(k) *Appeals.* Except as otherwise provided in this section, appeals shall be initiated and processed using the procedures in 38 CFR part 20 applicable to appeals under the modernized system.

[FR Doc. 2023–28100 Filed 12–20–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0955; FRL–10549–01–R9]

Approval of Implementation Plans for Air Quality Planning Purposes; State of Nevada; Clark County Second 10-Year Maintenance Plan for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, as a revision of the Nevada state implementation plan (SIP), the State's second 10-year plan for maintaining the 1997 8-hour ozone standard in Clark County (''Clark County Second Maintenance Plan'' or ''Plan''). The Clark County Second Maintenance Plan includes, among other elements, a base year emissions inventory, a maintenance demonstration, contingency provisions, and motor vehicle emissions budgets for use in transportation conformity determinations to ensure the continued maintenance of the 1997 National Ambient Air Quality Standards for ozone (''1997 ozone NAAQS'' or ''1997 8-hour ozone standard''). With this proposed rulemaking, the EPA is initiating the adequacy process for the 2017, 2023, and 2033 motor vehicle emissions budgets. The EPA is proposing these actions because the SIP revision meets the applicable statutory and regulatory requirements for such plans and motor vehicle emissions budgets.

DATES: Comments must be received on or before January 22, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0955, at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Ledezma, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3985 or by email at *Ledezma.Andrew@epa.gov.*

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

Table of Contents

I. Summary of Proposed Action

Under Clean Air Act (CAA or ''the Act'') section 110(k)(3), the EPA is proposing to approve two submittals from the Nevada Division of Environmental Protection (NDEP) as a revision to the Nevada SIP: the Clark County Second Maintenance Plan dated December 21, 2021, and a supplement to the Clark County Second Maintenance Plan (''Contingency Measure Revision'') dated August 16, 2023. In this action, we refer to the Clark County Second Maintenance Plan and the Contingency Measure Revision collectively as the ''Clark County Second Maintenance Plan submittal.''

The EPA is proposing to find that the maintenance demonstration, showing how the area will continue to attain the 1997 8-hour ozone NAAQS for 10 additional years beyond the approval the State's first 10-year plan for maintaining the 1997 8-hour ozone standard in Clark County (''Clark County First Maintenance Plan'' or ''first maintenance plan'') (*i.e.,* through 2033), and the contingency provisions, describing the actions that Clark County will take in the event of a future monitored violation, meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. The EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs or ''budgets'') in the Clark County Second Maintenance Plan because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

II. Background

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires the EPA to periodically review the air quality criteria, the science upon which the standards are based, and the standards themselves. Ground-level ozone is one of the criteria pollutants regulated under the NAAQS.

Ground-level ozone is generally not emitted directly by sources. Rather, directly emitted oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone, as a secondary pollutant, along with other secondary compounds. NO_X and VOC are ''ozone precursors.'' Reduction of peak ground-level ozone concentrations is typically achieved through controlling VOC and NO_X emissions.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[1]

[1] ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone,'' dated March 2008.

In 1997, the EPA revised the NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame.[2] The EPA set the 1997 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. The EPA determined that the 1997 8-hour ozone NAAQS would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.[3]

In 2004, the EPA designated areas of the country with respect to the 1997 8-hour ozone NAAQS.[4] Under the EPA's ''Phase 1'' implementation rule for the 1997 8-hour ozone standard [5] an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.,* the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration at the worst-case monitoring site in the area or in its immediate downwind environs), if it had a 1-hour ozone design value [6] at the time of designation at or above 0.121 ppm. All other areas were covered under subpart 1 based on their 8-hour ozone design values.[7] Clark County was designated as a subpart 1 ozone nonattainment area by the EPA on April 30, 2004, based on air quality monitoring data from 2001–2003. The designation became effective on June 15, 2004. On September 17, 2004, the EPA reduced the geographic extent of the ozone nonattainment area to encompass a portion, but not all, of Clark County.[8]

In *South Coast Air Quality Management Dist.* v. *EPA* [9] the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit, or ''Court'') vacated the EPA's Phase 1 implementation rule for the 1997 8-hour ozone standard.[10] In response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 rule was vacated only for those parts of the rule that had been successfully challenged.[11] The decision left intact the Court's rejection of the EPA's reasons for implementing the 8-hour ozone standard in certain nonattainment areas under subpart 1 in lieu of subpart 2 of the CAA.

On May 14, 2012, in response to the Court's vacatur of the provision of the Phase 1 rule for the 1997 8-hour ozone standard that placed certain nonattainment areas, including Clark County solely under subpart 1, the EPA classified Clark County as a marginal ozone nonattainment area under subpart 2 of the CAA.[12]

On March 29, 2011, the EPA determined that the Clark County 8-hour ozone nonattainment area had attained the 1997 8-hour ozone NAAQS, based on complete, quality-assured, and certified ambient air monitoring data that showed the area monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 monitoring period.[13]

On April 11, 2011, NDEP submitted the Clark County First Maintenance Plan and requested that the EPA redesignate the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone standard. On January 8, 2013, the EPA approved the Clark County First Maintenance Plan, and redesignated the area from nonattainment to attainment of the 1997 8-hour ozone NAAQS.[14]

On October 31, 2018, NDEP submitted a *Revision to Motor Vehicle Emissions Budgets in Ozone Redesignation Request and Maintenance Plan* (''2018 Ozone Maintenance Plan Revision''). The 2018 Ozone Maintenance Plan Revision updated elements of the Clark County First Maintenance Plan, including the attainment inventory, the maintenance demonstration, and the budgets. The 2018 Ozone Maintenance Plan Revision established ozone season budgets of 52.96 and 86.74 tons per day (tpd) for VOC and NO_X, respectively, for 2022 so that the area would have updated budgets available to use for transportation conformity determinations with respect to the 2015 National Ambient Air Quality Standards for ozone (''2015 ozone NAAQS'').[15] On August 27, 2019, the EPA conditionally approved the 2018 Ozone Maintenance Plan revisions, based on commitments to submit an additional SIP revision to reduce the safety margin allocations for the budgets within one year of the final conditional approval.[16]

On September 30, 2020, NDEP submitted an additional *Revision to Motor Vehicle Emissions Budgets for the 1997 ozone NAAQS, Clark County, Nevada* (''2020 Ozone Maintenance Plan Revision''). The 2020 Ozone Maintenance Plan Revision was prepared in response to the EPA's conditional approval of the 2018 Ozone Maintenance Plan Revision. The 2020 Ozone Maintenance Plan Revision revised certain budgets from the 2018 Ozone Maintenance Plan Revision to prevent interference with Reasonable Further Progress (RFP) or attainment of the 2008 and 2015 ozone NAAQS. The 2020 Ozone Maintenance Plan Revision established budgets of 23.92 and 32.16 tons per average summer day [17] for VOC and NO_X, respectively, for 2022. On October 28, 2021, with the submittal of the 2020 Ozone Maintenance Plan Revision, the EPA approved the updates to the attainment inventory, the maintenance demonstration, and the budgets to the Clark County First Maintenance Plan.[18]

On January 24, 2022, NDEP submitted the Clark County Second Maintenance Plan showing how the area will continue to attain the 1997 8-hour ozone national ambient air quality standard (NAAQS) for 10 additional years beyond the approval the State's first 10-year plan.

Lastly, on August 16, 2023, NDEP submitted the Contingency Measure Revision, which revised the contingency measure section of the Clark County Second Maintenance Plan. In this action, we are proposing action on the

[2] 62 FR 38856 (July 18, 1997).

[3] On March 27, 2008 (73 FR 16436), the EPA promulgated a revised 8-hour ozone standard of 0.075 ppm (the 2008 8-hour ozone standard), and on May 21, 2012, the EPA designated the entire state of Nevada unclassifiable/attainment for the 2008 8-hour ozone standard (77 FR 30088). This rulemaking relates only to the 1997 8-hour ozone standard and does not relate to the 2008 8-hour ozone standard.

[4] 69 FR 23858 (April 30, 2004).

[5] 69 FR 23951, (April 30, 2004).

[6] The design value for the 1-hour ozone standard is the fourth-highest daily maximum 1-hour ozone concentration over a three-year period at the worst-case monitoring site in the area.

[7] 69 FR 23951. The design value for the 8-hour standard is the three-year average of the annual fourth-highest daily maximum 8-hour ozone concentration at the worst-case monitoring site in the area.

[8] 69 FR 55956 (September 17, 2004), 70 FR 71612 (November 29, 2005), and 40 CFR 81.329. The boundaries of the Clark County ozone nonattainment area are defined in 40 CFR 81.329. Specifically, the area is defined as: ''That portion of Clark County that lies in hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218 but excluding the Moapa River Indian Reservation and the Fort Mojave Indian Reservation.'' The area includes a significant portion of the unincorporated portions of central and southern Clark County, as well as the cities of Las Vegas, Henderson, North Las Vegas, and Boulder City.

[9] 472 F.3d 882 (D.C. Cir. 2007).

[10] 69 FR 23951.

[11] 472 F.3d 882 (D.C. Cir. 2007).

[12] 77 FR 28424.

[13] 76 FR 17343.

[14] 78 FR 1149.

[15] 84 FR 33038 (July 11, 2019).

[16] 84 FR 44699.

[17] According to ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' dated May 2017, terminology used has changed from ''summer day'' emissions to ''ozone season'' emissions. However, ''average summer day'' emissions are used in this instance to stay consistent between motor vehicle emissions budgets of different ozone standards.

[18] 86 FR 59643.

NDEP's Clark County Second Maintenance Plan submittal.

III. Second 10-Year Maintenance Plan Submittal and Procedural Requirements

CAA section 110(a)(1) and (2) and section 110(1) require states to provide reasonable notice and public hearing prior to adoption of SIP revisions. In this action, we are proposing action on NDEP's January 24, 2022, submittal of the Clark County Ozone Second Maintenance Plan, and NDEP's August 16, 2023, submittal of the Contingency Measure Revision as a revision to the Nevada SIP, collectively referred to as the Clark County Second Maintenance Plan submittal.

Following a 30-day public comment period, the Clark County Second Maintenance Plan was adopted by the Clark County Board of Commissioners, submitted to NDEP, and submitted to the EPA. Appendix B of the Clark County Second Maintenance Plan documents the public review process followed by Clark County in adopting the plan prior to transmittal to NDEP for subsequent submittal to the EPA as a revision to the Nevada SIP. The documentation in appendix B provides evidence that reasonable notice of a public hearing was provided to the public and that a public hearing was conducted prior to adoption. Specifically, notice of the availability of, and opening of a 30-day comment period on, the draft Clark County Second Maintenance Plan was published on October 14, 2021, on the Clark County Department of Environment and Sustainability (DES) website, the DES official Facebook page, and the DES official Twitter. No comments were submitted.

On December 7, 2021, the Clark County Board of Commissioners set a public hearing for December 21, 2021, to consider and approve the Clark County Second Maintenance Plan. The announcement of the public hearing was subsequently published on the County's web page. On December 21, 2021, the Clark County Board of Commissioners adopted the Clark County Second Maintenance Plan at the close of the public hearing. Following adoption, Clark County DES forwarded the plan to NDEP, the Governor of Nevada's designee for SIP matters, and NDEP then submitted the plan as a revision to the Nevada SIP to the EPA for approval on January 24, 2022.

Appendix A of the Contingency Measure Revision documents the board approval process followed by Clark County in adopting the plan prior to transmittal to NDEP for subsequent submittal to the EPA as a revision to the Nevada SIP. On July 18, 2023, the Clark County Board of Commissioners put the Contingency Measure Revision up for public notice and adopted the Contingency Measure Revision at the close of the public hearing. Following adoption, Clark County DES forwarded the plan to NDEP and NDEP then submitted the plan, as a revision to the Nevada SIP, to the EPA for approval on August 16, 2023.

Based on the documentation contained in appendix B of the Plan and appendix A of the Contingency Measure Revision, we find that the Clark County Second Maintenance Plan submittal satisfies the procedural requirements of section 110(l) of the Act.

IV. Requirements for Second 10-Year Maintenance Plans

Section 175A of the CAA provides the general framework for a maintenance plan. The initial 10-year maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures necessary to ensure such maintenance. In addition, maintenance plans are to contain contingency provisions necessary to ensure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation. Beyond these provisions, section 175A of the CAA does not define the content of a second 10-year maintenance plan.

The primary guidance on maintenance plans and redesignation requests is a September 4, 1992, memorandum from John Calcagni, titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni Memo).[19] The Calcagni Memo outlines the key elements of a maintenance plan, which include verification of continued attainment, monitoring network requirements, attainment emissions inventory, maintenance demonstration, and a contingency plan. We evaluate the Second 10-Year Maintenance Plan based on the satisfactory fulfillment of these and all relevant procedural requirements of the CAA.

CAA section 175A(b) requires states to submit an additional SIP revision (Second 10-Year Maintenance Plan) to maintain the NAAQS for an additional 10 years after the expiration of the 10-year period covered by the initial maintenance plan approved in connection with the redesignation of the area from nonattainment to attainment. The revision is submitted eight years after the original redesignation request and maintenance plan have been approved. The deadline to submit Clark County's Second Maintenance Plan was January 8, 2021. On January 24, 2022, NDEP submitted the Clark County Second Maintenance Plan, to meet the requirement for the subsequent maintenance plan under CAA section 175A(b). The Clark County Second Maintenance Plan is intended to provide for continued maintenance of the 1997 ozone NAAQS for the 10-year period following the end of the first 10-year period, *i.e.,* from 2024 through 2033.

V. Evaluation of the Clark County Second Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan. We interpret this section of the Act to require, in general, the following core elements: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan.[20] Under CAA section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the EPA approves a redesignation to attainment. Eight years after redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency provisions that the EPA deems necessary to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Based on our review and evaluation of the plan, as detailed below, we are proposing to approve the Clark County Second Maintenance Plan submittal because we believe that it meets the requirements of CAA section 175A.

A. Monitoring Network Requirements

Continued ambient monitoring of an area is generally required over the maintenance period. Clark County DES currently operates ozone monitors at thirteen sites within the Clark County 8-hour ozone maintenance area.

[19] Memorandum dated September 4, 1992, from John Calcagni, Director, EPA Air Quality Management Division, to Regional Office Air Division Directors, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment.

[20] Calcagni Memo, 8–13.

In the Clark County Second Maintenance Plan,[21] Clark County DES indicates its intention to continue operation of an air quality monitoring network to verify continued attainment of the 1997 8-hour ozone NAAQS.[22] The Clark County Second Maintenance Plan also notes that Clark County DES's State and Local Air Monitoring Stations (SLAMS) air quality monitoring network (which includes ambient ozone monitoring) will be reviewed annually pursuant to 40 CFR 58.20(d) to determine whether the system continues to meet the applicable monitoring objectives.[23] We approved Clark County's SLAMS air quality network in their Annual Monitoring Network Plan for year 2020 on October 28, 2020, prior to Clark County's submittal of the Clark County Second Maintenance Plan. We find the County's commitment for continued ambient ozone monitoring as set forth in the Clark County Second Maintenance Plan to be acceptable.

B. Attainment Inventory

For maintenance plans, a state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with the EPA's most recent guidance. For ozone, the inventory should be based on typical ozone season day emissions of NO_X and VOC.

In the Clark County First Maintenance Plan, Clark County DES used 2008 for the attainment year inventory, because 2008 was one of the years in the 2007–2009 three-year period when the area first attained the 1997 ozone NAAQS.[24] Clark County DES continued to monitor attainment of the 1997 ozone NAAQS in 2017. Therefore, the emissions inventory from 2017 represents emissions levels consistent with continued attainment (*i.e.,* maintenance) of the NAAQS. Thus, Clark County DES selected 2017 as the year for the attainment inventory in the Clark County Second Maintenance Plan. We consider the selection of the 2017 base year inventory to be appropriate given that it was the most recent emissions inventory associated with the reporting schedule required under the Air Emissions Reporting Requirements rule at the time of Plan drafting.

Table 1 presents the VOC and NO_X emissions estimates contained in the Clark County Second Maintenance Plan for 2017 and presents the Plan's projected emissions inventories of ozone precursors in an interim year (2023) and the maintenance plan's horizon year (2033).[25]

TABLE 1—CLARK COUNTY 2017 AND PROJECTED 2023 AND 2033 VOC AND NO_X EMISSIONS TOTAL DAILY EMISSIONS

[Tpd, average summer ozone season weekday]

Emissions source	2017		2023		2033	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Point Source	2.95	12.34	2.62	11.41	2.63	11.33
Nonpoint Source	64.69	4.69	67.83	5.03	71.31	4.78
Mobile—On-road	26.27	42.20	17.85	22.22	11.50	11.13
Mobile—Nonroad	28.86	37.45	27.24	23.27	27.82	15.37
Airports	1.96	11.90	2.64	15.53	3.05	19.77
Locomotives	0.07	1.42	0.05	1.21	0.04	0.96
Emission Reduction Bank	0.00	0.00	0.43	22.23	0.43	22.23
Biogenic	362.61	2.43	362.61	2.43	362.61	2.43
Total	487.41	112.43	481.27	103.33	479.39	88.00

Source: Clark County Second Maintenance Plan, 17, Tables 2–4 and 2–5.

[a] Emissions associated with the proposed Department of Air Force (DAF) Training Project is included in Airport emissions projections for the 2023 and 2033 emissions projections for general conformity purposes. Emissions associated with the proposed Southern Nevada Supplemental Airport and proposed Sloan Regional Heliport are included for the 2033 emissions projection for general conformity purposes.

The data shown in Table 1 in this document is based on the 2017 National Emissions Inventory (NEI).[26] The inventory addresses point sources,[27] nonpoint sources,[28] on-road mobile, non-road mobile, airports, locomotives, Emission Reduction Credits (ERCs),[29] and biogenic [30] sources. Appendix A to the Clark County Second Maintenance Plan contains source-specific descriptions of emissions calculation procedures and sources of input data.

Point sources are stationary sources that have a potential to emit (PTE) greater than 100 tons per year of NO_X or VOC. Clark County DES adopted a lower threshold by including all title V stationary sources and minor sources with a PTE greater than 10 tons of VOC or 25 tons of NO_X per year. Clark County DES based the inventory estimates on source reported actual 2017 emissions data but adjusted the reported values to reflect a typical ozone

[21] Clark County Second Maintenance Plan, 20–23.

[22] Although the Clark County Second Maintenance Plan is not explicit in this regard, we presume that Clark County DES's intention to continue operation of a monitoring network means that the agency intends to do so consistent with the EPA's monitoring requirements in 40 CFR part 58 (''Ambient Air Quality Surveillance'').

[23] The EPA's requirements for annual review of monitoring networks are no longer codified at 40 CFR 58.20(d) but are now found at 40 CFR 58.10.

[24] 76 FR 17343 (Apr. 29, 2011).

[25] The emissions inventories reflect county-wide emissions which include both the nonattainment area portion of the county and the portion of the county designated as ''unclassifiable/attainment'' for the 1997 8-hour ozone NAAQS. County-wide emissions are acceptable to characterize emissions within the Clark County ozone nonattainment area because over 95% of the population of the county resides in the nonattainment area.

[26] The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources. The NEI is released every three years based primarily upon data provided by State, Local, and Tribal air agencies for sources in their jurisdictions and supplemented by data developed by the EPA.

[27] The Clark County Second Maintenance Plan uses the term, ''point sources,'' to refer to those stationary source facilities that are required to report their emissions to Clark County DES or NDEP.

[28] The Clark County Second Maintenance Plan uses the term, ''nonpoint sources,'' to refer to those stationary and area sources that fall below point source reporting levels and that are too numerous or small to identify individually.

[29] The Clark County Second Maintenance Plan uses the term, ''ERCs'' to refer to allowances earned through voluntary pollutant emission reductions such as equipment shutdowns or voluntarily installed controls.

[30] For the Clark County Second Maintenance Plan, ''biogenic sources'' include agricultural crops; lawn grass; forests that produce isoprene, monoterpene, and other VOC emissions; and soils that generate trace amounts of NO_X.

season day at each emissions unit within the source facilities based on information provided by the facilities.

Nonpoint sources include emissions from equipment, operations and activities that are numerous and in total have significant emissions. Clark County DES included emissions from minor sources, residential combustion, agricultural burning, industrial solvents and graphic arts, and degreasing operations. Clark County DES used several methods to estimate area source activity levels and emissions, including applying local activity levels, apportioning national or statewide activity levels to the local level, applying per capita emission factors considering county-specific populations and using specific method abstracts detailed within the submittal.

Non-road emissions sources include equipment that either move under their own power or can be moved from site to site.

The on-road emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. Clark County DES used MOVES3, EPA's MOVES3 emissions factors, fleet data from Department of Motor Vehicles (DMV) registration data, Coordinated Research council (CRC) vehicle speed data, the Regional Transportation Commission (RTC) of Southern Nevada's transportation demand modeling results, vehicle classification data from the June 2018 Clark County Vehicle Classification Study,[31] and 2017 Highway Performance Monitoring System (HPMS) data from the Nevada Department of Transportation (NDOT).

Biogenic emissions are from vegetation and soil, and include crops, lawn grass, and forests. Clark County DES used the Biogenic Emissions Inventory System version 3.61 (BEIS3.61) embedded in the SMOKE 4.7 model for the month of July to generate average ozone season day emissions for Clark County.

The airport sector includes emissions from aircraft from commercial and federal aviation sources. Clark County DES relied on airport-specific emissions inventory information provided by the Clark County Department of Aviation (CCDOA) for the five commercial airports located within the nonattainment area.

Locomotives include emissions from railroad and high-speed passenger train emissions. Locomotive emissions were estimated by Clark County DES based on local activity data collected for the Clark County First Maintenance Plan and predicted emissions from high-speed passenger train service.

ERCs refer to allowances earned through voluntary pollutant emissions reductions such as equipment shutdowns or voluntarily installed controls. Clark County adopted New Source Review (NSR) rule, Section 12.7.5—Emission Reduction credits into the SIP,[32] allowing Clark County to adopt ERCs. In the Clark County First Maintenance Plan, Clark County banked NO_X and VOC credits from the Clark County Department of Air Quality and Environmental Management (DAQEM) ERC Bank,[33] Reid Gardner ERCs,[34] and Mohave ERCs.[35] In the Clark County Second Maintenance Plan, Clark County noted that ERCs have not changed from the Clark County First Maintenance Plan.

The EPA has reviewed the emissions inventory submitted by Clark County and proposes to conclude that the plan's inventory is based on reasonable assumptions and methodologies, and that the inventory is comprehensive, current, accurate, and consistent with applicable CAA provisions and the Calcagni Memo. Therefore, we are proposing that the inventory is acceptable for use in demonstrating maintenance of the 1997 ozone NAAQS.

C. Maintenance Demonstration

CAA section 175A(a) requires that the maintenance plan ''provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' Generally, a state may demonstrate maintenance of the ozone NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS.[36] For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should use the same level of modeling.[37] The Clark County 8-hour ozone nonattainment area was not required to submit a modeled attainment demonstration, and thus, the Clark County Second Maintenance Plan may demonstrate maintenance based on a comparison of existing and future emissions of ozone precursors.[38]

Clark County used the 2017 national emissions inventory (NEI) data as the baseline to develop growth factors for point, nonpoint, and locomotive sources. Clark County DES used the EPA 2016 v.1 modeling platform emissions data to develop per-year growth adjustment factors for point, nonpoint, federal aviation, and locomotives. Clark County DES used local activity data to develop commercial airport growth factors and conducted MOVES3 modeling to project on-road and non-road emissions. The derived growth adjustment factors were used to extrapolate emissions to account for a 16-year (2017 through 2033) spread. The 2033 growth factors were multiplied by the 2017 actual emissions to produce the 2033 projected point source and various other stationary source emissions; including Residential Wood Combustion,[39] non-point VOC,[40] airport,[41] and locomotive emissions.[42] An interim year (2023) projected emissions inventory is also included. On-road emissions were estimated for the 2017 base year and for projection years 2023 and 2033 and reflect a 32 percent decrease in VMT from 2017 to 2023 and a 56 percent decrease in VMT from 2017 to 2033 based on Regional Transit Commission (RTC) projections.[43]

In addition to accounting for areawide growth trends, Clark County DES added emissions from specific projects that are expected to become operational during the second maintenance period,

[31] Clark County DES completed a vehicle classification study in June 2018. The study used 2014–2016 traffic count data collected by the Nevada Department of Transportation (NDOT). Clark County DES incorporated VMT mix profiles and temporal profiles, which DES incorporated into the 2017 MOVES3 input database.

[32] 79 FR 62350 (October 17, 2014).

[33] See ''DAQEM ERC Bank'' for a list of sources contributing to the DAQEM ERC Bank in Clark County.

[34] NDEP banked Reid Gardner ERCs after the NV Energy—Reid Gardner Station Power Plant, Unit #4 Steam Boiler was controlled with a low-NO_X burner in January 2010.

[35] NDEP banked Mohave ERCs after the permanent shut down and dismantling of the Southern California Edison Mohave Generating Station in November 2009.

[36] Calcagni Memo, 9–11.

[37] Id.

[38] A maintenance demonstration need not be based on ozone modeling. See *Wall* v. *EPA,* 265 F.3d. 426 (6th Cir. 2001); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094 (October 19, 2001), and 68 FR 25418 (May 12, 2003).

[39] Clark County Second Maintenance Plan, Appendix A, 23.

[40] Clark County Second Maintenance Plan, Appendix A, 24.

[41] Clark County Second Maintenance Plan, Appendix A, 29.

[42] Clark County Second Maintenance Plan, Appendix A, 31.

[43] Clark County Second Maintenance Plan, 27, Table 6–1.

including the proposed Southern Nevada Supplemental Airport, the proposed Sloan Regional Heliport, and DAF training program in the future-year emissions inventories, and also added in ERCs from certain stationary sources in the event that the ERCs are used for the purposes of issuing permits for new or modified stationary sources in the air quality planning area. We have reviewed the methods and assumptions, as described in connection with the attainment inventory, that Clark County DES used to project emissions to 2023 and 2033 for the various source categories and find them to be reasonable.

Table 1 compares the VOC and NO_X emissions estimated for the Clark County 8-hour ozone maintenance area for 2017 with those for 2023 and 2033 by source category. The projected VOC and NO_X emissions show that VOC and NO_X emissions would remain well below the attainment levels throughout the second 10-year maintenance period and thereby adequately demonstrate maintenance through that period.

In addition, historical monitoring data presented in the plan shows a gradual downward trend in ozone design values during 2008–2020. The 1997 NAAQS level of 80 ppb was achieved in 2009, and the 2020 value of 74 ppb is well below the NAAQS.[44] This supports the maintenance demonstration, and the EPA expects this downward trend will continue given the projected emissions decreases.

D. Verification of Continued Attainment

NDEP and the Clark County Board of County Commissioners have the legal authority to implement and enforce the requirements of the Clark County Second Maintenance Plan. This includes the authority to adopt, implement and enforce any emissions control contingency measures determined to be necessary to correct ozone NAAQS violations. To verify continued attainment, Clark County DES commits in the Clark County Second Maintenance Plan to the continued operation of an ozone monitoring network that meets the EPA ambient air quality surveillance requirements.

Secondly, the transportation conformity process represents another means by which to verify continued attainment of the 1997 8-hour ozone NAAQS in the Clark County 8-hour ozone area given the relative importance of motor vehicle emissions to the overall emissions inventories of ozone precursors.[45]

Lastly, while not cited in the plan, NDEP and Clark County DES must inventory emissions sources and report to the EPA on a periodic basis under 40 CFR part 51, subpart A (''Air Emissions Reporting Requirements''). These emissions inventory updates will provide a third means with which to track emissions in the area relative to those projected in the maintenance plan and thereby verify continued attainment of the NAAQS. These methods are sufficient for the purpose of verifying continued attainment.

E. Contingency Provisions

Section 175A(d) of the Act requires that maintenance plans include contingency provisions, as the EPA deems necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the area. Such provisions must include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.

Under section 175A(d), contingency measures identified in the contingency plan do not have to be fully adopted at the time of redesignation. However, the contingency plan is an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the State. As a necessary part of the plan, the State should also identify specific indicators or triggers, which will be used to determine when the contingency measures need to be implemented.

As required by section 175A of the CAA, Clark County DES has adopted a contingency plan to address possible future ozone air quality problems.[46] Clark County DES identifies the trigger date as 60 days after a determination of a confirmed violation of the 1997 8-hour ozone NAAQS. Within 45 days of the trigger date, Clark County will notify the EPA that it is evaluating potential contingency measures. Within 90 days of the trigger date, Clark County will send a report to the EPA and then will initiate a public process to consider the recommended contingency measures, including soliciting stakeholder involvement and holding public hearings. The necessary emissions control measures will be adopted and implemented no later than 18 months after the trigger date.

Potential contingency measures listed in the maintenance plan are those emissions controls or other measures that Clark County, the Nevada State Board of Agriculture, and/or the Nevada State Environmental Commission may choose to adopt and implement in response to the contingency trigger. The contingency measures plan in the Contingency Measure Revision lists the following potential contingency measures that will be considered for adoption and implementation by the applicable State or County agency, but the Plan indicates that the list is not to be considered exclusive:

- Reid vapor pressure reduction (*i.e.,* in gasoline sold during the summer ozone season; would need to be adopted and implemented by the Nevada State Board of Agriculture);
- Inspection/maintenance program changes and additions (*e.g.,* lowering the cut points for VOCs and NO_X applicable to pre-1996 vehicles; would need to be adopted and implemented by the State Environmental Commission and/or the State Department of Motor Vehicles);
- Consumer and commercial products (Clark County would be responsible for adoption and implementation);
- Architectural surface coatings (Clark County would be responsible for adoption and implementation);
- Lawn and garden equipment use (Clark County would be responsible for adoption and implementation); and
- Establish/enhance trip reduction programs (Clark County and the RTC would be responsible for adoption and implementation).

Upon our review of the plan, we find that the contingency provisions of the Contingency Measure Revision clearly identify specific contingency measures, contain tracking and triggering mechanisms to determine when contingency measures are needed, contain a description of the process of recommending and implementing contingency measures, and contain specific timelines for action. Thus, we conclude that the contingency provisions of the Contingency Measure Revision are adequate to ensure prompt correction of a violation and therefore comply with section 175A(d) of the Act.

F. Motor Vehicle Emissions Budgets for Transportation Conformity

Section 176(c) of the CAA requires federal actions in nonattainment and

[44] Clark County Second Maintenance Plan, 12, Figure 2–1.

[45] Clark County Second Maintenance Plan, Page 15.

[46] Contingency Measure Revision, Section 2, ''Contingency Measures Plan.''

maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, RTCs in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (''budgets'') contained in submitted or approved control strategy SIPs and maintenance plans.[47]

These control strategy SIPs and maintenance plans typically set budgets for criteria pollutants and/or their precursors to address pollution from cars and trucks. Budgets are generally established for specific years and specific pollutants or precursors. Maintenance plan submittals should identify budgets for transportation-related VOC and NO_X emissions in the last year of the maintenance period.

For budgets in a maintenance plan to be approvable, they must meet, at a minimum, the EPA's adequacy criteria.[48] To meet these requirements, the budgets must be consistent, when considered with emissions from all other sources, with maintenance of the NAAQS and reflect all the motor vehicle control measures relied upon for the maintenance demonstration. The EPA's process for determining adequacy of a budget consists of three basic steps: (1) providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) making a finding of adequacy. The process for determining the adequacy of a submitted budget is codified at 40 CFR 93.118(f). The EPA can notify the public by either posting an announcement that the EPA has received SIP budgets on the EPA's adequacy website, or via a **Federal Register** notice of proposed rulemaking when the EPA reviews the adequacy of a maintenance plan budget simultaneously with its review and action on the SIP submittal itself.[49]

Clark County's Second Maintenance Plan contains VOC and NO_X budgets for 2017, 2023 and 2033. Any and all comments on the approvability of the budgets should be submitted during the comment period stated in the **DATES** section of this document.

The EPA proposes to approve 2017, 2023, and 2033 budgets in the Clark County Second Maintenance Plan for transportation conformity purposes in the final rulemaking on Clark County's ozone redesignation request. If the EPA approves the budgets in the final rulemaking action, the new budgets must be used in future transportation conformity determinations for Clark County for the 2015 ozone standard. The new budgets, if approved in the final rulemaking, will be effective on the date of the EPA's final rulemaking in the **Federal Register**. The applicable VOC and NO_X MVEBs for the Clark County ozone nonattainment area are defined in table 2.

TABLE 2—PROPOSED MOTOR VEHICLE EMISSIONS BUDGETS (MVEBS) FOR CLARK COUNTY

Budget year	VOC (tpd, average summer weekday)	NO_X (tpd, average summer weekday)
2017	26.27	42.2
2023	20.92	26.77
2033	15.51	23.35

From Table 6–3 and 6–4 of the Clark County Second Maintenance Plan.

The MVEBs are the on-road mobile source VOC and NO_X emissions for Clark County for 2017, 2023 and 2033. The budgets are compatible with the 2017, 2023, and 2033 on-road mobile source VOC and NO_X emissions included in Clark County's 2017, 2023, and 2033 VOC and NO_X emission inventories, as summarized in Table 2. The derivation of the budgets is thoroughly discussed in Appendix A, Chapter 2 of Clark County's Second Maintenance Plan. While the Plan includes budgets for 2017, we are not evaluating the 2017 budgets because that year would not be used in any future conformity determination because the plan contains budgets for 2023 and because 2017 budgets are not required for the submitted second maintenance plan.

We evaluated the budgets against our adequacy criteria in 40 CFR 93.118(e)(4) and (5) as part of our review of the budget's approvability and expect to complete the adequacy review of the budgets concurrent with our final action on the Clark County's Second Maintenance Plan. The EPA is not required under its transportation conformity rule to find budgets adequate prior to proposing approval of them. In this notice, the EPA is announcing that the adequacy process for these budgets begins, and the public has 30 days to comment on their adequacy, per the transportation conformity rule at 40 CFR 93.118(f)(2)(i) and (ii).

Clark County DES developed the budgets for 2023 and 2033 using on-road motor vehicle emission estimates made using the EPA's MOVES3 model, fleet data from DMV registration data, CRC vehicle speed data, NDOT HPMS data, travel demand modeling from the Regional Transportation Commission and vehicle classification data from the June 2018 Clark County On-road Vehicle Classification Study.

As documented in the separate memorandum [50] included in the docket for this rulemaking, we preliminarily conclude that the budgets in the Second Maintenance Plan meet each adequacy criterion. While adequacy and approval

[47] Control strategy SIPs refer to RFP and attainment demonstration SIPs. 40 CFR 93.101.

[48] 40 CFR 93.118(e)(4) and (5). For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity website at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[49] 40 CFR 93.118(f)(2).

[50] See the EPA Memorandum dated August 22, 2023 titled: Adequacy Documentation for Motor Vehicle Emissions Budgets in Clark County Second Maintenance Plan.''

are two separate actions, reviewing the budgets in terms of the adequacy criteria informs the EPA's decision to propose to approve the budgets. We have completed our detailed review and are proposing to approve the demonstration of maintenance for the 1997 ozone maintenance area through the year 2033. We have also reviewed the budgets in Clark County's Second Maintenance Plan and found that they are consistent with the maintenance demonstration for which we are proposing approval, are clearly identified and precisely quantified, are based on control measures that have already been adopted and implemented, and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). The EPA is proposing to approve the budgets for 2023 and 2033 as part of our approval of Clark County's Second Maintenance Plan. At the point when we either finalize the adequacy process or approve the budgets as proposed (whichever occurs first; note that they could also occur concurrently per 40 CFR 93.118(f)(2)(iii)), the budgets must be used by the Regional Transportation Commission (*i.e.,* the Metropolitan Planning Organization (MPO) for this area) for transportation conformity determinations for the Clark County 2015 ozone nonattainment area.

VI. Environmental Justice Considerations

The EPA performed a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN''). Our screening-level analysis included multiple environmental and demographic indicators, including the EJSCREEN ''Demographic Index,'' which is the average of an area's percentage of minority and low-income populations. The Demographic Index of Clark County is at the 68th percentile, compared to the United States as a whole.[51] The results of this analysis are being provided for informational and transparency purposes.

This action addresses a plan for continued maintenance of the 1997 ozone NAAQS for Clark County. Approval of this plan does not impose any additional regulatory requirements on sources beyond those imposed by state law. As discussed in this document, Nevada has demonstrated that the Clark County is attaining the 1997 ozone NAAQS and the Clark County Second Maintenance Plan provides for the maintenance of the NAAQS for the reminder of the maintenance period. We expect that this action will generally be neutral or contribute to reduced environmental and health impacts on all populations in Clark County, including people of color and low-income populations. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

VII. Proposed Action and Request for Public Comment

Under CAA section 110(k)(3), and for the reasons set forth in this document, the EPA is proposing to approve the Clark County Second Maintenance Plan submitted by NDEP on January 24, 2022, as a revision to the Nevada SIP.[52] We are proposing to approve the maintenance demonstration and contingency provisions as meeting all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A, and the budgets for 2023 and 2033 (shown in Table 2) for transportation conformity purposes as we find they meet all applicable criteria for such budgets including the adequacy criteria under 40 CFR 93.118(e).

We are soliciting comments on these proposed actions. We will accept comments from the public for 30 days following publication of this proposal in the **Federal Register** and will consider any relevant comments before taking final action.

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, 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 Clean Air Act; and
- Will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), as discussed in section VI of this proposal.

In addition, there are no areas of Indian country within the planning area, and the state plan for which the EPA is proposing approval does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the Clark County Second Maintenance Plan does not apply, and therefore, this proposed action does not have tribal implications and would not, if approved, impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

[51] Clark County Ozone NAA EJSCREEN Report dated February 10, 2023.

[52] Clark County Second Maintenance Plan (submitted electronically January 24, 2022).

Dated: December 14, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–27874 Filed 12–20–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0232; FRL–11600–01–R4]

Air Plan Approval; GA; Miscellaneous Rule Revision

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 Georgia, through the Georgia Environmental Protection Division (EPD) via a letter dated October 20, 2022. The revision seeks to change Georgia's Rules for Air Quality Control in the SIP by removing the 1971 annual and 24-hour ambient air quality primary standard for sulfur dioxide (SO_2), which no longer applied in Georgia as of April 30, 2022. EPA is proposing to approve this SIP revision because the State has demonstrated that this change is consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before January 22, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. at EPA–R04–OAR–2023–0232 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://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, 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) 562–8085. Mr. Ortiz Borrero can also be reached via electronic mail at *ortizborrero.josue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 2, 2010, EPA revised the primary SO_2 national ambient air quality standards (NAAQS or standards) to provide requisite protection of public health with an adequate margin of safety. *See* 75 FR 35520 (June 22, 2010). Specifically, EPA established a new 1-hour SO_2 standard at a level of 75 parts per billion (ppb), codified at 40 CFR 50.17.[1] [2] The 1-hour standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50 and 40 CFR 50.17(a) and (b).[3] EPA set this new 1-hour short-term standard to replace the 1971 primary 24-hour standard of 0.14 parts per million (ppm) and the annual SO_2 standard set of 0.03 ppm.[4] [5] In the 2010 SO_2 NAAQS final rulemaking, the Administrator concluded it was appropriate to revoke the 24-hour and annual primary standards,[6] stating ''a 1-hour standard at [a] level of 75 ppb would have the effect of maintaining 24-hour and annual SO_2 concentrations generally well below the levels of the current 24-hour and annual NAAQS.'' *See* 75 FR at 35550. The final rule also states, based on health evidence and risk-based information, that the 1971 SO_2 standards '' 'are not adequate to protect public health, especially in relation to short-term exposures to SO_2 (5–10 minutes) by exercising asthmatics' '' and that the new 1-hour standard would provide requisite protection of public health with an adequate margin of safety. *See* 75 FR at 35530, 35550.

Anti-Backsliding

When EPA revised the SO_2 NAAQS in 2010, replacing the annual and 24-hour standards with a short term 1-hour standard, EPA also addressed the section 172(e) anti-backsliding provision of the CAA and determined what provisions are appropriate to provide for transition to the new standard. Section 172(e) of the CAA specifies that if EPA relaxes a NAAQS, control obligations no less stringent than those that apply in nonattainment area SIPs may not be relaxed, and adopting those controls that have not yet been adopted as needed may not be avoided. Even though the 2010 1-hour standard is more protective than the previous SO_2 NAAQS, anti-backsliding provisions were necessary to insure that the health protection provided by the prior NAAQS continues to be achieved as well as maintained as states transition to the new standard.[7] Specifically, EPA established at 40 CFR 50.4(e) when the 1971 SO_2 NAAQS would be revoked in areas, and when it was necessary to retain the older SO_2 standards, setting conditions needed for the eventual transition to the new 1-hour SO_2 NAAQS. Specifically, 40 CFR 50.4(e) provides that the 1971 SO_2 NAAQS will no longer apply to an area one year after the effective date of the designation of that area for the 2010 SO_2 NAAQS set forth in § 50.17; except that the 1971 SO_2 NAAQS remains in effect for areas that are nonattainment for that NAAQS as of the effective date of the 2010 SO_2 NAAQS, and areas not meeting the requirements of a SIP call with respect to requirements for the 1971 SO_2 NAAQS until that area submits, and EPA approves, an

[1] *See* 75 FR 35520 and *https://www.gpo.gov/fdsys/pkg/FR-2010-06-22/pdf/2010-13947.pdf.*

[2] *See also* NAAQS Table at *https://www.epa.gov/criteria-air-pollutants/naaqs-table.*

[3] On February 25, 2019, EPA finalized a second review of the SO_2 standard, retaining the existing primary 1-hour SO_2 NAAQS based on a review of the full body of currently available scientific evidence and exposure/risk information at the time. *See* 84 FR 9866 and *https://www.epa.gov/so2-pollution/primary-national-ambient-air-quality-standard-naaqs-sulfur-dioxide.*

[4] EPA promulgated the 1971 primary and secondary NAAQS for SO_2 on April 30, 1971. *See* 36 FR 8186. The 1971 primary SO_2 standards of 365 $\mu g/m^3$ (0.14 ppm), averaged over a period of 24 hours and not to be exceeded more than once per year, and 80 $\mu g/m^3$ (0.03 ppm), as an annual arithmetic mean.

[5] EPA did not revise the secondary 3-hour SO_2 NAAQS set at 0.5 ppm in the 2010 or 2019 NAAQS review.

[6] EPA arrived at the same conclusion in the 2019 review of the SO_2 standard when the agency retained the 1-hour SO_2 standard of 75 ppb stating (respecting the rationale to revoke the previous SO_2 standard) ''the evidence in this review [2019] is not substantively changed from that in the last review [2010].'' *See* 84 FR 9866 (March 18, 2019).

[7] The owner or operator of a new or modified source will still be required to demonstrate compliance with the annual and 24-hour SO_2 increments, even when their counterpart NAAQS are revoked. The annual and 24-hour increments are established in the CAA and will need to remain in the prevention of significant deterioration regulations because EPA does not interpret the CAA to authorize EPA to remove them. *See* 75 FR at 35578.