Organic Compound

II. Executive Summary of the EPA's Proposed Decision on the CAA Section 176A Petition

The EPA is proposing to deny a petition filed pursuant to CAA section 176A(a) that requests the states of Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, West Virginia and Virginia [1] (the upwind states) be added to the OTR, which was established pursuant to section 184 of the CAA. The petitioning states of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont (the petitioning states, downwind states, or petitioners) submitted a technical analysis intended to demonstrate that these nine upwind states significantly contribute to violations of the 2008 ozone national ambient air quality standard (NAAQS) in one or more of the current OTR states.

Section 176A(a) of the CAA provides the Administrator with the authority to develop interstate transport regions for particular pollutants where the Administrator determines that interstate transport of air pollutants from one or more states contributes significantly to violations of air quality standards in other states. The creation of such an interstate transport region requires the establishment of a transport commission with representatives from each state that make recommendations for the mitigation of the interstate pollution. Congress created one such transport region by statute in CAA section 184(a) in 1990 in order to address the interstate transport of ozone pollution, referred to as the OTR. The statute establishes certain minimum control requirements that apply to sources of emissions in each state in the OTR intended to address transported ozone pollution and provides the Ozone Transport Commission (OTC), comprised of representatives of each state in the OTR, with the authority to recommend

[1] The parts of northern Virginia included in the Washington, DC Consolidated Metropolitan Statistical Area are already in the OTR. The petition seeks to add the remainder of the state of Virginia to the OTR as well.

additional controls within the region. The downwind states' petition seeks to expand the OTR to include additional states and would thereby subject sources in those states to the requirements applicable in the OTR.

The CAA provides other provisions for addressing the interstate transport of ozone pollution besides sections 176A and 184. In particular, the Act includes a specific provision addressing how the EPA and the states are to mitigate the specific sources of emissions that contribute to interstate ozone pollution transport. Section 110(a)(2)(D)(i)(I) of the CAA, also referred to as the ''good neighbor'' provision, requires that states develop state implementation plans (SIPs) to prohibit emissions that will ''contribute significantly to nonattainment in, or interfere with maintenance by, any other state'' with respect to a NAAQS. Pursuant to this provision, states have the primary responsibility for reducing the interstate transport of pollutants, including ozone. Should the states fail to fulfill this responsibility, the EPA is obligated to develop federal implementation plans (FIPs) to ensure that appropriate emissions reductions are achieved and that the air quality standards downwind are attained and maintained. The CAA also contains a provision in section 126(b) that permits states and political subdivisions to petition the Administrator for a finding that any major source or group of stationary sources emits in violation of the prohibition in the good neighbor provision. In response to such a finding, the EPA may promulgate additional limits on such sources, and these limits must then be included in a state's good neighbor SIP pursuant to CAA section 110(a)(2)(D)(ii). This provision provides a means for the EPA to mediate disputes between the states regarding the compliance of specific sources with the requirements of the good neighbor provision. As described in detail later in this document, states and the EPA have historically used their authority under CAA sections 110(a)(2)(D)(i)(I) and section 126 to develop SIPs and FIPs that target specific sources of ozone precursor emissions to address interstate ozone transport across the U.S., including with respect to air quality concerns stemming from interstate transport of ozone within the OTR.

Pursuant to these and other CAA authorities, the EPA and states within and outside the OTR have taken significant actions independently and in collaboration for many years to address ozone pollution problems by reducing precursor emissions (*i.e.,* nitrogen oxides (NO_X) and volatile organic compounds (VOC)) that contribute to the formation of ozone. The EPA and states have promulgated a number of rules that have already or are expected in the future to result in reductions in ozone concentrations that will help areas attain the 2008 ozone NAAQS. Several of these rules were developed specifically to address the interstate transport of ozone pollution. With respect to the 2008 ozone NAAQS, the EPA recently promulgated FIPs to address the requirements of CAA section 110(a)(2)(D)(i)(I) to specifically address interstate transport of ozone pollution in the eastern U.S. from power plants during the ozone season.[2] Other rules reduce ozone precursor emissions to address other ozone pollution challenges (*e.g.,* ozone attainment demonstrations) and impact the interstate transport of ozone pollution as a co-benefit. Further, several other state and federal air quality regulations reduce emissions of other air pollutants, such as rules targeted to reduce air toxics from industrial boilers, which often also result in the reduction of ozone precursors (*e.g.,* NO_X) and thereby reduce interstate ozone transport as a co-pollutant benefit.

Section 176A of the CAA provides the Administrator with discretion to determine whether to establish a new transport region or expand an existing transport region. The EPA has reviewed the request of the petitioners in light of the control requirements that apply to sources located in states now included in the OTR and that would apply to states if they were added and the other statutory authorities provided for addressing the interstate transport of ozone pollution. The EPA proposes to deny the CAA section 176A petition to add states to the OTR for the purpose of addressing the interstate ozone transport problem with respect to the 2008 ozone NAAQS. The EPA believes that, based on the reasons fully described in Section IV of this document, other CAA provisions (*e.g.,* CAA sections 110 or 126) provide a better alternative pathway for states and the EPA to develop a targeted remedy to address interstate ozone transport that focuses on the precursor pollutants and sources most effective at addressing the nature of the downwind air quality problems identified by the petitioning states. The states and the EPA have historically and effectively reduced ozone and the interstate transport of ozone pollution using these CAA authorities to implement necessary emissions reductions. For purposes of addressing interstate transport of ozone with respect to the 2008 ozone NAAQS, the EPA believes that continuing its longstanding and effective utilization of the existing and expected control programs under the CAA's mandatory good neighbor provision embodied in CAA section 110(a)(2)(D)(i)(I) is a more effective means of addressing regional ozone pollution transport with respect the 2008 ozone NAAQS for the areas within the OTR that must attain the NAAQS. Thus, the EPA believes that regulation pursuant to these other CAA authorities together with the implementation of existing EPA and state rules expected to further reduce precursor pollutant emissions that contribute to the interstate transport of ozone are the more effective means for addressing the interstate ozone transport problem with respect to the 2008 ozone NAAQS. Accordingly, the EPA is proposing to deny the CAA section 176A petition filed by the petitioning states. This proposed denial is specific to the 2008 ozone NAAQS, but the EPA notes that under different circumstances the OTR provisions have been an effective tool for air quality management, and could be similarly effective in the future. The EPA requests comment on the proposed denial of the petition based on the EPA's preferred approach to addressing interstate transport with respect to the 2008 ozone NAAQS pursuant to these other CAA authorities.

[2] *See* 81 FR 74504, October 26, 2016, Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS.

III. Background and Legal Authority

A. Ozone and Public Health

Ground-level ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure causes visible foliar injury, decreases plant growth, and affects ecosystem community composition. Ground-level ozone is not emitted directly into the air, but is a secondary air pollutant created by chemical reactions between NO_X, carbon monoxide (CO), methane (CH_4), and non-methane VOCs in the presence of sunlight. Emissions from electric generating utilities (EGUs), industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. The potential for ground-level ozone formation increases during periods with warmer temperatures and stagnant air masses;

therefore ozone levels are generally higher during the summer months.[3] Ground-level ozone concentrations and temperature are highly correlated in the eastern U.S. with observed ozone increases of 2–3 parts per billion (ppb) per degree Celsius reported.[4] Increased temperatures may also increase emissions of volatile man-made and biogenic organics and can indirectly increase anthropogenic NO_X emissions as well (*e.g.,* through increased electricity generation to power air conditioning).

Precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone. Studies have established that ozone formation, atmospheric residence, and transport occurs on a regional scale (*i.e.,* hundreds of miles) over much of the eastern U.S., with elevated concentrations occurring in rural as well as metropolitan areas. As a result of ozone transport, in any given location, ozone pollution levels are impacted by a combination of local emissions and emissions from upwind sources. The transport of ozone pollution across state borders compounds the difficulty for downwind states in meeting the health-and-welfare based NAAQS. Numerous observational studies have demonstrated the transport of ozone and its precursors and the impact of upwind emissions on high concentrations of ozone pollution.

While substantial progress has been made in reducing ozone in many urban areas, regional-scale ozone transport is still an important component of peak ozone concentrations during the summer ozone season. Model assessments have looked at impacts on peak ozone concentrations after potential emission reduction scenarios for NO_X and VOCs for NO_X-limited and VOC-limited areas. For example, one study [5] concluded that NO_X emission reductions strategies would be effective in lowering ozone mixing ratios in urban areas and another study showed NO_X reductions would reduce peak ozone concentrations in non-attainment areas in the Mid-Atlantic (*i.e.,* a 10 percent reduction in electric generating unit (EGU) and non-EGU NO_X emissions would result in approximately a 6 ppb reduction in peak ozone concentrations in Washington, DC).[6]

On March 12, 2008, the EPA promulgated a revision to the NAAQS, lowering both the primary and secondary standards to 75 ppb.[7] On October 1, 2015, the EPA strengthened the ground-level ozone NAAQS, based on extensive scientific evidence about ozone's effects on public health and welfare.[8] This document does not address any CAA requirements with respect to the 2015 ozone NAAQS.

B. Sections 176A and 184 of the CAA and the OTR Process

Subpart 1 of part D of title I of the CAA provides provisions governing general plan requirements for designated nonattainment areas. This subpart includes provisions providing for the development of transport regions to address the interstate transport of pollutants that contribute to NAAQS violations. In particular, section 176A(a) of the CAA provides that, on the EPA's own motion or by a petition from the Governor of any state, whenever the EPA has reason to believe that the interstate transport of air pollutants from one or more states contributes significantly to a violation of the NAAQS in one or more other states, the EPA may establish, by rule, a transport region for such pollutant that includes such states. The provision further provides that the EPA may add any state or portion of a state to any transport region whenever the Administrator has reason to believe that the interstate transport of air pollutants from such state significantly contributes to a violation of the standard in the transport region.

Section 176A(b) of the CAA provides that when the EPA establishes a transport region, the Administrator shall establish an associated transport commission, comprised of (at a minimum) the following: Governor or designee of each state, the EPA Administrator or designee, the Regional EPA Administrator and an air pollution control official appointed by the Governor of each state. The purpose of the transport commission is to assess the degree of interstate transport throughout the transport region and assess control strategies to mitigate the interstate transport.

Subpart 2 of part D of title I of the CAA provides provisions governing additional plan requirements for designated ozone nonattainment areas. Consistent with CAA section 176A found in subpart 1, subpart 2 included specific provisions focused on the interstate transport of ozone. In particular, CAA section 184(a) established a single transport region for ozone—the OTR—comprised of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and the Consolidated Metropolitan Statistical Area that includes the District of Columbia and certain parts of northern Virginia.

Section 184(b) of the CAA established certain control requirements that each state in the OTR is required to implement within the state and which require certain controls on sources of NO_X and VOCs statewide. These include the following. Section 184(b)(1)(A) of the CAA requires OTR states to include in their SIPs enhanced vehicle inspection and maintenance (I/M) programs.[9] Section 184(b)(2) of the CAA requires SIPs to subject major sources of VOCs in ozone transport regions to the same requirements that apply to major sources in designated ozone nonattainment areas classified as moderate, regardless of whether the source is located in a nonattainment area. Thus, the state must adopt rules to apply the nonattainment new source review (NNSR) (pursuant to CAA section 173) and reasonably available control technology (RACT) (pursuant to CAA section 182(b)(2)) provisions for major VOC sources statewide. Section 184(b)(2) of the CAA further provides that, for purposes of implementing these requirements, a major stationary source shall be defined as any source that emits or has the potential to emit at least 50 tons per year of VOCs. Under CAA section 184(b)(2) states must also implement Stage II vapor recovery programs, incremental to Onboard Refueling Vapor Recovery achievements, or measures that achieve comparable emissions reductions for both attainment and nonattainment areas.[10] These programs are required to be implemented statewide in any state

[3] Rasmussen, D.J. et al. (2011) Ground-level ozone-temperature relationship in the eastern US: A monthly climatology for evaluating chemistry-climate models. Atmospheric Environment 47: 142–153.

[4] Bloomer, B.J., J.W. Stehr, C.A. Piety, R.J. Salawitch, and R.R. Dickerson (2009), Observed relationships of ozone air pollution with temperature and emissions, Geophysical Research Letters, 36, L09803.

[5] Jiang, G.; Fast, J.D. (2004) Modeling the effects of VOC and NO_X emission sources on ozone formation in Houston during the TexAQS 2000 field campaign. Atmospheric Environment 38: 5071–5085.

[6] Liao, K. et al. (2013) Impacts of interstate transport of pollutants on high ozone events over the Mid-Atlantic U.S. Atmospheric Environment 84, 100–112.

[7] *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008).

[8] *See* National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015).

[9] Enhanced vehicle inspection and maintenance programs are required in metropolitan statistical areas in the OTR with a 1990 Census population of 100,000 or more regardless of ozone attainment status.

[10] *See* 72 FR 28772, May 16, 2012, Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver.

included within the OTR, not just in areas designated as nonattainment.

Section 182(f) of the CAA requires states to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOCs under subpart 2. Thus, the same NNSR and RACT requirements that apply to major stationary sources of VOC in the OTR also apply to major stationary sources of NO_X.[11] While NO_X emissions are necessary for the formation of ozone in the lower atmosphere, a local decrease in NO_X emissions can, in some cases, increase local ozone concentrations, creating potential ''NO_X disbenefits.'' Accordingly, CAA section 182(f) provides for an exemption of the NO_X requirements where the Administrator determines that such NO_X reductions would not contribute to the attainment of the NAAQS in a particular area. Areas granted a NO_X exemption under CAA section 182(f) may be exempt from certain requirements of the EPA's motor vehicle I/M regulations and from certain federal requirements of general and transportation conformity.[12]

Additionally, under CAA section 184(c), the OTC may, based on a majority vote of the Governors on the Commission, recommend additional control measures not specified in the statute to be applied within all or part of the OTR if necessary to bring any areas in the OTR into attainment by the applicable attainment dates. If EPA approves such a recommendation, under CAA section 184(c)(5) the Administrator must declare each state's implementation plan inadequate and it must order the states to include the approved control measures in their revised plans pursuant to CAA section 110(k)(5) for the state to meet the requirements of CAA section 110(a)(2)(D). If a CAA section 110(k)(5) finding is issued, states have 1 year to revise their SIPs to include the approved measures.

States included in the OTR by virtue of CAA section 184(b)(1) were required to submit SIPs to the EPA addressing these requirements within 2 years of the 1990 CAA Amendments, or by November 15, 1992. Section 184(b)(1) of the CAA further provides that if states are later added to the OTR pursuant to CAA section 176A(a)(1), such states must submit SIPs addressing these requirements within 9 months after inclusion in the OTR.

C. Legal Standard for This Action

Section 176A(a)(1) of the CAA states that the Administrator *may* add a state to a transport region if the Administrator has reason to believe that emissions from the state significantly contribute to a violation of the NAAQS within the transport region. For the reasons discussed in this section, the use of the discretionary term ''may'' in CAA section 176A(a) means that the Administrator may exercise reasonable discretion in implementing the requirements of the CAA with respect to interstate pollution by determining whether or not to approve or deny a CAA section 176A petition.

The Administrator's discretion pursuant to CAA section 176A(a) has been affirmed by the U.S. District Court for the District of Columbia Circuit (D.C. Circuit). In *Michigan* v. *EPA,* plaintiffs challenged whether the EPA may exercise its authority pursuant to CAA sections 110(k)(5) and 110(a)(2)(D) of the statute to address interstate transport without first forming a transport commission pursuant to CAA section 176A(b). 213 F.3d 663, 672 (2000). The D.C. Circuit held that the agency shall only establish a transport commission ''if the agency exercises its discretion to create a transport region pursuant to section 176A(a).'' *Id.* The court explained that ''EPA can address interstate transport apart from convening a 176A/184 transport commission as subsection (a) provides that EPA 'may' establish a transport region . . . .'' *Id.* Thus, the court held that the statute clearly provides that the discretion to create a transport region rests with the Administrator. So, too, does the discretion to add states to or remove states from a transport commission.

Several courts have held that the use of similarly non-mandatory language such as that found in CAA section 176A confers discretion on the agency to grant or deny a petition so long as it is supported by a ''reasonable explanation.'' For example, in *Massachusetts* v. *Environmental Protection Agency,* the Supreme Court was considering whether the EPA's denial of a petition to regulate greenhouse gases under CAA section 202(a)(1) was reasonable. 549 U.S. 497 (2007). Section 202(a)(1) of the CAA states that the Administrator ''shall by regulation prescribe (and from time to time revise) . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA denied the petition, reasoning that the Act does not authorize the agency to issue mandatory regulations to address global climate change. *Id.* at 500. The Court concluded that the EPA has statutory authority to regulate emissions of greenhouse gases, and that the phrases ''from time to time'' and ''in his judgment'' conferred discretion on the Administrator to determine whether to promulgate an endangerment finding. Thus, ''[u]nder the clear terms of the Clean Air Act, EPA can avoid taking further action . . . if it provides some reasonable explanation as to why it cannot or will not exercise its discretion.'' *Id.* at 533. The Supreme Court confirmed that the review of an agency's denial of a petition for rulemaking is very narrow: ''Refusals to promulgate rules are . . . susceptible to judicial review, though such review is extremely limited and highly deferential.'' *Id.* at 527–28 (quotations omitted). Further, the court explained that the EPA's reason should conform to the authorizing statute, and that the agency could avoid taking further regulatory action if it provides some reasonable explanation as to why it cannot or will not exercise its discretion. *Id.* at 533 (citations omitted).

Consistent with *Massachusetts,* the D.C. Circuit has held that agencies have the discretion to determine how to best allocate resources in order to prioritize regulatory actions in a way that best achieve the objectives of the authorizing statute. In *Defenders of Wildlife* v. *Gutierrez,* the court rejected a challenge to the National Marine Fisheries Service's (NMFS) denial of a petition for emergency rulemaking to impose speed restrictions to protect the right whale from boating traffic pursuant to section 553(e) of the Endangered Species Act, which requires agencies to ''give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' 532 F.3d 913 (D.C. Cir. 2008). The NMFS denied the petition on the grounds that imposing such restrictions would divert resources from, and delay development of, a more comprehensive strategy for protecting the whale population. *Id. at 916.* The court determined that NMFS's explanation for the denial was a reasonable decision to focus its resources on a comprehensive strategy, which in light of the information before the NMFS at the time, was reasoned and adequately supported by the record. *Id.*

[11] *See* 57 FR 55622 (Nitrogen Oxides Supplement to the General Preamble, published November 25, 1992).

[12] As stated in the EPA's I/M (November 5, 1992; 57 FR 52950) and conformity rules (60 FR 57179 for transportation rules and 58 FR 63214 for general rules), certain NO_X requirements in those rules do not apply where the EPA grants an area-wide exemption under CAA section 182(f).

Similarly, in *WildEarth Guardians* v. *EPA,* the court reviewed the EPA's denial of a petition to list coal mines for regulation under CAA section 111(b)(1)(A). 751 F.3d 651 (D.C. Cir. 2014). Section 110(b)(1)(A) of the CAA provides that, as a means of developing standards of performance for new stationary sources, the EPA shall, by a date certain publish ''(and *from time to time* thereafter shall revise) a list of categories of stationary sources.'' (emphasis added) The provision provides that the Administrator ''shall include a category of sources in such list if *in his judgment* it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health and welfare.'' The EPA denied the petition, explaining that it must prioritize its actions in light of limited resources and ongoing budget uncertainties, and that denial of the petition was not a determination as to whether coal mines should be regulated as a source of air pollutants. *751 F.3d at 650.* The EPA also noted as part of its denial that it might in the future initiate a rulemaking to do so. The D.C. Circuit held that the language in CAA section 111(b)(1)(A)—''from time to time'' and ''in his judgment''—means that the Administrator may exercise reasonable discretion in determining when to add new sources to the list of regulated pollutants, and that such language afforded agency officials discretion to prioritize sources that are the most significant threats to public health to ensure effective administration of the agency's regulatory agenda. *Id.* at 651.

In each of these cases previously discussed, the acting agency has been entitled to broad discretion to act on a pending petition so long as the agency provided a reasoned explanation. Notably, as each of these decisions focused on the case-specific circumstances relied upon by the acting agency to deny the pending petition, the courts did not speak to whether the agency might reach a different conclusion under different circumstances. Like the statutory provisions evaluated by the courts in these cases, the term ''may'' in CAA section 176A(a) means that the Administrator is permitted to exercise reasonable discretion in determining when to add new states to a transport region. While the Administrator must adequately explain the facts and policy concerns she relied on in acting on the petition and conform such reasons with the authorizing statute, review of such a decision is highly deferential. Thus, the agency is entitled to broad discretion when determining whether to grant or deny such a petition.

D. The CAA Section 176A Petition and Related Correspondence

On December 9, 2013, the states of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont submitted a petition under CAA section 176A requesting that the EPA add to the OTR the states of Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, West Virginia and the portion of Virginia currently not within the OTR. On December 17, 2013, the petition was amended to add the state of Pennsylvania as an additional state petitioner.

The petitioning states submitted a technical analysis which the petitioning states contend demonstrates that the nine named upwind states significantly contribute to violations of the 2008 ozone NAAQS in the OTR. The petitioning states acknowledge and include data used to support rulemakings promulgated by the EPA that addressed interstate transport with respect to both the 2008 ozone NAAQS and prior ozone NAAQS in order to further support their request. Moreover, the petitioners identified those areas that are designated nonattainment with respect to the 2008 ozone NAAQS within and outside the OTR and conducted a linear extrapolation to predict that certain areas will continue to be in nonattainment or will have difficulty maintaining attainment of the NAAQS after the EPA's 2008 ozone NAAQS final area designations in 2012. The petitioning states' 2018 modeling showed that, with on-the-way OTR measures, areas within the OTR and non-OTR would continue to have problems attaining the 2008 ozone NAAQS. Lastly, their 2020 modeling showed that with a 58 percent NO_X and 3 percent VOC emissions reduction over the eastern U.S., there would only be one area in New Jersey that could have trouble maintaining the NAAQS.

The petitioners further note that the OTR states have adopted and implemented numerous and increasingly stringent controls on sources of VOCs and NO_X that may not currently be required for sources in the upwind states. Petitioners contend that expansion of the OTR to include these upwind states will help the petitioning states attain the 2008 ozone NAAQS. The petitioning states include two case studies that identify the types of measures adopted throughout the current OTR including mobile source and stationary source control measures that have been enacted to minimize emissions of NO_X and VOCs. The petitioners contend that the expansion of the OTR is warranted so that the downwind states and the upwind states can work together to address interstate ozone transport for the 2008 ozone NAAQS. Also, the petitioners assert that without immediate expansion of the OTR, attainment of the 2008 ozone NAAQS in many areas in the U.S. will remain elusive.

At the time the petition was submitted, the EPA's most recent effort to address the interstate transport of ozone pollution was subject to litigation in the D.C. Circuit. As discussed in more detail later in this document, the EPA issued the Cross-State Air Pollution Rule (CSAPR) pursuant to section 110(a)(2)(D)(i)(I) of the CAA in order to address interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS. 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), vacating CSAPR based on several holdings that would have limited the EPA's authority pursuant to section 110(a)(2)(D)(i)(I). The petitioners subsequently submitted the section 176A petition. Thereafter, on April 29, 2014, the Supreme Court issued a decision reversing the D.C. Circuit's decision and upholding the EPA's interpretation of its authority pursuant to CAA section 110. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014).

Since the petition was submitted, the EPA has received correspondence from both the upwind states and the petitioning states regarding the EPA's pending action on the petition. On February 14, 2014, the EPA received a letter from the environmental commissioners and directors representing the states of Illinois, Ohio, Indiana, Tennessee, Kentucky, Virginia, Michigan, West Virginia and North Carolina (in collaboration with LADCO) disagreeing with the basis for the petition and requesting that the EPA deny the petition. On May 29, 2015, the EPA received a letter from the Midwest Ozone Group urging that the EPA consider recent air quality, on-the-books measures between now and 2018 and other related information prior to any action on the petition. On July 7, 2015, the EPA received a letter from state representatives from the states of Ohio, Kentucky, Indiana, West Virginia, North Carolina and Michigan communicating the progress of the voluntary dialogue called the State Collaborative on Ozone Transport (SCOOT) that according to the letter, resulted in commitments, from

utilities in the upwind states to operate NO_X controls during the summer of 2015. The upwind states believed that the requests from some Northeast states to sign a memorandum of understanding to require additional emission control and reporting requirements from facilities and place such requirements into SIPs to be unnecessary and requested that the CAA section 176A petition be withdrawn by the petitioning states or denied by the EPA given the forecasted air quality improvements and declining ozone trends. On October 30, 2015, the EPA received a letter from environmental commissioners (or their designated representatives) from the petitioning states that provided an update on the SCOOT process and responded to the July 7, 2015, letter expressing a need for federally enforceable commitments from states to operate exiting controls.

On April 6, 2016, the EPA received a letter from the petitioning states requesting immediate action to grant the CAA section 176A petition. The letter acknowledged the EPA's recent proposal to update the CSAPR to address interstate transport for the 2008 ozone NAAQS and urged the EPA to grant the petition because the proposed rulemaking would only partially address ozone transport problems in the eastern U.S. Further, the letter noted that granting the petition will also facilitate efforts to attain the 2015 ozone NAAQS, as well as future updates to the ozone NAAQS. On May 16, 2016, the EPA received a letter from the upwind states of Ohio, Kentucky, Indiana, West Virginia and Michigan requesting that the EPA deny the petition, claiming that the technical information used to support the petition was not comparable to current air quality and noting the EPA's proposed transport rule to address the 2008 ozone NAAQS. These communications can be found in the docket for this action.

IV. The EPA's Proposed Decision on the CAA Section 176A Petition

This section describes the basis for the EPA's proposed denial of this CAA section 176A petition. Section IV.A of this document describes the alternative authorities provided by the CAA for addressing the interstate transport of ozone pollution and the flexibilities those provisions provide. Section IV.B of this document describes EPA's historical use of these authorities to address the interstate transport of ozone pollution and the advantages of those rulemakings for addressing current ozone nonattainment problems. Section IV.C of this document describes other measures that have achieved, and will continue to achieve, significant reductions in emissions of NO_X and VOCs resulting in lower levels of transported ozone pollution that impact downwind attainment and maintenance of the 2008 ozone NAAQS. Finally, Section IV.D of this document describes the EPA's rationale, based on these considerations, for proposing to deny this CAA section 176A petition.

As explained more fully later, the EPA believes an expansion of the OTR is unnecessary at this time and would not be the most efficient way to address the remaining interstate transport issues for the 2008 ozone NAAQS in states currently included in the OTR. Additional local and regional ozone precursor emissions reductions are expected in the coming years from already on-the-books rules (*see* Sections IV. B and C of this document for more details) and as described elsewhere in this document, the EPA has the authority through other CAA provisions (including CAA sections 110 and 126) to develop a more effective remedy to address the particular pollutants and sources for this air quality situation.

A. The CAA Good Neighbor Provisions

The CAA provision that states and the EPA have used most for addressing interstate transport is section 110(a)(2)(D)(i)(I), often referred to as the ''good neighbor'' or ''interstate transport'' provision, requires states to prohibit certain emissions from in-state sources if such emissions impact the air quality in downwind states. Specifically, in keeping with the CAA's structure of shared state and federal regulatory responsibility, CAA section 110(a)(2)(D)(i)(I) requires all states, within 3 years of promulgation of a new or revised NAAQS, to submit SIPs that contain 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 any NAAQS. Thus, each state is required to submit a SIP that demonstrates the state is adequately controlling sources of emissions that would impact downwind states' air quality relative to the NAAQS in violation of the good neighbor provision.

Once a state submits a good neighbor SIP, the EPA must evaluate the SIP to determine whether it meets the statutory criteria of the good neighbor provision, and then approve or disapprove, in whole or in part, the state's submission in accordance with CAA section 110(k)(3). In the event that a state does not submit a required SIP addressing the good neighbor provision, the EPA publishes in the **Federal Register** a ''finding of failure to submit'' that a state has failed to make the required SIP submission. If the EPA disapproves a state's SIP submission or if the EPA issues a finding of failure to submit, then the action triggers the EPA's obligations under section 110(c) of the CAA, to promulgate a FIP within 2 years, unless the state corrects the deficiency, and the EPA approves the plan or plan revision before the EPA promulgates a FIP. Thus, in the event that a state does not address the good neighbor provision requirements in a SIP submission, the statute provides that the EPA must address the requirements in the state's stead.

Section 110(k)(5) of the CAA also provides a means for the EPA to reopen previously approved SIPs, including good neighbor SIPs, if the EPA determines that an approved SIP is substantially inadequate to attain or maintain the NAAQS, to adequately mitigate interstate pollutant transport, or to otherwise comply with requirements of the CAA. The EPA can use its authority under CAA section 110(k)(5) to call for re-submission of the SIP to correct the inadequacies under CAA 110(a)(2)(D)(i)(I), and if the state fails to make the required submission, the EPA can promulgate a FIP under CAA section 110(c) to address the inadequacies.

Finally, section 126 of the CAA provides states with an additional opportunity to bring to the EPA's attention specific instances where a source or a group of sources in a specific state may be emitting in excess of what the good neighbor provision would allow. Section 126(b) of the CAA provides that any state or political subdivision may petition the Administrator of the EPA to find that any major source or group of stationary sources in upwind states emits or would emit any air pollutant in violation of the prohibition of CAA section 110(a)(2)(D)(i).[13] Petitions submitted pursuant to this section are referred to as CAA section 126 petitions. Section 126(c) of the CAA explains the impact of such a finding and establishes the conditions under which continued operation of a source subject to such a finding may be permitted. Specifically,

[13] The text of CAA section 126 codified in the U.S. Code cross references CAA section 110(a)(2)(D)(ii) instead of CAA section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross reference is to CAA section 110(a)(2)(D)(i), *See Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1040–44 (D.C. Cir. 2001).

CAA section 126(c) provides that it would be a violation of section 126 of the Act and of the applicable SIP: (1) For any major proposed new or modified source subject to a CAA section 126 finding to be constructed or operate in violation of the good neighbor prohibition of CAA section 110(a)(2)(D)(i); or (2) for any major existing source for which such a finding has been made to operate more than 3 months after the date of the finding. The statute, however, also gives the Administrator discretion to permit the continued operation of a source beyond 3 months if the source complies with emission limitations and compliance schedules provided by the EPA to bring about compliance with the requirements contained in CAA sections 110(a)(2)(D)(i) and 126 as expeditiously as practicable but no later than 3 years from the date of the finding. Where the EPA provides such limitations and compliance schedules, it promulgates these as a revision to the upwind state's good neighbor SIP, and CAA section 110(a)(2)(D)(ii) further requires that good neighbor SIPs ensure compliance with these limitations and compliance schedules.[14]

The flexibility provided by these statutory provisions is different from that provided by the requirements imposed upon states in the OTR. With limited exceptions described previously, states in the OTR must impose a uniform set of requirements on sources within each state. While the OTR states may impose additional requirements with the consent of the OTC and the EPA, the states generally must comply with the minimum requirements imposed by the statute. The good neighbor provision, by contrast, provides both the states and the EPA with the flexibility to develop a remedy targeted at a particular air quality problem, including the flexibility to tailor the remedy to address the particular precursor pollutants and sources that would most effectively address the downwind air quality problem. As described later, the EPA has previously promulgated four interstate transport rulemakings pursuant to these authorities in order to quantify the specific emission reductions required in certain eastern states in order to comply with the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to downwind nonattainment and maintenance concerns with respect to the NAAQS for ozone and $PM_{2.5}$. In Section IV.B. of this document, the EPA describes the importance of these transport rules as they relate to regional ozone pollution transport.

B. The EPA's Interstate Transport Rulemakings Under the Good Neighbor Provision

In order to address the regional transport of ozone pursuant to the CAA's good neighbor provision under section 110(a)(2)(D)(i)(I), the EPA has promulgated four regional interstate transport rules focusing on the reduction of NO_X emissions, as the primary meaningful precursor to address regional ozone, from certain sources located in states in the eastern half of the U.S.[15] [16] States and the EPA have implemented the emission reductions required by these rulemakings pursuant to the various authorities for implementing the good neighbor provision, including CAA sections 110(a)(1), 110(c), 110(k)(5) and 126.

In each of these rulemakings, the EPA identified those sources and pollutants that were most effective in addressing the particular air quality problem identified through the course of the EPA's analysis. This allowed the EPA to craft targeted remedies that provided efficient and effective means of addressing the particular air quality problem. In each of the regional transport rules, the EPA analysis has continued to demonstrate that NO_X is the ozone precursor that is most effective to reduce when addressing regional transport of ozone in the eastern U.S. The EPA has also focused each rule on those sources that can most cost-effectively reduce emissions of NO_X, such as EGUs and, in one rule, certain large non-EGUs. These rulemakings demonstrate that the EPA has used and is continuing to use its authority under CAA section 110(a)(2)(D)(i)(I) to target those sources and precursors that most efficiently address the particular interstate ozone transport problem. Accordingly, the EPA believes that it is unnecessary to include additional states, and sources within those states, in OTR in order to address the current nonattainment situation for the 2008 ozone NAAQS in the petitioning states. Prior to the EPA's promulgation of some of those federal transport rules, the EPA worked with states and provided guidance to help states submit approvable good neighbor SIPs to address the CAA good neighbor provision. States have the first responsibility to address these CAA requirements pursuant to section 110(a)(1), and the EPA issued those transport rules only after states had the opportunity to address their CAA interstate transport obligation. While some states have state-developed and EPA-approved good neighbor SIPs, other states are covered by EPA-issued FIPs.

1. NO_X SIP Call

Through a 2-year effort (starting in 1995 and ending in 1997) known as the Ozone Transport Assessment Group (OTAG), the EPA worked in partnership with the 37 eastern-most states and the District of Columbia, industry representatives, and environmental groups to address the interstate transport of ozone pollution. OTAG identified and evaluated flexible and cost-effective strategies for reducing long-range transport of ozone and ozone precursors. Based on the OTAG process, the EPA engaged in a rulemaking to promulgate a final action commonly referred to as the NO_X SIP Call in order to address the requirements of the good neighbor provision (CAA section 110(a)(2)(D)(i)(I)) with respect to the 1979 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. 63 FR 57356 (October 27, 1998). The rule required 22 eastern states and the District of Columbia to amend their SIPs and limit NO_X emissions that contribute to ozone nonattainment. The rule set a NO_X ozone season emission budget for each covered state, essentially a cap on all ozone season NO_X emissions in the state. Covered states were given the option to participate in a regional allowance trading program, known as the NO_X Budget Trading Program (NBP) in order to achieve most of the necessary emissions reductions.

Through the OTAG process, the states concluded that widespread NO_X reductions were necessary to enable areas to attain and maintain the ozone NAAQS.[17] The OTAG's recommendations identified control

[14] The EPA has received, but not yet acted upon, several CAA section 126 petitions from a number of the petitioning states regarding the contribution of specific EGUs to interstate ozone transport with respect to the 2008 and 2015 ozone NAAQS. Petitions have been submitted by Delaware, Maryland, and Connecticut. The list of EGUs identified in one or more of these petitions includes EGUs operating in Pennsylvania, West Virginia, Ohio, Kentucky, and Indiana.

[15] For purposes of these rulemakings, the western U.S. (or the West) consists of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

[16] Two of these rulemakings also addressed the reduction of NO_X and SO_2 emissions for the purposes of addressing the interstate transport of particulate matter pollution pursuant to the good neighbor provision.

[17] *See* 62 FR 60320, November 7, 1997, Notice of proposed rulemaking, Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone.

measures for states to achieve additional reductions in emissions of NO_X but did not identify such measures for VOC, beyond the EPA's promulgation of national VOC measures, at that time. The OTAG Regional and Urban Scale Modeling and Air Quality Analysis Work Groups reached the following relevant conclusions (with which the EPA agreed): Regional NO_X emissions reductions are effective in producing ozone benefits; the more NO_X emissions reduced, the greater the benefit to air quality; and VOC controls are effective in reducing ozone locally and are most advantageous to urban nonattainment areas. The EPA concluded in its rulemaking that, ''a regional strategy focusing on NO_X reductions across a broad portion of the region will help mitigate the ozone problem in many areas of the East .'' 63 FR 57381. The EPA did not propose any new SIP requirements for VOC reductions for the purpose of reducing the interstate transport of ozone, however, the agency suggested that states may consider additional reductions in VOC emissions as they develop local attainment plans.

In order to quantify necessary NO_X emission reductions, the EPA developed statewide NO_X emissions budgets based on recommendations from OTAG on how to cost-effectively reduce emissions from utilities and other sources of NO_X. Thus, the EPA established NO_X emission budgets based on the conclusion that EGUs and large non-EGU point sources could cost-effectively achieve emissions reductions by the implementation of controls costing $2,000 per ton of NO_X emissions reduced, including controls such as selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR) that could be required on a number of units in the OTAG region. Although the NO_X SIP Call did not specify which sources must reduce NO_X, consistent with OTAG's recommendations, the EPA encouraged states to consider controls on EGUs and large non-EGU point sources under an allowance trading program as a cost effective strategy for complying with the NO_X emissions budgets.

At the time the NO_X SIP Call was finalized, the EPA had already approved good neighbor SIPs for many states with respect to the 1-hour ozone standard. Accordingly, the EPA initiated a SIP call pursuant to CAA section 110(k)(5) requiring states covered by the rule to amend their SIPs in order to limit NO_X emissions that significantly contribute to ozone nonattainment in other states consistent with the budgets finalized in the rule.

In parallel with issuing the SIP call, the EPA reviewed petitions submitted pursuant to CAA section 126(b) by eight states requesting that the EPA find that stationary sources in upwind states contribute significantly to ozone nonattainment in the petitioning states. Because the section 126 petitions raised many of the same issues as those being addressed in NO_X SIP call, the EPA coordinated its response to the CAA section 126 petitions with the NO_X SIP Call rulemaking. The EPA issued findings that NO_X emissions in twelve states and the District of Columbia contribute significantly to nonattainment of the 1-hour ozone NAAQS in three downwind states, but the EPA determined that it was appropriate to postpone CAA section 126 findings pending the resolution of the NO_X SIP call process. 64 FR 28250 (May 25, 1999). Accordingly, the EPA issued a rule providing that the findings would automatically be deemed made with regard to sources from a given state should that state fail to submit a SIP revision as required by the NO_X SIP Call. The rulemaking further established the NBP as the remedy that would apply pursuant to CAA section 126(c) for any state subject to such a finding.

The D.C. Circuit subsequently issued two orders affecting implementation of the NO_X SIP Call: (1) An order remanding the 1997 8-hour ozone standard to the EPA, *American Trucking Ass'ns* v. *EPA,* 175 F.3d 1027, *reh'g granted in part and denied in part,* 195 F.3d 4 (D.C. Cir.1999), *rev'd in part sub nom. Whitman* v. *American Trucking Ass'ns,* 531 U.S. 457, 121 S.Ct. 903 (2001), and (2) an order staying the NO_X SIP Call deadline pending further litigation, *Michigan* v. *EPA,* No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part). In response to these court decisions, the EPA took two actions. First, the EPA indefinitely stayed the technical determinations of the prior section 126 action as they applied to the 8-hour ozone NAAQS, pending further developments in the litigation. 65 FR 2674, 2685 (January 18, 2000). Second, with respect to the 1-hour standard, the EPA made the requested findings of significant contributions, granting the relevant portions of the section 126 petitions. *Id.* at 2684–85. The EPA further imposed the NBP on affected sources as the remedy pursuant to section 126(c). *Id.* at 2686.

Ultimately, the NO_X SIP Call was largely upheld by the D.C. Circuit in *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000), *cert. denied,* 532 U.S. 904 (2001).[18] States chose to use the NBP to achieve the majority of the NO_X reductions required by the NO_X SIP Call. Subsequent rules have required additional reductions from certain sources regulated by the NO_X SIP Call, but the rules have not replaced the NO_X SIP Call reduction requirements and the rule remains in effect.

2. Clean Air Interstate Rule (CAIR)

The CAIR was published in May 2005 and addressed both the 1997 $PM_{2.5}$ and the 1997 ozone standards under the good neighbor provision. 70 FR 25162 (May 12, 2005). CAIR required SIP revisions in 28 eastern states and the District of Columbia to ensure that certain emissions of sulfur dioxide (SO_2) and/or NO_X—important precursors of regionally transported $PM_{2.5}$ (SO_2 and NO_X) and ozone (NO_X)—were prohibited.

The rule set statewide emission budgets for large EGUs that reduced emissions of annual SO_2 and annual NO_X (particulate matter precursors) and summertime NO_X (ozone precursor). As in the NO_X SIP Call, the EPA identified reductions in NO_X emissions as the most efficient and effective way to achieve the greatest reduction of interstate ozone pollution. *Id.* at 25185–8, 25195. The EPA also determined that emissions reductions from EGUs were the most cost-effective and efficient means of achieving necessary NO_X emissions reductions. 70 FR 25173. As in the NO_X SIP Call, affected states were given the option to participate in a regional allowance trading program to satisfy their SIP obligations.

When the EPA promulgated the final CAIR, the EPA also issued a national rule finding that certain states had failed to submit SIPs to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ and the 1997 ozone NAAQS by the CAA deadline for those standards of July 2000. 70 FR 21147. The findings of failure to submit triggered a 2-year clock for the EPA to issue FIPs to address the good neighbor provision with respect to those standards, and the EPA subsequently promulgated FIPs to ensure that the emission reductions required by CAIR would be achieved on schedule. 71 FR 25328 (April 28, 2006). Upon review, the D.C. Circuit determined that CAIR was ''fundamentally flawed,'' and the rule was remanded to the EPA to be replaced ''from the ground up.'' *North Carolina* v.

[18] The EPA's January 18, 2000, action on the CAA section 126 petitions was also challenged and upheld by the D.C. Circuit in *Appalachian Power Company* v. *EPA,* 249 F.3d 1032 (2001).

EPA, 531 F.3d 896, 929 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176.

3. CSAPR

In response to the court's remand of CAIR, on July 6, 2011, the EPA promulgated CSAPR, which requires certain states to significantly improve air quality by reducing power plant emissions that contribute to ozone and/or fine particle pollution in other states. CSAPR requires sources in a total of 28 states to reduce annual SO_2 emissions, annual NO_X emissions and/or ozone season NO_X emissions to assist in attaining the 1997 ozone and $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS. 76 FR 48208. The EPA found that each CSAPR state had failed to submit a complete SIP or the EPA disapproved a submitted SIP for the relevant NAAQS. To accomplish implementation aligned with the applicable NAAQS attainment deadlines, the EPA promulgated FIPs for each affected state which require affected sources to participate in the regional allowance trading program to achieve the necessary emission reductions. These states have the option of replacing each FIP with a SIP that could achieve the same emissions reductions in other ways.

CSAPR set emissions budgets for certain states according to the applicable NAAQS—annual NO_X and annual SO_2 budgets for $PM_{2.5}$, and ozone season NO_X budgets for ozone—to eliminate a state's significant contribution or interference with maintenance of a NAAQS in other states. With respect to the ozone NAAQS, the EPA determined that NO_X emissions had the most meaningful interstate impacts based on air quality modeling that examined upwind state emissions of all ozone precursors (including VOCs and NO_X). 75 FR 45230 (August 2, 2010) and 76 FR 48222. Moreover, the EPA noted that the other recent assessments of ozone, for example those conducted for the Regulatory Impact Analysis for the ozone standards in 2008, continue to show the importance of NO_X emissions on ozone transport. 75 FR 45236. Accordingly, the EPA quantified NO_X emissions budgets for each affected state by quantifying the emissions reductions achievable by applying cost-effective controls to EGUs. 76 FR 48256. The EPA determined that controls at other sources were generally not available at similar cost levels.

The timing of CSAPR's implementation was affected by a number of court actions. CSAPR was the subject to nearly four years of litigation in both the D.C. Circuit and the Supreme Court. CSAPR was generally upheld by the courts, but for the remand of certain state budgets, and implementation of the trading programs began in 2015. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014); *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015).

4. The CSAPR Update To Address the 2008 Ozone NAAQS

On October 26, 2016, the EPA published an update to CSAPR intended to respond to the D.C. Circuit's remand of certain NO_X ozone season budgets from the original CSAPR and to address the good neighbor provision with respect to the 2008 ozone NAAQS. 81 FR 74504 (CSAPR Update). The CSAPR Update requires 22 states to reduce ozone season NO_X emissions that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in certain downwind states. The EPA found that each CSAPR state had failed to submit a complete SIP or the EPA disapproved a submitted SIP for the 2008 ozone NAAQS. To accomplish implementation aligned with the applicable attainment deadline for the 2008 ozone NAAQS, the EPA promulgated FIPs for each of the 22 states covered by CSAPR Update which require affected sources to participate in the regional allowance trading program to achieve the necessary emission reductions beginning with the 2017 ozone season.

The CSAPR Update analysis found that emissions from eight of the nine states named in the section 176A petition, in addition to a number of other states, were linked to downwind projected nonattainment and/or maintenance receptors, in the eastern U.S., in 2017 with respect to the 2008 ozone NAAQS. 81 FR 74506, 74538–39. For one state named in the CAA section 176A petition, North Carolina, the EPA determined in the CSAPR Update that the state was not linked to any downwind receptors and, therefore, will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state pursuant to the good neighbor provision. 81 FR 74506, 74537–38.

For those states linked to downwind air quality problems, the EPA evaluated timely and cost-effective emissions reductions achievable in each state in order to quantify the amount of emissions constituting each state's significant contribution to nonattainment and interference with maintenance of the standard pursuant to the good neighbor provision. The EPA focused its analysis on: (1) Emissions reductions achievable by 2017 in order to assist downwind states with meeting the applicable attainment deadline for the 2008 ozone NAAQS (81 FR 74521), (2) reductions in only NO_X emissions, consistent with past ozone transport rules (81 FR 74514), and (3) achievable, cost effective NO_X emissions reductions from EGUs. The EPA, therefore, calculated emissions budgets for each affected state based on the cost-effective NO_X emissions reductions achievable from EGUs by the 2017 ozone season.

The EPA concluded that the emissions reductions achieved by implementation of the budgets constitute a portion of most affected states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS at these downwind receptors. 81 FR 74508, 74522.[19] However, because downwind air quality problems were projected to remain after implementation of the quantified emissions reductions, the EPA could not determine that it had fully quantified the affected states' emissions reduction obligations pursuant to the good neighbor provision to the extent upwind states remain linked to the downwind receptors and further emission reductions from EGUs and non-EGUs could be available. In order to determine the level of NO_X control stringency necessary to quantify those emissions reductions that fully constitute each state's significant contribution to downwind nonattainment or interference with maintenance, the EPA explained in promulgating the final CSAPR Update that it must evaluate further emission reductions from EGU and non-EGU strategies that can be implemented on longer timeframes. The CSAPR Update represents a significant first step by the EPA to quantify states' emission reduction obligations under the good neighbor provision for the 2008 ozone NAAQS. Even though the CSAPR Update did not fully address upwind states' emission reduction obligation pursuant to the good neighbor provision, the implementation of the emissions budgets quantified in that rule will help to resolve a number of projected air quality problems in the Philadelphia, Pennsylvania, Jefferson County, Kentucky and Hamilton County, Ohio areas and will help make progress to reduce upwind

[19] For one state named in the CAA section 176A petition, Tennessee, the EPA determined that the emissions reductions required by the CSAPR Update would fully address the state's significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states.

contributions to high ozone levels in Baltimore, Maryland, and the New York City area (including parts of Connecticut and New Jersey).

The EPA is continuing the work necessary to address its remaining obligation to promulgate FIPs fully addressing the good neighbor provision with respect to the 2008 ozone NAAQS for 21 states. The EPA intends to continue to collect information and undertake analyses to evaluate potential future emission reductions from non-EGUs and EGUs that may be necessary to fully quantify each state's interstate transport obligations for the 2008 ozone NAAQS in a future action.[20] The EPA expects to continue to fulfill its obligation to promulgate FIPs fully addressing interstate transport with respect to the 2008 ozone NAAQS consistent with the authority and flexibility provided by the good neighbor provision to tailor a remedy based on those sources and precursor pollutants (*i.e.,* NO_X) that can most effectively address the downwind air quality problems identified by the EPA's analysis.

C. Additional Rules That Reduce NO_X and VOC Emissions

In addition to the significant efforts to implement the good neighbor provision for the 2008 and prior ozone NAAQS described in Section IV.B of this document, there are numerous federal and state emission reduction rules that have already been adopted which have resulted or will result in the further reduction of ozone precursor emissions, including emissions from states named in the section 176A petition. Many of these rules directly require sources to achieve reductions of NO_X, VOC, or both, and others require actions that will indirectly result in such reductions. As a result of these emissions reductions, the interstate transport of ozone has been and will continue to be reduced over time.

The majority of man-made NO_X and VOC emissions that contribute to ozone formation in the U.S. comes from the following sectors: on-road and nonroad mobile sources, industrial processes (including solvents), consumer and commercial products, and the electric power industry. In 2014, the most recent year for which the National Emissions Inventory (NEI) is available, on-road and nonroad mobile sources accounted for about 56 percent of annual NO_X emissions; and the electric power industry (EGUs) accounted for about 13 percent. With respect to VOCs, industrial processes (including solvents) accounted for about 48 percent of manmade VOC emissions; and mobile sources accounted for about 27 percent.[21] [22]

The EPA establishes emissions standards under various CAA authorities for numerous classes of automobile, truck, bus, motorcycle, earth mover, aircraft, and locomotive engines, and for the fuels used to power these engines. The pollutant reduction benefits from new engine standards increase each year as older and more-polluting vehicles and engines are replaced with newer, cleaner models. The benefits from fuel programs generally begin as soon as a new fuel is available. Further, the ongoing emission reductions from mobile source federal programs such as those listed previously will provide for substantial emissions reductions well into the future, and will complement state and local efforts to attain the 2008 ozone NAAQS.

There are several existing national rules that continue to achieve emission reductions through 2025 and beyond with more protective emission standards for on-road vehicles that include: Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards; [23] Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements; [24] Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; [25] Model Year 2017 and Later Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards; [26] Model Year 2012–2016 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; [27] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2; [28] Phase 1 Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles [29] and Control of Hazardous Air Pollutants from Mobile Sources.[30]

Similarly, already adopted regulations for non-road engines and equipment that will achieve further reductions include: Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel; [31] Republication for Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder; [32] Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder; [33] the International Maritime Organization's Emission Control Area to Reduce Emissions from Ships in the U.S. Caribbean; Control of Air Pollution From Aircraft and Aircraft Engines; [34] Emission Standards and Test Procedures; Control of Emissions from Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based); [35] and Control of Emissions from Nonroad Spark-Ignition Engines and Equipment.[36]

Similarly, a number of already-adopted stationary source rules will drive further regional reductions in ozone precursor emissions, including: boiler maximum achievable control technology standards under CAA section 112 and the Mercury and Air Toxics Standards. These rules target specific sources and have the co-benefit of reducing ozone precursors which also reduce interstate ozone pollution transport. For example, the measures to address Regional Haze best available retrofit technology determinations often include power plant pollution controls that can achieve NO_X reductions of at least 80 to 90 percent from a particular source.

Other existing rules that will achieve NO_X and VOC emissions reductions include: New Source Performance Standards (NSPS) for reciprocating internal combustion engines; NSPS for gas turbines; NSPS for process heaters;

[20] Moreover, in support of this effort, on December 28, 2016, the EPA shared updated preliminary modeling information providing air quality projections for areas in the contiguous U.S. for the 2015 ozone NAAQS, which the EPA anticipates will assist states with the development of SIPs. *See,* ''Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS)'' available at: *https://www.epa.gov/airmarkets/notice-data-availability-preliminary-interstate-ozone-transport-modeling-data-2015-ozone.*

[21] The VOC percentages are for manmade VOCs only. Emissions from natural sources, such as trees, also comprise around 70 percent of total VOC emissions nationally, with a higher proportion during the ozone season and in areas with more vegetative cover.

[22] For more information, *see* the ''2014 NEI Summary Spreadsheet'' in the docket.

[23] 81 FR 23414 (April 28, 2014).

[24] 65 FR 6698 (February 10, 2000).

[25] 66 FR 5002 (January 18, 2001).

[26] 77 FR 62624 (October 15, 2012).

[27] 75 FR 25324, (May 7, 2010).

[28] 81 FR 73478, (October 25, 2016).

[29] 76 FR 57106, (September 15, 2011).

[30] 72 FR 8428, (February 26, 2007).

[31] 69 FR 38958, (June 29, 2004).

[32] 73 FR 37096, (June 30, 2008).

[33] 75 FR 22896, (April 30, 2010).

[34] 77 FR 36342, (June 18, 2012).

[35] 67 FR 68242, (November 8, 2002).

[36] 73 FR 59034, (October 8, 2008).

Hospital/Medical/Infectious Waste Incinerators: New Source Performance Standards and Emission Guidelines: Final Rule Amendments; and NO_X Emission Standard for New Commercial Aircraft Engines. The EPA's regulations for commercial, industrial and solid waste incinerators set standards for NO_X and several air toxics for all commercial incinerators, as required under CAA section 129. Air toxics rules for industrial boilers will yield co-benefit NO_X reductions as a result of tune-ups and energy efficiency measures, especially from boilers that burn coal.

The EPA expects existing federal and state rules, and also those that may be promulgated in the future, will have the co-benefit of reducing ozone precursor emissions even if they do not directly address interstate transport of ozone pollution. These rules will result in reductions in ozone concentrations that will help areas attain the 2008 ozone NAAQS. For example, the Regional Haze Rule requires states to revise their regional haze SIPs [37] to assess whether additional measures are necessary for continued visibility progress. On December 14, 2016, the EPA signed a final rule that could influence state regional haze plans to include measures to further reduce NO_X in light of its role as a visibility impairing pollutant.[38] Further, to address interstate transport with respect to the 2015 ozone NAAQS, states are required to submit additional SIPs addressing the good neighbor provision by October 2018. Measures designed to address the interstate transport of ozone with respect to the 2015 standard will necessarily assist with addressing interstate transport with respect to the less-stringent 2008 standard. Lastly, in response to actions such as the 2012 $PM_{2.5}$ SIP Requirements Rule and nonattainment designations under the 2010 primary SO_2 NAAQS, many states will be submitting SIPs that reduce pollution, some of which reduce ozone precursor emissions as a co-benefit.

As a result of the rules and programs listed previously, various other state programs and efforts, and wider economic trends, ozone levels across the nation and the OTR have been declining. Ozone levels across the nation are expected to further decline over the next several years due to emissions controls already in place. The EPA's emissions projections in support of the 2015 ozone NAAQS modeling show declining emissions of NO_X and VOCs between 2017 and 2025. In the states comprising the OTR plus the nine upwind states named in the CAA section 176A petition, total NO_X emissions over the upcoming 7-year period (2017–2025) are expected to decline by almost 20 percent on average and VOC emissions are expected to decline by more than 10 percent on average over the same period.

D. Rationale for the Proposed Decision on the CAA 176A Petition

The EPA is proposing to deny the CAA section 176A petition because we believe that the statute provides other, more effective means of addressing the impact of interstate ozone transport on the states within the OTR with respect to the 2008 ozone NAAQS. As described in Section IV of this document, the statute provides several provisions that allow states and the EPA to address interstate ozone transport with a remedy better tailored to the nature of the air quality problem, focusing on those precursor emissions and sources that most directly impact downwind ozone nonattainment and maintenance problems and which can be controlled most cost-effectively. The EPA and states are actively using these provisions, as demonstrated by the numerous federal and state measures that have reduced, and will continue to reduce, the VOC and NO_X emissions that contribute to ozone formation and the interstate transport of ozone pollution. The EPA does not believe that it is necessary to add more states to the OTR at this time in order to effectively address transported pollution in the OTR relative to the 2008 ozone NAAQS.

While the Act contains several provisions, both mandatory and discretionary, to address interstate pollution transport, the EPA's decision whether to grant or deny a CAA section 176A petition to expand an existing transport region is discretionary. Section 176A of the CAA states that the Administrator *may* add any state or portion of a state to an existing transport region whenever the Administrator has reason to believe that the interstate transport of air pollutants from such state significantly contributes to a violation of the standard in the transport region. The EPA does not dispute that certain named upwind states in the petition might significantly contribute to violations of the 2008 ozone NAAQS in one or more downwind states. However, the EPA believes that it can fully and more effectively address the upwind states' impacts on downwind ozone air quality through the good neighbor provision and the various statutory provisions that provide for its implementation. The EPA has already taken steps to address interstate transport with respect to the 2008 ozone NAAQS through the promulgation of the CSAPR Update, which reduces emissions in the 2017 ozone season and beyond. The EPA used the authority of CAA sections 110(a)(2)(D)(i)(I) and 110(c) to tailor a remedy focused on the precursor pollutant most likely to improve ozone levels (currently NO_X) and those sources that can most cost-effectively reduce emissions (*i.e.,* EGUs). The EPA further implemented the remedy through an allowance trading program that achieves necessary emission reductions while providing sources with the flexibility to implement the control strategies of their choice.

We believe that the continued use of the authority provided by the good neighbor provision to address the interstate transport of ozone pollution plus other regulations that are already in place will permit the states and EPA to achieve necessary additional reductions to address the 2008 ozone NAAQS without the need to implement the additional requirements that inclusion in the OTR would entail. As described in Section IV.A and B of this document, this approach to address the interstate transport of ozone is a proven, efficient, and cost-effective means of addressing downwind air quality concerns that the agency has employed and refined over nearly two decades. However, the EPA notes that the addition of states to the OTR pursuant to the section 176A authority—and the additional planning requirements that would entail—could be given consideration as an appropriate means to address the interstate transport requirements of the CAA should the agency depart from its current approach to addressing these requirements.

As described in this document, the CAA provides the agency with the authority to mitigate the specific sources that contribute to interstate pollution through the approval of SIPs or promulgation of FIPs to satisfy the requirements of the good neighbor provision, CAA section 110(a)(2)(D)(i)(I), and through the related petition process under section 126. This authority gives the EPA and states numerous potential policy approaches to address interstate pollution transport of ozone, and the EPA has consistently and repeatedly used its authority under CAA section 110(a)(2)(D)(i)(I) to approve state plans

[37] The EPA extended the due date to 2021, but is not changing dates for the implementation of further pollution reductions needed to address regional haze, which are required over the 2018–2028 time frame. *See https://www.epa.gov/visibility/final-rulemaking-amendments-regulatory-requirements-state-regional-haze-plans.*

[38] *See https://www.epa.gov/sites/production/files/2016-12/documents/regional_haze_2060-as55_final_preamblerule_final_12–14–16_disclaimer_0.pdf.*

for reducing ozone transport or to promulgate its own federal implementation plan to specifically target the sources of ozone transport both within and outside the OTR. The NO_X SIP call, CAIR, CSAPR, CSAPR Update and numerous individual SIP approvals demonstrate that the EPA has a long history of using its section 110 authority to specifically address interstate pollution transport in a targeted way that is tailored to a specific NAAQS and set of pollution sources which are the primary contributors to interstate pollution transport. As described in Section IV.B of this document, using the authority of the good neighbor provision has allowed the EPA to focus its efforts on pollution sources that are responsible for the largest contributions to ozone transport and that can cost-effectively reduce emissions, and also enables the agency to focus on NO_X as the primary driver of long range ozone transport—an approach the courts have found to be a reasonable means of addressing interstate ozone transport. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1607 (affirming as ''efficient and equitable'' the EPA's use of cost to apportion emission reduction responsibility pursuant to the good neighbor provision); *Michigan* v. *EPA,* 213 F.3d at 688 (''EPA reasonably concluded that long-range ozone transport can only be addressed adequately through NO_X reductions'').

As explained previously, it does not appear that adding states to an OTR under CAA section 176A will afford the states and EPA with the flexibility to focus on specific sources and ozone precursor emissions tailored to address the downwind state's current air quality and needed remedy to achieve attainment of the 2008 NAAQS. The statute prescribes a specific set of controls for a variety of sources to control emissions of both VOCs and NO_X. CAA section 110(a)(2)(D)(i)(I) on the other hand permits the EPA and the regulated community the flexibility to focus controls on specific sources and pollutants that most efficiently address the air quality problem being targeted. The EPA determined in the CSAPR Update that regional NO_X emissions reductions from upwind states are the most effective means for providing ozone benefits to an area in the OTR currently violating the 2008 ozone NAAQS, and that NO_X reductions can be most efficiently achieved by focusing on those sources that can cost-effectively reduce emissions. Accordingly, the EPA does not believe that the requirements imposed upon states added to the OTR would be the most effective means of addressing any remaining interstate transport concerns with respect to the 2008 ozone NAAQS.

The implementation of controls within the OTR, when combined with the numerous federal and state emission reduction programs that have already been adopted that have resulted in the reduction of ozone precursor emissions either directly or as a co-benefit of those regulations, have helped to significantly reduce ozone levels. These programs will continue to reduce ozone precursor emissions and ozone concentrations both within and outside of the OTR over many years to come. However, the EPA believes the most efficient way to address the current 2008 ozone NAAQS nonattainment and interstate transport problems is to continue to rely on the ability to flexibly target the necessary reductions through this combination of targeted programs such as the implementation of the CSAPR Update Rule, the further utilization of the CSAPR framework, development of local attainment plans, and consideration of additional emissions limitations resulting from action on CAA section 126 petitions.

As discussed in Section III.C. of this document, CAA section 176A provides that the Administrator may exercise reasonable discretion in administering the agency's regulatory agenda by determining whether or not to approve or deny a section 176A petition, so long as the EPA's action is supported by a reasonable interpretation within the context of the statute. The EPA has reviewed the request of the petitioners to add additional states to the OTR in light of required control strategies for ozone transport regions and the other statutory tools available to the agency and states to address the interstate transport of ozone pollution. The agency believes that continuing its longstanding and effective use of the existing and expected control programs under the CAA's mandatory good neighbor provision embodied in section 110(a)(2)(D)(i)(I), including implementation of the CSAPR Update beginning in 2017 and technical work now underway to establish a full remedy for the 2008 NAAQS as well as to implement the good neighbor provision for the more stringent 2015 NAAQS, is a more effective approach for addressing regional interstate ozone transport problems relative to the 2008 ozone standard.

The EPA is proposing to deny the petitioning states' request to add additional states to the OTR for the purpose of addressing interstate transport of the 2008 ozone NAAQS at this time. The agency will instead continue to use other authorities available within the CAA in order to address the long range interstate transport of ozone pollution. This document is specific to the 2008 ozone NAAQS, but the EPA notes that under different circumstances the OTR provisions have been an effective tool for air quality management, and could be similarly effective in the future for addressing interstate transport of ozone pollution. Accordingly, nothing in this document should be read to limit states' ability to file a different petition under 176A or to prejudge the outcome of such a petition if filed. The EPA requests comment on the proposed denial of the petition based on the EPA's preferred approach to addressing interstate transport with respect to the 2008 ozone NAAQS pursuant to these other CAA authorities.[39]

V. Judicial Review and Determinations Under Section 307(b)(1) of the CAA

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) 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.'' The EPA finds that any final action related to this document is ''nationally applicable'' and of ''nationwide scope and effect'' within the meaning of CAA section 307(b)(1). Through this document, the EPA interprets section 176A of the CAA, a provision which has nationwide applicability. In addition, this document is a response to a petition which would, if granted, extend

[39] The EPA's proposal as to the pending section 176A petition is focused on the appropriate mechanism to address interstate transport issues relative to the 2008 ozone NAAQS rather than the scope of remaining air quality problems or the level of controls necessary to address any such problems. Comment on any determinations made in prior rulemaking actions to identify downwind air quality problems relative to the ozone NAAQS or to quantify upwind state emission reduction obligations relative to those air quality problems, including the EPA's decision to focus on certain precursor emissions or sources, are not within the scope of this proposal. To the extent the EPA evaluates these issues in a future rulemaking to address remaining air quality problems relative to the 2008 ozone NAAQS, comments will be welcomed in the context of that rulemaking.

regulatory requirements to nine states in multiple different circuits, and if denied could impact the 13 states within the ozone transport region established in CAA section 184. This proposed action also discusses at length prior EPA action and analyses concerning the transport of pollutants between the different states under CAA section 110. For these reasons, the Administrator determines that, when finalized, this action is of nationwide scope and effect for purposes of section 307(b)(1). Thus, pursuant to CAA section 307(b) any petitions for review of any final action regarding this document would be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date any final action is published in the **Federal Register**.

VI. Statutory Authority

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

Dated: January 11, 2017.

Gina McCarthy,

Administrator.

[FR Doc. 2017–01097 Filed 1–18–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2017–0026; FRL–9958–34]

Statutory Requirements for Substantiation of Confidential Business Information (CBI) Claims Under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In June 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act amended the Toxic Substances Control Act (TSCA). EPA is announcing an interpretation of TSCA section 14 concerning confidential business information (CBI) claims for information submitted to EPA. EPA interprets the revised TSCA section 14(c)(3) as requiring substantiation of non-exempt CBI claims at the time the information claimed as CBI is submitted to EPA.

FOR FURTHER INFORMATION CONTACT:

For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

For technical information contact: Scott M. Sherlock, Attorney Advisor, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov.*

DATES: This action is effective on March 20, 2017.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This announcement is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process chemicals covered by TSCA (15 U.S.C. 2601 *et seq.*). This may include businesses identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this action is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2017–0026. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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 at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Other related information.* For information about EPA's programs to evaluate new and existing chemicals and their potential risks and the amended TSCA, go to *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act.*

II. What action is the Agency taking?

The amended TSCA provides new requirements relating to the assertion, substantiation and review of CBI claims. EPA is interpreting the revised TSCA section 14(c)(3) as requiring substantiation of all CBI claims at the time the information claimed as CBI is submitted to EPA, except for claims for information subject to TSCA section 14(c)(2).

This action facilitates the Agency's implementation of TSCA section 14(g) to review all CBI claims for chemical identity, with limited exceptions, as well as to review a representative sample of at least 25% of other non-exempt claims.

III. What is the Agency's authority for taking this action?

EPA has determined that TSCA section 14(c)(3), 15 U.S.C. 2613(c)(3), requires an affected business to substantiate all TSCA CBI claims, except for information subject to TSCA section 14(c)(2), at the time the affected business submits the claimed information to EPA.

TSCA section 14(c)(1)(a) requires an affected business to assert a claim for protection from disclosure concurrent with submission of the information in accordance with existing or future rules. TSCA section 14(c)(3) in turn requires an affected business submitting a claim to protect information from disclosure to substantiate the claim, also in accordance with existing or future rules. The language of TSCA section 14(c)(3) is as follows:

> ''(3) Substantiation requirements. Except as provided in paragraph (2), a person asserting a claim to protect information from disclosure under this section shall substantiate the claim, in accordance with such rules as the Administrator has promulgated or may promulgate pursuant to this section.''

EPA interprets TSCA section 14(c)(3) to require substantiation for all TSCA CBI claims, except for information