

requirements; rather, they would remove certain conditions for PVABs of all sizes, including small entities. Our objectives would not be served by establishing different compliance or reporting requirements for small entities, exempting small entities from all or part of the requirements, or clarifying, consolidating or simplifying compliance and reporting requirements for small entities. Similarly, because the proposed amendments do not set forth any standards, our objectives would not be served by establishing performance rather than design standards.

VII. Statutory Authority

We are proposing the rule amendments contained in this release under the authority set forth in Sections 3(b), 14, 23(a) and 36 of the Securities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 et seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

■ 2. Amend § 240.14a-2 by revising paragraph (b)(9) to read as follows:

§ 240.14a-2 Solicitations to which § 240.14a-3 to § 240.14a-15 apply.

\* \* \* \* \*

(b) \* \* \*

(9) Paragraphs (b)(1) and (3) of this section shall not be available to a person furnishing proxy voting advice covered by § 240.14a-1(l)(1)(iii)(A) (“proxy voting advice business”) unless the proxy voting advice business includes in its proxy voting advice or in an electronic medium used to deliver the

proxy voting advice prominent disclosure of:

(i) Any information regarding an interest, transaction, or relationship of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; and

(ii) Any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship.

§ 240.14a-9 [Amended]

■ 3. Amend § 240.14a-9 by removing paragraph e. of the Note.

By the Commission.

Dated: November 17, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-25420 Filed 11-24-21; 8:45 am]

BILLING CODE 8011-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0677; FRL-9276-01-R4]

Air Plan Approval; South Carolina; Catawba Indian Nation Portion of the Charlotte-Gastonia-Rock Hill Area Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of South Carolina, through the Department of Health and Environmental Control (DHEC), via a letter dated July 7, 2020. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Catawba Indian Nation portion (hereinafter referred to as the Catawba Area) of the Charlotte-Gastonia-Rock Hill NC-SC 1997 8-hour ozone maintenance area (hereinafter referred to as the Charlotte NC-SC 1997 8-hour NAAQS Area). The Charlotte NC-SC 1997 8-hour NAAQS Area is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (i.e., Davidson and Coddle Creek Townships) in North Carolina and a portion of York County,

South Carolina which includes the Catawba Area. EPA is proposing to approve the Catawba Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Catawba Area through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area federally enforceable as part of the South Carolina SIP.

DATES: Written comments must be received at the address below on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0677 at https://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit https://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9029. Ms. Spann can also be reached via electronic mail at spann.jane@epa.gov.

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## I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the Catawba Area LMP for the 1997 8-hour ozone NAAQS, adopted by DHEC on July 7, 2020, and submitted by DHEC as a revision to the South Carolina SIP under a letter dated July 7, 2020.<sup>1</sup> In 2004, the Charlotte NC-SC 1997 8-hour NAAQS Area, which includes the Catawba Area, was designated as nonattainment for the 1997 8-hour ozone NAAQS. Subsequently, in 2012, after a clean data determination<sup>2</sup> and EPA's approval of a maintenance plan, the South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area, which includes the Catawba Area, was redesignated to attainment for the 1997 8-hour ozone NAAQS.

The Catawba Area LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Catawba Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A.

As a general matter, the Catawba Area LMP relies on the same control measures and relevant contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by DHEC for the first 10-year period.

## II. Background

Ground-level ozone is formed when oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and in adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and

aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.<sup>3</sup>

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).<sup>4</sup> EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour ozone NAAQS would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Charlotte NC-SC 1997 8-hour NAAQS Area which consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (*i.e.*, Davidson and Coddle Creek Townships) in North Carolina and a portion of York County, South Carolina, including the Catawba Area, as nonattainment for the 1997 8-hour ozone NAAQS. The designation became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004).

Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the

2008 8-hour ozone NAAQS.<sup>5</sup> The Catawba Area was designated unclassifiable/attainment although the surrounding Charlotte—Gastonia-Rock Hill NC-SC Area<sup>6</sup> (hereinafter referred to as the Charlotte NC-SC 2008 NAAQS Area) was designated as nonattainment for the 2008 8-hour ozone NAAQS and classified as a marginal nonattainment area. This designation became effective on July 20, 2012.<sup>7</sup> In summary, the Catawba Area was included in the Charlotte NC-SC 1997 8-hour NAAQS boundary designation in 2004 but was not included in the Charlotte NC-SC 2008 NAAQS boundary designation in 2012.

In addition, on November 16, 2017, areas were designated for the 2015 8-hour ozone NAAQS. The entire states of North Carolina and South Carolina—including the Catawba Indian Nation—were designated attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date on January 16, 2018.<sup>8</sup>

A state may submit a request to redesignate a nonattainment area that is attaining a NAAQS to attainment, and, if the area has met other required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation request.<sup>9</sup> One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to

<sup>5</sup> In 2011, EPA established the "Guidance to Regions for Working with Tribes during the National Ambient Air Quality Standards (NAAQS) Designations Process" memorandum providing guidance to EPA Regional Offices for working with federally-recognized Indian tribes regarding the CAA section 107(d) NAAQS boundary designations process for Indian country. *See* [https://www.epa.gov/sites/production/files/2017-02/documents/12-20-11\\_guidance\\_to\\_regions\\_for\\_working\\_with\\_tribes\\_naaqs\\_designations.pdf](https://www.epa.gov/sites/production/files/2017-02/documents/12-20-11_guidance_to_regions_for_working_with_tribes_naaqs_designations.pdf). This guidance was then applied to the 2012 designation process for the 2008 ozone NAAQS.

<sup>6</sup> The Charlotte—Gastonia-Rock Hill NC-SC Area for the 2008 8-hour ozone NAAQS consists of portions of Cabarrus, Gaston, Iredell, Lincoln, Rowan and Union Counties and the entirety of Mecklenburg County in North Carolina, and a portion of York County, South Carolina which excludes the Catawba Area.

<sup>7</sup> *See* 77 FR 30088.

<sup>8</sup> *See* 82 FR 54232.

<sup>9</sup> Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

<sup>1</sup> EPA received the SIP submission on July 10, 2020.

<sup>2</sup> *See* 77 FR 13493 (March 7, 2012).

<sup>3</sup> *See* "Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone," January 6, 2010, and 75 FR 2938 (January 19, 2010).

<sup>4</sup> In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.*, ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans.<sup>10</sup> The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.*, attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value<sup>11</sup> being significantly below the standard and the area having a historically stable design value.<sup>12</sup> EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an

LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: An attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,<sup>13</sup> EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.<sup>14</sup>

In this case, EPA is proposing to approve the Catawba Area LMP because the State has made a showing, consistent with EPA's prior LMP guidance, that the Charlotte NC-SC 1997 8-hour NAAQS Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable, and that it has met the other maintenance plan requirements. DHEC submitted this LMP for the Catawba Area to fulfill the second maintenance plan requirement in the Act. EPA's evaluation of the Catawba Area LMP is presented below.

In June of 2011, DHEC submitted to EPA a request to redesignate the York County, South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area (which includes the Catawba Area), to attainment for the 1997 8-hour ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 8-hour ozone NAAQS in the Charlotte NC-SC 1997 8-hour NAAQS Area through 2022 as a revision to the South Carolina SIP. EPA approved South Carolina's Charlotte NC-SC 1997 8-hour NAAQS Area Maintenance Plan and the State's request to redesignate the South Carolina portion of the Charlotte NC-SC 1997 NAAQS Area to attainment for the 1997 8-hour ozone NAAQS effective December 26, 2012.<sup>15</sup>

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for

maintenance of the NAAQS for ten additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.*, maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).<sup>16</sup> On December 11, 2015, EPA redesignated the South Carolina portion of the Charlotte NC-SC 2008 NAAQS Area (which does not include the Catawba Area) as attainment for the 2008 8-hour ozone NAAQS, and the designation became effective on January 11, 2016. *See* 80 FR 76865.

In *South Coast Air Quality Management District v. EPA*, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for "orphan maintenance areas," *i.e.*, areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS (maintenance areas) and were designated attainment for the 2008 ozone NAAQS. *South Coast*, 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these "orphan maintenance areas" under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, through a letter dated July 7, 2020, South Carolina submitted a second maintenance plan covering the Catawba Area that provides for attainment of the 1997 8-hour ozone NAAQS through 2032.<sup>17</sup>

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Charlotte NC-SC 1997 8-hour NAAQS Area well below the 1997 8-hour ozone NAAQS, DHEC chose the LMP option for the development of its second 1997 8-hour ozone NAAQS maintenance plan covering the Catawba Area. On July 7, 2020, DHEC adopted this second 10-year 1997 8-hour ozone maintenance plan, and subsequently submitted the Catawba Area LMP to EPA as a revision to the South Carolina SIP.

### III. South Carolina's SIP Submittal

As mentioned above, on July 7, 2020, DHEC submitted the Catawba Area LMP

<sup>10</sup> John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards (OAQPS), "Procedures for Processing Requests to Redesignate Areas to Attainment," September 4, 1992 (Calcagni memo).

<sup>11</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

<sup>12</sup> *See* "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, OAQPS, dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

<sup>13</sup> The prior memos addressed: Unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM<sub>10</sub> (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment areas for the carbon monoxide (CO) NAAQS.

<sup>14</sup> *See, e.g.*, 79 FR 41900 (July 18, 2014) (Approval of the second ten-year LMP for the Grant County 1971 SO<sub>2</sub> maintenance area).

<sup>15</sup> *See* 77 FR 75862 (December 26, 2012).

<sup>16</sup> *See* 80 FR 12264, 12315 (March 6, 2015).

<sup>17</sup> In an email dated October 18, 2021, DHEC clarified that the end of the maintenance plan submitted on June 7, 2020, is 2032.

to EPA as a revision to the South Carolina SIP. The submittal includes the LMP, air quality data, a summary of the previous emissions inventory and a conclusion regarding future emission levels, and attachments, as well as certification of adoption of the plan by DHEC. Attachments to the plan include documentation of notice, opportunity for hearing and public participation prior to adoption of the plan by DHEC on July 7, 2020, and state legal authority. The LMP notes that South Carolina's LMP submittal for the remainder of the 20-year maintenance period for the Catawba Area is in response to the D.C. Circuit's decision overturning aspects of EPA's Implementation Plan rule. The Catawba Area LMP does not include any additional emissions reduction measures but relies on the same emissions reduction strategy as the first 10-year Maintenance Plan that provides for the maintenance of the 1997 8-hour ozone NAAQS through 2022. Prevention of significant deterioration (PSD) requirements and control measures contained in the SIP will continue to apply, and federal measures (e.g., Federal motor vehicle control program) will continue to be implemented in the Catawba Area.

#### IV. EPA's Evaluation of South Carolina's SIP Submittal

EPA has reviewed the Catawba Area LMP which is designed to maintain the 1997 8-hour ozone NAAQS within the Catawba Area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b).

As discussed below, the Catawba Area's impact on the larger Charlotte NC-SC 1997 8-hour NAAQS Area is very limited due to its size, population, and emissions profile. In addition, the monitoring values in the Charlotte NC-SC 1997 8-hour NAAQS Area, including the Catawba Area, are well below the NAAQS. As a result, EPA is proposing to approve the Catawba Area LMP as meeting the 175A requirements. The following is a more detailed summary of EPA's interpretation of the section 175A requirements<sup>18</sup> and EPA's evaluation of how each requirement is met.

##### A. Area Characteristics

The Catawba Indian Nation tribal lands are comprised of a total of approximately 1,000 acres, in two sections along the Catawba River in the eastern portion of York County, South Carolina.<sup>19</sup> The total Catawba Indian

Nation population is 3,370 (2010 Census), however, based on recent census estimates, the population of the Reservation is only 1,288 with 517 housing units within the Reservation.<sup>20</sup> According to the 2019 census estimates, the total York County population is 280,979, and the Reservation is home to 0.46 percent of York County's population.<sup>21</sup> The Reservation is a residential area which contains no industry, no limited access highways or transportation facilities, and only a few miles of secondary roads. There is a boat ramp but there are no airports, helipads, railroad tracks, or associated facilities. The Reservation has no shopping centers or industrial sites. The only community facilities, which are of modest size, are the Tribal offices and the Senior Center.

##### B. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and NO<sub>x</sub>, as these pollutants are precursors to ozone formation.

The 175A maintenance plan approved by EPA included an attainment inventory for the South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area that reflects typical summer day VOC and NO<sub>x</sub> emissions in 2010.<sup>22</sup> As previously mentioned, the Catawba Area is included in the South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area.

Because the Catawba Nation Reservation is a small residential area, both geographically and in population, with no industrial sites, no limited access highways, no transportation facilities, and no point sources of ozone

the Catawba River with a total land base of approximately 1,000 acres, which comprises only 0.002 percent of the land area of York County. See Technical Support Document for Charlotte-Rock Hill, NC-SC Area Designations for the 2008 Ozone National Ambient Air Quality Standards, available at <https://www.regulations.gov/search?filter=EPA-HQ-OAR-2008-0476-0642>.

<sup>20</sup> See Catawba Reservation, U.S. Census Bureau, 2015–2019 American Community Survey 5-Year Estimates, available at <https://www.census.gov/tribal/index.html?aianihh=0525>.

<sup>21</sup> *Id.*, see also <https://www.census.gov/quickfacts/yorkcountysouthcarolina> (showing York County, South Carolina with a 2019 estimated population of 280,979 and a 2020 census population of 282,090).

<sup>22</sup> See 77 FR 68087 (November 15, 2012) and 77 FR 75862 (December 26, 2012).

precursors, there are no estimates of VOC and NO<sub>x</sub> emissions from the Catawba Area. Given the unique nature of the Catawba Area and the air quality analysis in section IV.C, below, EPA does not believe that a detailed accounting of attainment level emissions is necessary in this instance.

##### C. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied in a LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.<sup>23</sup> These criteria are evaluated below with regard to the Catawba Area.

##### 1. Evaluation of Ozone Air Quality Levels

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the NAAQS is attained if the design value is 0.084 ppm or below. At the time of submission, EPA evaluated quality assured and certified 2016–2018 monitoring data and determined that the highest design value for the Charlotte NC-SC 1997 8-hour NAAQS Area was 0.070 ppm, or 83 percent of the level of the 1997 8-hour ozone NAAQS (measured at the University Meadows monitor in Mecklenburg, North Carolina (AQS ID: 37-119-0046)), and the design value for the Catawba Area monitor (AQS ID: 45-091-8801) was 0.064 ppm, or 76 percent of the level of the 1997 8-hour ozone NAAQS. Based on quality assured and certified monitoring data for 2018–2020, the current, highest design value for the Charlotte NC-SC 1997 8-hour NAAQS Area is 0.067 ppm, or 80 percent of the level of the 1997 8-hour ozone NAAQS (measured at the University Meadows monitor and the Garinger High School Monitor in Mecklenburg, NC (AQS ID: 37-119-0041)), and the current design value for the Catawba Area monitor is 0.062 ppm, or 74 percent of the level of the 1997 8-hour ozone NAAQS. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (e.g., below 85 percent of the NAAQS, or in this case below 0.071 ppm), then

<sup>23</sup> See Calcagni memo.

<sup>18</sup> See Calcagni memo.

<sup>19</sup> As described in the July 7, 2020 Submittal, the Catawba Area consists of two tracts of land along

EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of prevention of significant deterioration requirements and any control measures already in the

SIP and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 3 presents the design values for each monitor in the Charlotte NC-SC 1997 8-hour NAAQS Area over the

2008–2020 period. As shown in Table 3, all sites have been below the level of the 1997 8-hour ozone NAAQS since the area was redesignated to attainment, and the most current design value is below the level of 85 percent of the NAAQS, consistent with prior LMP guidance.

TABLE 3—1997 8-HOUR OZONE NAAQS DESIGN VALUES (DV) (PPM) AT MONITORING SITES IN THE CHARLOTTE NC-SC 1997 NAAQS AREA FOR THE 2008–2020 TIME PERIOD

Location	County (state)/tribal land	AQS site ID	2008–2010 DV	2009–2011 DV	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2017 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV
Catawba Area Monitor ....	Catawba Indian Nation ...	45–091–8801	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	0.064	0.064	0.062
Arrowood .....	Mecklenburg (NC) .....	37–119–1005	0.073	0.076	0.077	0.072	0.066	(**)	(**)	(**)	(**)	(**)	(**)
Crouse .....	Lincoln (NC) .....	37–109–0004	0.072	0.071	0.075	0.072	0.068	0.065	0.067	0.067	0.065	0.064	0.060
Enochville .....	Rowan (NC) .....	37–159–0022	0.077	0.076	0.077	0.072	(***)	(***)	(***)	(***)	(***)	(***)	(***)
Garinger High School .....	Mecklenburg (NC) .....	37–119–0041	0.078	0.079	0.083	0.078	0.070	0.068	0.069	0.069	0.068	0.070	0.067
County Line .....	Mecklenburg (NC) .....	37–117–1009	0.082	0.078	0.083	0.078	0.073	0.067	(****)	(****)	(****)	(****)	(****)
University Meadows .....	Mecklenburg (NC) .....	37–119–0046	(****)	(****)	(****)	(****)	(****)	(****)	0.070	0.070	0.070	0.069	0.067
Rockwell .....	Rowan (NC) .....	37–159–0021	0.077	0.075	0.078	0.073	0.068	0.064	0.065	0.064	0.062	0.062	0.061
Monroe School .....	Union (NC) .....	37–179–0003	0.072	0.070	0.073	0.070	0.068	0.065	0.068	0.067	0.068	0.068	0.063

\* The ozone monitor in the Catawba Indian Nation (AQS Site ID 45–091–8801) began operation for the 2016 ozone season.

\*\* The Arrowood monitor in Mecklenburg County (AQS Site ID 37–119–1005) was shut down in 2014.

\*\*\* The Enochville School monitor in Rowan County (AQS Site ID 37–159–0022) was shut down in 2013.

\*\*\*\* In 2014, the ozone monitor at Mecklenburg County Line (AQS Site ID 37–117–1009) changed locations to University Meadows (AQS ID 37–119–0046).

Therefore, the Catawba Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO<sub>x</sub> emissions control programs in the Charlotte NC-SC 1997 8-hour NAAQS Area, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area through the second 10-year maintenance period and beyond.

Additional supporting information that the Area is expected to continue to maintain the NAAQS can be found in projections of future year design values that EPA recently completed for the Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS that EPA finalized on April 30, 2021.<sup>24</sup> Those projections, made for the year 2023, show that the maximum design value for the Charlotte NC-SC 1997 Ozone Area is expected to be 60.3 ppb and the maximum design value of the Catawba Area monitor is expected to be 53.3 ppb. EPA is not proposing to make any finding in this action regarding

<sup>24</sup> On April 30, 2021, EPA published the final Revised Cross-State Air Pollution Rule (CSAPR) Update (RCU) using updated modeling that focused on analytic years 2023 and 2028 and an “interpolation” analysis of these modeling results to generate air quality and contribution values for the 2021 analytic year. See 86 FR 23054. <https://www.govinfo.gov/content/pkg/FR-2021-04-30/pdf/2021-05705.pdf>. This modeling included projected ozone design values for ozone monitors in the Catawba Area and Charlotte SC-NC maintenance areas.

interstate transport obligations for any state.

2. Stability of Ozone Levels

As discussed above, the Charlotte NC-SC 1997 8-hour NAAQS Area has maintained air quality below the 1997 8-hour ozone NAAQS over the past eleven design values. Additionally, the design value data shown in Table 3 illustrates that ozone levels have been relatively stable over this timeframe, with a modest downward trend. For example, the data in Table 3 indicates that the largest, year over year change in design value at any one monitor during these eleven years was 0.008 ppm which occurred between the 2013 design value and the 2014 design value, representing approximately a 10 percent decrease at monitor 37–119–0041 (Garinger High School). Furthermore, there is an overall downward trend in design values for the Charlotte NC-SC 1997 8-hour NAAQS Area. See, e.g., Table 1, above, data for monitor 37–159–0021 (Rockwell) 0.016 ppm, or 20.8 percent). This downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the Catawba Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

D. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring networks operated and maintained by the states in accordance with 40 CFR part 58. The network plans,

which are submitted annually to EPA, are consistent with the ambient air quality monitoring network assessment. It is important to note that the Charlotte NC-SC 1997 8-hour NAAQS Area was designated nonattainment due to violating monitors in the North Carolina portion of that area and that South Carolina has never operated any part 58 monitors in the Charlotte NC-SC 1997 8-hour NAAQS Area.<sup>25 26</sup> North Carolina operates a network plan with multiple monitors within the boundary of the Charlotte NC-SC 1997 8-hour NAAQS Area. The annual network plan developed by North Carolina follows a public notification and review process. EPA has reviewed and approved the North Carolina’s 2020 Ambient Air Monitoring Network Plan (“2020 Annual Network Plan”) which addresses the relevant monitors used to determine attainment for the Charlotte NC-SC 1997 8-hour NAAQS Area.<sup>27</sup>

<sup>25</sup> See 69 FR 23858 (April 30, 2004) for the final designation action for the 1997 8-hour ozone NAAQS and <https://www.epa.gov/ground-level-ozone-pollution/1997-ozone-national-ambient-air-quality-standards-naaqs-nonattainment> for the monitoring data associated with the designation for the 1997 8-hour ozone NAAQS.

<sup>26</sup> South Carolina maintains one monitor in York County. Although that monitor is near the maintenance boundary, it is not used to determine compliance of the Charlotte NC-SC 1997 8-hour NAAQS Area with the 1997 8-hour ozone NAAQS because it is not located within the maintenance area.

<sup>27</sup> See October 30, 2020, letter and approval from Caroline Freeman, Director, Air and Radiation Division, EPA Region 4 to Mike Abraczinskas, Director, Division of Air Quality, North Carolina

Separately, North Carolina has committed to maintain the monitoring network that is used to monitor ozone for compliance with the 1997 8-hour ozone NAAQS, which includes the monitors within the North Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area.<sup>28</sup>

Subsequent to the nonattainment designation for the 1997 8-hour ozone NAAQS, the Catawba Indian Nation, under a CAA section 103 grant agreement with EPA, erected and operates a monitor in the Catawba Area. EPA provides oversight of the Catawba Indian Nation's operation of this monitor through normal grant monitoring activities on annual basis.

To verify the attainment status of the Area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, North Carolina's 2020 Annual Network Plan, which covers the monitors within the Charlotte NC-SC 1997 8-hour NAAQS Area, has been approved by EPA in accordance with 40 CFR part 58, and North Carolina has committed to continue to maintain a network in accordance with EPA requirements. Although South Carolina does not operate any part 58 monitors in the Charlotte NC-SC 1997 8-hour NAAQS Area, the State commits to continue operating an approved ozone monitoring network near the South Carolina portion of that area; commits to consult with the EPA prior to making changes to the existing monitoring network should changes become necessary in the future; and acknowledges the obligation to meet monitoring requirements in compliance with 40 CFR part 58.<sup>29</sup> EPA proposes to find that there is an adequate ambient air quality monitoring network in the Charlotte NC-SC 1997 8-hour NAAQS Area to verify continued attainment of the 1997 8-hour ozone NAAQS.

#### E. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period. These contingency measures are required to be implemented expeditiously once they

are triggered by a future violation of the NAAQS or some other trigger. The state should identify specific triggers which will be used to determine when the contingency measures need to be implemented.

The trigger identified in the Catawba Area LMP is a Quality Assured/Quality Controlled (QA/QC) violating design value of the 1997 8-hour ozone NAAQS within or near the Charlotte NC-SC 1997 8-hour NAAQS Area.<sup>30</sup> If this trigger is activated, the maintenance plan requires South Carolina to conduct analyses to determine the emission control measures that will be necessary for attaining or maintaining the 1997 8-hour ozone NAAQS. The maintenance plan outlines the steps that South Carolina must conduct to determine control measures, including verification and analysis of data related to the exceedance, and possible causes. South Carolina will adopt and implement appropriate contingency measures tailored to the specific circumstances of the violation (or increased concentrations) within 24 months after a triggering event.<sup>31 32</sup>

EPA proposes to find that the contingency provisions in South Carolina's second maintenance plan for the 1997 8-hour ozone NAAQS meet the requirements of the CAA section 175A(d).

#### F. Conclusion

EPA proposes to find that the Catawba Area LMP for the 1997 8-hour ozone

<sup>30</sup> If QA/QC data indicates a violating design value for the 8-hour ozone NAAQS, then the triggering event will be the date of the design value violation, and not the final QA/QC date. However, if initial monitoring data indicates a possible design value violation but later QA/QC indicates that a NAAQS violation did not occur, then a triggering event will not have occurred, and contingency measures will not need to be implemented.

<sup>31</sup> As stated above, the Catawba Area LMP contains the same contingency measures that were included in the first 10-year maintenance plan, as tailored to the Catawba Area. For example, some contingency measures included only in the first 10-year LMP would have limited emissions reductions or were not applicable based on the characteristics of the Catawba Area (for example, alternative fuel programs for fleet vehicle operations, as there are no vehicle fleets in the Catawba Area). In addition, South Carolina added a provision to work closely with the York County Air Coalition for outreach and stakeholder input, contingency measure support, and community emission reduction efforts, which is a logical extension in recognition that this LMP is for a subset of the larger South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area.

<sup>32</sup> See the Contingency Plan section of the Catawba Area LMP for further information regarding the contingency plan, including measures that South Carolina will consider for adoption if the trigger is activated, as well as additional steps and notification to EPA if DHEC determines additional time than 24 months is necessary to implement specific contingency measures.

NAAQS includes an approvable update of various elements of the initial EPA-approved Maintenance Plan for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the Catawba Area qualifies for the LMP option and adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels below the NAAQS and historically stable design values. EPA believes the Catawba Area LMP, which retains existing control measures in the SIP, is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area over the second maintenance period (*i.e.*, through 2032) and thereby satisfies the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve South Carolina's July 7, 2020, submission of the Catawba Area LMP as a revision to the South Carolina SIP.

#### V. Transportation Conformity and General Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93 subpart A requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicles emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as "the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions." *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). On October 9, 2012, EPA made a finding that the MVEBs for the first 10 years of the 1997 8-hour ozone

Department of Environmental Quality, available in the docket for this proposed action.

<sup>28</sup> *See* 78 FR 72036 (December 2, 2013), 78 FR 45152 (July 26, 2013).

<sup>29</sup> *See* South Carolina's July 7, 2020, SIP submittal at page 7.

maintenance plan for the South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area were adequate for transportation conformity purposes. In a **Federal Register** notice dated September 24, 2012, EPA notified the public of that finding. *See* 77 FR 58829. This adequacy determination became effective on October 9, 2012. After approval of this LMP or an adequacy finding for this LMP, there is no requirement to meet the budget test pursuant to the transportation conformity rule for the Catawba Area. All actions that would require a transportation conformity determination for the Catawba Area under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and "budget test" requirements in 40 CFR 93.118 as a result of EPA's adequacy finding for this LMP. *See* 69 FR 40004 (July 1, 2004).

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determinations, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113) as well as meet the hot-spot requirements for projects (40 CFR 93.116).<sup>33</sup> Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, in order for projects to be approved they must come from a currently conforming RTP and TIP. *See* 40 CFR 93.114 and 40 CFR 93.115. The Charlotte NC-SC 2008 NAAQS Area must continue to meet all of the applicable requirements of the general conformity regulations.

## VI. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Catawba Area LMP for the 1997 8-hour ozone NAAQS, submitted by DHEC on July 7, 2020, as a revision to the South Carolina SIP. EPA is proposing to

<sup>33</sup> A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section (93.109(e)) is still required, including the hot-spot requirements for projects in CO, PM<sub>10</sub>, and fine particulate matter (PM<sub>2.5</sub>) areas.

approve the Catawba Area LMP because it includes an acceptable update of various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year period and retains the relevant provisions of the SIP.

EPA also finds that the Catawba Area qualifies for the LMP option and that therefore the Catawba Area LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes the Catawba Area's 1997 8-Hour Ozone LMP to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area over the second 10-year maintenance period, through 2032, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

## VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this Catawba Area LMP merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this Catawba Area LMP for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: November 17, 2021.

**John Blevins,**

*Acting Regional Administrator, Region 4.*

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