Rule No.	Rule title	State effective date	Final rule citation, date	Comments
R307–302–06	Prohibition	1/1/2013	[Insert **Federal Register** citation], 10/19/2016.	Conditionally approved through 10/19/2017.
*	*	*	*	*
R307–312. Aggregate Processing Operations for $PM_{2.5}$; Nonattainment Areas				
R307–312	Aggregate Processing Operations for $PM_{2.5}$ Nonattainment Areas.	2/4/2016	[Insert **Federal Register** citation], 10/19/2016.	
*	*	*	*	*
R307–328. Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage				
R307–328	Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage.	2/4/2016	[Insert **Federal Register** citation], 10/19/2016.	
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0107; FRL–9954–13-Region 8]

Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Interstate Transport for Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on portions of six submissions from the State of Utah that are intended to demonstrate that the State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (Act or CAA). These submissions address the 2006 and 2012 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), 2008 ozone NAAQS, 2008 lead (Pb) NAAQS, 2010 sulfur dioxide (SO_2) NAAQS and 2010 nitrogen dioxide (NO_2) NAAQS. The interstate transport requirements under the CAA consist of four elements: Significant contribution to nonattainment (prong 1) and interference with maintenance (prong 2) of the NAAQS in other states; and interference with measures required to be included in the plan for other states to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Specifically, the EPA is approving interstate transport prongs 1, 2 and 4 for the 2008 Pb NAAQS, approving prong 4 for the 2010 SO_2 NAAQS, disapproving prong 4 for the 2006 $PM_{2.5}$, 2008 ozone, 2010 NO_2 and 2012 $PM_{2.5}$ NAAQS, and disapproving prong 2 for the 2008 ozone NAAQS.

DATES: This final rule is effective on November 18, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification Number EPA–R08–OAR–2016–0107. All documents in the docket are listed on the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

I. Background

On May 10, 2016, the EPA proposed action on two submittals from Utah for the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 Pb and 2008 ozone NAAQS. 81 FR 28807. An explanation of the CAA requirements, a detailed analysis of the state's submittals, and the EPA's rationale for approval of a portion of the 2008 Pb submittal and disapproval of a portion of the 2008 ozone submittal were all provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on June 9, 2016. The EPA received four comments on the proposal, which will be addressed in the ''Response to Comments'' section, below.

In the May 10, 2016 proposed action, the EPA proposed to disapprove the Utah SIP for prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. In that document, the EPA cited to air quality modeling conducted to support the promulgation of an update to the Cross-State Air Pollution Rule to address interstate transport with respect to the 2008 ozone NAAQS (CSAPR Update). The air quality modeling (1) identified locations in the U.S. where the EPA anticipates nonattainment or maintenance issues in 2017 for the 2008 ozone NAAQS (these are identified as nonattainment and maintenance receptors), and (2) quantified the projected contributions from emissions from upwind states to downwind ozone concentrations at the nonattainment and maintenance receptors in 2017. The document also

proposed to apply an air quality threshold of one percent of the NAAQS, equivalent to 0.75 ppb with respect to the 2008 ozone NAAQS, to determine whether a state was ''linked'' to an identified downwind air quality problem in another state such that the upwind state may significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind state. The proposal modeling data showed that emissions from Utah contribute above the one percent threshold to two identified maintenance receptors and one nonattainment receptor in the Denver, Colorado area. Accordingly, as the Utah Department of Environmental Quality (UDEQ) did not provide technical analysis to support the State's conclusion that emissions originating in Utah do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state, the EPA proposed to disapprove the Utah SIP as to prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I).

On September 7, 2016, the EPA promulgated a final CSAPR Update, which included updated modeling data that reflected responses to comments received in the context of the CSAPR Update rulemaking.[1] The updated modeling projects three maintenance receptors in the Denver, Colorado area, but it does not project any nonattainment receptors in that area. Table 1 summarizes the air quality modeling results from the updated modeling conducted to support the final CSAPR Update relative to Utah. The modeling continues to indicate that Utah contributes emissions above the one percent threshold of 0.75 ppb with respect to 3 maintenance receptors in the Denver, Colorado area, confirming the data cited at proposal.

TABLE 1—MAINTENANCE RECEPTORS WITH UTAH CONTRIBUTION MODELED ABOVE 1%

Monitor I.D.	State	County	Utah modeled contribution (ppb)
80590006	Colorado	Jefferson	1.03
80590011	Colorado	Jefferson	1.17
80350004	Colorado	Douglas	1.63

Since the updated modeling continues to indicate that the contributions from Utah are above the one percent threshold of 0.75 ppb with respect to maintenance receptors in the Denver, Colorado area, and because the State has not otherwise provided a technical analysis which demonstrates that its SIP contains adequate provisions prohibiting emissions that will interfere with maintenance of the 2008 ozone NAAQS in any other state, the EPA is finalizing a disapproval of the Utah SIP with respect to the prong 2 requirements of CAA section 110(a)(2)(D)(i)(I) as to the 2008 ozone NAAQS.

Based on this new technical information showing that there are no longer any projected 2017 nonattainment receptors in the Denver, Colorado area or any other state to which Utah contributes at or above the one percent threshold, the EPA is not finalizing the proposed disapproval with respect to prong 1 of CAA section 110(a)(2)(D)(i)(I) as to the 2008 ozone NAAQS, as the proposed disapproval was based on in part on the EPA's August 4, 2015 Notice of Data Availability (NODA) modeling of a projected nonattainment receptor in Denver, Colorado. 80 FR 46271. The EPA will address the prong 1 requirements in a separate, subsequent rulemaking.

On August 1, 2016, the EPA proposed action on six submittals from Utah for the visibility-related interstate transport requirements of CAA section 110(a)(2)(D)(i)(II) prong 4. 81 FR 50430. An explanation of the CAA requirements, a detailed analysis of the state's submittals, and the EPA's rationale for approval of portions of the 2008 Pb and 2010 SO_2 submittals and disapproval of portions of the 2006 and 2012 $PM_{2.5}$, 2008 ozone and 2010 NO_2 submittals were all provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on August 31, 2016. The EPA did not receive any comments on this proposed action.

II. Response to Comments

Comment: Commenters UDEQ and the Wyoming Department of Environmental Quality (WDEQ) asserted that the CSAPR Update rulemaking was developed and promulgated for eastern states, and should not apply to western states. UDEQ stated that the EPA acknowledged in the CSAPR Update proposal that it will address contribution levels of western states like Utah on a case-by-case basis. 80 FR 75706, 75708 through 75709, December 3, 2015. The commenters contend that the EPA should consider other factors beyond those considered in developing the CSAPR Update.

UDEQ asserted that there are higher naturally occurring levels of background ozone in the west,[2] specifically citing the EPA's draft Regulatory Impact Analysis for the proposed 2015 ozone NAAQS rulemaking, contending that ''background ozone is a relatively large percentage (*e.g.* 70–80%) of the total seasonal mean ozone in locations in the intermountain western United States.'' [3] The commenter contends that background ozone levels in Utah and Colorado must be taken into consideration when evaluating nonattainment areas within the state borders and the impact that they have on intermountain downwind states.

Commenter WDEQ stated that the CSAPR modeling does not adequately account for important regional differences between the east and the west, including the unique topography, altitude, weather and wildfire prevalence (including intensity and duration) in the western U.S. The commenter asserted that the EPA did not provide a technical explanation for how the model accounts for the differences between the eastern and western U.S. with regard to these factors, and that such an analysis should be conducted before the CSAPR modeling is applied to evaluate

[1] A pre-publication version of the final CSAPR Update rulemaking can be found in the docket for this action, and is available at *https://www3.epa.gov/airmarkets/CSAPRU/Cross-State%20Air%20Pollution%20Rule%20Update%20for%20the%202008%20Ozone%20NAAQS%202060%20AS05%20FRM.pdf* (**Federal Register** publication pending).

[2] *See* National Ambient Air Quality Standards for Ozone, 79 FR 75234, 75382 (December 17, 2014) (proposed rule).

[3] EPA's draft Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ozone p. 2–16.

interstate transport with respect to western states. The commenter recommended that the EPA work with western states to ''make regional adjustments and remove erroneous data from the CSAPR model.''

Response: The commenter does not provide any evidence or technical basis for their claim about the inadequacies of the CSAPR Update modeling for the western U.S. As described in the CSAPR Update Air Quality Modeling Technical Support Document (AQM TSD), the CSAPR modeling was performed for a nationwide domain that accounted for the differences in emissions (including actual wild fires), meteorology, and topography in various regions across the U.S. The AQM TSD includes an evaluation of 2011 base year model performance for 8-hour daily maximum concentrations on a regional and statewide basis as well as for individual monitoring sites. For example, the performance evaluation results for the region that includes Utah and Colorado indicate a mean bias of less than 10 percent for 8-hour daily maximum predicted ozone concentrations compared to the corresponding measured data. As described more fully in the AQM TSD, the EPA's use of the CAMx source apportionment modeling for the CSAPR Update is appropriate and the Agency finds its use sufficient for the purposes of assessing and identifying downwind air quality problems and contributions from upwind states in both the eastern and the western U.S.[4] The emissions modeling TSD for the CSAPR Update final rule ''Preparation of Emission Inventories for the version 6.3, 2011 Emissions Modeling Platform'' describes how fire emissions were developed and modeled using a consistent approach for the contiguous U.S. As described earlier, the most updated modeling continues to indicate that emissions from Utah will interfere with maintenance of the 2008 ozone NAAQS at three receptors in the Denver, Colorado area.

The EPA does not find the information provided by the commenters to indicate flaws in the modeling conducted by the EPA. Rather, the commenters point to factors which the CSAPR Update modeling specifically took into account. For these reasons, the EPA disagrees with these comments and finds the use of the CSAPR Update modeling to evaluate Utah's contributions to interstate transport is reasonable and supported.

The EPA did acknowledge in the proposed CSAPR Update that ''there may be additional criteria to evaluate regarding collective contribution of transported air pollution in the West,'' and that ''timeframe constrains the opportunity to conduct evaluations of additional criteria'' in the context of that rulemaking. 80 FR 75709, December 3, 2015. The commenters do not explain how the EPA's modeling has allegedly failed to consider the other factors that they contend should be taken into account. With respect to background concentrations, UDEQ has not explained how it believes the EPA must consider background ozone levels in evaluating interstate transport in the west, nor has UDEQ cited any specific provision of the statute that specifically requires such consideration. While the EPA does not view the obligation under the good neighbor provision as a requirement for upwind states to bear all of the burden for resolving downwind air quality problems, both upwind and downwind states can take reasonable steps to control emissions impacting downwind air quality even in areas affected by high levels of background concentrations of ozone. Were the EPA to absolve upwind states of the responsibility to make such reasonable reductions, the area's citizens would suffer the health and environmental consequences of such inaction.

Notably, in its comment letter, UDEQ agreed that a further technical analysis was necessary to demonstrate that the state had satisfied prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I), and the State is in the process of developing such an analysis. The EPA will review that additional analysis when it is submitted to the EPA in a subsequent SIP submission.

Comment: Commenter Utility Air Regulatory Group (UARG) cites to EPA's action to approve Arizona's SIP in spite of the CSAPR Update modeling indicating that the state significantly contributed to nonattainment at two California receptors. The commenter contends that the EPA's differing actions on the Utah and Arizona SIPs amount to developing policy about what transport criteria apply in western states. The commenter asserted that the EPA's actions on these two SIPs establish regulatory policy in a piecemeal fashion through separate, case-by-case rulemakings, and that this practice leads to confusion and uncertainty among state officials, the public, and the regulated community. The commenter stated that the EPA should describe the western transport criteria in a comprehensive rulemaking which includes a rationale for selecting these criteria. The commenter asserted that the EPA's failure to do so would deprived interested parties of an opportunity to provide meaningful and comprehensive comments on this issue.

Response: As described in the proposal for this action and in the CSAPR Update, the EPA is assessing each of the western states transport obligations on a case-by-case basis using the information available, which includes information from the CSAPR Update modeling. The rulemaking addressing the Arizona SIP explains, as the commenter notes, why additional factors are relevant to evaluating Arizona's contribution to other states, factors that are not similarly applicable to Utah's contribution to the Denver receptors. Nothing in section 110(a)(2)(D)(i)(I) requires the EPA to establish criteria for evaluating individual SIPs through a national rulemaking. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S.Ct. 1584, 1601 (2014) (''nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligation''). As required by the CAA and Administrative Procedures Act, the EPA clearly described its bases for disapproving the Utah SIP in its proposal. Similarly, the EPA also described its bases for approving the Arizona SIP in its proposal for that action. The public, including the commenter, had an opportunity to provide meaningful and comprehensive comments both on the Utah and Arizona actions, and therefore the EPA disagrees that interested parties are deprived of an opportunity to comment on issues relating to the EPA's analysis of western transport.

Comment: Commenter WDEQ stated that the EPA did not provide an explanation as to what technical analysis from the State of Utah would have been sufficient. Another commenter (UARG), quoting language from the CSAPR Update proposal (80 FR 75715, December 3, 2015), stated that EPA should identify and explain the additional criteria that may be relevant to the western states and whether it is necessary and appropriate to also evaluate the same criteria with respect to eastern states. The commenter

[4] ''The EPA used CAMx photochemical source apportionment modeling to quantify the impact of emissions in specific upwind states on downwind nonattainment and maintenance receptors for 8-hour ozone. CAMx employs enhanced source apportionment techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The strength of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.'' 80 FR 75726, December 3, 2015.

asserted that the EPA's failure to address this issue denied the public a meaningful opportunity to comment on it.

Response: The Supreme Court has made clear that ''nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligation.'' *EPA* v. *EME Homer City Generation,* 134 S.Ct. at 1601. Thus, the EPA does not agree that it is required to identify all relevant criteria for evaluating SIPs before taking formal action on the submissions. The Court explained that ''[t]he statute speaks without reservation: Once a NAAQS has issued, a state 'shall' propose a SIP within three years, [40 U.S.C.] 7410(a)(1), and that SIP 'shall' include, among other components, provisions adequate to satisfy the Good Neighbor Provision, [40 U.S.C.] 7410(a)(2).'' *Id.* It is therefore the responsibility of the state to demonstrate that its SIP contains provisions sufficient to meet the requirements of CAA section 110(a)(2)(D)(i)(I). A state can and should submit all of the technical information it considers relevant to evaluate its contribution to downwind air quality, including anticipated changes in the emissions from sources within the state and any additional factors specific to the state that influence its emissions and air pollution which may transport to other states. As we noted at proposal and in this final action, Utah has not submitted technical information or analysis which leads the EPA to conclude that the state is not interfering with maintenance of the NAAQS in other states, particularly in light of air quality modeling demonstrating that emissions from Utah impact air quality in Denver, Colorado. The basis for this conclusion was clearly explained at proposal, and the EPA therefore does not agree that the public did not have a meaningful opportunity to comment on the factors relevant to the proposed disapproval of the Utah SIP submission.

Comments regarding the factors relevant to evaluation of interstate transport with respect to eastern states are out of the scope of this rulemaking and do not require a response.

Comment: Commenter UDEQ stated that Utah's contributions to Denver are modest and other factors weigh against the conclusion of significant contribution or interference with maintenance. UDEQ argued that the one percent threshold should be a screening threshold that can be overcome by empirical evidence. The commenter cited a proposed EPA action on Idaho's SIP in which EPA Region 10 did not rely solely on Idaho's contribution being below one percent in its action on that SIP, but also considered Idaho's modeling data and analysis that reinforced the EPA modeling results. 80 FR 66862, October 30, 2015. UDEQ argued that the EPA should follow this and ''consider additional factors when evaluating Utah's ozone infrastructure SIP.'' Commenter WDEQ claimed that it is appropriate for western states to use a ''weight of evidence'' approach, as was used in EPA Region 9's proposed action on Arizona's 2008 ozone transport SIP. 81 FR 15200, March 22, 2016.

Response: The EPA encourages states to submit any relevant information, such as that submitted by Idaho, to assist us in evaluating a state's impact on downwind state's air quality and the control requirements in order to determine whether a state's SIP is approvable. The EPA agrees that it is appropriate to analyze all information for western states and make a conclusion based on a weight of the evidence, but the EPA has not received any such evidence from UDEQ that is sufficient to alter our determination that Utah interferes with maintenance at Denver area receptors.

The EPA notes that the one percent threshold as used in the CSAPR rulemakings is in fact a screening threshold. States are not determined to significantly contribute to nonattainment or interfere with maintenance downwind merely because emissions from the state exceed the one percent threshold. Rather, the threshold is used to identify those states that are subject to further analysis to determine whether cost-effective reductions are achievable from sources within the states. The levels of such reductions quantify the amounts of emissions that significantly contribute to nonattainment and interfere with maintenance in other states. CSAPR Update, Final Rule, pre-publication draft at 77–80. If UDEQ believes that the EPA should consider additional factors with respect to its linkage to the Denver receptors, it should identify those factors in its SIP submission. But as noted, UDEQ did not provide any technical analysis in its SIP submission, and to the extent additional factors have been identified in UDEQ's comments, it did not explain how those factors should affect the EPA's conclusion in this action. Without explaining how such factors should impact EPA's analysis, the EPA does not agree that Utah's impacts on the Denver receptors are modest, particularly considering emissions from the State contribute as much as twice the one percent air quality threshold, nor has the State offered any analysis to support this conclusory statement.

The EPA also analyzed the State's submission and in the proposal described deficiencies such as a lack of quantification of the included emission reduction measures or evaluation of how such measures are sufficient to address the State's contribution to nonattainment and maintenance receptors in Denver, Colorado. The commenters here again provide no information as to why the EPA's case-specific analysis of Utah's SIP is incorrect.

Comment: Commenter UDEQ asserted that the one percent screening threshold is arbitrary, stating that EPA only explains why it rejected five percent and anything below one percent, but does not justify one percent as opposed to two percent, which Utah meets. UDEQ argued that this threshold has not been subject to sufficient scrutiny and comment when applied to western states, and that the EPA has only determined that the one percent threshold is appropriate for eastern states. 80 FR 66862–66863, October 30, 2015.

Response: As stated in the May 10, 2016 proposal for this final action, the EPA believes contribution from an individual state equal to or above one 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. The EPA's analysis has shown that the one percent threshold captures a high percentage of the total pollution transport affecting downwind states. 81 FR 28810, May 10, 2016. This threshold has been used by the EPA in past transport actions including the original CSAPR (76 FR 48208, August 8, 2011), and the EPA determined this threshold was appropriate following the public comment process in those previous rulemakings.

In the final CSAPR Update rulemaking, the EPA compiled the contribution modeling results from the air quality modeling in order to analyze the impact of different possible thresholds, and concluded that the one percent threshold continues to be a reasonable means of accounting for the combined impact of relatively small contributions from many upwind states. *See* CSAPR Update, Final Rule, pre-publication draft at 81–82; AQM TSD. For each of the ozone receptors identified in the final CSAPR Update rule analysis, the EPA identified: (1) The total upwind state contributions, and (2) the amount of the total upwind

state contribution that is captured at one percent, five percent, and half (0.5) percent of the NAAQS. The EPA continues to find that the total collective contribution from upwind states' sources represent a significant portion of the ozone concentrations at downwind nonattainment and maintenance receptor locations. This analysis shows that the one percent threshold generally captures a substantial percentage of the total pollution transport affecting downwind states without also implicating states that contribute insignificant amounts. Analysis of the data for the Denver receptors at issue in this rulemaking results in the same conclusion. Use of a higher threshold would result in a relatively large reduction in the overall percentage of ozone pollution transport captured relative to the amounts captured at the one percent level at the receptors. For example, none of the transport from upwind states would be captured with a five percent threshold.

Although UDEQ proposes that the EPA should instead use a two percent threshold with respect to the Denver receptors, it has not submitted additional information or analysis to assist the EPA in determining whether there is an appropriate alternative contribution threshold for Utah or western states generally. Rather, UDEQ's proposal to use a two percent threshold appears to only be justified by the conclusion that Utah would not have been linked to Denver receptors at this level (the updated modeling indicates contribution to a maintenance receptor above two percent: See Table 1 of this preamble). Given the lack of relevant information or analysis submitted by the State, and based on an analysis of EPA's own CAMx air quality modeling data, the EPA continues to find that the one percent threshold is appropriate to apply to identify upwind states linked to the Denver receptors.

Comment: Commenter UDEQ asserted that the IPM model used to project emissions for electric generating units is not precise. The commenter supported this assertion by citing a comment from Louisiana Chemical Association (LCA) on the NODA which stated the IPM model ''is simply not accurate enough and is dependent upon too many uncertain assumptions and imprecise inputs to make binding decisions of 'significant contribution' or 'interference with maintenance' when dealing with projections of ozone at part per billion level.'' UDEQ argued that this model is imprecise and should therefore be subject to ''opportunity for rebuttal based on empirical evidence.''

Response: The EPA has addressed LCA's comment in the response to comments document on the CSAPR Update proposal. In that document, we noted that the D.C. Circuit Court has recognized the usefulness of models despite the inherent uncertainty. In upholding the EPA's approach to evaluating interstate transport in CSAPR, the D.C. Circuit held that they would not ''invalidate EPA's predictions solely because there might be discrepancies between those predictions and the real world. That possibility is inherent in the enterprise of prediction.'' *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 135 (2015). The court continued to note that ''the fact that a 'model does not fit every application perfectly is no criticism; a model is meant to simplify reality in order to make it tractable.' '' *Id.* at 135–36 (quoting *Chemical Manufacturers Association* v. *EPA*, 28 F.3d 1259, 1264 (D.C. Cir. 1994).

The EPA has also provided thorough explanation as to how the modeling conducted for the CSAPR Update was appropriate. As stated in the final CSAPR Update, ''the EPA projected future 2017 baseline EGU emissions using version 5.15 of the Integrated Planning Model (IPM) (*www.epa.gov/airmarkets/power-sector-modeling*). IPM, developed by ICF Consulting, is a state-of-the-art, peer-reviewed, multiregional, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. . . . The model is designed to reflect electricity markets as accurately as possible. The EPA uses the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics as the basis for the detailed power sector modeling in IPM.'' [5] CSAPR Update, Final Rule, pre-publication draft at 131.

We have not received empirical evidence from the State to rebut our conclusions as stated in the proposal for this final rulemaking.

Comment: Commenter UDEQ argued that the EPA's reliance on IPM modeling is incorrect in Utah's case because this modeling used a 2011 emissions inventory that excluded certain enforceable reductions and included Carbon plant emissions, though the facility is no longer in operation.

Response: The EPA disagrees that the IPM modeling excluded certain enforceable reductions and included Carbon plant emissions. The shutdown of the Carbon power plant was accounted for in the CSAPR Update modeling, and no emissions were modeled from the facility in the 2017 scenario. (*See* documents and EPA–HQ–OAR–2015–0500–0205 and EPA–HQ–OAR–2015–0500–0014 in the docket for the CSAPR Update, or in the docket for this rulemaking. These documents, respectively, are the NEEDS database which defines the starting fleet in IPM and a unit level comparison of emissions from point sources between the 2011 and 2017 inventories). As for the other enforceable reductions referenced by the commenter, we cannot respond because the commenter has not provided specific detail as to the reductions that were unaccounted for. The EPA has encouraged and given the opportunity for states to submit information with regard to any inconsistencies between ''on the books'' upcoming reductions and the emissions modeled for the CSAPR Update in both that proposed rulemaking and in the August 4, 2015 NODA. 80 FR 46271, August 4, 2015.

Comment: Commenter UDEQ asserted that western states do not have confidence in the way in which they can submit data for consideration under the Exceptional Events Rule, which has not yet been finalized. UDEQ stated that ''it will be difficult for the EPA to get an accurate assessment of the responsibility that Utah and other western states have to downwind states with regard to the 2008 ozone NAAQS as used in CSAPR until the EPA releases a final rule on these revisions.'' Commenter insisted that finalization of this rulemaking will allow the EPA to address data influenced by wildfires, stratospheric intrusions, and abnormally high background ozone.

Response: The EPA agrees that the final Exceptional Events Rule will assist states and the EPA in preparing and processing exceptional events demonstrations for events, including wildfires, which contribute to monitored ozone NAAQS exceedances or violations, if those events meet the applicable criteria in the Exceptional Events Rule, including (1) the event affected air quality; (2) the event was not reasonably controllable or preventable; and (3) the event was caused by human activity that is unlikely to recur at a particular location or was a natural event. Exceptional Events Final Rule, pre-publication draft.[6] Although the rule is intended to

[5] Detailed information and documentation of the EPA's Base Case, including all the underlying assumptions, data sources, and architecture parameters can be found on the EPA's Web site at: *www.epa.gov/airmarkets/power-sector-modeling.*

[6] See ''Treatment of Data Influenced by Exceptional Events,'' final rule, pre-publication

Continued

streamline the exceptional events demonstration process, there is an exceptional events rule and process currently in place. *See* 40 CFR 50.14. We have not received and failed to act on exceptional events demonstrations from states that would impact the determination that Utah interferes with maintenance at receptors in the Denver area.

The EPA disagrees with the comment's note that abnormally high background ozone itself may qualify as an exceptional event. An exceptional event must be defined by the source of its emissions. If the underlying source is a natural event (*e.g.,* wildfire) and the emissions influence a regulatory monitor, then it can be considered for exclusion under the Exceptional Events Rule. If the underlying source is anthropogenic then the explicit text of CAA section 319 requires that it can only be considered under the Exceptional Events Rule if the activity causing emissions is unlikely to recur at a particular location. The meteorological processes that result in pollutant transport and the formation of background ozone are ongoing and thus not an event, even though their influence on ambient concentrations at a particular time and location may be observed only occasionally and thus seem ''event-like.'' Regardless of where the activity or event that caused emissions occurred, and regardless of whether the emissions travel internationally or interstate, all exceptional event criteria applicable to that activity or event must be met in order for the emissions to be excluded.

Comment: Commenter WDEQ stated that the EPA's application of CSAPR to the western U.S. will place an undue burden on all western states. WDEQ noted that its department lacks staff experienced in running Comprehensive Air Quality Model with Extensions (CAMx version 6.11) modeling, and asserted that the EPA has acknowledged that this modeling is quite costly and resource intensive.

Response: States are not required to conduct modeling to address their interstate transport requirements under CAA section 110(a)(2)(D)(i)(I). However, where the EPA has conducted modeling that indicates emissions from a state may impact air quality in another state, both the EPA and the state must address how that modeling impacts any conclusion regarding the upwind state's compliance with the statutory interstate transport requirements. The EPA understands that air quality modeling can be both complex and resource intensive, and remains committed to assisting the states in conducting or reviewing air quality modeling and other relevant technical information for the purposes of determining compliance with CAA section 110(a)(2)(D)(i)(I).

III. Final Action

In this action, the EPA is approving the Utah SIP with regard to certain interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 2008 Pb and 2010 SO_2 NAAQS from the State's certifications as shown in Table 2 of this preamble. The EPA is disapproving the Utah SIP with regard to certain interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$, 2008 ozone, 2010 NO_2 and 2012 $PM_{2.5}$ NAAQS as shown in Table 3 of this preamble. As noted in our August 1, 2016 proposed action, the EPA is not required to take further action with regard to the prong 4 disapprovals, because a FIP is already in place for Utah that corrects all regional haze, and thus visibility transport, SIP deficiencies. 81 FR 43894. This action is being taken under section 110 of the CAA.

TABLE 2—LIST OF UTAH INTERSTATE TRANSPORT PRONGS THAT EPA IS APPROVING

Final approval
January 19, 2012 submittal—2008 Pb NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.
June 2, 2013 submittal—2010 SO_2 NAAQS: (D)(i)(II) prong 4.

TABLE 3—LIST OF UTAH INTERSTATE TRANSPORT PRONGS THAT EPA IS DISAPPROVING

Final disapproval
February 21, 2010 submittal—2006 $PM_{2.5}$ NAAQS: (D)(i)(II) prong 4.
January 31, 2013 submittal—2008 Ozone NAAQS: (D)(i)(I) prong 2, (D)(i)(II) prong 4.
January 31, 2013 submittal—2010 NO_2 NAAQS: (D)(i)(II) prong 4.
December 22, 2015 submittal—2012 $PM_{2.5}$ NAAQS: (D)(i)(II) prong 4.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the CAA. Accordingly, this action merely approves some state law provisions as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

draft as signed by EPA Administrator Gina McCarthy on September 16, 2016.

jurisdiction. In those areas of 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *December 19, 2016.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: September 29, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

■ 2. Section 52.2354 is amended by redesignating the introductory text as paragraph (a) and adding paragraph (b).

The addition reads as follows:

Subpart TT—Utah

§ 52.2354 Interstate transport.

* * * * *

(b) Addition to the Utah State Implementation Plan regarding the 2008 Pb Standard for CAA section 110(a)(2)(D)(i) prongs 1, 2 and 4, submitted to EPA on January 19, 2012, and addition to the Utah SIP regarding the 2010 SO_2 Standard for CAA section 110(a)(2)(D)(i) prong 4, submitted to EPA on June 2, 2013.

[FR Doc. 2016–25145 Filed 10–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0499; FRL–9954–20–Region 9]

Approval and Promulgation of Implementation Plan; California; Calaveras County, Chico (Butte County), San Francisco Bay Area and San Luis Obispo County (Eastern San Luis Obispo) Base Year Emission Inventories for the 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the California State Implementation Plan (SIP) concerning the base year emission inventories (EIs) for four areas designated as nonattainment areas (NAAs) for the 2008 ozone National Ambient Air Quality Standards (2008 ozone NAAQS). The subject areas include Calaveras County, Chico (Butte County), San Francisco Bay Area and San Luis Obispo (Eastern San Luis Obispo). We are approving these revisions under the Clean Air Act (CAA or ''the Act'').

DATES: This rule is effective on December 19, 2016 without further notice, unless the EPA receives adverse comments by November 18, 2016. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0499 at *http://www.regulations.gov,* or via email to Nancy Levin, Air Planning Office at *levin.nancy@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. Background

On March 12, 2008, the EPA strengthened the primary and secondary eight-hour ozone NAAQS to 0.075 parts per million (ppm) (73 FR 16436).[1] In

[1] Since the 2008 primary and secondary NAAQS for ozone are identical, for convenience, we refer to

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