SUBMITTED VIA REGULATIONS.GOV AND EMAIL

June 1, 2026 ***Administrative correction filed on June 2, 2026***

Regional Administrator Cyrus Western
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202
Attn: Abby Fulton, Air Planning & Regulatory Section

RE: Utah; Northern Wasatch Front; 2015 8- Hour Ozone National Ambient Air Quality Standards; Reconsideration and Repeal of Finding of Failure to Attain and Reclassification to a Serious Nonattainment Area; Determination of Attainment by the Moderate Attainment Date But for International Emissions [EPA-R08-OAR-2024-0552]

Regional Administrator Western:

Utah Physicians for a Healthy Environment, Health Environmental Alliance of Utah, Western Resource Advocates, Sierra Club, Earthjustice, Clean Air Task Force, Public Employees for Environmental Responsibility, National Parks Conservation Association, and the Center for Biological Diversity (together, "Public Interest Groups") submit these comments on behalf of themselves and their many hundreds of members and supporters harmed by air pollution in Utah regarding the United States Environmental Protection Agency's ("EPA") proposal to determine that the Northern Wasatch Front ("NWF") ozone nonattainment area ("NAA") would have attained the 2015 ozone National Ambient Air Quality Standards ("NAAQS") by the August 3, 2024 Moderate attainment date, but for international emissions.[1] EPA's proposal undermines the health and welfare of the people who reside and spend time in the Northern Wasatch Front NAA, as well as the environment in the NAA. EPA has failed to meet the requirements of the Clean Air Act ("CAA") and grounds its proposal on an unlawful, arbitrary, and erroneous assessment. EPA is neglecting its crucial responsibility to reduce harmful ozone-forming air pollution and contributing to ongoing air quality and environmental justice crises in the Northern Wasatch Front.

[1] Utah; Northern Wasatch Front; 2015 8- Hour Ozone National Ambient Air Quality Standards; Reconsideration and Repeal of Finding of Failure to Attain and Reclassification to a Serious Nonattainment Area; Determination of Attainment by the Moderate Attainment Date But for International Emissions, 91 Fed. Reg. 23209 (Apr. 30, 2026) [hereinafter Proposed Rule].

TABLE OF CONTENTS

First, we note that the ozone NAAQS have not been updated since 2015, despite substantial medical research before and since then showing that that not only does ozone cause significant public health harm below the current standard of 70 parts per billion ("ppb")—but also, like with the other high-volume pollutant, particulate matter 2.5 ("PM2.5"), there is likely no safe level of exposure. The World Health Organization calls for a lower health guideline of 50.11 ppb short-term exposure, and 30.77 ppb long-term exposure; both are far more stringent than EPA's corresponding standards.[2] Almost invariably, the overwhelming majority of relevant medical organizations call upon the EPA to set stricter air quality standards, including for ozone.[3]

Salt Lake City suffers from one of the worst ozone problems in the United States.[4] Designated nonattainment for the 2015 ozone NAAQS in 2018, this problem is both chronic and egregious.[5] EPA's data shows that the NWF's design values over the past 10 years are consistently at or above 75 ppb, with one recent year as high as 79 ppb (2020–2022 design value ("DV").[6]

Ozone pollution is detrimental to human health and the environment. Ozone can cause cardiovascular and respiratory problems, as well as premature death.[7] The evidence is also suggestive of a causal relationship between exposure to ozone and adverse reproductive and developmental effects, including adverse birth outcomes as severe as still births.[8] Children, the elderly, people with respiratory conditions like asthma, and people who work or recreate outdoors are most at risk from ozone.[9] The American Lung Association calls ozone one of the most dangerous air pollutants in the nation.[10] Immediate problems from ozone exposure—in addition to increased risk of premature death—include: shortness of breath, wheezing and coughing; asthma attacks; increased risk of respiratory infections; increased susceptibility to

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[2] Ex. 35, Yuan Wang et al., *Substantially Underestimated Global Health Risks of Current Ozone Pollution.*, 16 Nat Commc'ns 102 (2025). https://doi.org/10.1038/s41467-024-55450-0.
[3] *See, e.g.*, Ex. 34, Medical Soc'y Consortium on Climate & Health, *19 Health and Medical Organizations Strongly Oppose EPA's Move to Keep Weak Limits on Particle Pollution, Placing Health of Millions at Risk (*Apr. 14, 2020), https://medsocietiesforclimatehealth.org/statements/consortium-statements/19-health-medical-organizations-strongly-oppose-epas-move-keep-weak-limits-particle-pollution-placing-health-millions-risk.
[4] In a recent report on air quality across the United States, Salt Lake City was ranked 13th among the 25 worst cities for ozone pollution. Ex. 16, Am. Lung Ass'n, *Most Polluted Cities*, https://www.lung.org/research/sota/city-rankings/most-polluted-cities (last accessed May 26, 2026).
[5] 83 Fed. Reg. 25776 (June 4, 2018).
[6] Ex. 20, EPA, Design Values in Areas Previously Designated Nonattainment for the 2015 8-Hour Ozone NAAQS, Table 3a (2025), https://www.epa.gov/system/files/documents/2025-05/o3_designvalues_2022_2024_final_05_28_25.xlsx.
[7] 85 Fed. Reg. 87256, 87268 (Dec. 31, 2020); 80 Fed. Reg. 65292, 65302–17 (Oct. 26, 2015).
[8] 80 Fed. Reg. at 65338.
[9] *Id*. at 65322.
[10] Ex. 15, Am. Lung Ass'n, What Makes Outdoor Air Unhealthy: Ozone (last updated June 9, 2025), https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone.

pulmonary inflammation; and increased need for people with lung diseases, like asthma or chronic obstructive pulmonary disease (COPD), to receive medical treatment and to go to the hospital.[11] Globally, the mortality attributed to respiratory disease from ozone increased 46% from 2000 to 2019,[12] and over 1.4 million deaths can be attributed to ozone pollution worldwide.[13] Ozone is associated with such devastating health outcomes as strokes, and has a synergistic relationship with fatal strokes and heat waves.[14] Ozone pollution is also associated with an increase in the risk of heart attack, high blood pressure, and heart failure.[15] It has also been shown to be toxic to the brain and nervous system, and is linked to increased risk of cognitive decline and neurodegenerative diseases like Alzheimer's.[16]

Ozone also degrades the environment. Acute and chronic exposures to ozone lead to foliar injury, decreased photosynthesis, and decreased vegetation and commercial crop growth.[17] The reduction in tree growth can, in turn, damage ecosystem services such as "provision of food, fiber, timber, other forest products, habitat, and recreational opportunities; climate and water regulation; erosion control; air pollution removal, and desired fire regimes."[18] Damage to native vegetation results in ecosystem damage, including diminished ecosystem services, that is, the life-sustaining services that ecosystems provide to people for free, such as clean air, clean water, and carbon sequestration.

These harmful public health and environmental impacts exacerbate the disproportionate pollution burden that vulnerable communities (low-income communities and communities of color) in the Northern Wasatch Front already face. The area has a long history of environmental injustice—including poor air quality—that Utah failed to consider in its plan to reduce ozone and 179B demonstration.[19]

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[11] *Id*.
[12] Ex. 36, David A. Malashock et al., *Global Trends in Ozone Concentration and Attributable Mortality for Urban, Peri-Urban, and Rural Areas Between 2000 And 2019: A Modelling Study*, 6 Lancet Planet. Health e958–e967 (2022).
[13] Ex. 35, Yuan Wang et al., *Substantially Underestimated Global Health Risks of Current Ozone Pollution.*
[14] Ex. 39, Zhen Wang et al., *Summer Heatwave, Ozone Pollution and Ischemic Stroke Mortality: An Individual-Level Case-Crossover Study*, 268 Environmental Research 120818 (2025), https://doi.org/10.1016/j.envres.2025.120818.
[15] Ex. 37, Qiaoyi Hua et al., *Ozone exposure and Cardiovascular Disease: A narrative Review of Epidemiology Evidence and Underlying Mechanisms*, 5 Fundamental Rsch., 249 (2025), https://doi.org/10.1016/j.fmre.2024.02.016.
[16] Ex. 38, Luis A. Marin-Castañeda et al., *Mechanisms of Ozone-Induced Neurotoxicity in the Development and Progression of Dementia: A Brief Review*, Frontiers Aging Neurosci., Oct. 2024, https://doi.org/10.3389/fnagi.2024.1494356.
[17] 85 Fed. Reg. at 87310.
[18] *Id.* at 87312.
[19] *See* Ex. 40, HEAL Utah, *Utah Environmental Justice* (Nov. 16, 2023), https://storymaps.arcgis.com/stories/3d624e84336f4e5fbc3368869e545ed0.

Utah has repeatedly tried to shirk its responsibilities under the CAA to implement all required local control measures to reduce ozone. When modeling showed ozone level exceedances and that additional measures were needed to demonstrate attainment, Utah first improperly attempted to rely on a weight of evidence ("WOE") demonstration to claim attainment would nonetheless be achieved. Utah's Moderate State Implementation Plan ("SIP") attainment demonstration modeled future design values that exceeded the 70 ppb limit—at some monitors, by 5 ppb (75 ppb).[20] Nevertheless, Utah reasoned that the WOE analysis, accounting for alleged modeling limitations, air quality and emissions trends, wildfire effects and unaccounted-for pollution controls, supported a showing of timely future attainment.[21] But EPA disagreed, observing that "it is generally agreed that approximately 1 ppb over NAAQS is the acceptable limit for an attainment demonstration using WOE."[22] Because Utah's demonstration showed exceedances of more than 1 ppb, EPA explained in its comments on Utah's draft SIP that its modeling "exceed[ed] the 70 ppb standard by too great an amount to permit a successful WOE demonstration."[23]

Along with its WOE approach (initially rebuffed by EPA), Utah also included a prospective 179B demonstration in its 2024 Submission and a later retrospective demonstration. But how can the NWF both meet attainment because of WOE that does not rely on international emissions *and* because international emissions caused any excess ozone? It cannot. Rather than controlling emissions originating from within its own borders, Utah offers multiple, inconsistent excuses that are irreconcilable with real-life facts.

The ozone nonattainment problems in the NWF are not getting any better. While Utah's submission focused on the 2021–2023 design value, more recent design values show that nonattainment problems persist. The below Table 1 shows the more recent design values for monitors in the NWF area; the numbers in red show values over the NAAQS. The values either come from EPA's 2022–2024 design value visualizer[24] or, for the 2023–2025 DVs, were calculated using the daily monitoring data available on EPA's website.[25]

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[20] Ex. 12, Utah Dep't of Env't Quality, State Implementation Plan 2015 Ozone NAAQS Northern Wasatch Front Moderate Nonattainment Area 136 (Nov. 2024), https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=539441&eqdocs=%20DAQ-2025-000886&dbid=0&repo=Public [hereinafter 2024 Submission].
[21] *Id.* at 128–150.
[22] Ex. 6, 2023 EPA Comments on 2023 Submission 9 (July 17, 2023), https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=392633&eqdocs=DAQ-2023-004709&dbid=0&repo=Public [hereinafter 2023 EPA Comments]. Pincites to this source refer to the PDF page number.
[23] 2023 EPA Comments at 9–10.
[24] Ex. 18, EPA, DV Interactive Tool - filtered for NWF 2019–2024 DVs (last visited May 26, 2026), https://awsedap.epa.gov/public/single/?appid=3dbf71f9-b3ee-4699-b976-d948b9f98e73&sheet=6564b795-974d-4406-903a-d8f34099d3a5&theme=colorStylerTheme&opt=ctxmenu,currsel&identity=preview8.
[25] EPA, Download Daily Data (last visited May 26, 2026), https://www.epa.gov/outdoor-air-quality-data/download-daily-data. Attached to these comments is an Excel spreadsheet

Table 1. Recent Design Values for monitors in the NWF

Monitor ID	Name	DV 2022–2024 (ppb)	DV 2023–2025 (ppb)
490110004	Bountiful Viewmont	75	75
490352005	Copper View	75	74
490353006	Hawthorne	73	73
490353010	ROSE PARK	74	73
490353013	Herriman #3	69	69
490353014	Lake Park	74	74
490353015	Utah Technical Center	71	70
490353016	Inland Port	74	71
490354002	Near Road	74	73
490450004	Erda	70	68
490571003	Harrisville	71	70

Finally, according to EPA's Ozone Watch interactive tool, based on air monitoring thus far in 2026, the preliminary design value for 2024–2026 is already exceeding the 70 ppb standard at multiple monitors.[26] Taking the 4th highest value from 2024, 2025, and the current 4th highest value for 2026 (thus far), the preliminary 2024–20s26 design value at the Utah Technical Center (71 ppb), Lake Park (71 ppb), Rose Park (71 ppb), Hawthorne (71 ppb), Cooper View (71 ppb), and Bountiful Viewmont (72 ppb) are already more than the standard.[27] As the air quality likely worsens into the summer, those design values will continue to increase above the standard.

I. EPA's Proposal Impermissibly Seeks to Revise or Flout Nationally Applicable Requirements.[28]

EPA's proposal to change its interpretation of CAA section 179B(b) to no longer require a state to demonstrate that a nonattainment area could not have attained by adopting and implementing the measures required for the area's classification, such as RACM/RACT for areas classified Moderate and higher, suffers from threshold rulemaking defects. As an initial matter, EPA improperly seeks to amend, or alternatively, flout its nationally applicable interpretation of

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containing the daily monitoring data for the Northern Wasatch Front and the calculations for Table 1, as well as Tables, 2, 3, and 4 below. Ex. 28.

[26] Ex. 41, EPA, Outdoor Air Quality, Ozone Watch Design Value Tables (last visited June 1, 2026), available for download at https://www.epa.gov/outdoor-air-quality-data/ozone-watch (Date Type: Site-level Design Values; Ozone NAAQS: 2015 8-hour (70 ppb); Area Type: NAA; State: Utah; Years: 2024–2026; NAA: NWF).

[27] *Id.*

[28] The section headers in these comments are intended to guide the reader and do not limit the scope of the content of the comments.

179(B)(b) for the 2015 ozone NAAQS, as set forth and codified in the equally nationally applicable 2015 Ozone Implementation Rule.[29]

Despite its assertions to the contrary in the present proposal, EPA in the 2015 Ozone Implementation Rule clearly characterized its interpretation that demonstrations under Section 179B(b) must include a showing that the air agency has adopted and implemented all reasonably available control measures ("RACM"), including reasonably available control technologies ("RACT"), as a *requirement* and not merely guidance. In its proposal for the 2015 Ozone Implementation Rule, EPA proposed and sought comment on "a *requirement* that *all* demonstrations under CAA section 179B(b), regardless of an area's classification (including nonattainment areas classified as Marginal), must include a showing that the air agency adopted all RACM, including RACT, for the area in accordance with CAA section 172(c)(1), 42 U.S.C. 7502(c)(1)."[30]

In its notice finalizing the 2015 Ozone Implementation Rule, EPA explained that it was not finalizing its "proposed *requirement* that *all* demonstrations under CAA section 179B(b) must include a showing that the air agency adopted all RACM, including RACT."[31] Rather, EPA stated that, "[f]or purposes of CAA section 179B demonstrations for the 2015 ozone NAAQS, we are maintaining the approach used for prior ozone standards that only areas classified Moderate and higher *must* show that they have implemented RACM/RACT."[32] (emphasis added). EPA further elaborated that,"[f]or this final rule, we are adopting our existing approach grounded in the plain language of CAA section 179B(b), which applies specifically to the ozone NAAQS and does not explicitly modify the subpart 2 planning requirements in CAA section 182."[33] These statements make clear that EPA intended to adopt in its 2015 Ozone Implementation Rule, as a legally binding and regulatory matter, its longstanding interpretation that CAA section 179B(b) requires a state to demonstrate that it has implemented RACM/RACT and other controls required for ozone nonattainment areas classified Moderate and above in order to show such area would have attained the NAAQS "but for" certain international emissions. These preamble statements "(mark) the consummation of the agency's decisionmaking process and that establishes rights and obligations or creates binding legal consequences."[34] Subsequent to the 2015 Ozone Implementation Rule, EPA has applied its prior interpretation of section 179B(b) outlined therein to at least one other state's demonstration, evincing the prior interpretation marked the consummation of the Agency's decisionmaking process, established obligations on the states, and created binding legal consequences. Specifically, EPA disapproved the section 179B(b) demonstration from Utah for the Northern Wasatch Front 2015 Marginal ozone nonattainment area, partially on the basis that "CAA section 179B does not relieve an air agency of its planning or control obligations, and Utah did not address what measures the State

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[29] 81 Fed. Reg. 81276 (Nov. 17, 2016); 83 Fed. Reg. 62998 (Dec. 6, 2018).
[30] 81 Fed. Reg. at 81304 (emphasis added).
[31] 83 Fed. Reg. at 63010 (emphasis added).
[32] *Id.*
[33] *Id.*
[34] *NRDC v. EPA*, 559 F.3d 561, 564–65 (D.C. Cir. 2009), *see also Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

has evaluated to address local sources of emissions that contribute to violations of the NAAQS in the area."[35]

In addition to the previously described preamble statements in the 2015 Ozone Implementation Rule, EPA also explicitly proposed new regulatory provisions at 40 C.F.R. § 51.1309 as part of that rule to require that states must also demonstrate adoption and implementation of RACM/RACT for Marginal areas for purposes of treatment under CAA section 179B.[36] EPA also proposed, and subsequently finalized, regulatory text at 50 C.F.R. §§ 51.1308 and 51.1312 that makes clear that areas classified Moderate and above for the 2015 ozone NAAQS must adopt and implement RACM/RACT by dates certain. EPA's proposed, but not finalized, regulatory text at 40 C.F.R. § 51.1309 clearly matches its preamble descriptions of its proposed, but not finalized, interpretation of CAA section 179B to require adoption and implementation of RACM/RACT for areas classified Marginal. It therefore follows that between the proposed, separate, and unfinalized regulatory text for Marginal areas and areas classified Moderate and above, and the preambles' mandatorily phrased statements regarding Moderate and above areas adopting and implementing RACM/RACT for purposes of CAA section 179B(b), and making this showing, the 2015 Ozone Implementation Rule codified EPA's interpretation of CAA section 179B(b) with respect to Moderate and above areas that the Agency now seeks to change.

Though its current proposal in effect seeks to amend[37] the Agency's prior nationally applicable interpretation of CAA section 179B(b) as set forth in the 2015 Ozone Implementation Rule, EPA does not sufficiently make clear to the public in this rulemaking that is what it is doing. The current proposal is in several ways facially styled as a state-specific rulemaking,[38] and it analyzes Utah's CAA section 179B(b) demonstration for the Northern Wasatch Front 2015 ozone nonattainment area. However, EPA's proposed new interpretation of CAA section 179B(b) is by its own terms *not* limited to Utah, and is instead nationally applicable. The portion of EPA's proposal setting out its new interpretation does not once suggest or otherwise discuss that it is

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[35] Ex. 4, 179B NWF TSD, EPA-HQ-OAR-2021-0742-0043 3 (2022), https://www.regulations.gov/document/EPA-HQ-OAR-2021-0742-0043 [hereinafter 2022 TSD].
[36] 81 Fed. Reg. at 81304.
[37] Alternatively, as EPA is not proposing to amend its 2015 Ozone Implementation Rule, its current proposal is in violation of that nationally applicable rulemaking and associated regulations. *See* 5 U.S.C. § 553.
[38] State-specific SIP and attainment-related actions are often handled by EPA Regional Offices, and the signature for such actions delegated to EPA Regional Administrators. The Administrator for EPA Region 8 signed this proposal, however, it is unclear whether he was delegated to do so given the proposal seeks to amend a national rulemaking, or at minimum, seeks to impose a nationally applicable legal interpretation and policy. EPA must clarify the authority for Region 8 to issue a nationally applicable rulemaking, especially as the EPA Administrator has previously exercised his authority to interpret 179B(b) in the manner the Regional Administrator seeks to now. *E.g.*, 83 Fed. Reg. 62998; Ex. 23, EPA News Release, *Administrator Zeldin Moves Forward with Ensuring U.S. States Are Not Punished for Foreign Air* (Apr. 7, 2025), https://www.epa.gov/newsreleases/administrator-zeldin-moves-forward-ensuring-us-states-are-not-punished-foreign-air.

applicable only to Utah, and instead contains broad language suggesting the Agency's intent to apply this new interpretation nationally. For example, the proposal states: "Under the proposed new interpretation, *States* will no longer be expected to show that they could not attain with on-the-books measures and potential reductions associated with controls required to be implemented by the attainment date to qualify for approval of a CAA 179B(b) determination."[39] EPA also stated that

> [b]ecause this action would, if finalized, relieve certain obligations for the State of Utah and *adopt interpretations and policies that clarify the ways in which other States may satisfy statutory obligations under similar circumstances*, the EPA does not believe there are reasonable and cognizable reliance interests that would be adversely impacted by finalizing this action as proposed.[40]

Nor could EPA otherwise suggest that its new interpretation is specific to Utah. The Agency is proposing to interpret CAA section 179B(b) in a way that applies equally to any state seeking to make a demonstration under this provision, and EPA in the current proposal does not suggest that any aspect of its new interpretation is locally or regionally-specific. And tellingly, EPA fails to even discuss the status of the Northern Wasatch Front area's Moderate area ozone SIP for the 2015 ozone standard. EPA's failure to fairly notify the public of the nature of its action here renders its notice deficient for purposes of the Clean Air Act and Administrative Procedure Act.

II. EPA's Proposed New Interpretation and Policy for Clean Air Act Section 179B(b) Is Unlawful, Arbitrary, and Capricious.

In proposing to amend a nationally applicable rule, or at minimum in changing a nationally applicable interpretation of CAA section 179B(b), EPA also fails to meet the legal requirements for such change, rendering its proposal both unlawful and arbitrary and capricious. First and foremost, EPA's approach here violates the statute. Further, EPA has failed to follow the Supreme Court's directive that an agency action must be "reasonable and reasonably explained."[41] The agency must "articulate a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made,'" and cannot "entirely fail[] to consider an important aspect of the problem."[42] Nor can it "offer[] an explanation for its decision that runs counter to the evidence before the agency."[43] And where an agency is reversing course

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[39] Proposed Rule at 23215 (emphasis added).
[40] *Id.* (emphasis added).
[41] *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021); s*ee also FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 567–69 (2025) (citing *Encino Motorcars, L.L.C. v. Navarro*, 579 U.S. 211, 221–22 (2016); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
[42] *State Farm*, 463 U.S. at 43 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).
[43] *Id*.

from a prior policy, as EPA is doing here, the agency must not only show awareness that it is changing course, but it must also provide a reasoned explanation for its change in policy.[44]

EPA's proposal neglects to provide the required lawful and reasoned explanation for its change in policy and interpretation of CAA section 179B(b), and entirely fails to consider an important aspect of the ozone nonattainment problem. In changing its interpretation of CAA section 179B(b) to not require implementation of controls required by the relevant attainment date, EPA claims that its prior interpretation was not the best reading of the CAA in a single sentence stating that the statutory provision "does not expressly require that a State meet all CAA requirements for an area's classification as a precondition before the EPA can approve a retrospective demonstration."[45] This scant rationale is legally deficient and arbitrary on multiple grounds. It fails to apply the traditional tools of statutory construction. By contrast, EPA's interpretation of CAA section 179B(b) prior to this proposal, including as reflected by the 2015 Ozone Implementation Rule, is the best interpretation of the statute. EPA there stated that for purposes of CAA section 179B demonstrations for the 2015 ozone NAAQS, Moderate and higher nonattainment areas must show that they have implemented RACM/RACT.[46] That prior interpretation considered the overall text, context, structure, and history of the statute, whereas EPA's new interpretation does not.[47] EPA justified its prior interpretation of CAA section 179B(a) and (b) by explaining that these provisions only narrowly eliminate the obligation for a state to submit an attainment demonstration (conditioned upon the state meeting all other nonattainment plan requirements); voids certain, explicitly articulated consequences of an area's failure to attain, including mandatory reclassification; and obviates the need for the state to seek an attainment date extension under section 181(a)(5). EPA correctly observed that CAA section 179B's narrow exemptions do not alter the general construct in the Act's part D nonattainment provisions, which is that states will take the actions required for an area's classification to mitigate public health impacts of exposure to pollution that violates the NAAQS and that are within the jurisdiction of the state. Based on this construction, EPA concluded previously that

> adopting an interpretation of CAA section 179B that would allow people to continue to be subjected to levels of ozone above the NAAQS that a state could reasonably reduce—in this case not to attainment level, but to a level below the current level—would be antithetical to the objectives of the CAA."[48]

EPA has likewise previously stated that "[f]or the EPA to concur with a state's CAA section 179B retrospective demonstration, the weight of evidence should show the area could not attain with on-the-books measures and potential reductions associated with controls required for that

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[44] *Fox*, 556 U.S. at 515–16.
[45] Proposed Rule at 23215.
[46] 83 Fed. Reg. 62998, 63010 (Dec. 6, 2018)
[47] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 403 (2024) ("Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences."); *id.* at 403 n.4, citing *Pulsifer v. United States*, 601 U.S. 124, 133 (2024) ("But statutes can be sensibly understood only 'by reviewing text in context.'"); *id*. at 401 ("The very point of the traditional tools of statutory construction is to resolve statutory ambiguities.").
[48] 81 Fed. Reg. at 81304.

particular NAAQS and classification that are to be implemented by the attainment date."[49] EPA has also previously noted that "[b]ecause CAA section 179B does not relieve an air agency of its planning or control obligations, the air agency should show that it has implemented all required emissions controls at the local level as part of its demonstration."[50] By now failing to explain how its new interpretation of CAA section 179B(b) considers the traditional canons of statutory interpretation or even attempting to refute its own prior rationale, EPA fails to provide the required reasoned explanation for its change in interpretation.

CAA section 179B(b) by its terms waives *only* CAA section 182(b)(2)'s reclassification requirements, section 181(a)(5)'s extension requirements, and CAA section 185's fees requirements. By explicitly describing which provisions are waived upon EPA approving a CAA section 179B(b) demonstration, the statute makes clear that all other applicable nonattainment planning provisions under the Act and EPA's implementing regulations are *not* waived.[51] Those provisions include the obligation for Moderate areas such as the Northern Wasatch Front to adopt and submit RACM and RACT under CAA sections 172(c)(1) and 182(b)(2), as neither provision is among the two Congress specified as waived. Nor does 179B(b) waive section 182(b)(1)(A)'s mandate for 15% reasonable further progress plans[52] or section 172(c)(9)'s contingency measures requirement.

However, EPA's proposed interpretation that a state need merely adopt and submit these measures someday ignores the applicable requirements of Subpart 2 and is therefore legally flawed and arbitrary. CAA section 182(b)(2) *also* requires that Moderate area plans provide for the implementation of RACT as expeditiously as practicable but no later than a certain date. Consistent with CAA section 182(i), EPA's ozone regulations specify that for RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than 18 months after the RACT SIP submittal deadline or the beginning of the attainment year ozone season associated with the area's new attainment deadline, whichever is earlier, unless the Administrator establishes a different date.[53] Pursuant to this authority, EPA established January 1, 2023 as the deadline for reclassified 2015 Moderate nonattainment areas, including the Northern Wasatch Front, to implement RACM and RACT.[54] CAA section 179B(b) neither exempts the RACM/RACT adoption *or* implementation requirements, therefore these measures were required to be implemented by January 1, 2023. EPA's implementing regulations promulgated under the 2015 Ozone Implementation Rule also specify that areas classified as Moderate are required to submit a RACM demonstration.[55] As EPA notes in the present proposal, the demonstration requirement under CAA section 179B(b) is

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[49] 87 Fed. Reg. 50030, 50034 (Aug. 15, 2022); *see also* 87 Fed. Reg. 21842, 21852 (Apr. 13, 2022).
[50] 87 Fed. Reg. at 21852.
[51] *See Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 188 (1978) (applying the maxim *expressio unius est exclusio alterius*).
[52] CAA section 179B(b) also does not waive EPA's 2015 Ozone Implementation Rule requirements for 15% reasonable further progress plans. 40 C.F.R. § 51.1310.
[53] 40 C.F.R. § 51.1402(b)(1)(ii).
[54] 87 Fed. Reg. 60897, 60900 (Oct. 7, 2022).
[55] 40 C.F.R. § 51.1312(c).

a retrospective one. The statutory and regulatory purpose of RACM/RACT is to help an area attain the NAAQS. Therefore the best reading of section 179B(b), particularly the phrase "would have attained the NAAQS for ozone by the attainment date," is to require that the demonstration establish the area has both adopted *and* implemented all measures associated with the area's nonattainment planning requirements that were required and intended to get the area into attainment, such as RACM/RACT. If adoption and implementation of these measures would have resulted in attainment "but for" international emissions, then CAA section 179B(b) provides relief from reclassification. But it is antithetical to the Act's structure and purpose to let a Moderate area avoid implementation of legally mandated measures to curb ozone pollution, fail to timely attain, and then be relieved of reclassification even if those mandated measures would have produced timely attainment.

Put another way, the required showing that an area would have timely attained but for foreign emissions necessarily requires EPA to assure itself that the area has adopted the level of pollution control that the Act required, and that the area still could not attain. That is the legally required baseline for the decision. EPA is plainly not authorized to grant a 179B(b) waiver where an area would have timely attained "but for" failure *of the state* to adopt all the controls the Act required for its existing classification, including RACM, RACT, reasonable further progress plans and other measures. Yet that is what EPA's new reading of the statute would allow. Further refuting EPA's position is the language of 179B(a)(1), which predicates prospective showings of attainment but for international emissions on the SIP's meeting all the requirements applicable to it under the Act other than the requirement to demonstrate timely attainment. Although directly applicable to prospective "but for" waivers, this language also shows that Congress expected adoption of SIPs meeting all applicable requirements well before the attainment date even if the area purported to show it would not timely attain but for international emissions. There is no plausible basis for concluding that Congress nonetheless meant to excuse adoption of such SIPs for areas that later failed to timely attain.

Section 179B must be read in the context of the mandatory deadlines set by Congress. To read it to excuse non-compliance with those deadlines cannot be the best reading. EPA's so-called "interpretation" of the Act rests on an assumption that the state can illegally fail to provide fully approvable versions of those elements in a timely fashion and still obtain a section 179B(b) waiver. This cannot be what Congress intended. Congress was entitled in enacting the 1990 Amendments to assume EPA would carry out its obligations in a timely manner. The ozone provisions in Subpart 2 were enacted by Congress in the 1990 Amendments in response to years of state and EPA failure to bring ozone areas into attainment. Furthermore, mootness is a judge-made doctrine. As the seemingly illegal perpetrator here of the situation, EPA cannot "be a judge in [its] own cause."[56] In short, EPA's interpretation that moots critical nonattainment area SIP elements cannot be the best reading of the Act. It rests on an assumption that EPA will act illegally to create the very situation EPA claims to be interpreting the Act to address. Congress does not ordinarily assume agency lawlessness when writing such a provision.

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[56] *Arnett v. Kennedy*, 416 U.S. 134, 197 (1974) (quoting *Bonham's Case*, 8 Co. 114a, 118a, 77 Eng. Rep. 646, 652 (1610)).

It is no answer for EPA to say that after a 179B(b) waiver is granted, the state will still be subject to the Moderate area requirements (other than a demonstration of timely attainment, and, in EPA's current view, progress requirements and contingency measures) and may someday be subject to sanctions and federal implementation plans for any failure to do so. The issue here is whether EPA can lawfully and rationally base a 179B(b) finding on a status quo in which emissions for sources within the state have not yet been reduced to the degree required by the Act. As explained above, section 179B(b) waivers are meant for the situation where the state has done all that it's required to do and still failed to timely attain due to emissions from outside the United States. To allow a state to avoid adopting all required pollution reduction measures and still receive such a waiver is utterly arbitrary and flouts the Act's language, structure, and purpose.

EPA's claim that its position is the best reading of the statute is further undermined by legislative history. Congress created Section 179B as a last resort option only after the state has complied with SIP requirements to control pollution within its control. In enacting 179B, Congress made clear that "it will be up to the State, the region, and the city to prove that they are in compliance, based on what they do . . . they will have an opportunity to come to EPA and say that they are in compliance in terms of their emissions, that their failure to meet the overall standards is due to something that is happening in a sovereign foreign country over which they exercise no control."[57] EPA's reading would flout that intent by allowing 179B waivers for areas that have not even made the basic efforts expressly mandated by Congress. EPA's current reading also goes against what EPA previously said when rejecting Utah's first attempt at a 179B demonstration for the NWF—without a reasoned explanation. As of 2022, "EPA believes that CAA section 179B is intended to apply to areas that could not attain the NAAQS, *even after adopting all feasible emissions control measures and technologies* because of large contributions from international transport."[58]

Similarly, EPA's proposal to interpret that the contingency measure requirements of CAA section 172(c)(9) would no longer apply to the Northern Wasatch Front Moderate 2015 ozone nonattainment area, if EPA finalizes its CAA section 179B(b) determination, is not a lawful reading of the Act. As a threshold legal matter, EPA's proposed interpretation regarding the application of the contingency measures requirement is barred by prior national EPA regulations. In promulgating the 2015 ozone NAAQS, which directly controls the present action, EPA stated:

> Section 179B also does not provide for any relaxation of mandatory emissions control measures (including contingency measures) or the prescribed emissions reductions necessary to achieve periodic emissions reduction progress requirements. In this way, section 179B insures that states will take actions to mitigate the public health impacts of exposure to ambient levels of pollution that violate the NAAQS by imposing reasonable control measures on the sources that *are* within the jurisdiction of the state while also authorizing EPA to approve such

[57] Ex. 1, 136 Cong. Rec. S4121 (1990).
[58] 2022 TSD at 11 (emphasis added).

attainment plans and demonstrations even though they do not fully address the public health impacts of international transport.[59]

Likewise, EPA maintained its position in the proposed 2015 Ozone Implementation Requirements Rule that "section 179B of the CAA does not provide for any relaxation of mandatory emissions control measures *(including contingency measures)* or the prescribed emissions reductions."[60] As described in this comment letter, EPA finalized this interpretation in the final rule, which accordingly controls the present action for the 2015 ozone NAAQS. Even if EPA could change its 2015 rulemaking in this state-specific SIP action—which it cannot—EPA's proposal fails to show awareness that it is changing position regarding this interpretation, and fails to provide a reasoned explanation for its change, as required under *FCC v. Fox Television*. EPA cites to the fact that, once previously, it applied its new interpretation regarding contingency measures in its action approving the 179B demonstration for Imperial County, California.[61] But that locally applicable action was taken under the 2008 ozone NAAQS, cannot take precedence over the above-cited nationally applicable regulations, and does not justify the unlawful action proposed here.

EPA also cites to the 1992 General Preamble in support of its proposed interpretation. However, that Preamble explicitly states that it is nonbinding guidance both as to EPA and the public.[62] By contrast, CAA section 179B(a) supports that the best interpretation of (b) is that the contingency measures requirements *do* apply. The plain language of CAA section 179B(a)(1) textually exempts only the attainment demonstration requirement for nonattainment SIPs, and requires that such SIPs meet all other applicable requirements. This plainly means that a state seeking a CAA section 179B(a) prospective determination is obligated to submit contingency measures. Congress could not have intended for states and EPA respectively to go through the process of adopting and approving nonattainment SIP requirements intended to achieve the statutory purposes of attaining and maintaining the NAAQS, only for those measures to remain on the shelf and unimplemented even when an area has failed to attain the NAAQS. The best interpretation of the broader statutory scheme under CAA section 179B (*i.e.*, reading both (a) and (b) together) is that Congress intended for states to adopt *and* implement all controls and measures required for a particular nonattainment area, except for the attainment demonstration and reclassification requirements to the extent specified as exempted under (a) and (b). EPA's proposed interpretation flouts CAA section 179B's limited exemptions and waivers by broadening them to include nonattainment measures that are within the state's control, violating CAA section 179B's caveat that a state would have attained "but for" international emissions.

EPA claims it has long read the CAA as requiring implementation of contingency measures only for Reasonable Further Progress ("RFP") failures in Moderate areas if the area also fails to timely attain, citing its 1992 General Preamble.[63] As noted above, that language is nonbinding. Moreover, language on that page contradicts EPA's claim. It states that "[o]zone

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[59] 80 Fed. Reg. 65292, 65444 (Oct. 26, 2015).
[60] 81 Fed. Reg. at 81276, 81304 (emphasis added).
[61] Proposed Rule at 23211 n.17.
[62] 57 Fed. Reg. 13498 (Apr. 16, 1992).
[63] 57 Fed. Reg. at 13511.

areas classified as moderate or above must include in their submittals, which are due by November 15, 1993, as set by EPA under section 172(b), contingency measures to be implemented if RFP is not achieved *or* if the standard is not attained by the applicable date."[64] Use of the term "or" means the SIP must ensure adequate contingency measures for both RFP and attainment failures and trigger them for either failure. For EPA to conclude otherwise would violate section 172(c)(9)'s mandate for contingency measures "to be undertaken if the area fails to make reasonable further progress, *or* to attain the national primary ambient air quality standard by the attainment date applicable under this part."[65] EPA's position would also flout that sub-provision's mandate for SIP contingency measures "to take effect in any such case without further action by the State or the Administrator."[66] Thus, if there is an RFP failure, the triggering of contingency measures must be automatic, regardless of whether a 179B waiver has been granted. EPA also ignores the fact that Congress set out an explicit RFP requirement for Moderate areas: a minimum 15% reduction in volatile organic compound ("VOC") emissions over a six-year period.[67] That requirement is separate from and in addition to the statute's mandate for a showing of timely attainment. Even if it were not, the fact is that the Northern Wasatch Front has *not* timely attained the 2015 ozone standard. The area's design value continues to violate the standard by a wide margin. A finding under 179B(b) is not a finding that the area has attained, but rather a narrow waiver of certain specified consequences for *failure* to attain.

Also groundless is EPA's apparent position that the requirement for implementing contingency measures for failure to timely attain somehow vanishes when EPA makes a 179B(b) determination. While such a finding relieves EPA of triggering a reclassification under section 7511(b)(2), a 179B(b) determination necessarily includes its own finding that the subject area failed to timely attain. In fact, section 179B(b) applies only if the area has failed to timely attain. The language of section 172(c)(9) does not tie the triggering of contingency measures to a finding under 7511(b)(2) but simply states that such measures are to be undertaken if the area fails to attain by the attainment date. Triggering contingency measures are warranted in the face of a 179B(b) finding for the same reasons EPA stated in its promulgation of the 2015 ozone NAAQS: The mandate for contingency measures

> insures that states will take actions to mitigate the public health impacts of exposure to ambient levels of pollution that violate the NAAQS by imposing reasonable control measures on the sources that *are* within the jurisdiction of the state while also authorizing EPA to approve such attainment plans and demonstrations even though they do not fully address the public health impacts of international transport.[68]

Whatever the impact of international emissions, people in the Northern Wasatch Front are still breathing dangerously polluted air. Allowing the area to evade progress requirements and

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[64] *Id.* (emphasis added).
[65] 42 U.S.C. § 7502(c)(9) (emphasis added).
[66] *Id.*
[67] 42 U.S.C. § 7511a(b)(1)(A)(i).
[68] 80 Fed. Reg. at 65444.

contingency measures already mandated by its existing Moderate area classification would be flatly contrary to the Act's health protective purposes.

Even if the CAA required a separate, formal EPA finding of failure to timely attain before contingency measures are triggered, the agency would still be obligated to make such a finding under CAA section 179(c)(1).[69] That provision states: "As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date." The requirements of section 179(c)(1) are not in any way waived by section 179B(b).

EPA also claims that Moderate areas do not need to submit milestone demonstrations, as they're not covered by the milestone provisions of section 182(g)(2). But all nonattainment areas must submit "a comprehensive, accurate, current inventory of actual emissions from all sources" every three years.[70] That inventory (if accurate) will necessarily show whether the required RFP reductions have been achieved. EPA has no authority under section 179B(b) or any other statute to waive that requirement. Further, states cannot show RFP achievement by simply documenting implementation of control measures, as that approach has been invalidated by the D.C. Circuit as contrary to the statute.[71] As noted separately in these comments, far from meeting the 15% progress mandate for VOCs, Utah's Moderate area SIP on its face fails to achieve a 15% VOC reduction, and the state has rejected the notion that it needs to meet that requirement.[72]

EPA also proposes two arbitrary and capricious policy changes from its prior treatment of CAA section 179B(b). The agency's prior treatment, which it is now proposing to cursorily abandon, was to consider specific characteristics (*e.g.*, when affected monitors aren't located near an international border or specific international source emissions are difficult to identify) as necessarily suggesting the need for a more detailed demonstration with additional evidence, and that when a CAA section 179B demonstration shows that international contributions are larger than domestic contributions, the weight of evidence will be more compelling than if the demonstration shows domestic contributions exceeding international contributions.[73] These changes in policy require a reasoned explanation, which the Agency altogether fails to provide. To the extent EPA is relying on the Administrator's rescission of the agency's 2020 179B guidance that included the above referenced policies, that rescission provided no reasoned substantive basis for abandoning the policies at issue here.[74] In announcing that rescission, the Administrator did not discuss any specific provisions of the 2020 Guidance at all, much less explain why those provisions were technically unsound, inconsistent with the statute, or otherwise flawed. Instead, the Administrator offered only broad, conclusory assertions that the Guidance "made it unnecessarily difficult for states to demonstrate that foreign air pollution is

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[69] 42 U.S.C. § 7509(c)(1).
[70] *Id.* § 7511a(a)(1), (3)(A).
[71] *Sierra Club v. EPA*, 21 F.4th 815, 823–26 (D.C. Cir. 2021).
[72] *See infra*, Section III.B.
[73] *See* Proposed Rule at 23215 & n.56.
[74] Ex. 23, EPA News Release, Administrator Zeldin Moves Forward with Ensuring U.S. States Are Not Punished for Foreign Air; *see infra*, Section VII.I.

harming Americans within their borders," and that its repeal "eliminat[ed] cumbersome red tape that placed excessive burden on states to prove emissions were from an international source." These generalized assertions hardly provided a reasoned explanation for eliminating the specific provisions of the Guidance at issue here. The Administrator failed to offer any explanation as to why those specific provisions made 179B demonstrations "unnecessarily difficult" or how they placed "excessive burdens" on states.

EPA also baldly asserts that based on the reference to the Administrator's "satisfaction," CAA section 179B(b) gives EPA the discretion to determine what technical analyses are sufficient for the purpose of a state demonstrating an area has attained but for international emissions. Whatever discretion the Administrator may have, however, his changes in policy must be rationally explained and supported, and the criteria for decision must be tethered to the statutory language and purpose.[75] EPA has established, time and time again, including in promulgating the 2015 ozone NAAQS itself, that ozone formation is complicated and influenced by complex interactions between precursor emissions, meteorological conditions, and surface characteristics.[76] In promulgating the 2015 ozone NAAQS, EPA explained that modeling analyses indicate that nationally the majority of ozone exceedances are predominantly caused by anthropogenic emissions from within the United States.[77] EPA has also recognized that while observational and modeling analyses have concluded that concentrations in "some" locations in the U.S. on "some" days can be substantially influenced by sources that cannot be addressed by domestic control measures, "these events are relatively infrequent."[78]

Based on EPA's scientific determinations regarding the ozone NAAQS, it is therefore reasonable, and in consideration of an important aspect of the ozone nonattainment problem, for EPA to require more detailed information and additional evidence in certain circumstances when assessing impacts on a nonattainment area from international emissions. Given the complicated nature of determining whether particular ozone monitoring impacts are from domestic or international emissions, it is equally reasonable for EPA to find that weight of evidence is more compelling when a demonstration shows international contributions exceed domestic contributions, suggesting an increased likelihood that nonattainment impacts are international rather than domestic. In the present proposal, EPA is completely silent as to whether and how its new policy regarding a weight of evidence demonstration under CAA section 179B addresses the nature of ozone formation and international transport, thus ignoring an important aspect of the ozone nonattainment problem. EPA also fails to acknowledge that its new interpretation disposes of the "clear distinction between near-border" international anthropogenic ("IA") contributions "and all the other[]" areas' IA contributions.[79] By disregarding domestic contributions, EPA flips

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[75] *See, e.g.*, *Loper Bright v. Raimondo*, 606 U.S. 369, 394-396 (2024).
[76] *See e.g.*, 80 Fed. Reg. 65292, 65299 (Oct. 26, 2015).
[77] *Id.* at 65300.
[78] *Id.*
[79] Memo from Barron Henderson and Heather Simon (EPA, OAQPS), to Ozone Determination of Attainment by the Attainment Date Rule Docket (EPA-HQ-OAR-2021-0742), Subject: Modeled U.S. and International Contributions for 2015 Ozone NAAQS Nonattainment Areas at 9, 11 fig.2 (Dec. 10, 2021), EPA-R08-OAR-2024-0552-0031 [hereinafter 2021 EPA Assessment].

the Clean Air Act on its head, allowing nonattainment areas to avoid reducing pollution when even a small fraction of emissions can be attributed to international sources—rather than requiring pollution reductions where possible, and allowing an exemption only where uncontrollable international emissions, rather than controllable local emissions, are the cause of a NAAQS violation.

Finally, EPA cannot now address these administrative law deficiencies by finalizing its new interpretation and policies without re-proposal and by instead claiming that this comment letter or others provide grounds for logical outgrowth. Section 553(b) of the Administrative Procedure Act requires that the notice of proposed rulemaking provide the terms or substance of the proposed rule. As described, EPA has failed to provide the required explanation for its proposed change in interpretation of CAA section 179B(b) and policy, depriving the public of an opportunity to comment on key aspects of its proposal.

III. Utah Has Failed to Timely Adopt All Legally Required Measures to Control Ozone-Forming Pollution from Sources in Utah.

The delayed 2024 NWF State Implementation Plan ("SIP") fails to comply with CAA requirements for Moderate SIPs and thus fails to adequately regulate in-state ozone-contributing sources. For ozone nonattainment areas that are classified Moderate, the CAA specifies the components the areas must adopt and implement in their Nonattainment Area State Implementation Plans ("NSIP"). For example, NSIPs for Moderate nonattainment areas under the 2015 ozone NAAQS, must, among other requirements, (1) show Reasonable Further Progress ("RFP") by reducing volatile organic compound ("VOC") emissions by 15%; (2) develop contingency measures for failure to either attain or demonstrate RFP; (3) implement Reasonably Available Control Technology ("RACT") for existing sources; and (4) implement all Reasonably Available Control Measures ("RACM") as expeditiously as practicable.[80]

For the NWF, Utah's NSIP fails to comply with the CAA in several ways: for example, Utah failed to (1) timely submit the NSIP; (2) demonstrate achievement of the 15% VOC-only reduction requirement; (3) adopt legally adequate contingency measures; (4) conduct a proper RACT analysis and adopt fully adequate RACT; and (5) conduct a proper RACM analysis and adopt fully adequate RACM. These deficiencies—most of which EPA has previously identified, and which Utah has not resolved—show that Utah has failed to exhaust options to reduce ozone from its own sources and cannot blame its 2024 nonattainment on international emissions. In fact, Utah's failure to implement measures to control local ozone pollution was one of the primary reasons for EPA rejecting the NWF's 2021 179B demonstration, which should be the result here.[81]

This 2021 EPA Assessment is an addition to the 2020 EPA Assessment, EPA-R08-OAR-2024-0552-0035.

[80] 42 U.S.C. §§ 7502(c), 7511a(b); 40 C.F.R. §§ 51.1310–18.

[81] 2022 TSD at 2–3.

A. Utah Failed to Timely Submit the Moderate NSIP, Which EPA Has Still Not Yet Approved.

Utah has repeatedly failed to take timely and adequate action to curb local sources of ozone-forming pollution. After failing to adopt measures adequate to attain the 2015 ozone NAAQS by the initial August 3, 2021 attainment date, EPA increased the severity of the nonattainment classification for the NWF from Marginal to Moderate classification.[82] That increase triggered Utah's duty to adopt and submit by January 1, 2023, a Moderate NSIP to reduce unhealthy ozone levels burdening the NWF community.[83] But Utah submitted the NSIP nearly a year late on September 25, 2023.[84] On top of the initial delay, Utah amended the 15% RFP portion of the NSIP in November 2024, three months after its attainment deadline.[85]

Utah's failure to meet its deadlines further delays the federal enforceability of measures to reduce harmful ozone levels, such as a valid RFP plan to reduce VOC emissions and RACT for oil refineries, a copper smelter, and power plants. As a result, the NWF remains without an EPA-approved NSIP more than two years after the attainment deadline, even while its residents are forced to breathe ozone at a level high enough for a serious classification.

B. Utah's RFP Plan Improperly Relies on NOx Emission Reductions and Therefore Fails to Provide for Adequate VOC Reductions.

Utah's approach to its RFP calculations violates the Clean Air Act. Utah included both VOC and nitrogen oxide ("NOx") emissions reductions to calculate its RFP demonstration. But the Clean Air Act requires Utah to show a 15% reduction in VOC emissions alone. The statutory RFP requirement requires moderate nonattainment areas to reduce VOC emissions by at least 15% in six years from the baseline year.[86] In its regulations implementing the statutory RFP requirements, EPA interpreted the statutory VOC-only RFP requirement as a one-time requirement, *i.e.*, nonattainment areas must demonstrate RFP with reductions in only VOC emissions at least once, but can use reductions in NOx emissions to demonstrate RFP for subsequent periods thereafter. Specifically, the CAA regulation provides that nonattainment areas may rely on "either NOx or VOC emissions (or a combination) to meet [RFP requirements]" *only if* "EPA fully approved a 15 percent plan for a prior ozone NAAQS" for the same area.[87] EPA confirms that for an ozone nonattainment area "that has not previously adopted and

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[82] 87 Fed. Reg. 60897, 60923 (Oct. 7, 2022).
[83] 87 Fed. Reg. at 60907.
[84] Ex. 5, Utah Dep't of Env't Quality, State Implementation Plan 2015 Ozone NAAQS Northern Wasatch Front Moderate Nonattainment Area (Sept. 2023), https://www.regulations.gov/document/EPA-R08-OAR-2024-0552-0024, EPA-R08-OAR-2024-0552-0024 [hereinafter 2023 Submission]; Ex. 11, Letter from EPA to UDEQ on Completeness Finding, EPA-HQ-OAR-2023-0442-0021, https://www.regulations.gov/document/EPA-HQ-OAR-2023-0442-0021 (Oct. 11, 2023).
[85] 2024 Submission. Both the 2023 and 2024 Submissions underwent notice and comment in the state administrative process.
[86] 42 U.S.C. § 7511a(b)(1)(A)(i).
[87] 40 C.F.R. § 51.1310(a)(2).

implemented a SIP providing for a 15 percent reduction in VOC emissions consistent with CAA section 182(b)(1)," the state "must provide for a 15 percent reduction in VOC emissions in the 6 years following the baseline emissions inventory year."[88] The statute also creates an "RFP waiver," with which a nonattainment area can demonstrate RFP with VOC-only reductions of less than 15% if it meets certain requirements, like "tightening of the major source threshold for VOC sources to 5 ton per year."[89] But here, EPA never previously approved a VOC-only 15% reduction plan for RFP under an ozone NSIP and Utah did not attempt to invoke the RFP waiver. Utah is thus required to show a 15% reduction in VOC-only emissions.

Utah did not comply with that requirement—Utah has not shown a 15% reduction in VOC-only emissions for 2017–2023. In the initial SIP submission, Utah did not even attempt to rely on NOx emissions and instead simply admitted its VOC-reducing strategies were not implemented in time and "will not count towards RFP under the moderate SIP."[90] In 2024, Utah switched its position and attempted to meet RFP by adding reductions in NOx emissions because it said it could not meet the required 15% reduction in VOC emissions. Utah showed only a 3.9% reduction in VOC emissions over the relevant time period.[91] Utah attempts to meet the 15% requirement with a 19.7% reduction in NOx emissions. But, as explained, Utah cannot rely on reductions in NOx emissions to meet the 15% requirement because EPA has not previously approved a VOC-only 15% reduction plan for a prior ozone NAAQS for the NWF—a fact that both EPA and Utah acknowledged during the state administrative process.

In particular, in commenting on both SIP submissions in the state administrative process, EPA found that Utah's reliance on NOx emissions to meet RFP would be grounds for disapproving that SIP element. Commenting on the 2023 Submission, EPA concluded that "[t]he proposed SIP does not meet the required reductions of 15 percent VOC emissions . . . Without a waiver or other alternatives, EPA may be required to disapprove this SIP element."[92] Then, in commenting on the 2024 Submission, EPA reaffirmed that

> Utah does not have a previously approved Moderate RFP ozone plan and therefore cannot rely on NOx emission reductions to satisfy the requirement . . . If the state submits a SIP revision that relies on NOx reductions, as in the proposed revisions, EPA does not currently see a basis for proposing approval of such a SIP revision.[93]

In the 2023 Submission, even Utah acknowledged that it must meet the 15% reduction with only VOC emissions reductions and "NOx reductions do not count towards" RFP because "the NWF

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[88] 80 Fed. Reg. 12264, 12275 (Mar. 6, 2015).
[89] 2023 EPA Comments at 8 (discussing 42 U.S.C. § 7511a(b)(1)(A)(ii)).
[90] 2023 Submission at 117.
[91] 2024 Submission at 114, 116.
[92] 2023 EPA Comments at 8.
[93] Ex. 13, 2024 EPA Comments on 2024 Submission 1 (Sept. 3, 2024), https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=545141&eqdocs=DAQ-2024-009992&dbid=0&repo=Public [hereinafter 2024 EPA Comments].

does not have a previously approved ROP [rate of progress] plan related to ozone, the state must meet the 182(b)(1)(A) requirements for this moderate SIP."[94]

In addition, several commenters on the 2023 Submission—from environmental organizations to industry associations—pointed out that the NWF may not include NO_x emission reductions to meet the 15% RFP because the area has never previously adopted and implemented an ozone SIP with a 15% VOC-only emissions reductions plan.[95] In fact, Utah was presented with several options to reduce VOC emissions but chose not to adopt any of them; the options included reducing VOC emissions through tighter regulations in line with existing regulations in other states on flaring, sealants, adhesives, architectural coatings, consumer products like deodorants, nonroad engines like lawnmowers, and on-road mobile sources.[96]

In its 2024 Submission, Utah later backpedaled from its position in its 2023 Submission, attempting to circumvent the CAA's RFP requirements by relying on three previous SIPs' VOC reductions as equivalent to an EPA-approved 15% VOC-only RFP plan under a prior ozone NAAQS: 1) VOC emissions reductions achieved under a 2015 Moderate PM2.5 NSIP; 2) VOC emissions reductions achieved under 2015 combined Moderate and Serious PM2.5 NSIPs; and 3) VOC emissions reductions achieved under the 1979 ozone SIP.[97] EPA rejected this approach because these three situations do not fit the regulation's eligibility requirements for NWF to use both NOx and VOC emissions in the current RFP plan.[98] Regarding the first two, the NSIPs were to attain a PM2.5 NAAQs, not ozone; the CAA regulation makes clear that EPA must have approved a VOC-only RFP plan under a prior *ozone* NAAQS, not just reductions that may have occurred in efforts to meet other NAAQS. Besides, the RFP NSIP requirements for PM2.5 do not even require reductions for a certain pollutant or by a certain percentage, unlike the ozone RFP NSIP requirements that do.[99] As to the third prior action that Utah attempts to rely on, the 1979 ozone SIP's VOC reductions also do not constitute an EPA-approved VOC-only RFP plan. Although the NWF reduced VOC emissions by 43.2% between 1980 and 1987 when

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[94] 2023 Submission at 112, 114.
[95] *See, e.g.*, Ex. 10, Western Resources Advocates Comments 3–4 (July 17, 2023), https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=392634&eqdocs=DAQ-2023-004708 [hereinafter WRA Comments]; Ex. 7, Breathe Utah Comments 12 (July 17, 2023), https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=392636&eqdocs=DAQ-2023-004687 [hereinafter Breathe Utah Comments]; Ex. 9, Utah Petroleum Association & Utah Mining Association Comments 8 (July 17, 2023), https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=392311&eqdocs=DAQ-2023-004691 [hereinafter UPA & UMA Comments]; Ex. 27, Western Resources Advocates 2024 Comments (Sept. 3, 2024), https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=545146&eqdocs=DAQ-2024-009980.
[96] Ex. 8, HEAL Comments at 2–6 (July 17, 2023), https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=392632&eqdocs=DAQ-2023-004688&dbid=0 [hereinafter HEAL Comments]; WRA Comments at 11–15; 2024 Submission at 98–105.
[97] 2024 Submission at 120.
[98] 2023 EPA Comments at 8.
[99] 42 U.S.C. § 7513a; 40 C.F.R. § 51.1012.

the 1979 ozone NAAQS applied, "VOC emission reductions achieved under this standard were not federally approved and therefore are not considered a previously approved RFP plan," as Utah conceded in its initial submission.[100]

Utah was on notice that such past reductions were not equivalent to a prior EPA-approved VOC-only RFP plan but nevertheless ignored EPA's warning. In commenting on the 2023 Submission that did not rely on NOx emissions for RFP, EPA noted "these prior reductions" that were "made under other NAAQS" "cannot be credited towards this 15% VOC requirement for the 2015 ozone NAAQS."[101] In commenting on the 2024 Submission that relied on NOx emissions for RFP, EPA reaffirmed that "Utah does not have a previously approved Moderate RFP ozone plan and therefore cannot rely on NOx emission reductions to satisfy the requirement. The volatile organic compound (VOC) reductions achieved under the particulate matter (PM2.5) SIP do not substitute for a previously approved Moderate RFP ozone plan."[102]

Moreover, Utah could have availed itself of an RFP waiver, like EPA suggested in 2023 and 2024, but did not.[103] Instead, Utah responded that seeking a waiver was "infeasib[le]" because reducing VOCs was "extremely difficult" in light of "the lack of available and cost effective options," even though commenters raised options.[104] Because EPA never fully approved a 15% RFP plan for a prior ozone NAAQS for the NWF and did not issue Utah an RFP waiver, Utah cannot rely on both VOC and NOx emissions reductions to meet RFP requirements.

Utah's RFP measures therefore fall far short of the Clean Air Act's requirements, and Utah failed to adequately reduce ozone precursors during the years at issue for its 179B demonstration.

C. Utah's Proposed Contingency Measures Are Not Contingent Upon a Triggering Event and Improperly Include Both VOC and NOx Emissions Reductions.

Utah's proposed contingency measures in its Moderate area plan are faulty for two reasons: (1) they are already-implemented measures, not new measures planned to go into effect after a qualifying triggering event; and (2) they fail to reduce VOC emissions by the required 3% from the baseline emissions inventory.

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[100] 2024 Submission at 121.
[101] 2023 EPA Comments at 8.
[102] 2024 EPA Comments at 1.
[103] 2023 EPA Comments at 8; 2024 EPA Comments at 2.
[104] Ex. 14, Utah Response to Comments 8 (2024), https://lf-public.deq.utah.gov/WebLink/ElectronicFile.aspx?docid=465252&eqdocs=DAQ-2024-011286&dbid=0 [hereinafter Utah RTC] (pincites to this document are to the PDF page number); *see* HEAL Comments.

1. The Contingency Measures Went into Effect Regardless of Whether Utah Failed to Attain or Failed to Meet RFP.

Utah's proposed contingency measures were not tied to either of the two triggering events specified in the Act: (1) failure to timely attain; or (2) failure to timely achieve RFP. The Act expressly states that nonattainment areas "shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date."[105] EPA confirms that "[c]ontingency measures must be designed so as to be implemented prospectively; control measures that have already been implemented may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose."[106] Multiple Circuit courts affirm this reading. "The Act's plain text expressly provides that valid contingency measures become operative only when the triggering conditions set forth in the statute occur, and not any earlier."[107] Utah's proposed contingency measures did not measure up to the Clean Air Act.

Utah's two proposed contingency measures were planned to take effect and did go into effect independent of a triggering event. The NOx emissions rules for natural gas-fired boilers were planned for May 2024 and the requirement of VOC emissions control for the US Magnesium plant was planned for October 2024 —regardless of a triggering event.[108]

During the state administrative process, EPA warned Utah that the proposed contingency measures "will not [*sic*] [be] approvable if they are implemented prior to a future EPA action determining that the nonattainment area either failed to attain by the Moderate attainment date or failed to meet RFP."[109] The Utah Petroleum Association & Utah Mining Association also noted this flaw, but Utah did not amend its contingency measures.[110] In short, given that Utah's contingency measures went into effect before either failure to attain or failure to demonstrate RFP (both of which occurred), Utah was left with no contingency measures to implement when it did not attain or achieve RFP Accordingly, its NSIP fails to meet the Act's contingency measure requirements.

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[105] 42 U.S.C. § 7509(c)(9).
[106] 88 Fed. Reg. 39179, 39180–81 (June 15, 2023).
[107] *Sierra Club v. EPA*, 21 F.4th 815, 827 (D.C. Cir. 2021); *see Bahr v. EPA*, 836 F.3d 1218, 1235–37 (9th Cir. 2016) ("The statutory language in § 7502(c)(9) is clear: it requires the SIP to provide for the implementation of measures 'to be undertaken' in the future, triggered by the state's failure 'to make reasonable further progress' or to attain the NAAQS. These measures are included in the SIP as 'contingency measures' and are 'to take effect' automatically in the future.").
[108] 2024 Submission at 157–58; *see* Utah Admin. Code § R307-315-6 (beginning compliance schedule for boilers on November 1, 2024).
[109] 2023 EPA Comments at 15.
[110] UPA & UMA Comments at 9–11.

2. To Meet the Emissions Reductions the Contingency Measures Are Required to Achieve, Utah Improperly Included Both VOC and NOx Emissions Reductions.

Utah's inclusion of both VOC and NOx emissions reductions to show that contingency measures will reduce emissions by 3% from the baseline emissions inventory does not comply with the CAA because Utah cannot rely on reductions in NOx emissions as EPA never approved a previous VOC-only 15% reduction plan for RFP.[111] The Act requires nonattainment areas to adopt contingency measures, and EPA's rule further explains that contingency measures must provide for emissions reductions of "approximately 3 percent of the baseline emissions inventory."[112] EPA allows nonattainment areas to meet the 3% reduction "based entirely or in part on NOx controls *if the area has completed the initial 15 percent [rate of progress] VOC reduction* required by [RFP] and an air agency's analyses have demonstrated that NOx substitution [for VOC] (entirely or in part) would be effective in bringing the area into attainment."[113] In other words, if the nonattainment area did not initially meet RFP requirements with an EPA-approved plan to reduce only VOC emissions by 15% under a ozone NAAQS, then the nonattainment area must propose contingency measures that provide for a 3% reduction in VOC-only emissions and cannot rely on reductions in NOx emissions. As explained above in Section III.B., EPA has not approved a VOC-only RFP plan for the NWF, so Utah must show that its contingency measures cover a 3% reduction in VOC emissions alone.

For 2017–2023, Utah has not shown that contingency measures will provide for a 3% reduction in VOC emissions of the baseline emissions inventory. Utah shows at most only a 0.47% reduction in VOC emissions.[114] Because EPA has not previously approved a VOC-only RFP plan for the NWF, NWF's contingency measures must meet the 3% reduction through only VOC emissions reductions, which Utah has not shown. During the state administrative process, Western Resource Advocates raised this deficiency, but Utah did not amend its contingency measure provisions.[115]

Utah's proposed contingency measures thus do not comport with CAA requirements, further showing Utah's failure to adopt all required of local control measures to attain the ozone NAAQS and disqualifying it from relying on a 179B(b) exemption.

D. Utah's RACT Analysis Is Improper Because Utah Failed to Consider Applicable Guidelines and Relied on Outdated Technology Analysis Conducted under an Older, Different NAAQS.

Utah's RACT analysis was deficient because it insufficiently considered applicable guidelines and it mostly relied on a previous BACT analysis under a different NAAQS as a substitute. The CAA requires that Moderate nonattainment areas set and implement RACT for

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[111] 42 U.S.C. § 7511a(b)(1)(A)(i).
[112] 42 U.S.C. § 7509(c)(9); 83 Fed. Reg. at 63026.
[113] 83 Fed. Reg. at 63026 (emphasis added).
[114] 2024 Submission at 165.
[115] WRA Comments at 5–6.

existing VOC or NOx sources covered by a Control Technique Guidelines (CTG) and all major stationary VOC or NOx sources.[116] EPA has stated that, when determining RACT, states should consider "recent technical information and information received during the state's public comment period."[117]

Utah's RACT analysis did not list which Control Technique Guidelines or Alternative Control Techniques it considered, if any, as EPA noted in its comments. As a result, EPA could not determine which technical information was evaluated, let alone whether Utah's review was sufficient.[118] During the state comment period, Utah also ignored EPA's instruction to compare its analysis to other RACT analysis under the ozone NAAQS, like the Moderate NSIP for Denver that EPA proposed for comparison.[119]

Other commenters during the state administrative process also highlighted that Utah's RACT analysis failed to survey technology in other states and failed to analyze all units at covered sources. For example, commenters pointed out Utah's failure to complete a "systematic RACT analysis" since "some facilities submitted a new RACT analysis but did not include all VOC and NOx emission units. Each major source must evaluate each VOC and NOx emission unit under the RACT Report requirements."[120] For several emission units, the state's RACT for VOCs was simply "good combustion practices" with no explanation of whether additional reductions could be achieved with reasonably available add-on controls.[121] Utah also could have implemented refinery flare regulations to reduce the number and size of flaring events, which would reduce VOCs in NWF and had already successfully reduced VOCs in California, but did not.[122]

Moreover, to determine RACT, Utah primarily relied on its now seven-year-old analysis of Best Available Control Technology ("BACT") analysis that EPA approved for Salt Lake City's Serious PM2.5 NSIP, which Utah submitted in 2019.[123] That PM2.5 NSIP concerns the 2006 PM2.5 NAAQS and was supposed to apply to the time period of 2017–2019.[124] But Utah cannot rely on an outdated technology analysis, let alone an analysis under a *different NAAQS* for a *different pollutant* entirely. First, such an outdated analysis does not constitute consideration of "recent technical information."[125] Second, technology to achieve a 2006 NAAQS for one pollutant does not necessarily equate to that technology achieving RACT for a 2015 NAAQS for another pollutant. Utah cannot merely substitute its technology analysis to reduce NOx and VOCs for purposes of the 2006 PM2.5 standard for an analysis to reduce NOx and VOCs for purposes of the current 2015 standard. In support of its reliance on the PM2.5 BACT analysis,

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[116] 42 U.S.C. § 7511a(b)(2); 40 C.F.R. § 51.1312.
[117] 83 Fed. Reg. at 63007.
[118] 2024 Submission at 34–95; 2023 EPA Comments at 4.
[119] 2023 EPA Comments at 4.
[120] Breathe Utah Comments at 1, 4.
[121] 2024 Submission at 37.
[122] WRA Comments at 11, Attachment 1.
[123] 2024 Submission at 35.
[124] 85 Fed. Reg. 71023, 71030–31 (Nov. 6, 2020).
[125] 83 Fed. Reg. at 63007.

Utah points to EPA's consideration of states using pre-existing ozone RACT determinations when developing SIPs for the 2008 ozone NAAQS.[126] But EPA's approach there concerned the 2008—not 2015—ozone NAAQS nonattainment SIPs. Notably, this language does not appear in the final rule for NSIP requirements for the applicable 2015 ozone NAAQS.[127] Further, EPA's statement was not an actual finding of a prior RACT determination sufficing for a future one; EPA qualified that the approach was allowed only "in some cases," and did not endorse using outdated RACT determinations.[128] And, critically, the RACT determinations at issue there involved the same pollutant for which the area was nonattainment.

Therefore, Utah's RACT analysis does not satisfy the CAA and demonstrates another way Utah failed to adequately reduce local sources of ozone before trying to blame international sources for the nonattainment area's unsafe air.

E. Utah's RACM Analysis Was Incomplete and Improperly Relied on a Prior Analysis Conducted Under an Older, Different NAAQS.

Utah's RACM analysis did not look at appropriate sources and did not provide for the requisite stringency of control measures. The CAA requires nonattainment areas to implement all reasonably available control measures as expeditiously as practicable ("RACM").[129] To determine RACM, states must consider updated, relevant information, especially resources provided by EPA.[130]

Utah did not conduct a comprehensive, up-to-date RACM analysis for its Moderate area plan. For example, Utah included a comparison of its rules with three other nonattainment areas in California and Arizona with EPA-approved NSIPs.[131] However, those NSIPs were designed to attain the 2008 ozone standard—not the more-stringent, current 2015 standard. And reviewing rules in only three other areas falls short of the required comprehensive, up-to-date assessment. Indeed, EPA advised Utah to "look at more than just these three western states for possible control measures as well as resources provided by EPA," such as EPA's Menu of Control Measures.[132] EPA also stated that Utah should consider Transportation Control Measures under CAA Section 108(f).[133] But Utah failed to seriously consider additional controls from other states or from the resources EPA identified.

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[126] 2024 Submission at 35 n.48; *see* 80 Fed. Reg. 12264, 12278 (Mar. 6, 2015) ("The EPA is finalizing the approach allowing in some cases for states to conclude that sources already addressed by RACT determinations for the 1-hour and/or 1997 ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement.").
[127] 83 Fed. Reg. 62998 (Dec. 6, 2018).
[128] 80 Fed. Reg. at 12278.
[129] 42 U.S.C. § 7502(c)(1); 40 C.F.R. § 51.1312(c).
[130] 2023 EPA Comments at 5.
[131] 2024 Submission at 96.
[132] 2023 EPA Comments at 5.
[133] *Id.*

During the state comment period, commenters noted that Utah's RACM "could be strengthened to match" existing regulations in other states.[134] For example, Utah's rule on sealant and adhesives—one of the area's largest sources of VOCs—"falls short in setting standards for many categories of VOC gram/liter limits as compared to California's [regulation]."[135] Utah also mistakenly relied on the Ozone Transport Commission model rule as the governing standard for RACM and thus did not add controls where its rules already met the model rule.[136] Commenters highlighted that California's policies, not the model rule, were the more relevant (and stronger) standard for regulations on architectural coatings and consumer products (*e.g.*, deodorants).[137] Commenters also suggested that Utah reduce VOC emissions by more stringently regulating another significant and growing source of VOC emissions: nonroad engines (*e.g.*, lawnmowers).[138] While Utah acknowledged that regulations for nonroad engines "are likely to be reasonable in scope and could result in significant emission reductions of both VOCs and NOx," the state's revised SIP did not include limits on nonroad engines because it claimed to not have enough time to develop a policy that "covers such a large amount" of sources (even though its SIP submissions were late).[139] And commenters raised the option of adopting measures to reduce ozone precursors from mobile sources similar to an existing Texas program that reduces ozone precursors with various initiatives like diesel alternatives, clean school buses, and energy efficiency programs.[140] Utah was also presented with the option of adopting California's Advanced Clean Trucks Rule to reduce VOCs from diesel-fueled medium- and heavy-duty vehicles, which included details on how the rule works and ways that Utah could implement the rule.[141] But Utah did not amend RACM to incorporate these measures.

In addition, similar to its approach for the RACT analysis, Utah relied on the analysis for Best Available Control Measures ("BACM") for Salt Lake City's Serious PM2.5 NSIP.[142] But the 2019 BACM analysis conducted under a 2006 NAAQS for a different pollutant is not appropriate for RACM here because the old BACM does not reflect the most updated technical information and does not control NOx and VOCs to specifically meet the 2015 ozone NAAQS. During the state administrative process, EPA explained why Utah cannot merely copy and paste its prior BACM analysis: "[T]he BACM analysis for the refineries in the Salt Lake City nonattainment area did not address limits, or present detailed BACM analyses for VOC, which is one of the two assumed precursors of ozone."[143]

Therefore, Utah's RACM analysis was insufficient to comply with the CAA and exemplifies another way Utah has not sufficiently regulated local ozone sources.

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[134] HEAL Comments at 2, 3.
[135] *Id.* at 2, 3.
[136] 2024 Submission at 98–101.
[137] HEAL Comments at 3.
[138] WRA Comments at 11–12.
[139] 2024 Submissions at 105.
[140] HEAL Comments at 5–6.
[141] WRA Comments at 13, Attachments 2–3.
[142] 2024 Submission at 96.
[143] 2023 EPA Comments at 17.

F. Utah's 2024 Submittal Contains Other Deficiencies.

In addition to the abovementioned deficiencies, Utah's SIP does not satisfy the CAA because (1) the "emissions inventory methodology is not sufficiently supported in the SIP narrative or TSD"; and (2) "Motor vehicle emissions budgets cannot be greater than the future year SIP mobile source emissions inventory."[144] EPA identified these flaws in 2023, but Utah did not address them in the 2024 Submittal.

In conclusion, Utah's SIP submissions do not comply with the CAA requirements for Utah to implement required local control measures to reduce ozone, which precludes Utah from eligibility for a 179B(b) exemption.

IV. EPA Does Not Have Reconsideration Authority Over Its Reclassification of the NWF Area Given That CAA Section 110(k)(6) Specifies the Circumstances Under Which EPA Can Revisit a Reclassification.

The Clean Air Act does not provide EPA with the reconsideration authority for its proposed repeal of its December 9, 2024 action both determining that the NWF nonattainment area failed to attain the 2015 ozone NAAQS, and reclassifying the area to Serious. EPA incorrectly asserts that it has the authority to reconsider and revise, rescind, and repeal final actions "to the extent permitted by law" so long as it offers a reasonable basis for doing so and considers applicable reliance interests.[145] In support of this proposition, EPA cross-references a footnote that cites several cases, none of which go to the Agency's statutory reconsideration authority over its prior determination that the NWF failed to attain the 2015 ozone NAAQS and related reclassification.[146] EPA also cites to the entire Clean Air Act for its proposed action.[147] EPA cites to CAA sections 179B and 181(b)(2) as legal authority for its proposed actions, but EPA's proposal makes clear that the applications of these authorities are with respect to EPA's proposed approval of Utah's 179B waiver and determination that NWF would have attained but for international emissions, *not* that EPA has legal authority to reconsider its prior action. Tellingly, nowhere does EPA cite or discuss any specific statutory provisions as supporting its legal authority to reconsider its prior action.

As an initial matter, failing to meet its burden under the Administrative Procedure Act ("APA") and relevant caselaw, EPA offers no substantive explanation for how these cases or the Clean Air Act grants it authority to reconsider and repeal a determination of attainment by the attainment date and related reclassification for the ozone NAAQS. As previously noted, EPA does not cite to any specific statutory provisions for its reconsideration authority. Nor do any of the cited cases actually support EPA's authority for its proposed action. The cases referenced all provide the Supreme Court's instruction on the reasoned explanation an agency must provide when changing position, and/or the circumstances under which an agency may change position

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[144] *Id.* at 1–2.
[145] Proposed Rule at 23214.
[146] *Id.* at 23213 n.37.
[147] *Id.* at 23214 n.51.

when there are significant reliance interests on the agency's prior position.[148] EPA provides no explanation on how these cases support its authority to reconsider its prior determination and reclassification for the NWF 2015 ozone nonattainment area, and therefore fails altogether to provide the reasoned explanation these actions require for a change in position.[149]

In addition to failing to reasonably explain its authority for its proposed reconsideration, case law and the Clean Air Act itself cut *against* EPA's purported authority for its proposed action. As the D.C. Circuit has emphasized, "it is 'axiomatic' that 'administrative agencies may act only pursuant to authority delegated to them by Congress,'" and "EPA must point to something in . . . the Clean Air Act" that gives it the reconsideration authority it asserts it has.[150] As previously noted, EPA cites to the Clean Air Act generally as supporting its proposed action, but "it is well established that an agency may not circumvent specific statutory limits on its actions by relying on separate, general rulemaking authority."[151] For the reasons described below, the Clean Air Act *does* provide EPA with specific statutory authority to reconsider its prior determination of attainment by the attainment date and reclassification of an ozone nonattainment area—within enumerated limits. EPA therefore cannot circumvent the specific statutory limits Congress placed on the Agency under the *actual* provisions that apply to such a reconsideration.

CAA section 110(k)(6) *specifically* speaks to EPA's authority to reconsider its action promulgating a reclassification. As the D.C. Circuit has explained, a "general grant of rulemaking power . . . [cannot] trump the specific provisions of the act."[152] When two regulations conflict on the same subject matter, "the specific governs the general," and the more specific regulation applies.[153] EPA points to Clean Air Act Section 110(k)(2) and (3) as providing it with "implicit" authority; however, in doing so, the Agency impermissibly "trump[s] the specific provisions of the Act." Accordingly, EPA may not allow vague assertions of legal authority to "override" the more explicit, specific reconsideration authority under the former.

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[148] *FDA v. Wages & White Lion Invs., LLC*, 145 S. Ct. 898 (2025); *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

[149] EPA cannot for the first time provide the required explanation in a final rule, as such final rule would not be considered logical outgrowth of the proposal. In determining whether a final rule is the logical outgrowth of the proposed rule, the key focus is on whether the purposes of notice and comment have been adequately served. *See Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983). Furthermore, responses to EPA's generic solicitation of comment on its statutory authority to reconsider and repeal the December 2024 rule do not suffice for purposes of logical outgrowth, as "EPA itself must *itself* provide notice of a regulatory proposal. Having failed to do so, it cannot bootstrap notice from a comment." *Id.*

[150] *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017) (quoting *Verizon v. FCC*, 740 F.3d 623, 632 (D.C. Cir. 2014)).

[151] *Air All. Houston v. EPA*, 906 F.3d 1049, 1061 (D.C Cir 2018).

[152] *NRDC v. Reilly*, 976 F.2d 36, 41 (D.C. Cir. 1992).

[153] *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 169–70 (2007); *see also Halverson v. Slater*, 129 F.3d 180, 183–84 (D.C. Cir. 1997).

When two regulations conflict on the same subject matter, "the specific governs the general," and the more specific regulation applies.[154]

Because CAA section 110(k)(6) plainly specifies the circumstances under which EPA may reconsider its prior action reclassifying a nonattainment area, "EPA cannot escape Congress's clear intent to specifically limit the agency's authority" by relying on more general authorities to reconsider its prior actions.[155] Per the D.C. Circuit, ''the power to decide is normally accompanied by the power to reconsider'' unless Congress has "'limit[ed] [the] agency's discretion to reverse itself.'"[156] Importantly, "any inherent reconsideration authority does not apply in cases where Congress has spoken," and EPA may not rely on inherent reconsideration authority "when Congress has provided a mechanism capable of rectifying mistaken actions."[157] Here, Congress has plainly displaced any implicit authority to reconsider prior reclassification decisions, and limited the scope of EPA's discretion to reverse itself by specifying EPA's reconsideration authority under Clean Air Act Section 110(k)(6).

The specific limits on EPA's reconsideration of a prior reclassification action do not authorize the type of reconsideration EPA seeks to now take. As an initial matter, EPA has not proposed to take its current action under Section 110(k)(6), and may not finalize action based on such reconsideration authority without a proposal that complies with the relevant requirements. Under the error correction provision, EPA may reconsider its prior action reclassifying an area whenever EPA determines its prior action "was in error." This means that CAA section 110(k)(6) requires a determination by EPA that its prior action "was" in error, *i.e.*, that a legal or factual error existed at the time of EPA's prior action approving or disapproving a SIP submission. The text of this provision plainly does not allow EPA to reconsider a prior reclassification based on subsequent policy preferences or a CAA section 179B submission by a State *after* EPA has determined that an area failed to attain the NAAQS and reclassifies the area accordingly. In proposing to approve Utah's CAA section 179B demonstration, EPA is clearly changing certain policies.[158] The statute's prescription that EPA may correct an action that "was" in error, rather than allowing EPA to correct an action that "is" in error, places a reasonable limiting principle on EPA's reconsideration authority. The best reading of Clean Air Act Section 110(k)(6)'s error correction authority is that EPA may revise its prior action reclassifying a nonattainment area based on a technical, factual, clerical, or legal error that existed *at the time* of such action. A subsequent court decision that renders the legal basis for EPA's prior SIP action as "was in error" can also provide the predicate for an error correction.

EPA's long-held interpretation and implementation of Clean Air Act Section 110(k)(6) is consistent with such best reading of this provision. *See e.g.*, 75 Fed. Reg. 82430, 82449 (Dec. 30, 2010) (error correction of Texas's SIP on the basis that it was legally flawed at the time of EPA's

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[154] *Long Island Care*, 551 U.S. at 170.
[155] *Air All. Houston*, 906 F.3d at 1061.
[156] *NRDC v. Regan*, 67 F.4th 397, 401 (D.C. Cir. 2023) (quoting *New Jersey v. EPA*, 517 F.3d 574, 582–83 (D.C. Cir. 2008)).
[157] *Ivy Sports Medicine, LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014) (quoting *American Methyl Corp. v. EPA,* 749 F.2d 826 (D.C. Cir. 1984)).
[158] Proposed Rule at 23215.

approval), challenged and upheld in *Texas v. EPA,* 726 F.3d 180, 204 (D.C. Cir. 2013) (Kavanaugh, J., dissenting) (explaining EPA's agreement with the interpretation of "*was* in error" in Clean Air Act Section 110(k)(6) means the provision can be used to retroactively disapprove a SIP "only if the SIP was out of compliance with the Act or EPA regulations when the SIP was originally approved"); 89 Fed. Reg. 13304, 13307 (Feb. 22, 2024) (deciding proposed determination that EPA's removal of a nuisance provision from Ohio's SIP was in error, as EPA's original approval of the nuisance provision into the SIP met the Clean Air Act's requirements to provide for the enforcement of the NAAQS, and therefore no legal error existed at the time of EPA's original approval).

For these reasons, EPA does not have the legal authority under the Clean Air Act to reconsider and repeal its prior determination of nonattainment and reclassification for NWF based on subsequent consideration of Utah's 179B demonstration and illegal new policy changes. Any reconsideration of EPA's prior action must be proposed under the authority of and limits prescribed by Congress under CAA section 110(k)(6), which also does not provide the legal grounds for EPA's present action.

V. A Valid 179B Demonstration Must Be Limited to International "Border Areas."

EPA's proposal violates the plain language of CAA section 179B because this provision only applies to "International border areas" according to its very title. The NWF nonattainment area is over 500 miles from the U.S.-Mexico border at its closest point and over 7,000 miles away from Asia and other intercontinental sources. Of course, neither Utah nor the NWF area border those Asian sources, even if one were to construe the U.S. West Coast as "bordering" Asia, which is not accurate. The provision does not apply to border states where the relevant nonattainment area is not on a border, and certainly does not apply to circumstances where emissions may emanate from thousands of miles away where the nonattainment area does not border the region or country from which the pollution originates. Statutory titles are important tools for statutory interpretation and placing the provision in context.[159]

The overriding purpose of the Clean Air Act is to "protect and enhance" air quality and mitigate the "mounting dangers to the public health and welfare" caused by air pollution.[160] To that end, Congress established NAAQS for six of the most common air pollutants, also known as

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[159] *Pileggi v. Wash. Newspaper Publ'g Co., LLC*, 146 F.4th 1219, 1232-33 (D.C. Cir. 2025) (using statutory title and section heading as starting point for statutory interpretation); *Cannon v. Watermark Ret. Cmtys., Inc.*, 45 F.4th 137, 144 (D.C. Cir. 2022) ("Titles offer clues as to statutory meaning.") (citing *Guam v. United States*, 593 U.S. 310, 316 (2021)); *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 727 (D.C. Cir. 2022) ("The title and headings are permissible indicators of meaning.") (quoting Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 221 (2012)); *see also Singh v. Gonzales*, 499 F.3d 969, 977 (9th Cir. 2007) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.") (citing *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998)) (quotation marks and citation omitted).

[160] 42 U.S.C. § 7401(a).

"criteria" air pollutants.[161] Congress directed EPA to set the primary, health-based standards at a level that is "requisite to protect the public health" with an adequate margin of safety.[162] To effectuate the NAAQS program, the Clean Air Act requires states to develop and submit state implementation plans ("SIPs") by certain statutory deadlines. These detailed plans provide for the implementation, attainment, maintenance, and enforcement of the NAAQS.

In the 1990 Amendments to the Clean Air Act, Congress added section 179B, which provides EPA with limited authority to adjust certain specific requirements under the NAAQS program for a border area that would have attained an air quality standard (or that would have demonstrated timely prospective attainment) "but for emissions emanating from outside the United States."[163] In drafting the amendment that became section 179B, appropriately entitled "International border areas," Congress introduced the bill as an amendment "to establish implementation plans or plan revisions with respect to ambient air quality standards in international border areas."[164]

During Senate debate on March 9, 1990, Congress discussed Section 179B to address pollution from border countries specifically and used the impact of Mexican emissions on Texas communities as *an* example of *the* international border pollution problem.[165] The bill was introduced as a way to solve "problems all along *America's border* where pollution is generated across the border by sources that we exercise no control over."[166] For example, Senator Gramm explained that "our basic problem is this: Take the city of El Paso and its sister city across the border, Juarez. No matter what El Paso does, it is affected by the level of air pollution that emanates from across the border."[167] Senator Baucus stated that "It is clear that cities *like* El Paso in the State of Texas do not have control of their own destiny themselves."[168] A city *like* El Paso is one that is adjacent to an international border, like Mexico, not the NWF area. Notably, the amendment "says that in assessing whether or not the State implementation plan has been met, . . . pollution that is being generated *across the border* has to be taken into account so that our cities and regions will be judged based on what they do."[169]

Moreover, in later debating a related Mexico-specific amendment, members of Congress explained this amendment was related to section 179B, both of which arose out of concern with addressing international border pollution.[170] The later debate concerned section 815 of the Act, which authorizes EPA to negotiate with Mexico on air quality monitoring and pollution-reduction measures to improve air quality.[171] During the debate, Congress referred to the

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[161] *Id.* § 7409.
[162] *Id.* § 7409(b)(1).
[163] *Id.* § 7509a.
[164] Ex. 1, 136 Cong. Rec. D120 (1990).
[165] 136 Cong. Rec. S4121 (1990).
[166] *Id.* (statement of Sen. Gramm) (emphasis added).
[167] *Id.*
[168] *Id.* (statement of Sen. Baucus) (emphasis added).
[169] *Id.* (emphasis added).
[170] Ex. 1, 136 Cong. Rec. S5062 (1990).
[171] Pub. L. No. 101–549, title VIII, § 815, 104 Stat. 2693 (1990).

Mexico-specific amendment as a tool to address "one of the major problems that we have in trying to control air pollution."[172] As an example of the international border pollution, Senator Baucus of Montana raised issues with pollution crossing the U.S.-Canada border and Canada's strong interest in the U.S. passing the entire legislation—nothing to do with section 815 itself—but indicative of the broader concern of international border pollution that related sections 179B and 815 were meant to address.[173] Senator DeConcini introduced Section 815 with the context of section 179B as a related amendment accepted to solve the same problem.[174] Senator Baucus also noted that section 815 "is another in a series of amendments," and summarized Section 179B, both of which are meant to "address" the problem of border areas not attaining.[175] Notably, the Senate discussion made no mention of non-border nonattainment areas or non-border countries, suggesting that Congress did not intend section 815 and 179B to provide relief beyond border regions, instructive of the provision's proper scope.[176]

The legislative history also contains no indication that Congress intended to relieve states of their obligation to adopt all feasible state and local measures to limit emissions. Instead, Congressional leaders repeatedly emphasized that the Act's "fundamental goal," the protection of public health, would not be compromised, noting that the Clean Air Act at its core "is a health bill."[177]

Furthermore, before its very recent approval of a 179B demonstration for Phoenix, EPA had never approved a 179B demonstration from an area that was not immediately adjacent to an international border. EPA must adhere to the clear limits Congress placed on this narrow exemption. EPA should only consider 179B Demonstrations from "border areas"—*i.e.*, areas of the U.S. that are directly adjacent a foreign country where the state can show that specific sources of foreign emissions are directly interfering with attainment.[178] EPA has failed to do so here, and has failed to articulate a valid basis to depart from the clear language and purpose of

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[172] 136 Cong. Rec. S5062 (1990) (statement of Sen. Baucus).
[173] *Id.*
[174] *Id.* (referring to another amendment that Senator Gramm offered and was accepted).
[175] *Id.*
[176] The only states represented in debates on sections 179B and 815 were all border states: Arizona, Vermont, Montana, and Texas.
[177] Ex. 1, 136 Cong. Rec. S3387 (1990) (statement of Sen. Baucus); *id.* at S3387 (statement of Sen. Chafee) ("[L]et us all remember that its principle purpose is to improve the health of the American people . . . . It is a health bill."); *see id.* at S3384–85 (statement of Sen. Baucus) ("[I]t is the result of nearly a month of intense but productive discussions with administration officials and with Senate members from both parties . . . . We have all had to bend some, all of us. But we never compromised the fundamental goal of the Clean Air Act, that is to protect public health and the environment. Whenever a proposal came up that might compromise this goal, it was flatly rejected.").
[178] The term "outside the United States" takes meaning from context and must be read in tandem with the provision's title, "International border areas." For example, if you say someone is "standing outside my house," you mean they're directly outside the house—not 7,000 miles away. Courts look to context, legislative history and the title as interpretative tools, and here all speak loudly and clearly in favor of limiting section 179B relief to border areas.

section 179B. Where Congress has "delegated to an administrative agency the critical task of assessing the public health and the power to make decisions of national importance in which individuals' lives and welfare hang in the balance," EPA has the "heaviest of obligations" to explain its reasoning.[179]

While EPA's illegal interpretation of CAA section 179B disqualifies the agency from considering emissions claimed to originate from sources in Mexico and Asia, its interpretation is especially egregious with respect to the latter. There is no border involved with respect to the NWF area and intercontinental pollution, and no indication that Congress in any way intended section 179B to be stretched so far.

VI. EPA's Proposal Arbitrarily Conflicts with Its Prior Rejection of Utah's 179B(b) Demonstration for the Northern Wasatch Front NAA.

EPA is proposing to approve Utah's latest demonstration despite the continued presence of arguments and frameworks that the agency rejected in Utah's previous demonstration.

In 2022, EPA found that the NWF's 2021 179B demonstration did not meet the criteria and thus designated the NWF as a Moderate nonattainment area.[180] EPA rejected the original 179B demonstration for four primary reasons: (1) lack of sufficient technical information (on several fronts); (2) flawed interpretation of 179B; (3) insufficient showing that feasible local measures have been implemented; and (4) attainment by an adjacent area with similar elevation, topography, and meteorology.[181] Utah's updated 2024 179B(b) demonstration, which EPA is now proposing to approve, still suffers from these kinds of flaws.

A. Lack of Sufficient Technical Information

EPA's 2022 TSD remarked that Utah's prior 179B(b) showing contained insufficient technical information:

> As described in EPA's, 'Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions' (CAA section 179B Guidance), a state's technical analysis for a CAA section 179B demonstration should include analysis of the exceedance days in the years that caused the failure to attain the NAAQS, and *if modeling is performed for a different year, the analysis should show that the modeled days have similar meteorological and long-range transport conditions as exceedance days in [the relevant three-year period*].[182]

Pointing to a conflict between the 179B submission deadline and the release of an updated EPA modeling platform, Ramboll used meteorology and air quality conditions from the June and July

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[179] *Am. Lung Ass'n v. EPA*, 134 F.3d 388, 392 (D.C. Cir. 1998).
[180] 87 Fed. Reg. at 60899.
[181] 2022 TSD at 2–3 (2022).
[182] *Id.* at 2 (emphasis added); *see also infra*, Section VII.I (discussing EPA's failure to adequately explain departures from the 2020 Guidance).

period of the 2017 base year to model ozone during 2023, and then used those results to extrapolate IA contributions for the entire 2021–2023 attainment period.[183] As an initial matter, Ramboll admits that this approach "does not directly address specific ozone exceedance events during the 2021-2023 attainment period."[184] In addition, this approach improperly assumes (1) that 2017 is an appropriate base year for the model and (2) that 2023 is representative of conditions in 2021 and 2022. EPA's Guidance, referenced in the 2022 TSD, does not bar the use of data from outside the attainment period; however, the analysis should show that the modeled time period has similar meteorological and long-range transport conditions to the attainment period years.[185] Despite using 2017 for the base year conditions, the Modeling Demo simply states that "[t]his approach therefore assumes that the summer of 2017 adequately characterizes typical air quality events that have occurred in more recent years."[186] Nowhere in the Modeling Demonstration does Utah provide evidence to back up this blanket statement. Because Utah fails to provide this information, the state has no basis for claiming that the conditions of 2017 truly are representative of meteorological conditions during the attainment period.[187] The analysis of Dr. Thompson, accompanying these comments, also notes that Utah has not done the work "to show that the 2017 year represents common conditions for high ozone," which is necessary "to be able to make meaningful decisions based on the modeling results."[188] Further, Utah does not provide evidence to back up its assumption that its 2023 modeling outputs are relevant for 2021 and 2022—Utah does not "show that the modeled days have similar meteorological and long-range transport conditions as exceedance days" in 2021 and 2022.[189]

B. Invalid Interpretation of 179B(b)

In EPA's TSD accompanying its 2022 disapproval of Utah's 2021 section 179B(b) demonstration for the Northern Wasatch Front NAA, EPA decided to reject the state's showing due, in part, to Utah's "unique" interpretation of 179B in its demonstration. "Specifically, the state has assumed that it is sufficient merely to subtract the estimated international contribution from the design value (DV), and if the result does not exceed 70 ppb, then EPA should approve the demonstration without further evaluation."[190] Instead, EPA recommends evaluating international contributions relative to domestic ones, noting that 179B(b) demonstrations with a

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[183] Ex. 24, Utah Dep't of Env't Quality, Northern Wasatch Front Nonattainment Area 2015 Ozone NAAQS Clean Air Act 179B(b) Demonstration, (2024), EPA-R08-OAR-2024-0552-0021 [hereinafter 2024 Demo.]. Pincites to the 2024 Demo. refer to the PDF page number. Citations to Appendix I of the 2024 Demo. titled "Modeling Demonstration" will hereinafter be cited as "Modeling Demo.," and pincites to Modeling Demo. refer to the internal paginated number in Appendix I.

[184] Modeling Demo. at 30; *see infra*, Section VI.E (discussing demonstration's failings with respect to examining IA contributions on specific high ozone days).

[185] 2022 TSD at 2.

[186] Modeling Demo. at 30.

[187] *See* Ex. 42, Report of Dr. Thompson, Ph.D at 2–3 (June 1, 2026) [hereinafter Dr. Thompson Report].

[188] *Id.* at 2.

[189] 2022 TSD at 7.

[190] 2022 TSD at 2.

large IA contribution relative to domestic contributions are stronger.[191] EPA identifies other critical factors for consideration, including whether international transport is significantly different on ozone exceedance days compared to non-ozone exceedance days.[192]

The 2024 Utah 179B(b) demonstration retains the state's posture that EPA previously rejected. "By applying the same RRF values listed in Table 6 to the fire-adjusted 2023 Copperview DV listed in Table 7, all monitors are reduced below the 2015 ozone NAAQS when IA contributions are removed."[193] Utah does not establish that IA contributions are large relative to domestic emissions. In fact, local anthropogenic emissions contributions to ozone levels in the NWF are almost four times higher than international anthropogenic contributions.[194] In other words, "local emissions drive chemistry."[195] And Utah still does not examine whether international transport is different on exceedance days compared to non-exceedance days. While Utah did not even examine this question,[196] its prior demonstration "concluded . . . that differences between ozone exceedance and non-exceedance days do not appear to be correlated with changes associated with international transport."[197] Utah has not offered any new or different evidence to suggest that ozone exceedance days are correlated with changes in international anthropogenic emissions. Instead, Utah is applying the same logic it did in its failed prior demonstration in an attempt to avoid addressing local emissions.

Despite rejecting Utah's previous demonstration on these grounds, EPA here proposes to accept Utah's repeated assertion that lopping modeled international emissions off the top of the design value calculated from monitoring data is sufficient to meet the standard for a successful 179B(b) demonstration.[198] EPA's approval of the rationale it had previously rejected is unlawful and arbitrary. EPA provides no reasoned basis for abandoning its previous rejection of Utah's simplistic subtraction methodology, and no such basis exists. The facts are that (a) local emissions contribute nearly four times as much to ozone levels as compared to IA contributions, and (b) IA contributions are not different on high ozone days compared to low ozone days. Instead, it is local emissions that drive exceedances on high ozone days. Further, Utah's modeling does not purport to accurately identify a precise numerical "international" portion of the design value at a given monitor on a given day. Rather, the modeling develops only a relative reduction factor based on average predicted values that is in turn based on a range of speculative and sometimes dubious assumptions about international pollution emissions and transport, local and regional meteorology and other factors. As discussed elsewhere in these comments, there are

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[191] 2023 EPA Comments at 11.
[192] 2022 TSD at 3.
[193] Modeling Demo. at 38.
[194] Dr. Thompson Report at 2.
[195] *Id.* at 2.
[196] *Id.* at 2–3.
[197] 2022 TSD at 7.
[198] Ex. 22, EPA, Technical Support Document - Evaluation of the Utah Clean Air Act Section 179B(b) Demonstration for the Northern Wasatch Front Ozone Nonattainment Area Under the 2015 NAAQS – Modeling and Impact of International Anthropogenic Emissions and Wildfire Smoke Atypical Events 1–2 (2026), https://www.regulations.gov/document/EPA-R08-OAR-2024-0552-0006, EPA-R08-OAR-2024-0552-0006 [hereinafter 2026 TSD].

significant uncertainties and flaws in the underlying assumptions, the modeling, and the methods used to apply the model outputs. Utah also concedes that the model underpredicts local ozone contributions. In short, Utah's demonstration is simply too imprecise to support a simplistic subtraction approach.

C. Meteorological Conditions of NWF on High Ozone Days Conducive to Accumulation of Local Emissions

In EPA's 2022 TSD, the agency stated:

> [Utah] concluded that the ozone exceedance day meteorological conditions were dominated by periods of high pressure conditions with clear skies and light to stagnant winds. *UDEQ concluded that local emissions could be significant contributors to ozone exceedances based on the synoptic scale meteorological pattern analysis*. We note that these are the conditions typically associated with ozone episodes in other urban areas in the U.S., in which stagnant winds allow the accumulation of ambient pollution concentrations from local emissions, and clear skies promote the photochemical production of ozone and other oxidant pollutants.[199]

The 2024 179B(b) Modeling Demonstration, prepared by Ramboll, explores meteorological conditions at two monitors, Hawthorne and Bountiful Viewmont.[200] Conditions at the two monitors are "very similar": low wind speed, high temperature, and low relative humidity.[201] Citing the 2022 Salt Lake Regional Smoke, Ozone, and Aerosol (SAMOZA) study (Jaffe et al., 2024), the Modeling Demonstration notes that, based on 12-hour back-trajectory data, morning winds during the 2015–2022 ozone exceedance days were from the southeast to south directions. Winds arriving at these two monitors from south/southeast will first cross the highly populated areas of Salt Lake and Utah counties,[202] likely picking up local emissions along the way. Furthermore, "[o]utside of other regional influences such as wildfire activity . . . locally generated ozone exceedance days are always associated with high pressure, high temperatures, and low winds."[203] The presence of such conditions—high pressure, high temperatures, and low winds—can help distinguish exceedance days where the emissions responsible are likely predominantly local in origin. In particular, "[t]he reduced mixing means that local emissions drive chemistry" on high ozone days.[204]

Figure 12 of the 2024 179B(b) Modeling Demonstration depicts a surface synoptic analysis with surface conditions favorable for ozone exceedances in the NWF on August 31,

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[199] 2022 TSD at 7 (emphasis added).
[200] Modeling Demo. at 12.
[201] *Id.*
[202] *Id.*
[203] *Id.* at 14.
[204] Dr. Thompson Report at 2.

2022,[205] a day on which NWF monitors recorded ozone measurements as high as 75 ppb.[206] On that day, the area experienced high pressure, light or calm winds, high temperatures, and low humidity.[207] These are the same conditions that EPA's 2022 TSD, referencing Utah's Department of Environmental Quality ("UDEQ"), highlighted as typically associated with "the accumulation of ambient pollution concentrations *from local emissions*."[208] In other words, the meteorological conditions that EPA, and UDEQ, cite as conducive to ozone exceedances caused by local emissions are the same meteorological conditions Utah's 2024 demonstration finds are prevalent during ozone exceedances. This evidence runs counter to Utah's assertion that international emissions are to blame for the NWF NAA's failure to attain the standard. EPA rejected this flawed reasoning last time; it cannot rationally approve it now when nothing has changed. By proposing to approve this 179B(b) demonstration, EPA is contradicting its prior rejection without a reasoned explanation.

D. Size of Modeled IA Contributions Relative to U.S. Anthropogenic Contributions

EPA's 2022 TSD noted in its disapproval of Utah's prior demonstration that "[a] key finding is that border areas with approved CAA section 179B demonstrations have more IA than U.S. Anthropogenic (UA) contributions."[209] Meaning, in previously approved 179B(b) demonstrations, applicant states—which were all border states—presented models showing that the magnitude of international emissions was larger than emissions from elsewhere in the U.S. outside the nonattainment area.

The 2024 Utah demo, like the state's prior attempt, fails to recognize this precedent. Utah notes, when discussing the 2023 OSAT results at the Hawthorne and Bountiful View monitors, that "IA contributions to MDA8 ranged between 5 and 8 ppb at the beginning of the analysis period and decreased to a lower range of 2 to 4 ppb starting around July 8th."[210] In contrast, global natural background + U.S. contribution was estimated to be between 35 to 40 ppb.[211] While Utah did not separate global natural background emissions from U.S. contributions in its analysis, given the magnitude of the difference between modeled IA and modeled global natural + U.S. contributions, it is likely that U.S. anthropogenic emissions significantly outpace IA in the NWF. Indeed, several peer-reviewed studies focused on the Salt Lake Valley "provide strong evidence that *local* emissions sources"—not just U.S. emissions generally—"are significant contributors to elevated surface ozone concentrations in the region."[212] And Utah's failure to separate global natural background emissions from U.S. contributions is itself a disqualifying

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[205] Modeling Demo. at 15 fig.12.
[206] Ex. 30, EPA Compilation of Utah ozone monitor daily data (2022), available for download at https://www.epa.gov/outdoor-air-quality-data/download-daily-data (Pollutant: ozone; Year: 2022; Geographic Area: Utah).
[207] Modeling Demo. at 15.
[208] 2022 TSD at 7 (emphasis added).
[209] 2022 TSD at 13.
[210] Modeling Demo. at 33.
[211] *Id.*
[212] Dr. Thompson Report at 3.

aspect of the demonstration. EPA's own analysis, as well as Utah's prior 179B submission, both showed "that at the NWF design value monitors [U.S. anthropogenic] contributions are approximately three times larger than IA contributions."[213] Utah did not even bother to examine that aspect in its new demonstration. Having previously found that information highly relevant, EPA fails to rationally explain its new position that the information is not relevant *at all*.

E. Size of Modeled IA contributions on Exceedance Days Compared to Non-exceedance Days

The 2022 EPA TSD also stated that demonstrations should address whether there are larger international contributions on exceedance days compared to non-exceedance days.[214] Yet Utah's 2024 demo is unable to make this finding. For one thing, the amount of modeled IA contributions varied only a small amount between days compared to other modeled sources of ozone: "[A]t both sites [Hawthorne and Bountiful Viewmont], daily IA contributions to MDA8 . . . exhibited little variation with a standard deviation of 1.6 ppb, compared to the contributions from other sectors with standard deviations greater than 2.2 ppb."[215]

The Modeling Demonstration contemplates the criteria posed in the 2022 TSD but comes to a nonsensical conclusion, claiming that "[a]verage IA contributions to MDA8 ozone on lower ozone days were noticeably smaller."[216] However, this assertion is unsupported by the model output. Across the top ten highest modeled ozone days at the two sites *and* across all days, the percentage of IA contributions modeled held steady at or close to 7%.[217] So relatively speaking, no variation in IA across low and high ozone days was found in Utah's models. Even in absolute terms, for Hawthorne, the model found an average of 5.1 ppb IA contribution on the top ten exceedance days and an average of 4.4 ppb across all exceedance days, both values of which are within one standard deviation (1.6 ppb) of the estimate for non-exceedance days of 3.8 ppb.[218] For Bountiful Viewmont, the difference was even smaller: 4.7 ppb IA during top ten exceedance days and 4.6 ppb IA across all exceedance days, versus 3.6 ppb on non-exceedance days.[219] Based on these numbers, there is no rational basis for Utah's assertion that average IA contributions are "noticeably smaller" on lower ozone days compared to exceedance days. And in fact, Utah explains that IA contributions are *lower* from July 8 onward—when many of the NWF's ozone exceedances occur.[220] As EPA previously recognized, when international transport has a relatively constant contribution to background ozone concentrations, Utah cannot

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[213] 2022 TSD at 13
[214] *Id.* at 2.
[215] Modeling Demo. at 33.
[216] *Id.*
[217] *Id.* at 34. Specifically, Utah estimates IA contributions contributed exactly 7.2% of the ozone level for both non-exceedance days and the top ten exceedance days. *Id.*
[218] *Id.* at 34 fig.24.
[219] *Id.* at 35 fig.25.
[220] *See infra*, Section VI.D.

satisfactorily demonstrate that international contributions are the cause of the ozone exceedances.[221] EPA has not rationally explained its reversal here.

Further, Utah and EPA ignore that Utah's relative reduction factor (RRF) approach underestimates local contributions across the board. These types of models "are well known to underestimate ozone on the highest days (and overestimate on the lowest days)."[222] This "propagates to an underestimate of the contribution of local sources."[223] As a result, "international sources are relatively over-estimated because the RRF relies on a ratio approach."[224] EPA has previously flagged this problem specifically with respect to Utah's modeling for the NWF, explaining that "the local ozone contribution is likely underestimated by as much as 8 ppb . . . and the model source contribution analysis likely overestimate [*sic*] the international contribution."[225] EPA explained that source apportionment results are not reliable when the model underestimates ozone on exceedance days.[226] EPA has not explained its change in position, nor can it; the underlying facts have not changed: the model overestimates IA contributions, undermining Utah's demonstration and rendering EPA's approval arbitrary and capricious.

In addition, Utah's demonstration relies on the use of the Ozone Source Apportionment Tool ("OSAT").[227] But EPA has previously explained that OSAT suffers from deficiencies—at times attributing ozone to biogenic VOC emissions "even though the anthropogenic NOx emissions are essential for ozone production and ozone levels could be reduced through NOx emissions reductions."[228] EPA therefore "recommends the use of [Anthropogenic Precursor Culpability Analysis] APCA tool for source apportionment studies," explaining that "APCA results are more useful than OSAT results."[229] But Utah did not use APCA, and EPA has not explained its change in position concerning APCA's utility and OSAT's deficiencies.

F. Lower Design Values in Adjacent Nonattainment Area (SWF)

The final primary reason that EPA rejected the NWF's 2021 179B demonstration was that a nearby nonattainment area, the Southern Wasatch Front ("SWF"), achieved attainment despite sharing similarities in elevation, topography, meteorology—and most importantly, similarities in how much international emissions contribute to local ozone levels.[230]

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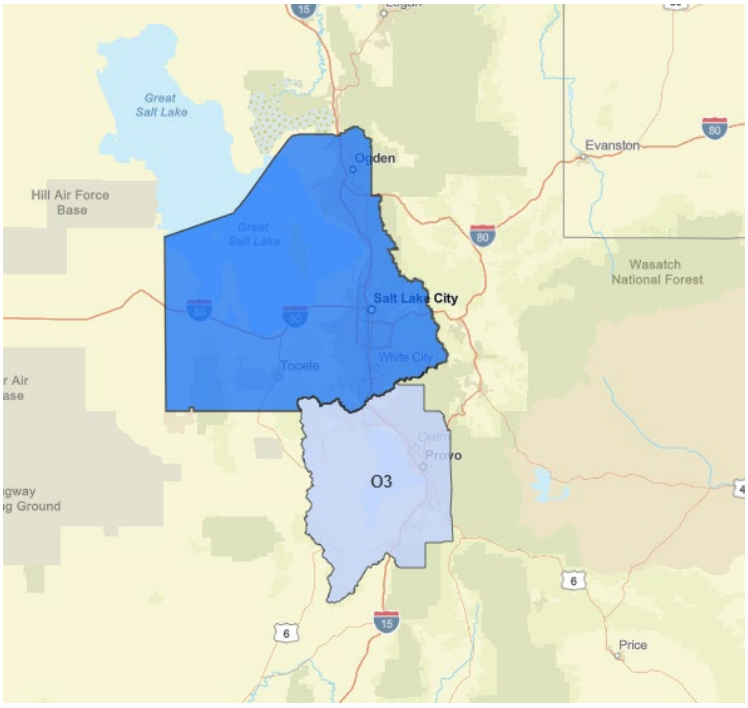
[221] *See* 2022 TSD at 5–6.
[222] Dr. Thompson Report at 2.
[223] *Id.*
[224] *Id.*
[225] 2023 EPA Comments at 13.
[226] *Id.*
[227] Modeling Demo. at 30.
[228] 2023 EPA Comments at 9.
[229] *Id.*
[230] 2022 TSD at 3.

Figure 1. Utah's nonattainment area map shows the NWF as darker blue and the SWF as lighter blue.[231]



Given the proximity and similarity of the NWF and SWF, the impact of international emissions on both areas could not have been so different as to cause high ozone levels in the NWF yet simultaneously lead to lower levels in the SWF. The SWF is south of the NWF and thus closer to an international border (but still not adjacent to any border),[232] yet recorded 10% lower levels of ozone than the NWF and actually achieved attainment in 2021.[233] The most current 2023 design values continue to show that the SWF observed lower levels of ozone compared to the NWF (by 6.5%).[234] While the NWF and SWF share similarities in elevation, topography, and meteorology, the NWF has four times the amount of local source emissions than the SWF does, which is more likely the cause of NWF's higher ozone levels, rather than influence from international emissions.[235] As EPA noted in rejecting the NWF's 2021 179B demonstration, the NWF houses more industrial activity and has 3–5 times more emissions from motor vehicles than the SWF.[236] Recent studies, discussed in the analysis of Dr. Thompson

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[231] Ex. 26, Utah Dep't of Env't Quality, *Am I in a Non-Attainment Area?* (last visited May 19, 2026), https://utahdeq.maps.arcgis.com/apps/webappviewer/index.html?id=dcc4eacb53a942f2a4b74a36ae5ea118.
[232] *Id.*
[233] 87 Fed. Reg. at 60899 tbl.1.
[234] Ex. 19, EPA, Design Values in Areas Previously Designated Nonattainment for the 2015 8-Hour Ozone NAAQS, Table 1a (2024), https://www.epa.gov/system/files/documents/2024-06/o3_designvalues_2021_2023_final_06_04_24.xlsx.
[235] 2022 TSD at 3.
[236] *Id.*

accompanying these comments, show that local emissions are the "primary driver of high-ozone episodes" in the NWF.[237]

As was the case in 2022 when EPA rejected Utah's 179B demonstration for the NWF, SWF continues to experience lower levels of ozone than the NWF despite the two areas being right next to each other. For design value year 2023, comprising data from years 2021 through 2023 (which is the relevant period for Utah's most recent 179B demonstration), the higher of the two SWF monitors recorded a DV of 72 ppb. Over that same period, nine of the NWF's eleven monitors had DVs that exceeded the SWF's highest monitor. The incorporation of more recent data shows a decrease of the SWF's design value to 71 ppb; seven of NWF's eleven monitors exceed this level.[238] This pattern undermines the NWF's current 179B demonstration that purports to point to international emissions as the cause ozone exceedances. While international emission contributions are likely very similar for the two areas, one is attaining the ozone NAAQS while the other is not—leading to the conclusion that international anthropogenic emissions are not the but-for cause of the NWF's failure to attain. Indeed, EPA concluded that SWF's attainment occurring simultaneously with the NWF's nonattainment meant that "more efforts by the state to reduce local ozone precursor emissions in the NWF should have a positive impact on reducing ozone levels in the NWF," which remains true today, especially in light of Utah's failure to implement statutorily required measures to control local ozone pollution as mentioned above in Section III.[239]

In affirming EPA's rejection of an Imperial County 179B demonstration for a similar reason, the Ninth Circuit found it compelling that a nearby area, which was closer to an international border, recorded lower levels of the same pollutant compared to the area submitting a 179B demonstration.[240] The Ninth Circuit found that if "wind-borne emissions traveling northward from Mexico" really were the cause of exceedances in the area at issue, then "one could expect similarly high levels of [the pollutant] closer to the border," and the absence thereof "d[id] not support the theory of transport from Mexico."[241] Similarly, here Utah claims that the most common transport pattern (based on the modeled HYSPLIT back trajectories) shows that emissions originating in Mexico most commonly influence the NWF area due to air flowing "northward from Mexico into the Great Basin states."[242] But the SWF is closer to Mexico and is subject to the same described transport pattern—yet observes lower levels of ozone. The modeling in Utah's demonstration does not show that the transport patterns influence the NWF

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[237] Dr. Thompson Report at 4.
[238] Ex. 21, EPA, Design Values in Areas Previously Designated Nonattainment for the 2015 8-Hour Ozone NAAQS, Table 6 (filtered for Utah) (2024), https://www.epa.gov/system/files/documents/2024-06/o3_designvalues_2021_2023_final_06_04_24.xlsx.
[239] 2022 TSD at 14.
[240] *Sierra Club v. EPA*, 346 F.3d 955, 962–63 (9th Cir.), *opinion amended on denial of reh'g sub nom. Sierra Club v. EPA*, 352 F.3d 1186 (9th Cir. 2003).
[241] *Id.*
[242] Modeling Demo. at 18, 27–28 fig.21 (lower left pattern). We note, however, that the observed trajectory in fact travels over the Southern United States, the Gulf of Mexico, and Mexico, before heading northward; Utah provides no evidence that these emissions originate in Mexico.

any differently than the SWF.[243] These unexplained differences thus undermine Utah's theory that Mexican emissions influenced the NWF to the extent of causing local exceedances.

Therefore, the difference in the amount of local pollution and implementation of control measures between the NWF and SWF explains why the former regularly experiences high ozone levels, undercutting the impact of international emissions on the NWF's nonattainment.

VII. EPA Improperly Determined That the Northern Wasatch Front Area Would Have Attained but for International Emissions.

A. Expert Analysis

We incorporate by reference the attached report of Dr. Tammy Thompson regarding technical deficiencies in Utah's 179B(b) demonstration.[244] That report highlights significant concerns regarding the modeling and the conclusions Utah and EPA draw from the modeling.

B. Utah's HYSPLIT Transport Analysis Does Not Contribute to Weight-Of-Evidence Finding That Exceedance Days in the Northern Wasatch Front Are Caused by International Emissions.

Utah generated 10-day HYSPLIT back-trajectories of 33 exceedance days from 2021–2023 and grouped the results into four patterns.[245] Two of these four patterns, reported by Utah as accounting for 13 of the 33, or 39% of exceedance days in the NWF, show back-trajectories primarily originating to the west of the NWF. One of these two patterns (upper left), accounting for 27% of exceedance days, shows no trajectories touching or passing through any Asian landmass in the modeled 10 days; instead, they exist wholly over the Pacific Ocean. The second of these two (upper right), which show some back-trajectories over Asia and might reasonably be said to represent air parcels with emissions possibly originating from Asia, accounts for a mere 4 exceedance days—just 12%. So, out of 33 exceedance days studied, only 4 contain back-trajectories that could even begin to possibly be attributed to Asian emissions.

A third pattern group (lower right) identified by Utah showed shorter trajectories, which represents "weaker transport and subsidence within the broad eastern Pacific sub-tropical high pressure dome, indicating general western US stagnation."[246] This pattern was seen in 4 of the 33 exceedance days, or 12%. The final pattern—the most common, at 16 of 33 exceedance days, or 48%—contains back-trajectories that originate throughout the east and southeast U.S., often passing over Louisiana, Texas, New Mexico, and Arizona, in addition to northern Mexico, en route to the NWF.

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[243] *Id.* Utah also did not quantify the emissions supposedly originating in Mexico versus Asia on exceedance days.
[244] Dr. Thompson Report.
[245] Modeling Demo. at 27 fig.21.
[246] *Id.* at 28.

Utah tries to characterize this fourth transport pattern (lower left) as definitively Mexican-influenced.[247] However, based on this transport analysis, it is equally (or even more) likely that the depicted air parcels are U.S.-influenced, with emissions from Southern and Southeastern states, as well as emissions in the Gulf of Mexico produced by U.S. oil and gas production, merely passing through Mexico on the way to Utah. Pinpointing where exactly emissions originate when a trajectory passes through multiple states/countries is impossible for a HYSPLIT analysis. Therefore, it is unreasonable for Utah to point to this transport analysis as evidence of Mexican emissions influencing monitor readings in the NWF NAA when it is equally or more likely that other U.S., not foreign, emissions are responsible.

This point is further reinforced by Figure 22, a heat map representation of aggregate frequencies of all modeled 10-day transport of air parcels that arrive to the NWF on the 33 modeled exceedance days in 2021–2023.[248] Modeled air parcels passed through California, Nevada, Southern Idaho, and Arizona between 10 and 100 times more frequently than through most of Mexico or anywhere in Asia. This makes sense on its face given the proximity of those states to the NWF: air parcels do not teleport, so they would have to pass through a neighboring state to arrive in Utah. However, that also means it is far more likely that emissions from California or another state contributed to exceedance days than emissions from international sources, where the number of modeled possible back-trajectories are 1–2x less frequent. But Utah's analysis fails to provide information about the quantity, origin, and type of emissions contained in each air parcel.

Further, Utah's HYSPLIT analysis improperly excludes (1) high-ozone days with an assumed level of smoke impacts and (2) all low-ozone days. These exclusions obscure relevant information. By looking only at a narrow subset of dates, Utah has potentially skewed the HSYPLIT analysis results, rendering its conclusions arbitrary. First, Utah excludes from its HYSPLIT analysis all exceedance days "noted with medium and heavy smoke impacts (as reported by UDAQ).[249] In its TSD, EPA explains Utah's approach: "days between 10 and 22 µg/m3 were rated as medium, and days greater than 22 µg/m3 were rated as heavy" based on 24-hour surface PM2.5 concentrations.[250] But Utah's arbitrary line-drawing is unsupported. In fact, Salt Lake City's 24-hour PM2.5 design value is far higher than that, ranging from 32 and 44 µg/m3 since 2015.[251] In July 2022 alone, the Near Road monitor's 24-hour PM2.5 average exceeded 10 µg/m3 on eight occasions.[252] Notably, neither Utah nor EPA has offered evidence that those dates in July 2022 were influenced by wildfire smoke. And neither Utah nor EPA

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[247] *Id.*
[248] *Id.* at 29.
[249] Modeling Demo. at 3.
[250] 2026 TSD at 5.
[251] Ex. 33, EPA, Design Value History in Areas Previously Designated Nonattainment for the 2006 24-hour PM2.5 NAAQS, Table 3b (2025), https://www.epa.gov/system/files/documents/2025-06/pm25_designvalues_2022_2024_final_05_28_25.xlsx.
[252] Ex. 32, Utah Dep't of Env't Quality, Particulate Matter 2.5 Monthly Report - 24 Hour Filter Data (July 2022), https://air.utah.gov/dataarchive/PM25JUL22.pdf.

offers evidence supporting that a 10 μg/m3 necessarily indicates "medium smoke."[253] By excluding this data from the HYSPLIT analysis, Utah has arbitrarily narrowed the scope of its analysis. It stands to reason that days with slightly elevated PM2.5 may have lower windspeeds and overall experience different air parcel trajectories than other days. Further, the presence of smoke does not necessarily mean that smoke caused an ozone exceedance.[254] Utah's exclusion of this data may have skewed its results by obscuring high-ozone days that had a low impact from international transport.

Second, Utah also excludes all lower-ozone days from its HYSPLIT analysis. Because of that, Utah is unable to show differential influence on exceedance days. "Without modeling the non-exceedance days to compare resulting trajectory patterns, it is impossible to derive any meaningful conclusions."[255] Utah has thus failed entirely to show that international contributions are significantly different on exceedance days as compared to non-exceedance days.[256] Its HYSPLIT analysis therefore cannot contribute to a weight-of-evidence 179B finding that exceedance days in the Northern Wasatch Front are caused by international emissions.

C. EPA's 2020 Policy Assessment Does Not Contribute to Weight-Of-Evidence Finding That Exceedance Days in the Northern Wasatch Front Are Caused by International Emissions.

In its TSD, EPA states that its 2020 policy assessment ("EPA Assessment") "suggest[s] that the international anthropogenic contribution to ozone levels in Utah's demonstration may be seen as relatively conservative."[257] This conclusion is arbitrary and unsupported by evidence, and EPA has not adequately explained its change from its prior position that the EPA Assessment did not, in fact, support a 179B determination for the NWF.

First, the EPA Assessment only analyzed and modeled ozone, including source attribution, for 2016.[258] Neither EPA nor Utah has demonstrated (or even attempted to demonstrate) that 2016 was representative of common ozone exceedance conditions, or specifically of ozone exceedance conditions in 2021, 2022, and 2023.[259] Without such a demonstration, the EPA Assessment lacks any probative value.

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[253] *See* 2023 EPA Comments at 10. EPA has previously explained that "when ground concentration of PM2.5 . . . were not substantially enhanced compared to typical levels," "it is difficult to determine if there was a substantial wildfire enhancement in addition to the local production." *Id.* In particular, EPA recommended that "Utah also perform photochemical modeling to estimate the wildfire contribution to ozone on exceedance days," to help estimate the relative contribution of local anthropogenic emissions and wildfire to the exceedance. *Id.* Utah has not provided this information.
[254] Dr. Thompson Report at 4–5.
[255] *Id.* at 3.
[256] *See* 2022 TSD at 3.
[257] 2026 TSD at 13.
[258] 2021 EPA Assessment at 5.
[259] Dr. Thompson Report at 2–3; *see infra*, Section VI.A.

Second, the EPA Assessment itself identifies three monitors that still would not have attained the standard, even excluding the EPA Assessment's estimate of IA contributions.[260] EPA cannot now rely on the exclusion of so-called 'atypical' days to adjust those values, because (a) it did not include any justification or even attempt to exclude those days,[261] and (b) even if EPA had relied on explanations of atypical days excluded from Utah's modeling, such a reliance suffers from the same flaws discussed elsewhere in these comments.[262]

Third, EPA has previously acknowledged shortcomings in its EPA Assessment and expressed doubt that the EPA Assessment would support a 179B determination for the NWF. EPA has failed to rationally explain its change in position. For example, in disapproving Utah's earlier 179B request, the agency considered its 2020 Assessment but still did not conclude that it supported a 179B determination.[263] Specifically, EPA noted that its Assessment "was also biased low for ozone," meaning it "underestimate[d] the U.S. contribution on high ozone days in the NWF."[264] As a result, EPA concluded that there was a "need for additional work to improve model ozone performance for the NWF."[265] EPA specifically identified a need for "more robust evaluation of meteorological and emissions data used as inputs to the photochemical model and the possibility that chlorine emissions contribute to rapid ozone production in the NWF."[266] Utah has not taken those steps, and EPA does not explain why that information and improved inputs are no longer important. EPA also previously explained that its Assessment shows that the NWF has comparable, but even lower, IA contributions compared to sites in the Southern Wasatch Front—which has attained the ozone standard, showing that IA contributions are not the cause of exceedances in the NWF.[267] EPA further noted that its Assessment shows that U.S. anthropogenic contributions are at least three times higher than IA contributions in the NWF (and U.S. anthropogenic estimates are likely even higher than those estimates), again undermining any 179B demonstration.[268] EPA fails to explain why these conclusions are no longer relevant.

For all of the above reasons, EPA's newfound conclusion that its Assessment *supports* a 179B demonstration, rather than cuts *against* such a demonstration, is arbitrary and capricious.

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[260] Email from Colleen Baublitz to Amanda Brimmer Re Modeling from EPA's 2021 memo applied to UT 2021-2023 DVs at 3 (Oct. 27, 2025), EPA-R08-OAR-2024-0552-0032. This 2025 EPA email is an addition to the 2020 and 2021 EPA Assessments. *See supra*, n.79.
[261] *Id.*
[262] *See* Section VII.D.
[263] 2022 TSD at 13.
[264] *Id.* at 12.
[265] *Id.*
[266] *Id.*
[267] 2021 EPA Assessment at 7; *see supra*, Section VI.F.
[268] *Id.* at 7–8.

D. Utah's and EPA's Analyses Illegally and Improperly Rely on "Atypical Events" That Have Not Qualified as Exceptional Events Under the Requirements of the Clean Air Act and EPA's Implementing Regulations.

Utah's CAA section 179B(b) demonstration and EPA's proposed approval thereof improperly exclude a number of ozone exceedance days that were allegedly impacted by wildfire activity. Without the exclusion of exceedance data from these days, the but-for demonstration fails even under the state's and EPA's flawed approach, as design values at three monitors continue to violate the standard even after exclusion of alleged international impacts. As further discussed below, EPA's exclusion of exceedance data based on alleged wildfire impacts was unlawful and arbitrary. The statute and EPA's regulations require that exceedance data can only be excluded if they go through the formal process outlined in the Exceptional Events Rule ("EER"). CAA section 319(b) requires EPA to promulgate regulations prescribing criteria and procedures for a state to petition EPA to exclude air quality monitoring data that was directly due to exceptional events from use in determinations by EPA with respect to exceedances or violations of the NAAQS. EPA's regulations under the EER lists the type of regulatory actions for which the EER would apply. However, EPA incorrectly asserts that Utah's exclusion of monitored exceedance values here based on alleged wildfire impacts is not subject to the Exceptional Events Rule and instead are "'atypical events' [that] may be excluded from DV calculations used in air quality modeling."[269] EPA claims that data from these events "if used in modeling calculations, would not create representative modeled air quality estimates."[270] EPA and Utah cannot circumvent the EER by inventing a new, extra-regulatory category of event that is excluded from determining attainment.

The EER, as codified under 40 C.F.R. § 50.14, explicitly defines the scope of the rule to cover the treatment of showing NAAQS exceedances for purposes of six enumerated types of determinations by EPA, one of which is a determination by EPA regarding whether a nonattainment area has attained the level of the NAAQS by the applicable attainment date.[271] While Utah seeks to artificially create a distinction that the action requested in its demonstration is an adjustment of base modeling year design value,[272] such distinction arbitrarily ignores the purpose of Utah's demonstration, which is to support EPA's proposed determination of attainment by the attainment date but for international emissions. Between the title, summary, and numerous statements throughout EPA's proposal and rulemaking documents, there is no question that EPA is proposing a determination with respect to attainment by the applicable deadline. There is similarly no question that under 40 C.F.R. § 50.14(a)(1)(C) the EER applies to EPA's proposed determination and therefore any wildfire exceedance-related data the state seeks to exclude from such determination must go through the EER-prescribed process. Because the state did not submit its proposed exclusion of wildfire days for EPA's concurrence through the

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[269] 91 Fed. Reg. at 23213.
[270] *Id.*
[271] 40 C.F.R. § 50.14(a)(1)(C).
[272] 2024 Demo., Appendix II: Exceptional Events and Data Modification Demonstration at 119–20. Citations to Appendix II of the 2024 Demo. will hereinafter be cited as "Exceptional Events Demo.," and pincites to Exceptional Events Demo. refer to the PDF page number of the 2024 Demo. because Exceptional Events Demo. is not internally paginated.

EER, both CAA section 319 and the EER legally preclude EPA from relying on Utah's demonstration excluding those days to support its determination of attainment by the attainment date but for international emissions.

In addition to contravening the statute and regulations for excluding certain wildfire related exceedance days, both Utah and EPA incorrectly point to Agency guidance as supporting the proposition that an adjustment of the base modeling year design value does not fall within the scope of the EER. Both Utah and EPA point to an April 2019 Memorandum and EPA's 2018 Modeling Guidance as support for the proposition that ambient data not representative to characterize background concentrations or base period concentrations may qualify as "atypical events" that can be removed from the *post-processing* design value calculations without going through the EER. Neither document controls the present situation, as post-processing calculations are entirely distinct from background and base period concentrations. In addition, both documents clearly state that they are non-binding guidance, do not create any new regulatory authority, and do not supplant or revise any aspects of the EER or other existing CAA authorities.[273] Furthermore, neither document actually supports Utah's and EPA's assertions in the present case. EPA's 2018 Modeling Guidance states several times throughout the document that it applies to "modeled attainment demonstrations" for ozone.[274] These attainment demonstrations are required to be submitted as part of a state's nonattainment SIPs, and are forward-looking demonstrations "to show that an area *will* likely meet the NAAQS."[275] Such attainment demonstrations are required under statutory provisions governing nonattainment SIP requirements such as 182(b)(1) for Moderate areas. EPA does not explain how the 2018 Guidance is relevant or applicable to Utah's exclusion of data from its retrospective demonstration that the Northern Wasatch Front nonattainment area would have attained the 2015 ozone NAAQS but for international emissions, an inquiry that happens *well after* the state is required to submit a forward-looking modeled attainment demonstration as part of its nonattainment SIP.

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[273] Ex. 2, Memorandum from Richard Wayland, EPA Air Quality Assessment Division Director, EPA, to Regional Air Division Directors, *Modeling Guidance for Demonstrating Air Quality Goals for Ozone, PM2.5., and Regional Haze* 1 (2018), https://www.epa.gov/sites/default/files/2020-10/documents/o3-pm-rh-modeling_guidance-2018.pdf [hereinafter 2018 Modeling Guidance]; Ex. 3, Memorandum from Richard Wayland & Anna Marie Wood, EPA, *Additional Methods, Determinations, and Analyses to Modify Air Quality Data Beyond Exceptional Events* 1 (2019), https://www.epa.gov/air-quality-analysis/clarificationmemo-additional-methods-determinations-and-analyses-modify-air [hereinafter 2019 Memo].

[274] 2018 Modeling Guidance at 10 ("Air agencies required to submit an attainment demonstration and/or a reasonable progress analysis for regional haze are encouraged to follow the procedures described in this document. Details on when a state is required to submit a modeled attainment demonstration can be found in the Ozone SIP Requirements Rule and the PM2.5 SIP Requirements Rule." (citing 40 C.F.R. § 51.1308's requirements for a modeled attainment demonstration)).

[275] *Id.* at 16 (emphasis added).

Similarly, EPA's April 2019 Memorandum is flatly inapplicable to the present case. That memo addresses determinations and analyses not covered by the EER, and that may also rely on ambient air quality monitoring data that may have been influenced by "atypical"[276] or unrepresentative events. The memo expressly notes that such determinations and analyses are those not included in the EER's list of covered regulatory actions.[277] As previously described in this comment, determinations of attainment by the attainment date *are* a category of regulatory actions covered by the EER. Therefore, EPA's proposal is unequivocally subject to the requirements of the EER and cannot rely on data that is excluded through other means.

EPA also incorrectly relies on inapplicable language taken out of context from the Guideline for Air Quality Modeling, 40 C.F.R. part 51, appendix W ("Guideline"). EPA cites subsection 8.3.2.c.ii. of that Guideline, but that provision is part of subsection 8.3.2. titled: "Recommendations for Isolated Single Sources." As the title connotes, the subsection addresses "determining appropriate background concentrations" in "areas with an isolated source(s)."[278] Further, the context makes clear that this subsection addresses modeling only for purposes of determining the air quality impacts of an isolated individual source. Nothing in the subsection's language purports to allow circumvention of the exceptional events statute or rule for purposes of retrospective determinations regarding a nonattainment area's timely attainment of a NAAQS. Another Guideline subsection cited by EPA, 8.3.2.d, is also limited to isolated individual sources and says nothing at all about excluding monitoring data from days with "atypical" events that don't qualify as exceptional events. EPA also cites subsection 8.3.3.d, but that provision merely cross-references section 8.3.2 and does not expand the limited application of subsection 8.3.2.a.

Even if Utah's demonstration could be considered as somehow distinct and separate from EPA's determination of attainment by the attainment date but for international emissions, nothing in EPA's 2019 Memorandum suggests Utah's design value calculation, adjusted for IA contributions, can exclude data through a means outside of the EER. To the contrary, the 2019 memo clarifies which types of determinations or analyses are covered by other regulatory programs that are *not* the Exceptional Events program. None of these programs include a retrospective determination of attainment by the attainment date but for international emissions under CAA section 179B(b). The 2019 memo does list "[e]stimating base and future year design values for ozone and PM2.5. **SIP attainment demonstrations**" as a type of determination or analysis not covered by the Exceptional Events program.[279]

As already stated, SIP attainment demonstrations are a different, prospective requirement distinct from the retrospective demonstration required under CAA section 179B(b). The 2019 memo confirms as much, in describing that monitoring data for an ozone SIP attainment demonstration could qualify for exclusion in developing "alternative current and

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[276] Nothing in the CAA or EPA's regulations recognize, much less define, "atypical events." Utah's or EPA's use and application of such term must still be consistent with the law.
[277] 2019 Memo at 2.
[278] 40 C.F.R. part 51, appendix W subsection 8.3.2.a.
[279] 2019 Memo at 5.

future year design values."[280] Indeed, EPA's 2016 preamble for the EER noted the Agency's intention to develop a supplementary guidance document to describe "the appropriate additional pathways for data exclusion for some 'predicted future' monitoring data applications (e.g., predicting future attainment that is the basis for approval of an attainment demonstration in the SIP for a nonattainment area)."[281] This statement in the EER, particularly the parenthetical, makes clear that the 2019 memo intended to address prospective attainment demonstrations, not retrospective determinations of attainment by the attainment date.

In analyzing Utah's demonstration and assertions regarding atypical events, EPA identifies no applicable statutory or regulatory provision, or guidance, that authorizes the exclusion of wildfire-related data from a determination of attainment by the attainment date through a process other than the EER. Nowhere in the proposal record does EPA explain[282] why and how these wildfire-related exceedance days are "atypical events" rather than exceptional events that caused a specific air pollution concentration at a particular air quality monitoring location, and that therefore do not need to meet the applicable requirements of the EER for exclusion from EPA's determination of attainment by the attainment date.[283] EPA simply references its 2018 Modeling Guidance and 2019 Memorandum as allowing for removal of specific data at monitors caused by atypical events. As previously discussed, both of those documents are nonbinding guidance and by their own terms are irrelevant to the present case of a demonstration to support a determination of attainment by the attainment date.

By contrast, the statutory and regulatory requirements of CAA section 319 and the EER *do* control, and plainly require that wildfire-related exceedance data can only be excluded for purposes of EPA's determinations with respect to exceedances or violations of the NAAQS if such data is submitted by the state, and concurred upon by EPA, through the EER-prescribed process. Indeed, Utah's 179B(b) submittal *itself* refers to its exclusion of alleged wildfire-impacted days as an "Exceptional Events" demonstration.[284] Because Utah and EPA improperly excluded such wildfire-related exceedance data, the state and EPA cannot rely on such data exclusion for purposes of CAA section 179B(b), and EPA cannot legally finalize its proposed determination of attainment based on this demonstration without violating CAA section 319 and its own regulations under 40 C.F.R. § 50.14.

EPA's attempt to by-pass the exceptional events process here further flouts Congressional intent as expressed in CAA section 319. The statute envisions that the exceptional events process will apply to requests by states to "exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator *with respect to exceedances*

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[280] *Id*. (emphasis added). In pointing out the inapplicability of the 2019 memo to the present case, this comment letter does not endorse or otherwise take a position on the validity of its contents.
[281] 81 Fed. Reg. 68216, 68229 (Oct. 3, 2016). EPA's 2019 memorandum states that this document is intended to fulfill EPA's commitment in the 2016 EER to issue supplementary guidance. *See* 2019 Memo at 1.
[282] EPA's relative silence on this issue also violates the bedrock rulemaking requirements that its action be "reasonable and reasonably explained." *State Farm*, 463 U.S. at 43.
[283] 40 C.F.R. § 50.14(b)(1).
[284] *See* Exceptional Events Demo. at 101–478.

or violations of the national ambient air quality standards."[285] That is precisely the situation here. The statute further directs EPA's rules to follow "the principle that protection of public health is the highest priority"—a principle at odds with EPA's attempt here to take short cuts rather than engaging in the rigorous exceptional events process before dismissing exceedances of health standards.[286] In fact, EPA's proposed action here is devoid of any consideration of the importance of protecting public health from dangerous ozone levels in the Northern Wasatch Front. EPA further fails to rationally explain why the exclusion of data here based on alleged smoke impacts should be subject to a less rigorous review than other actions subject to the exceptional events rule. The effect of the data exclusion here—to waive stronger anti-pollution measures for a dangerously polluted urban area—is at least as consequential as such other actions, if not more so.

E. The State's Exclusion of Monitoring Data Based on Alleged Wildfire Impacts Is Procedurally and Technically Flawed.

The state and EPA tacitly concede that the state failed to follow the exceptional events process here. They make no attempt to show that the state's submittal meets the requirements of the exceptional events statute and rules. Although the failure to show EER compliance is by itself sufficient to invalidate EPA's proposal, the state's demonstration in fact does not meet EER rule requirements. Among other things, the submittal is procedurally defective, as the state did not subject the proposed exclusion of data to public notice and comment, submit the public comments as part of its demonstration, and address in its submission comments disputing or contradicting factual evidence, all as required by 40 C.F.R. § 50.14(c)(3)(i), (v). Nor did the state document that it followed the public comment process as required by 40 C.F.R. § 50.14(c)(3)(v)(A). Nor has EPA issued the formal concurrence required by the EER.[287]

Further, to exclude data based on wildfire impacts, the State must demonstrate "that emissions from wildfires *cause[d]* a specific air pollution concentration in excess of one or more national ambient air quality standard at a particular air quality monitoring location."[288] The state must also provide a "demonstration that the event affected air quality in such a way that there exists a *clear causal relationship* between the specific event and the monitored exceedance or violation."[289] EPA's own analysis of the data fails to find or show such a clear causal relationship. The conclusions in EPA's TSD are at best equivocal. For example, the TSD states that "effects from the wildfire smoke emissions on ozone from these flagged events *may have* been uncontrollable and *could be* determined unrepresentative of typical conditions at the

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[285] CAA § 319(b)(3)(B)(iv) (emphasis added).
[286] 42 U.S.C. § 7619(b)(3)(A)(i). The statute also requires that EPA's regulations follow "the principle that each State must take necessary measures to safeguard public health *regardless of the source* of the air pollution"—a principle that EPA's proposed determination repeatedly flouts, as it seeks to allow Utah to bypass Moderate SIP requirements and avoid tackling local pollution. *Id.* § 7619(b)(3)(A)(iv) (emphasis added).
[287] *Id.* § 50.14(c)(2)(ii).
[288] 40 C.F.R. § 50.14(b)(4) (emphasis added); *see* 42 U.S.C. § 7619(3)(B)(ii).
[289] *Id.* § 50.14(c)(3)(iv)(B) (emphasis added).

monitor.[290] The TSD further states that "these wildfire smoke events *could* be considered atypical events and not representative of normal background conditions.[291] Nowhere does the TSD find a "clear causal relationship" between these wildfires and the specific levels of monitored exceedances that the state excluded.[292] Although the TSD says the evidence suggests wildfires contributed to the ozone exceedances, there is no showing of the degree of wildfire smoke contribution at specific monitors on specific days. EPA offers Figure 4 purporting to show smoke events associated with elevated hourly PM2.5 levels at Copperview, Inland Port, and Near Road.[293] But the graph for July 8−15 shows much *higher* PM2.5 levels at Inland Port at a time (July 9−10) when no wildfire smoke is indicated, and shows PM 2.5 levels at Near Road comparable to levels in the latter part of the alleged smoke period. And the graph for July 22−29 shows multiple monitors with PM2.5 levels after the July 24 event comparable to levels during that event.[294] Neither EPA nor Utah quantified *ozone* impacts attributable to wildfire smoke at the specific monitors on the specific days of the exceedances excluded in the state's analysis. The state cited a journal article as supporting ozone impacts from wildfire smoke, but that article does not purport to identify a single formula to determine specific levels of ozone impacts of wildfire smoke based on PM2.5 levels at an individual monitor on a specific day.[295] To the contrary, the article states: "With complex interactions between emissions, transport, and meteorology, it is challenging to predict downwind O3 and large uncertainties remain."[296] The article further states that "an incomplete understanding of smoke impacts on O3 make it difficult to verify" whether wildfire smoke caused an exceptional event for ozone, and that "O3 enhancements on smoke days may be partly attributable to temperature."[297]

The data provided by the state do not support a correlation between specific levels of wildfire smoke impacts (as reflected by monitored PM2.5 levels) and specific ozone levels. For example, in Appendix II to the state's 2024 179B(b) submittal, the state posited that elevated 24 hour PM2.5 levels were indicators of smoke impacts and that smoke impacts are associated with higher ozone. Among other things, the state offered the following data to support these claims on ozone exceedance days when there was evidence of smoke impacting the Copperview monitor:[298]

- July 12: 96 ppb O3; 27.3 µg/m3 PM2.5
- July 24: 83 ppb O3; 26.2 µg/m3 PM2.5
- Aug 7: 89 ppb O3; 42.8 µg/m3 PM2.5
- Aug 8: 87 ppb O3; 49.5 µg/m3 PM2.5

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[290] 2026 TSD at 22.
[291] *Id.*
[292] 40 C.F.R. § 50.14(c)(3)(iv)(B).
[293] 2026 TSD at 21 fig.4.
[294] *Id.*
[295] Exceptional Events Demo. at 173, 269, 308, 319 (citing Buysse et al., *Relationships between Particulate Matter, Ozone, and Nitrogen Oxides during Urban Smoke Events in the Western US*, 53 Env't Sci. Technol. 12519−12528 (2019), EPA-R08-OAR-2024-0552-0039).
[296] Buysse et al. at 12519.
[297] *Id.* at 12520, 12523.
[298] Exceptional Events Demo. at 116−117.

- Aug 16: 86 ppb O3; 48.4 µg/m3 PM2.5

In reality, these numbers undermine—rather than support—a claimed correlation between smoke and ozone levels. On July 7, when ozone levels were at their very highest (96 ppb); PM2.5 was at its lowest (27.3 µg/m3). But ozone levels were substantially lower on July 24, when PM2.5 was barely lower than on July 7. The other days show much *higher* PM2.5 levels than on July 7, but with much *lower* O3 than on July 7.

So within the above dataset, there is no apparent correlation between elevated PM2.5 (allegedly due to wildfire) and elevated ozone. The state at one point asserted that ozone may be lower when smoke is particularly dense because the smoke blocks sunlight necessary for ozone formation. But ozone was higher on August 8 (when PM2.5 was at its highest) than on July 24 when PM2.5 was about half the August 8 level. In any event, to the extent that there is an inverse relationship between ozone and at particularly high PM2.5 levels, that further undermines exclusion of ozone data based on elevated PM2.5 levels. Formation of ozone is too complex for such a simplistic approach. It is arbitrary to exclude data based on PM2.5 levels without analyzing the smoke's specific contribution to an exceedance.

EPA's proposed data exclusion is flawed in other respects as well. To qualify as an exceptional event, the event cannot be caused by: a stagnation of air masses or meteorological inversions; a meteorological event involving high temperatures or lack of precipitation; or air pollution relating to source noncompliance.[299] The state and EPA did not negate these factors as potential causes. As part of the demonstration, states must also assess the potential contribution of local or in-state sources subject to their jurisdiction.[300] The state and EPA did not conduct such an assessment of potential contributions from local or in-state sources on the days at issue here. The state's HYSPLIT analyses relied on back trajectories passing over various areas with fires, but did not prove the parcels actually carried smoke to NWF. EPA's TSD merely states that with respect to the sites and days EPA evaluated, "the air parcels from the back trajectories could have originated or passed over several active fire complexes (red polygons) in California, Oregon, and Idaho on these days."[301] Also, some of these back trajectories pass over heavily populated, industrialized, and agribusiness areas of California. It does not appear the state or EPA evaluated what portion of any pollution transported from these areas was from cars, trucks, industrial emissions, and agricultural activity as opposed to wildfire smoke. Failure to consider the impact of such anthropogenic emissions undermines the state's and EPA's analyses.

In its comments on Utah's 2023 draft Moderate area SIP for the 2015 ozone standard, EPA rejected the state's claim that wildfire smoke impacts on particular days supported the weight of evidence in favor of the SIP's attainment demonstration.[302] There, as here, the state supported its claim with analysis of wildfire smoke, surface monitoring data, meteorological information, and back trajectory information. EPA did not find the state's data compelling because of the complexity of determining how much ozone comes from smoke and how much

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[299] 42 U.S.C. § 7619(b)(1)(B)(i−iii).
[300] 81 Fed Reg. 68216, 68237 (Oct. 3, 2016)
[301] 2026 TSD at 18.
[302] 2023 EPA Comments at 8−10.

from local sources on a given day at a given location. EPA noted that during the periods in question, conditions were conducive to local ozone formation. EPA urged the state to use photochemical grid modeling of ozone impacts of wildfire smoke if the state submitted a future request to exclude ozone exceedance data based on alleged wildfire impacts.[303] The state and EPA itself did not heed EPA's 2022 advice here. Instead, they merely assume that unquantified ozone impacts of wildfire smoke on the specific days at issue is enough to disqualify the monitored exceedances from inclusion in a "but for" analysis, without also evaluating and quantifying increased local ozone production on those days and modeling the impact of the different sources. That approach was inadequate in 2022 and is inadequate now.

The analysis of Dr. Thompson, accompanying these comments, highlights the failure of the state and EPA to adequately account for local sources of ozone. Among other things, Dr. Thompson cites a Salt Lake regional study by Jaffe et al. (2024) finding that certain high-ozone events coinciding with wildfire smoke influence may have still exceeded the NAAQS ozone standard in the absence of smoke, implying that blanket removal of smoke-flagged days from regulatory analyses likely overstates the contribution of wildfire smoke to exceedance frequency in the valley.[304]

For all the foregoing reasons, the state's submission (and EPA's supplied analysis for additional dates and monitors) does not meet the Clean Air Act's EER's requirement for showing a "clear causal relationship between the specific event and the monitored exceedance or violation."[305] Even if the exceptional events rule did not apply here (and it does), the above described deficiencies would render EPA's proposed approval of the 179B demonstration arbitrary. The state and EPA have failed to establish a causal connection between the claimed wildfire impacts and the specific level of ozone exceedances at the specific monitors at issue on each of the excluded days. The same factors that render EPA's proposal violative of the exceptional events rule would render it arbitrary as a matter of reasoned decisionmaking.

F. Utah Incorrectly Calculated Design Values for Three Sites Alleged to Have Experienced "Atypical Events."

Even if Utah's exclusion of data based on atypical events were allowable (and it is not), Utah incorrectly calculates final design values when excluding both wildfires and ozone attributed to international emissions by the model.[306] For three monitors—Copperview, Inland Port, and Near Road—EPA removes alleged "atypical event" days and truncates the resulting three-year average 4th-highest maximum daily average. Then, EPA applies the modeled RRF to that truncated three-year average to arrive at a design value, which is then truncated again. This approach is incorrect, as detailed in EPA's July 2023 comments on the draft 2023 NWF Moderate

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[303] *Id.* at 8.
[304] *See* Dr. Thompson Report at 4–5 (quoting Thompson Ex. 2, Daniel A. Jaffe et al., *Key Results from the Salt Lake Regional Smoke, Ozone, and Aerosol Study (SAMOZA)*, 74 J. Air & Waste Mgmt. Ass'n 163, 174 (2024), https://doi.org/10.1080/10962247.2024.2301956).
[305] 40 C.F.R. § 50.14(c)(3)(iv)(B).
[306] Modeling Demo. at 39 tbl.7; 2026 TSD at 4 tbl.1.

2015 ozone SIP.[307] When Utah adopted the same approach—truncating a base design value before applying the RRF, and again truncating the result to arrive at the future design value—EPA stated the approach was erroneous and demonstrated a correct calculation.[308] EPA has not explained its change in position here.

When calculated correctly, and truncating only as a final step, the Copperview monitor 2021–2023 design value is 71 ppb—above the NAAQS—even with the requested "atypical" days excluded from the calculation as shown below in Table 2.

Table 2. Calculation of 2023 DV at Copperview (Site ID 490352005)[309]

Metric	**Value (ppb)**
2021 4th highest MD8H — original	86
2021 4th highest MD8H — "atypical" days* removed	80
2022 4th highest MD8H	74
2023 4th highest MD8H	73
2021–2023 3-year 4th highest MD8H average — original	77.7
2021–2023 3-year 4th highest MD8H average — "atypical" days removed	75.7
IA contribution from NWF 179B(b)	4.3
2021–2023 3-year 4th highest MD8H average — "atypical" days removed, IA contribution from NWF 179B(b) removed	71.4
2021–2023 3-year 4th highest MD8H average — "atypical" days removed, IA contribution from NWF 179B(b) removed; truncated	71

**Utah requested removal of July 12 and 24, 2021, and August 7, 8, and 16, 2021.*

As to the Near Road site, after removing modeled IA contributions to ozone, the monitor still showed violation of the ozone NAAQS. In order to reduce the design value further to 70 ppb, EPA excluded an additional day (July 11) under the guise of "atypical events" that Utah didn't even request, and provided insufficient evidence for that exclusion. Using solely the two days for which Utah sought exclusion, the design value when calculated correctly is 71 ppb, as shown below in Table 3.

[307] 2023 EPA Comments at 6−7.
[308] *Id.*
[309] Attached to these comments is an Excel spreadsheet containing the daily monitoring data and the calculations for this table. Ex. 28. *See supra*, nn.24–25.

Table 3. Calculation of 2023 DV at Near Road (Site ID 490354002) – UT-requested scenario[310]

Metric	Value (ppb)
2021 4th highest MD8H – original	83
2021 4th highest MD8H – "atypical" days requested by UT (7/12 & 24) removed	80
2022 4th highest MD8H	72
2023 4th highest MD8H	76
2021–2023 3-year 4th highest MD8H average - original	77
2021–2023 3-year 4th highest MD8H average – "atypical" days requested by UT (7/12 & 24) removed	76
IA contribution from NWF 179B(b)	4.4
2021–2023 3-year 4th highest MD8H average – "atypical" days requested by UT (7/12 & 24) removed, IA contribution from NWF 179B(b) removed	71.6
2021–2023 3-year 4th highest MD8H average – "atypical" days requested by UT (7/12 & 24) removed, IA contribution from NWF 179B(b) removed	71

EPA stated that "[f]or the Near Road site, *the EPA* expanded the assessment to July 11, 2021 because the date appeared to be part of a multi-day fire event that also included July 12 and had already been assessed in Utah's 179B(b) demonstration for the Copperview monitor."[311]

To begin, EPA arbitrarily misapplies the Clean Air Act's requirements by attempting to step into Utah's shoes and exclude additional data. The Clean Air Act requires the "State" to "establish[]" that it would have attained the NAAQS but for IA emissions.[312] Nowhere does the CAA deputize EPA to take on the role of making such a showing. EPA does not point to any statutory or regulatory authority supporting its action. Nor does EPA identify any precedent for EPA's action. In fact, the legislative history indicates that Congress intended to place a burden of proof on the states for 179B demonstrations: "[I]t will be up to the State . . . to prove that they are in compliance, based on what they do. The burden of proof will not be on EPA."[313]

Problematically, EPA does not adequately back up its decision to designate July 11, 2021, as an "atypical" event at the Near Road monitor.[314] EPA submits as evidence of July 11's status as an "atypical" event influenced by wildfire HYSPLIT back-trajectories and average surface-level PM2.5 measurements. These two components by themselves do not sufficiently prove that July 11, 2021, should be designated as an "atypical" event; nor do they come anywhere close to complying with the Clean Air Act's prerequisites for allowing "the Administrator to exclude air

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[310] Attached to these comments is an Excel spreadsheet containing the daily monitoring data and the calculations for this table. Ex. 28. *See supra*, nn.24–25.
[311] 2026 TSD at 16–17 (emphasis added).
[312] 42 U.S.C. § 7509a(b).
[313] 136 Cong. Rec. S4121 (1990) (statement of Sen. Gramm).
[314] 2026 TSD at 16–22.

quality monitoring data . . . with respect to exceedances."[315] Those prerequisites include showing a "clear causal relationship" between the measured exceedances and the exceptional event and "a public process for determining whether an event is exceptional."[316] EPA has not met those requirements here. For example, a "clear causal relationship" must be supported by a comparison to historical concentrations, "quantifying the difference, if any, between the event and the non-event concentrations."[317] Similarly, the causal relationship must be supported by a "[c]omparison of event-affected day(s) to specific non-event days," "[c]hemical composition . . . of measured pollution that links the pollution at the monitor(s) with particular sources," and other evidence.[318] EPA failed to provide any of this supporting analysis here. Nor did EPA support its analysis with photochemical grid modeling, as EPA itself recommended to Utah as discussed above. Further, EPA arbitrarily ignores the fact that conditions in the area on July 11, 2021 were conducive to formation of ozone from local sources of precursors. For example, the high temperature that day in Salt Lake City was 102 degrees, 8.4 degrees above the average high for that date and only 3 degrees below the record high.[319]

G. Exceedances Occur on Days When Ramboll's Time Series Modeling Shows Smaller International Anthropogenic Contributions, Even After Removing These Modeled International Anthropogenic Contributions, Resulting in a Violation of the NAAQS.

Utah calculates an average IA contribution for certain monitors based on modeling of roughly one month (June 26 to July 31) in 2023. Utah then uses this average to calculate a single RRF for each monitor and applies that RRF to adjust the measured design value, which is based on multiple months of data spanning three years. The 8-hour ozone standard is determined by calculating the fourth-highest daily reading at a given monitor for each year during three consecutive years. 80 Fed. Reg. 65292, 65292. Only then are those three values averaged. *Id.* Utah's use of applying an average RRF to a calculation that depends on specific daily data arbitrarily obscures the key question: how much did international emissions contribute to ozone readings on the specific days when ozone exceedances occurred?

The demonstration does not answer this question. The closest it comes is charts showing estimated daily international emissions contributions over the roughly one month period for just two of the monitors at issue.[320] At each of these monitors (Hawthorne and Bountiful Viewmont), Utah estimates that IA contributions range from 2 to 4 ppb between July 8 to July 31.[321] That contribution is lower than estimated during the time period from June 26 to July 7, when Utah estimated IA contributions ranged between 5 and 8 ppb.[322] This critical temporal variance is

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[315] 42 U.S.C. §7619(3)(B)(iv).
[316] *Id.* § 7619(3)(B)(ii), (iii).
[317] 81 Fed. Reg. at 68241.
[318] *Id.* at 68241 tbl.1.
[319] Ex. 25, Salt Lake City, UT Weather History - July 11, 2021 (last visited May 28, 2026), https://www.wunderground.com/history/daily/us/ut/salt-lake-city/KSLC/date/2021-7-11.
[320] Modeling Demo. at 34–35 figs.24–25.
[321] *Id.* at 33.
[322] *Id.*

obscured by Utah's averaging approach. In fact, from July 8 onward in 2023, both of those monitors exceeded the ozone standard by more than 4 ppb (Utah's *maximum* estimated IA contribution during that time frame) on multiple occasions. Ozone concentrations reached 75 ppb at Hawthorne on July 20 and August 16, 2023.[323] At Bountiful Viewmont, concentrations reached 76 ppb on July 20, 86 ppb on August 15, and 83 ppb on August 16.[324]

Utah does not model IA contributions for 2021 or 2022. But, assuming for the sake of argument that 2023 was a representative year, then Utah's own modeling and methodology shows that at least one monitor would have had a design value above 70 ppb even after accounting for international emissions. This is true even after excluding all of the 2021 wildfire days identified by both Utah and EPA in both the demonstration and TSD.[325] Excluding each of those identified wildfire days, in 2021, the Bountiful monitor's fourth highest ozone reading was 77 ppb, on September 8.[326] In 2022, the monitor's fourth highest ozone reading was 75 ppb, on September 7.[327] In 2023, the monitor's fourth highest ozone reading was 73 ppb, on July 22.[328] The 3-year design value was thus 75 ppb. For each of these years, all four of the highest readings occurred on or after July 8. Utah asserts that its modeling shows an international anthropogenic contribution of at most 4 ppb from July 8 onward.[329] Conservatively assuming that the IA contribution was the maximum 4 ppb on each of the twelve days at issue still yields a design value of 71 ppb, exceeding the NAAQS.

It is highly likely that similar problems occur at other monitors. Utah did not provide IA contribution estimates based on specific dates or date ranges for any other monitors. But it stands to reason that other monitors would similarly have lower IA contributions in mid- to late-July and onward, like at the Bountiful and Hawthorne monitors. And Utah estimated that the Hawthorne and Bountiful monitors had two of the highest average IA contributions (across the full modeled time range), with contributions of 5.2 and 5.0 ppb, respectively. In contrast, Utah estimated that the Copperview monitor, for example, had an average IA of 4.3 ppb—nearly 20% lower than at the Bountiful monitor. Copperview (and other monitors) therefore likely had an

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[323] Ex. 31, EPA Compilation of Utah ozone monitor daily data (2023), available for download at https://www.epa.gov/outdoor-air-quality-data/download-daily-data (Pollutant: ozone; Year: 2023; Geographic Area: Utah).
[324] *Id.*
[325] These dates are: July 12, July 24, August 7, August 8, and August 16 (Utah); and July 11 and July 14 (EPA). Note that the wildfire analyses conducted by Utah and EPA were specific to the Copperview, Inland, and Near Road monitors. Neither Utah nor EPA even attempted to make a showing of exceptional events at the Bountiful Vermont monitor, so our analysis is particularly conservative.
[326] Ex. 29, EPA Compilation of Utah ozone monitor daily data (2021), available for download at https://www.epa.gov/outdoor-air-quality-data/download-daily-data (Pollutant: ozone; Year: 2021; Geographic Area: Utah).
[327] Ex. 30, EPA Compilation of Utah ozone monitor daily data (2022).
[328] *See* Ex. 31, EPA Compilation of Utah ozone monitor daily data (2023).
[329] Modeling Demo. at 33.

even lower range of IA contributions from July 8 onward (*i.e.*, 20% less than 2–4 ppb), impacting those exceedance days by an even smaller degree.

This is important because, across monitors, the vast majority of exceedances occurred on or after July 8. This is apparent in Table 2 of the Utah demonstration, which summarizes exceedance dates analyzed for the HYSPLIT analysis.[330] Although that table excludes any day "noted with medium and heavy smoke impacts (as reported by UDAQ)," without support,[331] it demonstrates that most exceedances occur later in the summer. Of the 33 exceedance days analyzed, only four occurred before July 8. Utah's decision to average IA contributions across the entire modeled time period, rather than examining daily IA contributions as a function of time, is thus a fatal flaw that undermines the entire assessment's reliability and credibility.[332] Utah's related decision to only examine IA contributions through July 31 suffers from the same defect. Further, IA contributions may not have been steady across all three years at issue, yet Utah failed to explain whether or why 2023 was a representative year. Without that information, Utah's entire analysis is arbitrarily based on conjecture.

To further illustrate why the demonstration's failure to account for declining international emissions later in the summer matters, the tables below show that a significant number of exceedances occur in the months of August and September. These values come from the daily emissions data available on EPA's website and show the incidents of exceedances per month for 2021 through 2025 (not excluding alleged "atypical" events):

Table 4. Exceedances per Month 2021–2025[333]

Year	May	June	July	August	September	Total
2021	0	24	114	54	30	222
2022	0	2	13	20	25	60
2023	5	1	20	26	0	52
2024	0	8	71	45	10	134
2025	8	19	4	9	2	52
Total	13	54	222	154	67	

[330] *Id.* at 25 tbl. 2.
[331] *Id.*
[332] EPA has also explained why this type of averaging is inappropriate. In its disapproval of Utah's prior 179B application, EPA explained: "We note that the modeling report presents CAMx source apportionment results for the average of all summer days, for which the Bountiful monitor has an average ozone concentration of 52 ppb. *Summer averages conditions are not useful for identifying source contributions on the high ozone days that cause violations of the 2015 ozone NAAQS*, so the CAMx source apportionment results presented in the report are not useful for comparing international and domestic contributions to ozone on days with poor air quality. In future work, the source apportionment results should be evaluated on high ozone days, and more specifically, on days for which the model accurately simulates observed ozone levels." 2022 TSD at 13.
[333] Attached to these comments is an Excel spreadsheet containing the daily monitoring data and the calculations for this table. Ex. 28. *See supra*, nn.24–25.

Weighted Average	3%	11%	44%	30%	13%	

The emissions data shows that, on average, about the same frequency of exceedances occur in August and September as compared to June and July. And in the specific years relevant to Utah's demonstration, more exceedances occurred in August and September as compared to June and July: in 2023, for instance, fully half of all exceedances occurred in August, and in 2024, three-quarters of exceedances occurred in August and September. Thus, the demonstration's failure to model and quantify international contributions in August and September means it fails to show that international emissions are the "but for" cause of the significant number of exceedances.

H. Utah Did Not Explain Why the Southern Wasatch Front, a Nearby Area That Is Closer to Mexico, Experiences Lower Levels of Ozone Despite Sharing Similarities in Topography, Elevation, and International Transport Patterns.

As explained above in Section VI.F, Utah failed to meet the but-for standard (and EPA erroneously found that Utah did) because a nearby area, the Southern Wasatch Front ("SWF"), is closer to international borders and shares similarities in international transport patterns—yet experienced lower levels of ozone. The dispositive difference between the NWF and SWF is that the NWF is home to more local sources of pollution, which are the more likely cause of exceedances.

I. EPA Failed to Act Consistently with Its 2020 179B Guidance or Rationally Explain Why It Is Departing from That Guidance.

In December 2020, EPA adopted—after notice and comment—an extensive guidance document on preparation of 179B demonstrations.[334] On April 7, 2025, without any public participation opportunity, the EPA Administrator rescinded the 2020 Guidance. The only explanation given for this rescission was that the Guidance purportedly "made it unnecessarily difficult for states to demonstrate that foreign air pollution is harming Americans within their borders."[335] As noted earlier in these comments, a bare conclusory assertion that the Guidance made section 179B demonstrations "unnecessarily difficult" is not a reasoned explanation for abandoning a carefully thought through and developed guidance. Nor does it adequately explain EPA's abandonment of the following specific elements of the 2020 Guidance that are highly relevant to the proposed 179B(b) finding for the Utah NWF area.

First, EPA's 2020 Guidance specifically calls for 179B demonstrations to include "[i]dentification of specific international anthropogenic emissions sources (e.g., an international

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[334] EPA, Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions (2020), https://downloads.regulations.gov/EPA-HQ-OAR-2019-0668-0027/content.pdf, EPA-R08-OAR-2024-0552-0028 [hereinafter 2020 Guidance].

[335] Ex. 23, EPA, Administrator Zeldin Moves Forward with Ensuring U.S. States Are Not Punished for Foreign Air.

emitting facility) or source regions (e.g., an international metropolitan area) that predominantly impact the monitor location on internationally influenced days."[336] EPA fails to explain why this information is no longer important. To credibly claim that international emissions from Asia or Mexico are a "but for" cause of ozone violations in Utah's NWF, there needs to be more than just a generic claim that the cause is emissions from unidentified sources or regions of those vast areas. As noted elsewhere in these comments, section 179B requires a showing that emissions "emanating from" outside the United States were the "but for" cause of the NWF's failure to attain. Emanate means "to come out from a source," "emit."[337]

Yet Utah has not shown which metropolitan areas the pollution allegedly comes from, much less what sources or even what kinds of sources in Asia or Mexico emitted the pollution claimed to have traveled up to thousands of miles to Utah. Utah's back trajectory demonstration generically claims that 40% of examined exceedance days "indicate air parcel origins reaching toward/over Asia."[338] Air parcels "reaching "toward/over" a vast continent fails to even hint at what might be the sources of these emissions. As for Mexico, Utah's demonstration states that 48% of examined exceedance days involved parcels "passing over Mexico."[339] But the demonstration fails to establish that emissions on those days *originated* in Mexico, much less from which sources in Mexico—indeed, Utah notes that origins of air parcels on those days include "Mexico, the Gulf of Mexico, and the Southern US."[340] This air pattern was the "most common" observed.[341] This is precisely the type of situation where the information required by the 2020 Guidance would be necessary: Utah needs to identify specific emissions sources in order to establish that emissions were emanating from outside the United States, and that those emissions were the "but for" cause of the failure to attain.

EPA fails to explain why it abandoned 2020 Guidance's call for identification of emission sources or source regions. Further, its failure to provide analyses explaining the nature of Mexican and Asian emissions and how their contributions were quantified undermines the weight of evidence analysis.

Second, the 2020 Guidance calls for domestic and international emissions inventories to be developed in a manner consistent with EPA's emission inventory guidance:[342]

> The international emissions database may either be developed as a part of the section 179B demonstration or leveraged from a pre-existing public database. In either case, the process for developing the database should be based on the same principles of emission inventory development as are included in the guidance for domestic emissions. When using a pre-existing database, the provenance and

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[336] 2020 Guidance at 20.
[337] *See* Ex. 17, *Emanate*, Merriam-Webster (last visited May 28, 2026), https://www.merriam-webster.com/dictionary/emanate.
[338] Modeling Demo. at 27.
[339] *Id.* at 27.
[340] *Id.* at 28.
[341] *Id.* at 39.
[342] 2020 Guidance at 37, 39.

> methodology used to build the international emissions database should be well documented.[343]

Utah does not provide an emissions inventory at all for Mexico or Asia. The only inventory anywhere in Utah's demonstration is a summary of four major sectors (area, nonroad, on-road, and point source) of ozone precursor emissions within the four NAA counties.[344] Nor do EPA or Utah rationally explain why ensuring that emissions inventories are developed in a reliable manner according to EPA guidance is no longer important. Utah's method to calculate its own emissions is also unsupported. In commenting on the SIP, EPA previously noted that the "emissions inventory methodology is not sufficiently supported in the SIP narrative or TSD."[345]

Third, the Guidance explains that a demonstration should show "that the air quality data on *specific days in the past* were affected by international emission *to an extent that prevented the area from attaining*."[346] As discussed elsewhere in these comments, a but-for demonstration requires more than a simple averaging of international emission contributions. It requires showing that international emissions—which can vary day to day—caused an exceedance on specific days. Utah's demonstration does not make this showing: its back-trajectory analysis shows, at most, that some exceedance days involved international emissions, but does not quantify those levels; and its photochemical model applies an average international emissions contribution to all days without examining contributions on specific days. EPA fails to explain why it abandoned the Guidance's requirements for a "but-for" showing, and the demonstration's failure to quantify international contributions on specific days undermines the weight of evidence analysis.

Fourth, the Guidance calls for the demonstration to include a "list of the monitor(s) and days that the air agency has identified as influenced by international anthropogenic emissions."[347] Utah's demonstration does not contain any such list. The Guidance also calls for a "table of the relevant monitor data," including date, hours, monitor values, and design value calculations with and without the international emissions; Utah's demonstration does not include this information. Utah's demonstration does not contain any such list, and EPA does not explain why such key and basic information is no longer important.

Fifth, the Guidance explains a demonstration must be supported by additional evidence when affected monitors are not near an international border, specific international sources are not identified, and exceedances occurred on days where meteorological conditions were conducive to local pollutant formation (such as hot days).[348] All of these characteristics are applicable to

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[343] *Id.* at 39.
[344] Modeling Demo. at 21 tbl.1.
[345] 2023 EPA Comments at 1.
[346] 2020 Guidance at 16; *see also id.* at 23 (discussing inadequacy of modeling that is "not necessarily representative of the international contributions that occur *on specific days* (e.g., specific exceedances that may influence a SIP determination and be critical for section 179B purposes" (emphasis added)); *id.* at 41 ("It will be useful to provide day-specific results . . . .").
[347] *Id.* at 19.
[348] *Id.* at 23.

Utah's demonstration.[349] EPA does not explain why these characteristics are not indicative of a need for stronger evidence, and Utah fails to provide that stronger evidence.

Sixth, the Guidance explains that modeling should "cover all the relevant observations" across the three-year attainment period, and cautions that if "using a surrogate year, a demonstration should include an analysis to examine the impact of year-specific meteorology and transport patterns."[350] Here, Utah used a surrogate year, but failed to examine whether that year was representative of the other two years of the attainment period. EPA fails to explain why such an assessment is no longer necessary, and Utah's failure to provide it undermines the weight of the evidence analysis.

Finally, the Guidance encourages air agencies to conduct a public comment process for all section 179B demonstrations prior to submissions to EPA.[351] Utah's demonstration does not document a public comment process, and EPA does not explain why such a process is no longer important.

J. Utah's Demonstration Has Not Met the Stringent But-For Standard Because Utah Failed to Demonstrate a Causal Connection Between International Emissions and Observed Exceedances at Specific Monitors.

Section 179B imposes a strict "but for" causation standard on states and EPA in order for a nonattainment area to escape an increase in its nonattainment classification. The statute provides that nonattainment areas may take advantage of a 179B waiver only if the state "establishes to the satisfaction of the Administrator that" the state would have timely attained "but for emissions emanating from outside of the United States."[352] Utah has not met this stringent standard. The state has not shown that emissions originating in another country caused the observed exceedances at specific monitors in the NWF area.

The "but for" standard is a well settled legal test that is not met by a mere showing of "possible" causation. The term "but for" has a well settled meaning in the law that has been extensively developed through caselaw and commentary.[353] "But for" causation is more stringent than substantial or motivating factor causation.[354] The Supreme Court announced that the "ancient and simple 'but for' common law causation test . . . supplies the 'default' or

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[349] *See* Modeling Demo. at 14 (discussing prevalence of ozone exceedances on days with high-pressure systems, which in turn both bring down mid-tropospheric ozone from long distances *and* inhibit cloud development, lead to warmer days, and therefore create conditions favorable for air stagnation at the surface).
[350] 2020 Guidance at 41.
[351] *Id.* at 47.
[352] 42 U.S.C. § 7509a.
[353] Prosser & Keeton on the Law of Torts 265–69 (5th ed. 1984).
[354] *Acosta v. Brain*, 910 F.3d 502, 514 (9th Cir. 2018); *see Black v. Grant Cnty. Pub. Util. Dist.*, 820 F. App'x 547, 553 (9th Cir. 2020) (Bumatay, J., concurring) ("But-for causation is a heightened standard.").

'background' rule against which Congress is normally presumed to have legislated."[355] Courts regularly apply the traditional "but for" test in the context of statutes that require a showing of causation.[356] In cases involving exposure to a pollutant, like the NWF monitors here, courts require a showing of both general and specific causation, which means that Utah needs to (1) show international emissions are capable of causing a nonattainment in an U.S. area; and (2) identify emissions from Mexico and Asia that caused the observed exceedances at specific NWF monitors.[357]

Utah has not satisfied either part. As discussed above, Utah has not established general causation, in part because its method of simply subtracting modeled international contributions from the design value—a method that EPA previously rejected[358]—cannot establish that IA contributions caused a violation of the NAAQS. But even if Utah had made that showing, the state has failed to establish specific causation, as its demonstration is devoid of information identifying exactly where the international emissions originated from, when they originated, when they were transported to the NWF area, whether the emissions caused an observed exceedance, and the quantity of the international emissions that impacted a local NWF monitor. For example, specific causation would require a demonstration that emissions that originated in Mexico were responsible for 5 ppb of the observed 75 ppb at a specific monitor on a specific day.[359] Utah broadly paints Mexico and Asia as various causes, but the analysis provides no insight into whether Mexico, Asia, or both were the causes of any particular exceedance event.

Additionally, EPA cannot write off the stringent "but for" test in favor of a weight of the evidence approach. The language of the statute is the best evidence of Congressional intent, and Congress deliberately chose the "but for" test over other possible formulations.[360] Congress did not, as EPA seems to think, write the statute to say that a mere showing of potential causation would be sufficient. Moreover, the legislative history indicates that Congress intended to place a burden of proof on the states for 179B demonstrations.[361] In discussing a related amendment on addressing international border pollution, Congress highlighted the importance of "know[ing]

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[355] *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 332 (2020); *see Bradley v. United States*, 410 U.S. 605, 609 (1973) (statutes use familiar legal expressions in their familiar legal sense); N.J. Singer, 2A Statutes and Statutory Construction §47:30 (6th ed. 2000) (legal terms in a statute are presumed to have been used in their legal sense, absent legislative intent to the contrary).

[356] *See, e.g.*, *Public Citizen Health Research Group v. Young*, 909 F.2d 546, 550 (D.C. Cir. 1990) (applying traditional "but for" test to determine whether plaintiff qualified as prevailing party for purposes of statutory fee award); *McQuillen v. Wis. Education Ass'n Council*, 830 F.2d 659, 664 (7th Cir. 1987) (applying "but for" test of causation to claim of sex discrimination under Title VII of the Civil Rights Act).

[357] *Norris v. Baxter Healthcare Corp.*, 397 F.3d 878, 881 (10th Cir. 2005); *Panchev v. Pac. Gas & Elec. Co.*, 825 F. App'x 462, 463 (9th Cir. 2020).

[358] 2022 TSD at 12.

[359] *Supra*, Sections VI.D–F.

[360] *See, e.g.*, 42 U.S.C. § 7407(d)(1)(A)(i) (designating an area a NAA even if its monitors meet DVs if it "contributes" to a nearby area's nonattainment).

[361] 136 Cong. Rec. S4121 (1990) (statement of Sen. Gramm).

where the pollution is coming from" and "how much from [international] sources."[362] Use of the traditional "but for" test is also fully consistent with the Act's public health purposes, and with Congress' overall approach in the 1990 amendments of requiring increasingly stringent air pollution controls in areas that failed to timely meet standards.[363] Having laid out in great detail the anti-pollution steps required in such areas, it stands to reason that Congress would want strong proof before allowing waiver of those requirements.

Therefore, EPA cannot rationally conclude that the evidence proves that Mexican and Asian emissions caused the NWF exceedances.[364] Utah does not show, nor does EPA verify, that Mexican or Asian emissions "must have caused" the NWF violations, or that there is "objective, verifiable evidence and scientific methodology" supporting every necessary link in the chain of causation.[365]

VIII. Conclusion

For the reasons stated above, EPA's proposed rule violates the Clean Air Act and is grounded on erroneous and arbitrary modeling and technical analyses. EPA's interpretation of the Act and the agency's proposed approval are unmoored from the facts and law, and EPA fails to provide a reasoned explanation for its clear departure from the requirements of the Act. People in the Northern Wasatch Front need real solutions to the severe, enduring ozone problem. This problem demands much, much more than a flawed attempt to shift the blame to Asia and Mexico. Public health and the environment continue to suffer as EPA violates the law, illegally expands and misinterprets section 179B, and undermines the Clean Air Act's clear, effective nonattainment SIP requirements.

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[362] 136 Cong. Rec. S5062 (1990) (statement of Sen. Baucus).
[363] *See, e.g.*, CAA §§ 181, 182, 186, 187, 188, 189.
[364] *Daubert v. Merrell Dow Pharms.*, 43 F.3d 1311, 1320–22 (9th Cir. 1995).
[365] *Domingo v. T.K., M.D.*, 289 F.3d 600, 607 (9th Cir. 2002).

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