

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

#### List of Subjects in 40 CFR Part 52

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

Dated: May 16, 2022.

Debra Shore,

Regional Administrator, Region 5.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R08–OAR–2022–0315; EPA–HQ–OAR–2021–0663; FRL–9806–01–R8]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to disapprove the State Implementation Plan (SIP) submittal from Utah regarding interstate transport for the 2015 8-hour ozone national ambient air quality standard (NAAQS). The “good neighbor” or “interstate transport” provision requires that each state’s SIP contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader set of “infrastructure” requirements, which are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA. If the EPA finalizes this disapproval, the EPA will continue to be subject to an obligation to promulgate a Federal Implementation Plan (FIP) to address the relevant interstate transport requirements, which was triggered by a finding of failure to submit issued in December of 2019. Disapproval does not start a mandatory CAA sanctions clock.

**DATES:** *Comments:* Written comments must be received on or before July 25, 2022.

**ADDRESSES:** You may send comments, identified as Docket No. EPA–R08–OAR–2022–0315, to the Federal eRulemaking Portal at <https://www.regulations.gov> following the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document. The EPA Docket Office can be contacted at (202) 566–1744, and is located at EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. For further information on EPA Docket Center services and the current hours of operation at the EPA Docket Center, please visit us online at <https://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

*Public participation:* Submit your comments, identified by Docket ID No. EPA–R08–OAR–2022–0315, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> 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).

There are two dockets supporting this action, EPA–R08–OAR–2022–0315 and EPA–HQ–OAR–2021–0663. Docket No. EPA–R08–OAR–2022–0315 contains information specific to Utah, including

the notice of proposed rulemaking. Docket No. EPA–HQ–OAR–2021–0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 8-hour ozone NAAQS which are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket No. EPA–R08–OAR–2022–0315. For additional submission methods, please contact Adam Clark, telephone number: (303) 312–7104, email address: [clark.adam@epa.gov](mailto:clark.adam@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The index for Docket No. EPA–HQ–OAR–2021–0663, is available electronically at [www.regulations.gov](https://www.regulations.gov). While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

Throughout this document, “we,” “us,” and “our” means the EPA.

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#### I. Background

##### A. Description of Statutory Background

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (2015 8-hour ozone NAAQS), lowering the level of both the primary

and secondary standards to 0.070 parts per million (ppm).<sup>1</sup> Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).<sup>2</sup> One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the “interstate transport” or “good neighbor” provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called “prongs” within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). The EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).<sup>3</sup>

#### *B. Description of the EPA’s 4-Step Interstate Transport Regulatory Process*

The EPA is using the 4-step interstate transport framework (or 4-step framework) to evaluate Utah’s SIP submittal addressing the interstate transport provision for the 2015 8-hour ozone NAAQS. The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,<sup>4</sup> and the Cross-State Air Pollution Rule Update (CSAPR

Update)<sup>5</sup> and the Revised CSAPR Update, both of which addressed the 2008 ozone NAAQS.<sup>6</sup> Through the development and implementation of the CSAPR rulemakings and prior regional rulemakings pursuant to the interstate transport provision,<sup>7</sup> the EPA, working in partnership with states, developed the following 4-step interstate transport framework to evaluate a state’s obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.*, nonattainment and/or maintenance receptors); (2) identify states that impact those air quality problems in other (*i.e.*, downwind) states sufficiently such that the states are considered “linked” and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind state’s significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

#### *C. Background on the EPA’s Ozone Transport Modeling Information*

In general, the EPA has performed nationwide air quality modeling to project ozone design values which are used in combination with measured data to identify nonattainment and maintenance receptors. To quantify the contribution of emissions from specific upwind states on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors, the EPA performed nationwide, state-level ozone source apportionment modeling for 2023. The source apportionment modeling

provided contributions to ozone at receptors from precursor emissions of anthropogenic nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) in individual upwind states.

The EPA has released several documents containing projected ozone design values, contributions, and information relevant to evaluating interstate transport with respect to the 2015 8-hour ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) in which we requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.<sup>8</sup> In the NODA, the EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 8-hour ozone NAAQS.<sup>9</sup> On October 27, 2017, we released a memorandum (October 2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address interstate transport obligations for the 2008 ozone NAAQS.<sup>10</sup> On March 27, 2018, we issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 8-hour ozone NAAQS at Step 1 of the 4-step interstate transport framework.<sup>11</sup> The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist states in evaluating their impact on potential downwind air quality problems for the 2015 8-hour ozone NAAQS under Step 2 of the 4-step interstate transport

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

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

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

<sup>4</sup> See Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

<sup>5</sup> Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

<sup>6</sup> In 2019, the D.C. Circuit Court of Appeals remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin v. EPA*, 938 F.3d 303, 313 (D.C. Cir. 2019). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of the CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the “CSAPR Close-Out,” 83 FR 65878 (December 21, 2018), in *New York v. EPA*, 781 F. App’x 4 (D.C. Cir. 2019).

<sup>7</sup> In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport include the “NO<sub>x</sub> SIP Call,” 63 FR 57356 (October 27, 1998), and the “Clean Air Interstate Rule” (CAIR), 70 FR 25162 (May 12, 2005).

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

<sup>9</sup> 82 FR 1733 at 1735 (January 6, 2017).

<sup>10</sup> See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017 (“October 2017 memorandum”), available in docket ID No. EPA–HQ–OAR–2021–0663.

<sup>11</sup> See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (“March 2018 memorandum”), available in docket ID No. EPA–HQ–OAR–2021–0663.

framework.<sup>12</sup> The EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 8-hour ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step interstate transport framework, and considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step interstate transport framework.<sup>13</sup>

Since the release of the modeling data shared in the March 2018 memorandum, the EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.*, 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project.<sup>14</sup> This collaborative project was a multi-year joint effort by the EPA, MJOs, and states to develop a new, more recent emissions platform for use by the EPA and states in regulatory modeling as an improvement over the dated 2011-based platform that the EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. The EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the Notice of Proposed Rulemaking for the Revised CSAPR Update, the EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.<sup>15</sup> Although the Revised CSAPR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform are also useful for identifying

downwind ozone problems and linkages with respect to the 2015 ozone NAAQS.<sup>16</sup>

Following the final Revised CSAPR Update, the EPA made further updates to the 2016 emissions platform to include mobile emissions from the EPA's Motor Vehicle Emission Simulator MOVES3 model<sup>17</sup> and updated emissions projections for electric generating units (EGUs) that reflect the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other sector trends. The construct of this updated emissions platform, 2016v2, is described in an emissions modeling technical support document (TSD) included in the docket for this proposed rule.<sup>18</sup> The EPA performed air quality modeling of the 2016v2 emissions using the most recent public release version of the Comprehensive Air-quality Model with extensions (CAMx) photochemical modeling, version 7.10.<sup>19</sup> The EPA now proposes to primarily rely on modeling based on the updated and newly available 2016v2 emissions platform in evaluating these submissions with respect to Steps 1 and 2 of the 4-step interstate transport framework. This modeling will generally be referenced within this action as 2016v2 modeling for 2023. By using the updated modeling results, the EPA is using the most current and technically appropriate information for this proposed rulemaking. Section III of this document and the Air Quality Modeling TSD for 2015 Ozone NAAQS Transport SIP Proposed Actions, included in Docket ID No. EPA-HQ-OAR-2021-0663 for this proposal, contain additional detail on the EPA's 2016v2 modeling. In this document, the EPA is accepting public comment on this updated 2023 modeling, which uses a 2016v2 emissions platform. Comments on the EPA's air quality modeling should be submitted in the Regional docket for this action, docket ID No. EPA-R08-OAR-2022-0315. Comments are not being accepted in docket ID No. EPA-HQ-OAR-2021-0663.

States may have chosen to rely on the results of the EPA modeling and/or alternative modeling performed by states or MJOs to evaluate downwind air quality problems and contributions as part of their submissions. In Section III we evaluate how Utah used air quality modeling information in their submission.

#### *D. The EPA's Approach To Evaluating Interstate Transport SIPs for the 2015 8-Hour Ozone NAAQS*

The EPA proposes to apply a consistent set of policy judgments across all states for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submittals for the 2015 8-hour ozone NAAQS. These policy judgments reflect consistency with relevant case law and past agency practice as reflected in the CSAPR and related rulemakings. Nationwide consistency in approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO<sub>x</sub> SIP Call have necessitated the application of a uniform framework of policy judgments in order to ensure an "efficient and equitable" approach. See *EME Homer City Generation, LP v. EPA*, 572 U.S. 489, 519 (2014).

In the March, August, and October 2018 memoranda, the EPA recognized that states may be able to establish alternative approaches to addressing their interstate transport obligations for the 2015 8-hour ozone NAAQS that vary from a nationally uniform framework. The EPA emphasized in these memoranda, however, that such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular state's submittal. In general, the EPA continues to believe that deviation from a nationally consistent approach to ozone transport must be substantially justified and have a well-documented technical basis that is consistent with relevant case law. Where states submitted SIPs that rely on any such potential "flexibilities" as may have been identified or suggested in the past, the EPA will evaluate whether the state adequately justified the technical and legal basis for doing so.

The EPA notes that certain concepts included in an attachment to the March 2018 memorandum require unique consideration, and these ideas do not constitute agency guidance with respect to transport obligations for the 2015 ozone NAAQS. Attachment A to the

<sup>12</sup> The March 2018 memorandum, however, provided, "While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking."

<sup>13</sup> See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 ("August 2018 memorandum"), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in docket ID No. EPA-HQ-OAR-2021-0663.

<sup>14</sup> The results of this modeling, as well as the underlying modeling files, are included in docket ID No. EPA-HQ-OAR-2021-0663.

<sup>15</sup> See 85 FR 68964, 68981.

<sup>16</sup> See the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in the Headquarters docket ID No. EPA-HQ-OAR-2021-0663.

<sup>17</sup> Additional details and documentation related to the MOVES3 model can be found at <https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves>.

<sup>18</sup> See Technical Support Document (TSD) Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform included in the Headquarters docket ID No. EPA-HQ-OAR-2021-0663.

<sup>19</sup> Ramboll Environment and Health, January 2021, [www.camx.com](http://www.camx.com).

March 2018 memorandum identified a “Preliminary List of Potential Flexibilities” that could potentially inform SIP development.<sup>20</sup> However, the EPA made clear in that Attachment that the list of ideas were not suggestions endorsed by the Agency but rather “comments provided in various forums” on which the EPA sought “feedback from interested stakeholders.”<sup>21</sup> Further, Attachment A stated, “EPA is not at this time making any determination that the ideas discussed below are consistent with the requirements of the CAA, nor are we specifically recommending that states use these approaches.”<sup>22</sup> Attachment A to the March 2018 memorandum, therefore, does not constitute agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. To the extent states sought to develop or rely on these ideas in support of their SIP submittals, the EPA will thoroughly review the technical and legal justifications for doing so.

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

#### 1. Selection of Analytic Year

In general, the states and the EPA must implement the interstate transport provision in a manner “consistent with the provisions of [title I of the CAA.]” CAA section 110(a)(2)(D)(i). This requires, among other things, that these obligations are addressed consistently with the timeframes for downwind areas to meet their CAA obligations. With respect to ozone NAAQS, under CAA section 181(a), this means obligations must be addressed “as expeditiously as practicable” and no later than the schedule of attainment dates provided in CAA section 181(a)(1).<sup>23</sup> Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin v. EPA*, remanding the CSAPR Update to the extent that it failed to require upwind states to

eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). 938 F.3d 303 at 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland v. EPA* that cited the *Wisconsin* decision in holding that the EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for the EPA’s denial of a petition under CAA section 126(b). *Maryland v. EPA*, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020). The court noted that “section 126(b) incorporates the Good Neighbor Provision,” and, therefore, “EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the next downwind attainment deadline. Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.” *Id.* at 1204 (emphasis added). The EPA interprets the court’s holding in *Maryland* as requiring the states and the Agency, under the good neighbor provision, to assess downwind air quality as expeditiously as practicable and no later than the next applicable attainment date,<sup>24</sup> which is now the Moderate area attainment date under CAA section 181 for ozone nonattainment. The Moderate area attainment date for the 2015 8-hour ozone NAAQS is August 3, 2024.<sup>25</sup> The EPA believes that 2023 is now the appropriate year for analysis of interstate transport obligations for the 2015 8-hour ozone NAAQS, because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024 Moderate area attainment date for the 2015 8-hour ozone NAAQS.

The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 8-

hour ozone NAAQS was August 3, 2021. Under the *Maryland* holding, any necessary emissions reductions to satisfy interstate transport obligations should have been implemented by no later than this date. At the time of the statutory deadline to submit interstate transport SIPs (October 1, 2018), many states relied upon the EPA modeling of the year 2023, and no state provided an alternative analysis using a 2021 analytic year (or the prior 2020 ozone season). However, the EPA must act on SIP submittals using the information available at the time it takes such action. In this circumstance, the EPA does not believe it would be appropriate to evaluate states’ obligations under CAA section 110(a)(2)(D)(i)(I) as of an attainment date that is wholly in the past, because the Agency interprets the interstate transport provision as forward looking. *See* 86 FR 23054 at 23074; *see also Wisconsin*, 938 F.3d at 322. Consequently, in this proposal the EPA will use the analytical year of 2023 to evaluate Utah’s CAA section 110(a)(2)(D)(i)(I) SIP submission with respect to the 2015 8-hour ozone NAAQS.

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

In Step 1, the EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. Where the EPA’s analysis shows that a site does not fall under the definition of a nonattainment or maintenance receptor, that site is excluded from further analysis under the EPA’s 4-step interstate transport framework. For sites that are identified as a nonattainment or maintenance receptor in 2023, we proceed to the next step of our 4-step interstate transport framework by identifying the upwind state’s contribution to those receptors.

The EPA’s approach to identifying ozone nonattainment and maintenance receptors in this action is consistent with the approach used in previous transport rulemakings. The EPA’s approach gives independent consideration to both the “contribute significantly to nonattainment” and the “interfere with maintenance” prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit’s direction in *North Carolina v. EPA*.<sup>26</sup>

For the purpose of this proposal, the EPA identifies nonattainment receptors as those monitoring sites that are

<sup>24</sup> We note that the court in *Maryland* did not have occasion to evaluate circumstances in which the EPA may determine that an upwind linkage to a downwind air quality problem exists at Steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See Wisconsin*, 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the interstate transport provision.

<sup>25</sup> *See* CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

<sup>26</sup> *See North Carolina v. EPA*, 531 F.3d 896, 910–11 (D.C. Cir. 2008) (holding that the EPA must give “independent significance” to each prong of CAA section 110(a)(2)(D)(i)(I)).

<sup>20</sup> March 2018 memorandum, Attachment A.

<sup>21</sup> *Id.* at A–1.

<sup>22</sup> *Id.*

<sup>23</sup> For attainment dates for the 2015 8-hour ozone NAAQS, refer to CAA section 181(a), 40 CFR 51.1303, and Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where the EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that the EPA projects will be in nonattainment in the future analytic year (*i.e.*, 2023).<sup>27</sup>

In addition, in this proposal, the EPA identifies a receptor to be a “maintenance” receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 136 (D.C. Cir. 2015).<sup>28</sup> Specifically, the EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the “maximum” future design value at each receptor based on a projection of the maximum measured design value over the relevant base period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.*, ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.*, dominant wind direction, temperatures, vertical mixing, insolation, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area’s ability to maintain the NAAQS.

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

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

In Step 2 the EPA quantifies the contribution of each upwind state to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each state to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a state’s contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.*, 0.70 ppb for the 2015 8-hour ozone NAAQS), the upwind state is not linked to a downwind air quality problem, and the EPA, therefore, concludes that the state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. However, if a state’s contribution equals or exceeds the 1 percent threshold, the state’s emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed “significant” and, thus, must be eliminated under CAA section 110(a)(2)(D)(i)(I). The EPA is proposing to rely in the first instance on the 1 percent threshold for the purpose of evaluating a state’s contribution to nonattainment or maintenance of the 2015 8-hour ozone NAAQS (*i.e.*, 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that the EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS. The EPA continues to find 1 percent to be an appropriate threshold. For ozone, as the EPA found in the Clean Air

Interstate Rule (CAIR), CSAPR, and CSAPR Update, a portion of the nonattainment problems from anthropogenic sources in the U.S. results from the combined impact of relatively small contributions from many upwind states, along with contributions from in-state sources and, in some cases, substantially larger contributions from a subset of particular upwind states. The EPA’s analysis shows that much of the ozone transport problem being analyzed in this proposed rule is the result of the collective impacts of contributions from multiple upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows the EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. *See* 81 FR at 74518. *See also* 86 FR at 23085 (reviewing and explaining rationale from CSAPR, 76 FR at 48237–38, for selection of 1 percent threshold).

The EPA’s August 2018 memorandum recognized that in certain circumstances, a state may be able to establish that an alternative contribution threshold of 1 ppb is justifiable. Where a state relies on this alternative threshold, and where that state determined that it was not linked at Step 2 using the alternative threshold, the EPA will evaluate whether the state provided a technically sound assessment of the appropriateness of using this alternative threshold based on the facts and circumstances underlying its application in the particular SIP submission.

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

Consistent with the EPA’s longstanding approach to eliminating significant contribution or interference with maintenance, at Step 3, states linked at Steps 1 and 2 are generally expected to prepare a multifactor assessment of potential emissions controls. The EPA’s analysis at Step 3 in prior federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions

<sup>27</sup> *See* 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptors, was also applied in CAIR. *See* 70 FR 25162 at 25241, 25249 (January 14, 2005); *see also North Carolina*, 531 F.3d at 913–14 (affirming as reasonable EPA’s approach to defining nonattainment in CAIR).

<sup>28</sup> *See* 76 FR 48208 (August 8, 2011). CSAPR Update and Revised CSAPR Update also used this approach. *See* 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

that may be achieved by requiring such controls (if applied across all linked upwind states), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a state is linked; other factors may potentially be relevant if adequately supported. In general, where the EPA's or alternative air quality and contribution modeling establishes that a state is linked at Steps 1 and 2, it will be insufficient at Step 3 for a state merely to point to its existing rules requiring control measures as a basis for approval. Generally the emissions-reducing effects of all existing emissions control requirements are already reflected in the air quality results of the modeling for Steps 1 and 2. If the state is shown to still be linked to one or more downwind receptor(s), states must provide a well-documented evaluation determining whether their emissions constitute significant contribution or interference with maintenance by evaluating additional available control opportunities by preparing a multifactor assessment. While the EPA has not prescribed a particular method for this assessment, the EPA expects states at a minimum to present a sufficient technical evaluation. This would typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no additional emissions controls should be required.<sup>29</sup>

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

At Step 4, states (or the EPA) develop permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. For a state

linked at Steps 1 and 2 to rely on an emissions control measure at Step 3 to address its interstate transport obligations, that measure must be included in the state's SIP so that it is permanent and federally enforceable. See CAA section 110(a)(2)(D) ("Each such [SIP] shall . . . contain adequate provisions . . ."). See also CAA 110(a)(2)(A); *Committee for a Better Arvin v. U.S. E.P.A.*, 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by state to meet CAA requirements must be included in the SIP).

#### II. Utah SIP Submission Addressing Interstate Transport of Air Pollution for the 2015 8-Hour Ozone NAAQS

On October 24, 2019, the State of Utah submitted a SIP revision to the EPA addressing the 110(a)(1) and (2) infrastructure requirements for the 2015 ozone NAAQS, including CAA section 110(a)(2)(D)(i)(I). The EPA evaluated this submission for completeness pursuant to the criteria in 40 CFR part 51, appendix V, and concluded that it was incomplete because Utah had not provided the necessary certification under section 2.1(g) of appendix V that a public hearing was held or provided the opportunity for the public to request a public hearing in accordance with 40 CFR 51.102(a). On November 21, 2019, the EPA sent a letter to Utah explaining our incompleteness determination.<sup>30</sup> On December 5, 2019, the EPA issued a finding that several states, including Utah, had failed to submit SIPs to meet the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. See 84 FR 66612. On January 29, 2020, the State submitted a new SIP revision addressing the infrastructure requirements for the 2015 ozone NAAQS, including CAA section 110(a)(2)(D)(i)(I), as well as CAA section 110(a)(2)(D)(i)(I) prong 2 for the 2008 ozone NAAQS.<sup>31</sup>

The SIP submission provided an analysis by the Utah Division of Air Quality (UDAQ) of the State's impact on air quality in downwind states and

concluded that emissions from Utah will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other states in 2023.<sup>32</sup> In the SIP submittal, UDAQ conducted a weight-of-evidence analysis, which sought to rely in part on certain outside parties' ideas for "flexibilities" in assessing good neighbor obligations that had been listed in Attachment A to the March 2018 memorandum. See section I.D. above. UDAQ's weight-of-evidence analysis utilized the EPA's 4-step interstate transport framework approach. At Step 1 of the framework, UDAQ used EPA modeling released with the March 2018 memorandum to conclude that the Denver nonattainment area was the only area with identified nonattainment and maintenance receptors in 2023 to which sources in Utah could possibly contribute (Step 1).<sup>33</sup> In identifying this area at Step 1, UDAQ considered the "flexibility" listed in Attachment A of the March 2018 memo, consideration of "the current and projected local emission reductions and whether downwind areas have considered and/or used available mechanisms for regulatory relief." UDAQ considered current and projected emissions reductions in the Denver nonattainment area.<sup>34</sup> Specifically, UDAQ considered recent oil and gas control requirements Colorado adopted for oil and gas sources within the Denver nonattainment area.<sup>35</sup>

At Step 2 of the 4-step interstate transport framework, UDAQ utilized a weight of evidence approach.<sup>36</sup> As part of its weight of evidence, UDAQ considered EPA's modeling from the March 2018 memorandum to identify which nonattainment and/or maintenance receptors were linked to emissions from Utah. UDAQ identified five nonattainment and maintenance receptors to which the State was projected to contribute greater than 0.70 ppb (1 percent) to the 2023 design values. Table 1 provides information on the five nonattainment and maintenance receptors identified by UDAQ in their SIP submittal.

<sup>29</sup> As examples of general approaches for how such an analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51; CSAPR, 76 FR 48208, 48246–63; CAIR, 70 FR 25162, 25195–229; or the NO<sub>x</sub> SIP Call, 63 FR 57356, 57399–405. See also Revised CSAPR Update, 86 FR 23054, 23086–23116. Consistently across these rulemakings, the EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

<sup>30</sup> The EPA's November 21, 2019 letter to the State of Utah is included in docket ID EPA–R08–OAR–2022–0315 for this action.

<sup>31</sup> The EPA is not proposing any action on the 2008 ozone portion of Utah's January 29, 2020 submittal, or any of the other infrastructure elements apart from those portions submitted to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

<sup>32</sup> Utah's SIP submission at C–005, C–013.

<sup>33</sup> Id. at C–007. The EPA notes that the modeling released with the March 2018 memorandum used 2011 base year inventory data.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id. at C–007–C008.

TABLE 1—2023 AVERAGE AND MAXIMUM DESIGN VALUES AT DOWNWIND RECEPTORS WITH UTAH CONTRIBUTIONS EQUAL TO AND GREATER THAN 0.70 ppb<sup>a</sup>

Receptor ID	State	County	Average design value (ppb)	Maximum design value (ppb)	Utah modeled contribution (ppb)
Nonattainment Receptors:					
80350004 .....	CO	Douglas .....	71.1	73.2	1.08
80590006 .....	CO	Jefferson .....	71.3	73.7	0.83
80690011 .....	CO	Larimer .....	71.2	73.0	1.05
Maintenance Receptors:					
80050002 .....	CO	Arapahoe .....	69.3	71.3	1.23
80590011 .....	CO	Jefferson .....	70.9	73.9	1.04

<sup>a</sup>Data according to March 2018 memorandum modeling.

UDAQ presented all of the monitors to which the State was modeled to contribute at or above the 1 percent of the NAAQS threshold. However, UDAQ indicated in their SIP submittal that they support the use of a 1 ppb threshold and referenced the EPA's August 2018 memorandum, which they characterized as the EPA finding alternative thresholds as "appropriate."<sup>37</sup> UDAQ conducted a

comparison of the 1 percent and 1 ppb thresholds at the five nonattainment or maintenance receptor sites shown in Table 1, analyzing the differences in capture of upwind contribution under the two thresholds (60% for 1 percent and 47% for 1 ppb) to assert that the 1 ppb threshold is appropriate because the capture rates were comparable.<sup>38</sup> UDAQ noted that by using a 1 ppb threshold, the State would only be

linked to four<sup>39</sup> of the five receptors listed in Table 1. UDAQ still elected to evaluate contributions from the fifth receptor (Receptor ID 806590011) "to make a more complete assessment of the modeled results."<sup>40</sup> Table 2 provides UDAQ's analysis of the two contribution thresholds as presented in its January 29, 2020 submission.

TABLE 2—COMPARISON OF 2023 CONTRIBUTION THRESHOLDS AT RECEPTOR SITES IN COLORADO<sup>a</sup>

Receptor ID	County	Total upwind state contr. (ppb)	Sum of upwind contr. captured with 0.70 ppb (1%) threshold	Sum of upwind contr. captured with 1 ppb threshold	Percent of upwind contr. captured using a 0.70 ppb (1%) threshold	Percent of upwind contr. captured using a 1 ppb threshold
80050002 .....	Arapahoe .....	5.98	3.47	3.47	58.0	58.0
80350004 .....	Douglas .....	5.94	3.35	3.35	56.4	56.4
80590006 .....	Jefferson .....	7.06	4.68	2.34	66.3	33.1
80590011 .....	Jefferson .....	6.98	4.51	3.57	64.6	51.1
80690011 .....	Larimer .....	6.33	3.48	2.60	55.0	41.1

<sup>a</sup>Data according to March 2018 memorandum modeling.

In its weight-of-evidence analysis, UDAQ also referenced the EPA's proposed approval of Arizona's interstate transport SIP for the 2008 ozone NAAQS as providing an administrative precedent for its conclusions regarding Utah.<sup>41</sup> UDAQ stated that in that proposal, the EPA considered "the magnitude of ozone attributable to transport from all upwind states collectively contributing to the air quality problem" and, after considering the total contributions from all states that contributed to the same receptors linked to Arizona, determined the collective contribution of emissions to those downwind receptors was negligible "particularly when compared

to the relatively large contributions from upwind states in the East." To support the applicability of the Arizona action, UDAQ again pointed to the March 2018 memorandum modeling to illustrate "the disparity between upwind contributions from states in the East versus the West."<sup>42</sup> Specifically, UDAQ cited modeled collective upwind state contributions to receptors in Connecticut (44.24 ppb to Receptor ID 900190003) and New York (30.68 ppb to Receptor ID 360810124) in comparison to the lesser in-state contributions (3.71 ppb to Receptor ID 900190003 and 13.55 ppb to Receptor ID 360810124) to these receptors. UDAQ then compared these ratios against the highest collective

contributions from upwind states to any of the Colorado nonattainment or maintenance receptors (7.06 ppb to Receptor ID 80590006) and the in-state (Colorado) contribution to this receptor (25.52 ppb). Table 3 provides UDAQ's summary of in-state and upwind state contributions using the March 2018 memorandum modeling. UDAQ asserted that the difference in magnitude between Colorado's modeled in-state contributions to its nonattainment and maintenance receptors and Utah's modeled contributions, especially when compared to receptors in the eastern U.S., led the State to conclude that their interstate contributions to these receptors are negligible.<sup>43</sup>

<sup>37</sup> Utah's SIP submission at C-008.

<sup>38</sup> Id.

<sup>39</sup> Each of the five receptors apart from Receptor ID 80590006 (Jefferson, Colorado).

<sup>40</sup> Utah's SIP submission at C-008.

<sup>41</sup> Id. (quoting 81 FR 15200 (March 22, 2016)).

<sup>42</sup> Id.

<sup>43</sup> Id. at C-009.



TABLE 3—IN-STATE VS. COLLECTIVE UPWIND STATE CONTRIBUTIONS <sup>a</sup>

Receptor ID	County	State	Average design value (ppb)	Maximum design value (ppb)	In-state contribution (ppb)	Total contribution from upwind states (ppb)
80050002 .....	Arapahoe .....	CO	69.3	71.3	22.94	5.98
80350004 .....	Douglas .....	CO	71.1	73.2	24.71	5.94
80590006 .....	Jefferson .....	CO	71.3	73.7	25.52	7.06
80590011 .....	Jefferson .....	CO	70.9	73.9	24.72	6.98
80690011 .....	Larimer .....	CO	71.2	73.0	21.74	6.33

<sup>a</sup> Data according to March 2018 memorandum modeling.

As part of its weight of evidence analysis, UDAQ also considered the impacts of non-anthropogenic and international contributions on the Denver area receptors to which it was linked by the March 2018 memorandum

modeling, claiming that this was identified as a flexibility under Step 3 in the March 2018 memorandum.<sup>44</sup> UDAQ included the information provided in Table 4 to support this point and asserted that the high level of

“[u]ncontrollable” emissions made it unnecessary for the State to consider Step 3 of the 4-step interstate transport framework in its analysis.<sup>45</sup>

TABLE 4—CONTRIBUTIONS FROM CANADA/MEXICO, OFFSHORE, FIRE, AND BIOGENIC EMISSIONS AND THE INITIAL/ BOUNDARY CONDITIONS TO COLORADO RECEPTOR SITES <sup>a</sup>

Receptor ID	County	2023 Maximum design value (ppb)	Non-U.S./non anthro <sup>b</sup> (ppb)	Initial and Boundary conditions	Total uncontrollable contribution (ppb)	Percent of max DV
80050002 .....	Arapahoe .....	71.3	5.39	34.84	40.23	56
80350004 .....	Douglas .....	73.2	5.53	34.74	40.27	55
80590006 .....	Jefferson .....	73.7	7.13	31.41	38.54	52
80590011 .....	Jefferson .....	73.9	6.05	32.96	39.01	53
80690011 .....	Larimer .....	73.0	8.42	34.54	42.96	59

<sup>a</sup> Data according to March 2018 memorandum modeling.

<sup>b</sup> Includes contributions from Canada/Mexico, Offshore, Fire, and Biogenic sources.

Lastly, UDAQ’s weight-of-evidence argument points to reductions in ozone precursor pollutants nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) that have taken place in the State since 2011, the base year for the March 2018 memorandum modeling.<sup>46</sup> UDAQ asserted that their statewide emissions inventory had decreased by 37% (NO<sub>x</sub>) and 30% (VOC), respectively, between 2011 and 2017.<sup>47</sup> UDAQ also pointed to then-forthcoming Best Available Control Technology (BACT) requirements for the Salt Lake City, UT PM<sub>2.5</sub> Nonattainment Area, estimating these would result in projected further reductions of 1,440 tons/year of NO<sub>x</sub> and 5,624 tons/year of VOC within the nonattainment area by 2020.<sup>48</sup> UDAQ also discussed the anticipated reduction in mobile source emissions due to the national Tier 3 Vehicle Emissions and Fuel Standards, as well as increased inspection and compliance requirements for the oil and gas sector, though they did not quantify either of these reductions.<sup>49</sup> UDAQ concluded that it would not be necessary to require

additional reductions at Steps 3 and 4 given the amount of reductions already achieved.<sup>50</sup>

Overall, Utah’s SIP submittal asserts that: (1) A 1 ppb threshold is appropriate for states contributing to the Denver area receptors, including Utah; (2) contributions from Utah to linked nonattainment and maintenance receptors are not significant when considering in-state contributions from Colorado and total collective contributions from all upwind states; (3) contributions from Utah should not be controlled at Step 3 due to the amount of uncontrollable international and non-anthropogenic emissions contributing to the downwind nonattainment and maintenance receptors; and; (4) emissions of VOCs and NO<sub>x</sub> in Utah are declining or have declined such that it is unnecessary to require further reductions at Steps 3 and 4. UDAQ asserted that the combined information in its weight of evidence analysis demonstrates that emissions from the State do not significantly contribute to nonattainment or interfere with the

maintenance of the 2015 ozone NAAQS in any downwind state.

### III. The EPA’s Evaluation

The EPA is proposing to find that Utah’s January 29, 2020 SIP submission does not meet the State’s obligations with respect to prohibiting emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state. The Agency’s decision to propose disapproval of Utah’s SIP submission is based on our evaluation of the SIP using the 4-step interstate transport framework.

#### A. Evaluation of Information Provided by Utah Regarding Step 1 and Step 2

At Step 1 and Step 2 of the 4-step interstate transport framework, UDAQ relied on EPA modeling released in the March 2018 memorandum to identify nonattainment and maintenance receptors and upwind state linkages to those nonattainment and maintenance receptors in 2023. In this proposal, the

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id. at C-011.

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id. at C-013.



EPA relies on the Agency's most recently available modeling (2016v2) to identify upwind contributions and linkages to downwind air quality problems in 2023. The earlier modeling relied on by UDAQ identified a number of nonattainment and maintenance receptor sites in 2023 as did the more recent 2023 modeling. Thus, EPA agrees with UDAQ that for Step 1 under the 4-step interstate transport framework, a number of nonattainment and maintenance receptors for the 2015 ozone NAAQS were projected for 2023 in the Denver area.

In their January 2020 SIP submittal, UDAQ stated that a 1 ppb threshold is appropriate for the Denver area receptors to which it is linked. As noted in Section II of this proposed action, UDAQ cited the EPA's August 2018 memorandum to justify using a 1 ppb alternative contribution threshold at Step 2 as a basis to assert that Utah would not be linked to some projected downwind nonattainment or maintenance receptors. UDAQ did not appear to argue in its submittal that 1 percent of the NAAQS would *not* be an appropriate threshold for upwind contribution to the Denver area receptors, and purported to evaluate contribution even at a fifth receptor to which it contributed less than 1 ppb (See Submittal at C-009). The EPA views the 1 percent of NAAQS threshold as the more appropriate threshold, as explained elsewhere in this document.<sup>51</sup>

As discussed in the August 2018 memorandum, the EPA suggested that, with appropriate additional analysis, it may be reasonable for states to use a 1 ppb contribution threshold, as an alternative to a 1 percent threshold, at Step 2 of the 4-step interstate transport framework, for the purposes of identifying linkages to downwind receptors. Utah conducted an analysis comparing the 1 ppb and 1 percent thresholds, as shown in Table 2 of this document and asserted that the 1 ppb threshold is appropriate because the capture rates are generally comparable in the March 2018 memorandum modeling. However, UDAQ did not adequately explain how a 1 ppb threshold would be justified with respect to all the receptors to which Utah is linked. While the EPA agrees that the capture rate is comparable with

regard to some of the listed Denver area receptors, the use of the alternative 1 ppb threshold would have the result of reducing the amount of cumulative upwind state contributions that would be captured for other receptors. Specifically, the two Jefferson County receptors (sites 80590006 and 80590011) captured 33.2% and 13.5% less upwind contribution, respectively, at 1 ppb than at 1 percent using the March 2018 memorandum modeling UDAQ relied on (see Table 2). This far exceeds the roughly 7 percent loss in total upwind state contributions the EPA found would occur at 1 ppb on a nationwide basis in its August 2018 memorandum, but UDAQ offered no further explanation why that level of loss in cumulative upwind state contribution would be approvable with respect to the receptors to which it was linked. Indeed, this degree of loss in cumulative upwind state contribution appears more comparable to what would occur at a threshold of 2 ppb, which the EPA indicated in its August 2018 memorandum would generally not be approvable.<sup>52</sup> While the EPA does not, in this action, approve of UDAQ's application of the 1 ppb threshold, because all of Utah's linkages based on the EPA's updated 2016v2 modeling (See Table 5 below) are greater than 1 ppb to projected downwind nonattainment or maintenance receptors, UDAQ's use of this alternative threshold at Step 2 of the 4-step interstate framework would not alter our review and proposed disapproval of this SIP submittal.

The EPA here shares further evaluation of its experience since the issuance of the August 2018 memorandum regarding use of alternative thresholds at Step 2. This experience leads the Agency to now believe it may not be appropriate to continue to attempt to recognize alternative contribution thresholds at Step 2. The August 2018 memorandum stated that "it may be reasonable and appropriate" for states to rely on an alternative threshold of 1 ppb threshold at Step 2.<sup>53</sup> (The memorandum also indicated that any higher alternative threshold, such as 2 ppb, would likely not be appropriate.) However, the EPA also provided that "air agencies should consider whether the recommendations in this guidance are appropriate for each situation." Following receipt and review of 49 good neighbor SIP submittals for the 2015 8-hour ozone NAAQS, the EPA's experience has been that nearly every state that attempted to rely on a

1 ppb threshold did not provide sufficient information and analysis to support a determination that an alternative threshold was reasonable or appropriate for that state. For instance, in nearly all submittals, the states did not provide the EPA with analysis specific to their state or the receptors to which its emissions are potentially linked. In one case, the proposed approval of Iowa's SIP submittal, the EPA expended its own resources to attempt to supplement the information submitted by that state, in order to more thoroughly evaluate the state-specific circumstances that could support approval.<sup>54</sup> It was at the EPA's sole discretion to perform this analysis in support of Iowa's submittal, and the Agency is not obligated to conduct supplemental analysis to fill the gaps whenever it believes a state's analysis is insufficient. The Agency no longer intends to undertake supplemental analysis of SIP submittals with respect to alternative thresholds at Step 2 for purposes of the 2015 ozone NAAQS. Furthermore, the EPA's experience since 2018 is that allowing for alternative Step 2 thresholds may be impractical or otherwise inadvisable for a number of additional policy reasons. For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. Based on its review of submittals to-date and after further consideration of the policy implications of attempting to recognize an alternative Step 2 threshold for certain states, the Agency now believes the attempted use of different thresholds at Step 2 with respect to the 2015 ozone NAAQS raises substantial policy consistency and practical implementation concerns.<sup>55</sup> The availability of different thresholds at Step 2 has the potential to result in inconsistent application of good neighbor obligations based solely on the strength of a state's SIP submittal at Step 2 of the 4-step interstate transport framework. From the perspective of ensuring effective regional implementation of good neighbor obligations, the more important analysis is the evaluation of the emissions

<sup>51</sup> We note the explanation for how the 1 percent contribution threshold was originally derived is available in the 2011 CSAPR rulemaking. See 76 FR 48208, 48237–38. Further, in the CSAPR Update, the EPA re-analyzed the threshold for purposes of the 2008 ozone NAAQS and determined it was appropriate to continue to apply this threshold. See 81 FR 74504, 74518–19.

<sup>52</sup> See August 2018 memorandum at 4.

<sup>53</sup> *Id.*

<sup>54</sup> See Air Plan Approval; Iowa; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard, 85 FR 12232 (March 2, 2020). The Agency received adverse comment on this proposed approval and has subsequently formally withdrawn the proposed approval. 87 FR 9477 (Feb. 22, 2022).

<sup>55</sup> We note that Congress has placed on the EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. See CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

reductions needed, if any, to address a state's significant contribution after consideration of a multifactor analysis at Step 3, including a detailed evaluation that considers air quality factors and cost. Where alternative thresholds for purposes of Step 2 may be "similar" in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of an alternative threshold would allow certain states to avoid further evaluation of potential emission controls while other states must proceed to a Step 3 analysis. This can create significant equity and consistency problems among states. Further, it is not clear that national ozone transport policy is best served by allowing for less stringent thresholds at Step 2. The EPA recognized in the August 2018 memorandum that there was some similarity in the amount of total upwind contribution captured (on a nationwide basis) between 1 percent and 1 ppb. However, the EPA notes that while this may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3 (e.g., roughly seven percent of total upwind state contribution was lost according to the modeling underlying

the August 2018 memorandum;<sup>56</sup> in the EPA's updated modeling, the amount lost is five percent). Considering the core statutory objective of ensuring elimination of all significant contribution to nonattainment or interference of the NAAQS in other states and the broad, regional nature of the collective contribution problem with respect to ozone, there does not appear to be a compelling policy imperative in allowing some states to use a 1 ppb threshold while others rely on a 1 percent of NAAQS threshold.

Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less stringent ozone NAAQS), is also important. Continuing to use a 1 percent of NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, so as to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport. *Accord* 76 FR 48237–38. Therefore, notwithstanding the August 2018 memorandum's recognition of the potential viability of alternative Step 2 thresholds, and in particular, a potentially applicable 1 ppb threshold, the EPA's experience since the issuance

of that memorandum has revealed substantial programmatic and policy difficulties in attempting to implement this approach. Nonetheless, the EPA is not at this time rescinding the August 2018 memorandum. The basis for disapproval of Utah's SIP submission with respect to the Step 2 analysis is, in the Agency's view, warranted even under the terms of the August 2018 memorandum. The EPA invites comment on this broader discussion of issues associated with alternative thresholds at Step 2. Depending on comment and further evaluation of this issue, the EPA may determine to rescind the August 2018 memorandum in the future.

As described in Section I of this preamble, the EPA recently performed air quality modeling using the 2016v2 emissions platform to project design values and contributions for 2023. These data were examined to determine if Utah contributes at or above the threshold of 1 percent of the 2015 8-hour ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. As shown in Table 5, the EPA's 2016v2 modeling projects that in 2023, emissions from Utah will contribute greater than 1 percent of the standard to nonattainment receptors in both Douglas and Jefferson Counties, Colorado.<sup>57</sup>

TABLE 5—UTAH LINKAGE RESULTS BASED ON EPA UPDATED 2023 MODELING <sup>a</sup>

Receptor ID	Location	Nonattainment/maintenance	2023 Average design value (ppb)	2023 Maximum design value (ppb)	Utah contribution (ppb)
80350004 .....	Douglas County, CO .....	Nonattainment .....	71.7	72.3	1.37
80590006 .....	Jefferson County, CO .....	Nonattainment .....	72.6	73.3	1.10
80590011 .....	Jefferson County, CO .....	Nonattainment .....	73.8	74.4	1.06

<sup>a</sup> According to data from 2016v2 platform modeling.

In regard to UDAQ's argument that contributions from Utah are not significant when considering total collective contributions from all upwind states to the same receptors, as well as UDAQ's argument that ozone transport is somehow fundamentally different in the west than the east, the EPA disagrees. The EPA's recent air quality modeling shows that multiple upwind states collectively contributed to projected downwind nonattainment or

maintenance receptors in Colorado. In particular, the EPA found that the total upwind states' contribution to ozone concentrations (from linked and unlinked states) to identified downwind air quality problems in Colorado is between 6 and 7 percent, as shown in Table 6. The EPA has found that the collective contribution of emissions from upwind states represents a significant portion of the ozone concentrations at projected

nonattainment and maintenance receptors in Colorado.

In its SIP submittal, UDAQ pointed to the EPA's approval of an Arizona interstate transport SIP for the 2008 ozone NAAQS based on collective transport contributions.<sup>58</sup> However, for that SIP, Arizona was the only state linked to the downwind monitoring sites at issue and the range of total upwind-state contributions to those sites identified in the Arizona case were

<sup>56</sup> See August 2018 memorandum, at 4.

<sup>57</sup> These modeling results are consistent with the results of a prior round of 2023 modeling using the 2016v1 emissions platform which became available to the public in the fall of 2020 in the Revised CSAPR Update, as noted in Section I. That

modeling showed that Utah had a maximum contribution equal to or greater than 0.70 ppb to multiple nonattainment or maintenance-only receptor in 2023. These modeling results are included in the file "Ozone Design Values and Contributions Revised CSAPR Update.xlsx" in docket EPA-HQ-OAR-2021-0663.

<sup>58</sup> Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements To Address Interstate Transport for the 2008 Ozone NAAQS. 81 FR 31513 (May 19, 2016).

very low as well, in the range of 2.5 to 4.4 percent of the design value for *all* upwind states, including both linked (above 1 percent) and unlinked (below 1 percent) state contributions.

TABLE 6—ALL UPWIND STATE CONTRIBUTIONS TO NONATTAINMENT RECEPTORS IN COLORADO <sup>a</sup>

Site ID	State	County	2023 Avg (ppb)	2023 Max (ppb)	Contribution of all upwind states combined (ppb) <sup>b</sup>	Percent contribution of all upwind states combined <sup>c</sup>
80350004 .....	Colorado .....	Douglas .....	71.7	72.3	5.17	7.21
80590006 .....	Colorado .....	Jefferson .....	72.6	73.3	4.23	5.83
80590011 .....	Colorado .....	Jefferson .....	73.8	74.4	4.34	5.88

<sup>a</sup> According to data from 2016v2 platform modeling.

<sup>b</sup> The contribution from all upwind states and percent contribution are based on individual upwind contributions that are truncated to two digits to the right of the decimal, as provided in *regulations.gov* at document EPA-HQ-OAR-2021-0668-0069.

<sup>c</sup> Calculated using the projected 2023 average design values for the applicable receptors.

As noted, the EPA has consistently found that the 1 percent threshold is appropriate for identifying interstate transport linkages for states collectively contributing to downwind ozone nonattainment or maintenance problems because that threshold captures a high percentage of the total pollution transport affecting downwind receptors. The EPA believes contribution from an individual state equal to or above 1 percent of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located. In the case of the two Jefferson County, Colorado nonattainment receptors listed in Table 6, two states, including Utah, contribute emissions greater than or equal to 1 percent of the 2015 ozone NAAQS. Three states, also including Utah, contribute above 1 percent to the nonattainment receptor located in Douglas County, CO. Given the 2016v2 modeling results and the EPA's consistent application of the 1 percent threshold to establish linkages, the EPA is proposing to determine that Utah contributes to nonattainment and interferes with maintenance of the 2015 ozone NAAQS in the Denver, Colorado area.

Further, the EPA has explained in prior actions on western states' ozone transport SIPs that a 1 percent threshold may be appropriate in the west just as much as in the east. When the EPA took action on Utah's SIP submittal as to prong 2 for the 2008 ozone NAAQS, the EPA addressed the basis for applying a 1 percent threshold at least as to Colorado receptors and rejected comments advocating for a higher threshold. 81 FR 71991, 71994–95 (Oct. 19, 2016). The EPA explained the basis

for the 1 percent threshold as derived in the CSAPR and CSAPR Update rulemakings, and then explained that the same reasoning would hold true with respect to the Colorado receptors to which Utah was linked. *Id.* The EPA noted that Utah's advocacy for a higher contribution threshold of 2 percent of the NAAQS was not technically supported and “appears to only be justified by the conclusion that Utah would not have been linked to Denver receptors at this level.” *Id.* at 71995.

Similarly, in acting on Wyoming's interstate transport submittals for the 2008 ozone NAAQS, the EPA consistently applied the 1 percent threshold and rejected use of a higher threshold. The EPA explained that a 1 percent threshold was appropriate to apply for a Colorado receptor “because the air quality problem in that area resulted in part from the relatively small individual contribution of upwind states that collectively contribute a larger portion of the ozone contributions (9.7%), comparable to some eastern receptors. . . .” See 84 FR 3389, 3391 (Feb. 12, 2019).

When the EPA approved Arizona's 2008 ozone NAAQS transport SIP submittal, it found the 1 percent threshold appropriate to apply as to that western state. 81 FR 15200, 15202–03 (March 22, 2016). We stated that we disagreed with Arizona's contention that it is unclear what screening threshold is significant for southwestern states when addressing interstate transport contributions. We explained that we believe contribution from an individual state equal to or above 1 percent of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem

regardless of where the receptor is geographically located. *See id.* 15202.

As discussed in further detail below, the EPA found based on an analysis of the California monitoring sites at issue in that action that Arizona was not contributing to downwind nonattainment or maintenance problems.

UDAQ relies on the EPA's approval of Arizona's 2008 ozone NAAQS transport SIP as a basis for the claim that its contributions to Colorado are “negligible.” <sup>59</sup> In that action the EPA made an assessment of the nature of certain monitoring sites in California. The EPA noted that a “factor [ . . . ] relevant to determining the nature of a projected receptor's interstate transport problem is the magnitude of ozone attributable to transport from all upwind states collectively contributing to the air quality problem.” 81 FR at 15203. The EPA observed that only one upwind state (Arizona) was linked above 1 percent of the 2008 ozone NAAQS to the two relevant monitoring sites in California, and the cumulative ozone contribution from all upwind states to those sites was 2.5 percent and 4.4 percent of the total ozone concentration, respectively. The EPA determined the size of those cumulative upwind contributions was “negligible, particularly when compared to the relatively large contributions from upwind states in the East or in certain other areas of the West.” *Id.* (emphasis added). In that action, the EPA concluded the two California sites to which Arizona was linked should not be treated as receptors for the purposes of determining Good Neighbor obligations for the 2008 ozone NAAQS. *Id.*

As an initial matter, we note that this analysis is properly considered at Step

<sup>59</sup> See 81 FR 15200 (March 22, 2016) (proposal); 81 FR 31513 (May 19, 2016) (final rule; no comments received).

1 of the 4-step framework rather than at Step 2, as it is a determination of whether an interstate-pollution transport problem should be considered to exist at all, *before* reaching a determination as to which states contribute to that problem. As the EPA explained in its Arizona action, it considered the 1 percent of NAAQS threshold appropriate to apply at Step 2. *Id.* at 15202. *See also id.* at 15203 (“EPA believes the emissions that result in transported ozone from upwind states have limited impacts on the projected air quality problems in El Centro, California and Los Angeles, California, and therefore should not be treated as receptors for purposes of determining the interstate transport obligations of upwind states.”). However, because UDAQ has presented this argument as a part of its weight of evidence analysis at Step 2, we present this analysis in turn here, as related to UDAQ’s Step 2 arguments.

Turning to the substance of UDAQ’s argument that the EPA’s Arizona action supports an approval here: The conclusions the EPA reached regarding El Centro and Los Angeles California cannot be reached with respect to the receptors in Colorado, and the EPA has consistently taken this same position across several prior actions addressing Wyoming’s and Utah’s interstate transport obligations, where we have concluded that the receptors in Colorado are “substantially” influenced by upwind-state emissions. *See* 82 FR 9155, 9157 (Feb. 3, 2017). The EPA’s view in acting on Wyoming and Utah’s 2008 ozone NAAQS SIP submittals was that “the air quality problem in [the Denver nonattainment area of Colorado] resulted in part from the relatively small individual contribution of upwind states that collectively contribute a larger portion of the ozone contributions (9.7%), comparable to some eastern receptors . . . .” *See* 84 FR 3389, 3391 (Feb. 12, 2019).<sup>60</sup> *See also* 81 FR 71991, 71994–95 (Oct. 19, 2016); 81 FR 28807, 28810 (May 10, 2016) (Colorado receptors are impacted by interstate transport where total upwind state contribution is about 11 percent of the total ozone concentration, and five states were projected to be linked).

Indeed, the EPA has specifically addressed this precise comparison between the circumstances of Arizona’s approval and the nature of the receptors in Colorado. In approving Utah’s transport SIP as to prong 1 for the 2008 ozone NAAQS, the EPA found its analysis as to Arizona’s impact on California sites did not apply to Utah’s impact on Colorado’s sites (which the EPA found remained at least maintenance receptors as to the 2008 ozone NAAQS). *See* 82 FR 9155, 9157 (Feb. 3, 2017) (“The EPA’s assessment concluded that emissions reductions from Arizona are not necessary to address interstate transport because the total collective upwind state ozone contribution to these receptors is relatively low compared to the air quality problems typically addressed by the good neighbor provision. As discussed previously, the EPA similarly evaluated collective contribution to the Douglas County, Colorado monitor *and finds the collective contribution of transported pollution to be substantial*”) (emphasis added).<sup>61</sup>

The modeling data on which UDAQ relied in its SIP submittal (from the EPA’s March 2018 memorandum) continue to bear out these conclusions (*see* Table 3 of UDAQ’s submittal). That modeling showed contributions from more than one upwind state above 1 percent of the NAAQS at all Colorado receptors, and it showed total upwind-state contribution to be between 8 and 10 percent of the total ozone concentrations at those receptors. The EPA disagrees that that degree of upwind state contribution can be characterized as “negligible.”

The EPA acknowledges that in its most recent modeling of 2023 (using the 2016v2 platform), the degree of the interstate transport problem to Colorado is now projected to lessen somewhat compared to previous projections of 2023. However, these projected improvements are still not sufficient to draw a conclusion that Colorado is not impacted to a considerable degree by out of state emissions. The EPA’s recent air quality modeling continues to show that multiple upwind states collectively contribute to projected downwind nonattainment or maintenance receptors in Colorado—specifically, California, Utah, and Wyoming all contribute above 1 percent of the NAAQS to at least one of Colorado’s receptors in 2023. (In contrast, at the time EPA approved Arizona’s 2008 ozone NAAQS good

neighbor SIP, Arizona was the only state linked above 1 percent at the relevant California monitoring sites.) Further, our most recent modeling shows that the total upwind state contribution to ozone concentrations at identified downwind air quality problems in Colorado is approximately 6 to 7 percent, as shown in Table 6. That remains higher than the 2 to 4% range of total upwind contribution the EPA found to be negligible with respect to the California sites analyzed in the Arizona action. Therefore, the EPA continues to find that the collective contribution of emissions from upwind states represents a significant portion of the ozone concentrations at projected nonattainment and maintenance receptors in Colorado.

Based on the EPA’s evaluation of Utah’s January 2020 submission and consideration of the EPA’s most recent (2016v2) modeling results for 2023, the EPA proposes to find that Utah is linked at Steps 1 and 2 and has an obligation to assess potential emissions reductions from sources or other emissions activity at Step 3 of the 4-step framework.

#### *B. Evaluation of Information Provided Regarding Step 3*

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

To effectively evaluate which emissions in the state should be deemed “significant” and therefore prohibited, states generally should prepare an accounting of sources and other emissions activity for relevant pollutants and assess potential, additional emissions reduction opportunities and resulting downwind air quality improvements. The EPA has consistently applied this general approach (*i.e.*, Step 3 of the 4-step interstate transport framework) when identifying emissions contributions that the Agency has determined to be “significant” (or interfere with maintenance) in each of its prior federal, regional ozone transport rulemakings, and this interpretation of the statute has been upheld by the Supreme Court. *See EME Homer City*, 572 U.S. 489, 519 (2014). While the EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner the EPA has done in its prior regional transport rulemakings, state implementation plans addressing the

<sup>60</sup> While EPA ultimately approved Wyoming’s transport SIP submittal as proposed in this 2019 action, this was on the basis of a unique air quality demonstration developed by Colorado itself to establish that there would be no air quality problem in Colorado with respect to the 2008 ozone NAAQS once air quality monitoring data influenced by “atypical events” were removed (assuming 2023 was the correct analytical year). *See* 84 FR 3392–94; 84 FR 14270 (April 10, 2019) (final action; no comments received).

<sup>61</sup> As noted in that action, because Utah was found to still be linked to Colorado’s *maintenance* receptors under the 2008 ozone NAAQS, EPA’s disapproval of the SIP as to prong 2 remained in place. *See id.* at 9156.

obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit “any source or other type of emissions activity within the State” from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, states must complete something similar to the EPA’s analysis (or an alternative approach to defining “significance” that comports with the statute’s objectives) to determine whether and to what degree emissions from a state should be “prohibited” to eliminate emissions that will “contribute significantly to nonattainment in, or interfere with maintenance of” the NAAQS in any other state.

UDAQ did not conduct such an analysis in its SIP submission, determining instead that the relatively large impact of so-called “uncontrollable” emissions (*i.e.*, international and non-anthropogenic emissions) and home state emissions at the Colorado receptors, as well as emissions reductions already achieved as a result of other regulatory programs, meant the State had no further obligation to assess or implement additional emissions control measures at Steps 3 or 4. The EPA disagrees with these conclusions for the reasons below.

UDAQ asserted that receptors in the western U.S. are much more impacted by emissions from non-U.S. sources or non-anthropogenic sources (see Table 4) than by upwind State contributions, especially when compared to such impacts in the eastern U.S., making Utah’s contributions to Denver area receptors comparably negligible. The EPA disagrees that contributions from other sources, including international or non-anthropogenic emissions, in any way excuse Utah from addressing its own significant contribution to nonattainment or interference with maintenance at downwind areas under CAA section 110(a)(2)(D)(i)(I). The EPA acknowledges that the consideration of international contributions was among the “Preliminary List of Potential Flexibilities” provided in the March 2018 memorandum, as UDAQ noted. However, as described in section I.D. of this proposed action, the EPA does not consider the potential flexibilities described in the March 2018 memorandum as constituting agency guidance; rather, the EPA must thoroughly review the technical and legal merits of invoking the concepts in that Appendix.

UDAQ’s reasoning related to international and non-anthropogenic emissions is inapplicable to the requirements of CAA section 110(a)(2)(D)(i)(I). The good neighbor

provision requires states and the EPA to address interstate transport of air pollution that *contributes to* downwind states’ ability to attain and maintain NAAQS. Whether emissions from other countries or non-anthropogenic sources also contribute to the same downwind air quality issue is irrelevant in assessing whether a downwind state has an air quality problem, or whether an upwind state is significantly contributing to that problem. States are not obligated under CAA section 110(a)(2)(D)(i)(I) to reduce emissions sufficient on their own to resolve downwind receptors’ nonattainment or maintenance problems. Rather, states are obligated to eliminate their own “significant contribution” or “interference” with the ability of other states to attain or maintain the NAAQS.

Indeed, the D.C. Circuit in *Wisconsin* specifically rejected petitioner arguments suggesting that upwind states should be excused from good neighbor obligations on the basis that some other source of emissions (whether international or another upwind state) could be considered the “but-for” cause of downwind air quality problem. 938 F.3d 303 at 323–324. The court viewed petitioners’ arguments as essentially an argument “that an upwind State ‘contributes significantly’ to downwind nonattainment only when its emissions are the sole cause of downwind nonattainment.” 938 F.3d 303 at 324. The court explained that “an upwind State can ‘contribute’ to downwind nonattainment even if its emissions are not the but-for cause.” *Id.* at 324–325. *See also Catawba County v. EPA*, 571 F.3d 20, 39 (D.C. Cir. 2009) (rejecting the argument “that ‘significantly contribute’ unambiguously means ‘strictly cause’” because there is “no reason why the statute precludes EPA from determining that [an] addition of [pollutant] into the atmosphere is significant even though a nearby county’s nonattainment problem would still persist in its absence”); *Miss. Comm’n on Env’tl. Quality v. EPA*, 790 F.3d 138, 163 n.12 (D.C. Cir. 2015) (observing that the argument that “there likely would have been no violation at all . . . if it were not for the emissions resulting from [another source]” is “merely a rephrasing of the but-for causation rule that we rejected in *Catawba County*.”). Therefore, a state is not excused from eliminating its significant contribution on the basis that some amount of “uncontrollable” emissions (whether international or non-anthropogenic) also contribute some amount of pollution to the same receptors to which the state is linked.

Further, the data supplied in UDAQ’s SIP submission tends to be self-refuting on this point. Table 4 of the submission indicates that 52 percent–59 percent (depending on receptor) of the total ozone concentrations at the Colorado receptors are from non-anthropogenic or non-U.S. emissions sources. This means that between 41 percent–48 percent of the ozone levels at the Colorado receptors *are* the result of anthropogenic emissions originating in the U.S. Those emissions are clearly within the authority of states and the EPA to redress, and reducing some portion of those emissions can be assumed to improve air quality at the Colorado receptors. While not all of those U.S. anthropogenic emissions can be attributed to Utah, Utah’s emissions are shown by the modeling to contribute to Colorado’s air quality problem at levels sufficient to warrant evaluation of emissions control opportunities at Step 3 of the EPA’s longstanding analytical framework.

The EPA also disagrees that greater in-state emissions, in this case anthropogenic emissions generated in Colorado, preclude upwind states’ good neighbor obligations under CAA section 110(a)(2)(D)(i)(I). The D.C. Circuit has held on five different occasions that the timing framework for addressing interstate transport obligations must be consistent with the downwind areas’ attainment schedule. In particular, for the ozone NAAQS, the states and the EPA are to address interstate transport obligations “as expeditiously as practicable” and no later than the attainment schedule set in accordance with CAA section 181(a). *See North Carolina*, 531 F.3d at 911–13; *Wisconsin*, 938 F.3d at 313–20; *Maryland*, 958 F.3d at 1204; *New York v. EPA*, 964 F.3d 1214, 1226 (D.C. Cir. 2020); *New York v. EPA*, 781 Fed. App’x 4, 6–7 (D.C. Cir. 2019). The court in *Wisconsin* explained its reasoning in part by noting that downwind jurisdictions often may need to heavily rely on emissions reductions from upwind states in order to achieve attainment of the NAAQS, 938 F.3d at 316–17; such states would face increased regulatory burdens including the risk of bumping up to a higher nonattainment classification if attainment is not reached by the relevant deadline, *Maryland*, 958 F.3d at 1204. The statutory framework of the CAA and these cases establish clearly that states and the EPA must address interstate transport obligations in line with the attainment schedule provided in the CAA in order to timely assist downwind states in attaining and

maintaining the NAAQS, and this schedule is “central to the regulatory scheme.” *Wisconsin*, 938 F.3d at 316 (quoting *Sierra Club v. EPA*, 294 F.3d 155, 161 (D.C. Cir. 2002)). Therefore, the EPA does not find that it should be the sole responsibility of the downwind state to resolve its nonattainment, especially after having established that collective contribution of emissions from multiple upwind states is responsible for a considerable portion of the downwind air quality problem. To that end, the EPA does not find UDAQ’s arguments regarding the impacts of emissions from sources other than upwind states to be relevant to the analysis of interstate transport to Denver area nonattainment receptors. Therefore, the EPA finds that Utah has not adequately addressed its modeled contributions to projected downwind nonattainment receptors identified by the EPA.

UDAQ also pointed to reductions in emissions of VOCs and NO<sub>x</sub> in the State through a combination of regulatory actions. Though the EPA considers the measures UDAQ described to be beneficial in reducing VOCs and NO<sub>x</sub> in the State, UDAQ’s analysis primarily quantifies anticipated reductions from area source rules in the Salt Lake City 2006 PM<sub>2.5</sub> nonattainment area. These rules all were finalized between 2008 and 2018 (see UDAQ submittal Table 5). UDAQ also cites but does not quantify emissions reductions from certain oil and gas sector rules which have effective dates in March 2019 (Table 6 in UDAQ’s submittal). However, the EPA’s modeling captures the air quality effects of existing on-the-books control measures in the emissions inventory baseline, and that modeling confirms that these control programs were not sufficient to eliminate Utah’s linkage at Steps 1 and 2 under the 2015 8-hour ozone NAAQS. The State was therefore obligated at Step 3 to assess *additional* control measures using a multifactor analysis.

Further, the emissions reductions cited in Table 5 of UDAQ’s submittal are predominantly from reductions in VOC emissions. The EPA has long recognized that the more important ozone-precursors for purposes of addressing regional and long-range interstate ozone transport are nitrogen oxides (NO<sub>x</sub>).<sup>62</sup> According to Table 5 of the submittal, the existing rules UDAQ cited may achieve on the order of roughly 600 tons of NO<sub>x</sub> reductions per ozone season (roughly 4 tons per day multiplied by the number of days in an ozone season). The import of this figure is unclear;

regardless, UDAQ did not explain the baseline from which that amount of emissions reductions was derived, nor did UDAQ explain how or why that amount of emissions reduction is sufficient to eliminate significant contribution or interference with maintenance. For example, UDAQ could have but did not conduct a comparative assessment of additional emissions control opportunities and associated costs, develop a regional emissions-reduction assessment, or analyze the air quality benefits of those strategies at the downwind receptors. All of these are factors in the analysis the EPA has consistently performed at Step 3 over several ozone transport rulemakings such as CSAPR and the CSAPR Update.

In particular, UDAQ’s analysis failed to evaluate emissions and emissions-reduction opportunities from most of the highest emitting NO<sub>x</sub> sources in the State, including multiple electric generating units located further east of the Salt Lake City, Utah area and thus closer to the Denver area receptors to which Utah contributes greater than 1 percent of the NAAQS. A state conducting a Step 3 analysis should undertake an evaluation of these kinds of substantial and potentially cost-effective emissions reduction opportunities, and the failure to do so is grounds for disapproval.

For these reasons, the EPA finds that the historically-achieved emissions reductions listed in Utah’s January 2020 submission are not a satisfactory Step 3 analysis and do not demonstrate that the Utah SIP contains adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

We therefore propose to find that Utah was required to analyze emissions from the sources and other emissions activity from within the State to determine whether its contributions were significant, and we propose to disapprove its submission because the State failed to do so.

#### C. Evaluation of Information Provided Regarding Step 4

Step 4 of the 4-step interstate transport framework calls for development of permanent and federally enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. As mentioned previously, Utah’s SIP submission did not contain an evaluation of additional emission

control opportunities (or establish that no additional controls are required), thus, no information was provided at Step 4. As a result, the EPA proposes to disapprove Utah’s submittal on the separate, additional basis that the State has not developed permanent and enforceable emissions reductions necessary to meet the obligations of CAA section 110(a)(2)(D)(i)(I).

#### D. Conclusion

Based on the EPA’s evaluation of Utah’s SIP submission, the Agency is proposing to find that the portion of the State’s January 29, 2020 SIP submission addressing CAA section 110(a)(2)(D)(i)(I) for the 2015 8-hour ozone NAAQS does not meet Utah’s interstate transport obligations, because it fails to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of this NAAQS in any other state.

#### IV. Proposed Action

We are proposing to disapprove Utah’s SIP submission pertaining to interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states. Under CAA section 110(c)(1), disapproval would establish a 2-year deadline for the EPA to promulgate a FIP for Utah to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2015 8-hour ozone NAAQS in other states, unless the EPA approves a SIP that meets these requirements. Disapproval does not start a mandatory CAA sanctions clock for Utah. The remaining elements of the State’s January 29, 2020 submission are not addressed in this action and either have been or will be acted on in a separate rulemaking.

#### V. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

#### B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

<sup>62</sup> See, e.g., 86 FR 23054, 23087.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

*K. CAA Section 307(b)(1)*

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) When the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).<sup>63</sup>

If the EPA takes final action on this proposed rulemaking the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action (to the extent a court finds the action to be locally or regionally applicable) is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), the EPA interprets and applies section 110(a)(2)(d)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental

<sup>63</sup> In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

U.S. In particular, the EPA is applying here (and in other proposed actions related to the same obligations) the same, nationally consistent 4-step framework for assessing good neighbor obligations for the 2015 ozone NAAQS. The EPA relies on a single set of updated, 2016-base year photochemical grid modeling results of the year 2023 as the primary basis for its assessment of air quality conditions and contributions at Steps 1 and 2 of that framework. Further, the EPA proposes to determine and apply a set of nationally consistent policy judgments to apply the 4-step framework. The EPA has selected a nationally uniform analytic year (2023) for this analysis and is applying a nationally uniform approach to nonattainment and maintenance receptors and a nationally uniform approach to contribution threshold analysis.<sup>64</sup> For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on one or more determinations of nationwide scope or effect for purposes of CAA section 307(b)(1).<sup>65</sup>

**List of Subjects in 40 CFR Part 52**

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

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

Dated: May 16, 2022.

**KC Becker,**

*Regional Administrator, Region 8.*

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**BILLING CODE 6560–50–P**

<sup>64</sup> A finding of nationwide scope or effect is also appropriate for actions that cover states in multiple judicial circuits. In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

<sup>65</sup> The EPA may take a consolidated, single final action on all of the proposed SIP disapproval actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Should the EPA take a single final action on all such disapprovals, this action would be nationally applicable, and the EPA would also anticipate, in the alternative, making and publishing a finding that such final action is based on a determination of nationwide scope or effect.