

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, New Source Review, Minor New Source Review, Permitting, Incorporation by reference.

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

Dated: October 19, 2012.

**James B. Martin,**

*Regional Administrator, Region 8.*

[FR Doc. 2012-27566 Filed 11-9-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R09-OAR-2012-0792;9750-9]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Nevada; Redesignation of Clark County to Attainment for the 1997 8-Hour Ozone Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve, as a revision of the Nevada state implementation plan, the State's plan for maintaining the 1997 8-hour ozone standard in Clark County for ten years beyond redesignation, and the related motor vehicle emissions budgets, because they meet the applicable requirements for such plans and budgets. EPA is also proposing to approve a request from the Nevada Division of Environmental Protection to redesignate the Clark County ozone nonattainment area to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard because the request meets the statutory requirements for redesignation under the Clean Air Act.

**DATES:** Comments must be received on or before December 13, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R09-OAR-2012-0792, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *Email:* [r9.airplanning@epa.gov](mailto:r9.airplanning@epa.gov).
3. *Fax:* 415-947-3579.
4. *Mail or Deliver:* Ginger Vagenas (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or email. <http://www.regulations.gov> is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material, large maps), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** Ginger Vagenas, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3964, [vagenas.ginger@epa.gov](mailto:vagenas.ginger@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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#### I. Summary of Today's Proposed Action

EPA is proposing to take several related actions. First, under Clean Air Act (CAA or "Act") section 110(k)(3), EPA is proposing to approve a submittal from the Nevada Division of Environmental Protection (NDEP) dated April 11, 2011 of Clark County's *Ozone Redesignation Request and Maintenance Plan* (March 2011) ("Clark County Ozone Maintenance Plan" or "Ozone Maintenance Plan") as a revision to the Nevada state implementation plan (SIP).

In connection with the Clark County Ozone Maintenance Plan, EPA finds that the maintenance demonstration showing how the area will continue to attain the 1997 8-hour ozone national ambient air quality standard (NAAQS) for 10 years beyond redesignation (*i.e.*, through 2022) 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. EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs) in the Clark County Ozone Maintenance Plan because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), EPA is proposing to approve NDEP's request that accompanied the submittal of the maintenance plan to redesignate the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. We are doing so based on our conclusion that the area has met the five criteria for

redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard is in turn based on our proposed determination that the area has attained the 1997 8-hour ozone NAAQS, that relevant portions of the Nevada SIP are fully approved, that the improvement in air quality is due to permanent and enforceable reductions in emissions, that Nevada has met all requirements applicable to the Clark County 8-hour ozone nonattainment area with respect to section 110 and part D of the CAA, and based on our proposed approval as part of this action of the Clark County Ozone Maintenance Plan.

## II. Background

Ground-level ozone is generally not emitted directly by sources. Rather, directly-emitted oxides of nitrogen (NO<sub>x</sub>) 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<sub>x</sub> and VOC are “ozone precursors.” Reduction of peak ground-level ozone concentrations is typically achieved through controlling VOC and NO<sub>x</sub> emissions.

In 1971, under section 109 of the Act, as amended in 1970, EPA promulgated the original NAAQS for several pervasive air pollutants, including photochemical oxidants. NAAQS represent concentration levels the attainment and maintenance of which, allowing for an adequate margin of safety, EPA has determined to be requisite to protect public health (“primary” NAAQS) and welfare (“secondary” NAAQS).

In 1978, EPA designated the Las Vegas Valley (hydrographic area No. 212) as a nonattainment area for the photochemical oxidant NAAQS. See 43 FR 8962 (March 3, 1978). In 1979, EPA revised the NAAQS from an hourly average of 0.08 parts per million (ppm) oxidant to an hourly average of 0.12 ppm ozone. See 44 FR 8202 (February 8, 1979). The nonattainment designation for Las Vegas Valley for photochemical oxidant carried over to the 1-hour ozone NAAQS.

During the 1980s, Clark County adopted a number of rules and prepared a number of nonattainment plans to address planning requirements under the CAA, as amended in 1977. NDEP submitted these rules and plans to EPA at various times, and EPA approved a number of them into the Nevada SIP. Among the rules approved by EPA as revisions to the Nevada SIP as part of the ozone control strategy in Las Vegas Valley are Clark County air pollution rules section 33, which relates to chlorine in chemical processes);

sections 50, 51, and 52, which relate to storage and distribution of petroleum products; and section 60, which relates to evaporation and leakage. In 1986, in light of the approved control strategy and monitored levels below the NAAQS, EPA redesignated Las Vegas Valley to attainment for the 1-hour ozone NAAQS. See 51 FR 41788 (November 19, 1986).

In 1997, EPA revised the NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame (“1997 8-hour ozone standard”). 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. EPA determined that the 1997 8-hour standard 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.<sup>1</sup>

In 2004, EPA designated areas of the country with respect to the 1997 8-hour ozone NAAQS. See 69 FR 23858 (April 30, 2004). Under EPA’s “Phase 1” implementation rule for the 1997 8-hour ozone standard (69 FR 23951, April 30, 2004), 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<sup>2</sup> 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<sup>3</sup> (69 FR 23951). Clark County was designated as a “subpart 1” ozone nonattainment area by 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, EPA reduced the geographic extent of the ozone nonattainment area to encompass a portion of, but not all of,

Clark County.<sup>4</sup> See 69 FR 55956 (September 17, 2004), 70 FR 71612 (November 29, 2005), and 40 CFR 81.329.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) vacated EPA’s Phase 1 implementation rule for the 1997 8-hour ozone standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court (Court) clarified that the Phase 1 rule was vacated only for those parts of the rule that had been successfully challenged. The June 8, 2007, decision left intact the Court’s rejection of 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 vacating of the provision of EPA’s Phase 1 implementation rule for the 1997 8-hour ozone standard that placed certain nonattainment areas, including Clark County solely under subpart 1, EPA classified Clark County as a marginal ozone nonattainment area under subpart 2 of the CAA (77 FR 28424).

On July 28, 2008, NDEP submitted the *8-hour Ozone Early Progress Plan for Clark County, Nevada* (June 2008) (“Clark County Ozone EPP”) to EPA as a revision to the Nevada SIP. The purpose of the Clark County Ozone EPP was to establish motor vehicle emissions budgets (MVEBs) consistent with progress towards attainment of the 1997 8-hour ozone standard in advance of completion and submittal of an attainment demonstration. The Clark County EPP established MVEBs of 64.2 and 76.1 tons per day (ozone season) for VOC and NO<sub>x</sub>, respectively, for 2008. On May 5, 2009, EPA found the MVEBs in the Clark County EPP adequate for the purposes of transportation conformity. See 74 FR 22738 (May 14, 2009). Since the effective date of EPA’s adequacy finding (*i.e.*, May 29, 2009), the applicable metropolitan planning organization (MPO), *i.e.*, the Regional Transportation Commission of Southern Nevada (RTC), and the U.S. Department

<sup>1</sup> On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm (the 2008 8-hour ozone standard), and on May 21, 2012, 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

of Transportation have been required to use these budgets in transportation conformity analyses for regional transportation plans, programs and projects.

On March 29, 2011, 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 (76 FR 17343). As a result, the obligation for the State of Nevada to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS was suspended until such time as: the area is redesignated to attainment, at which time the requirements no longer apply; or EPA determines that the area has violated the 1997 8-hour ozone NAAQS. See 40 CFR 51.918. In this action, we are updating the determination of attainment to account for more recent ozone monitoring data consistent with the applicable criterion for redesignation under CAA section 107(d)(3)(E)(i).

Lastly, on April 11, 2011, NDEP submitted the Clark County Ozone Maintenance Plan and requested that EPA redesignate the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone standard. We are proposing action today on the NDEP's April 11, 2011 redesignation request and submittal of the Clark County Ozone Maintenance Plan.

### III. Procedural Requirements for Adoption and Submittal of SIP Revisions

Section 110(l) of the Act requires States to provide reasonable notice and public hearing prior to adoption of SIP revisions. In this action, we are proposing action on NDEP's April 11, 2011 submittal of the Clark County Ozone Maintenance Plan as a revision to the Nevada SIP.

Appendix C of the Clark County Ozone Maintenance Plan documents the public review process followed by Clark County in adopting the plan prior to transmittal to NDEP for subsequent submittal to EPA as a revision to the Nevada SIP. The documentation in appendix C 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 ozone maintenance plan was published on December 12, 2010 in a newspaper of general circulation within the Las Vegas area and on the County's Web page. No comments were submitted.

On February 1, 2011, the Clark County Board of Commissioners set a public hearing for March 15, 2011 to consider and approve the Clark County Ozone Maintenance Plan. The announcement of the public hearing was subsequently published on the County's Web page. On March 15, 2011, the Clark County Board of Commissioners adopted the Clark County Ozone Maintenance Plan at the close of the public hearing. Following adoption, Clark County Department of Air Quality (DAQ) 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 EPA for approval on April 11, 2011.

Based on the documentation contained in appendix C of the plan, we find that the submittal of the Clark County Ozone Maintenance Plan as a SIP revision satisfies the procedural requirements of section 110(l) of the Act for revising SIPs.

### IV. Substantive Requirements for Redesignation

The CAA establishes the requirements for redesignation of a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that the following criteria are met: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. Section 110 identifies a comprehensive list of elements that SIPs must include, and part D establishes the SIP requirements for nonattainment areas. Part D is divided into six subparts. The generally-applicable nonattainment SIP requirements are found in part D, subpart 1, and the ozone-specific nonattainment SIP

requirements are found in part D, subpart 2.

EPA provided guidance on redesignations in a document entitled, "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," published in the **Federal Register** on April 16, 1992 (57 FR 13498), and supplemented on April 28, 1992 (57 FR 18070) (referred to herein as the "General Preamble"). Another relevant EPA guidance document includes "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, September 4, 1992 (referred to herein as the "Calcagni memo").

For the reasons set forth below in section V of this document, we propose to approve NDEP's request for redesignation of the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS based on our conclusion that all of the criteria under CAA section 107(d)(3)(E) have been satisfied.

### V. Evaluation of the State's Redesignation Request for the Clark County 8-Hour Ozone Nonattainment Area

#### A. Determination That the Area Has Attained the Applicable NAAQS

CAA section 107(d)(3)(E)(i) requires that we determine that the area has attained the NAAQS. EPA generally makes the determination of whether an area's air quality meets the ozone NAAQS based upon the most recent three years of complete, quality-assured data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of areas. See 40 CFR 50.10; 40 CFR part 50, appendix I; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix I.

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained at a site when the 3-year average of the annual fourth-highest

daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm. See 40 CFR 50.10. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (based on the rounding convention in 40 CFR part 50, appendix I) at each monitoring site within the area, then the area is meeting the NAAQS. The data completeness requirement is met when the three-year average percent of days with valid ambient monitoring data is at least 90%, and no single year has less than 75% data completeness as determined in appendix I of 40 CFR part 50.

The Clark County Department of Air Quality (DAQ), (previously known as Clark County Department of Air Quality and Environmental Management, or DAQEM) is responsible for monitoring ambient air quality within Clark County. DAQ submits monitoring network plan reports to EPA on an annual basis. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. Beginning in 2007, EPA has reviewed these annual plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to ozone, we have found DAQ's annual network plans to meet the applicable requirements under 40 CFR part 58. See EPA letters to DAQ concerning DAQ's annual network plan reports for 2010 and 2011, included in the docket for this rulemaking. Furthermore, we concluded in our Technical System

Audit Report (February 2010) that Clark County DAQ's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants. Also, DAQ annually certifies that the data it submits to AQS are complete and quality-assured. See, e.g., the letter dated February 28, 2012, from Lewis Wallenmeyer, Director, DAQ, to Jared Blumenfeld, EPA Region IX Regional Administrator.

Clark County DAQ operated 13 ozone SLAMS monitoring sites during the 2009–2011 period<sup>5</sup> within the Clark County ozone nonattainment area: Apex (Apex Valley), Boulder City (City of Boulder City), Craig Road (City of North Las Vegas), J.D. Smith School (City of North Las Vegas), Jean (City of Jean, south of Las Vegas), Jerome Mack (near North Las Vegas Airport), Joe Neal (northwest Las Vegas), Lone Mountain (northwest Las Vegas), Orr School (central-southeast Las Vegas), Paul Meyer Park (southwest Las Vegas), Palo Verde School (west Las Vegas), Walter Johnson (west Las Vegas), and Winterwood (southeast Las Vegas). All 13 sites have monitored ozone concentrations on a continuous basis using ultraviolet absorption monitors.<sup>6</sup> The spatial scale and monitoring objective of most of DAQ's ozone monitoring sites are “neighborhood” and “population exposure,” respectively. The exceptions are the Apex and Jean sites, whose spatial scale and monitoring objective is “regional”

and “regional transport,” respectively, and the Joe Neal site, whose spatial scale is “neighborhood” and monitoring objective is “highest concentration.” See “Clark County Department of Air Quality and Environmental Management—Annual Network Plan Report (June 2011).”

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the ozone ambient air monitoring data for the monitoring period from 2009 through 2011 collected at the monitoring sites discussed above, as recorded in AQS and summarized in table 1, and found that the data meet our completeness criteria, except at the discontinued or newly-operating monitoring sites.<sup>7</sup>

Table 1 summarizes the site-specific annual fourth-high daily maximum 8-hour ozone concentrations and 3-year ozone design values for all monitoring sites within the Clark County 8-hour ozone nonattainment area for the period of 2009–2011. As shown in table 1, the design value for the 2009–2011 period was less than 0.084 ppm at all of the monitors. Therefore, we are proposing to determine, based on the complete, quality-assured data for 2009–2011, that the Clark County 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard. There are ten ozone monitors currently operating in the nonattainment area. Preliminary SLAMS data for 2012 from these monitors, which are summarized in table 2, are also consistent with continued attainment.

TABLE 1—SUMMARY OF AMBIENT DATA COLLECTED WITHIN CLARK COUNTY 8-HOUR OZONE NONATTAINMENT AREA, 2009–2011

| Monitor              | Site code   | 2009 4th highest | 2010 4th highest | 2011 4th highest | 2009–2011 average (ppm) |
|----------------------|-------------|------------------|------------------|------------------|-------------------------|
| Craig Road .....     | 32–003–0020 | 0.072            | (*)              | N/A              | N/A                     |
| Apex .....           | 32–003–0022 | 0.070            | 0.068            | 0.070            | 0.069                   |
| Paul Meyer .....     | 32–003–0043 | 0.071            | 0.070            | 0.078            | 0.073                   |
| Walter Johnson ..... | 32–003–0071 | 0.074            | 0.073            | 0.077            | 0.074                   |
| Lone Mountain .....  | 32–003–0072 | 0.072            | (*)              | N/A              | N/A                     |
| Palo Verde .....     | 32–003–0073 | 0.072            | 0.071            | 0.077            | 0.073                   |
| Joel Neal .....      | 32–003–0075 | 0.074            | 0.074            | 0.077            | 0.075                   |
| Winterwood .....     | 32–003–0538 | 0.070            | 0.068            | 0.073            | 0.070                   |
| Jerome Mack** .....  | 32–003–9540 | N/A              | N/A              | 0.073            | N/A                     |
| Boulder City .....   | 32–003–0601 | 0.071            | 0.069            | 0.070            | 0.070                   |
| Jean .....           | 32–003–1019 | 0.072            | 0.074            | 0.074            | 0.073                   |

<sup>5</sup> As allowed by 40 CFR 58.14, Clark County DAQ has periodically modified its monitoring network and therefore not all monitors operated over the entire 2009–2011 period. In 2010, the Craig Road, Lone Mountain, and Orr monitors were discontinued. EPA has approved the discontinuation of these sites (see letter dated October 23, 2012 from Matthew Lakin, Manager, Air Quality Analysis Office, EPA Region IX to Mike Sword, Engineering Manager, Clark County DAQ). Clark County's monitoring network has exceeded the number of required monitors throughout the referenced time period.

<sup>6</sup> DAQ operates Federal equivalent method (FEM) monitors for ozone. Specifically, API 400 Series ultraviolet absorption monitors. See the Clark County DAQ “Annual Network Plan Report”, page 12, June 2011. These monitoring devices have an EPA designation number EQQA–0992–087. See EPA “List of Designated Reference and Equivalent Methods”, page 28, June 6, 2012, available at: <http://www.epa.gov/ttn/amt/criteria.html>.

<sup>7</sup> Also, the data from the Boulder City ozone monitor did not meet EPA's completeness criteria during year 2010 because of a temporary shutdown

(from November 2009 through March 2010) (i.e., the low ozone season) due to station repairs. This temporary shutdown was approved by EPA. See page 71 of the Clark County DAQ Annual Network Plan Report, June 2010. In addition, the data from the Apex ozone monitor likewise did not meet EPA completeness criteria during 2010 and 2011 but EPA has approved a shortened ozone monitoring season at the Apex site. See letter dated March 8, 2012 from Matthew Lakin, Manager, Air Quality Analysis Office, EPA Region IX to Mike Sword, Engineering Manager, Clark County DAQ.

TABLE 1—SUMMARY OF AMBIENT DATA COLLECTED WITHIN CLARK COUNTY 8-HOUR OZONE NONATTAINMENT AREA, 2009–2011—Continued

| Monitor          | Site code   | 2009 4th highest | 2010 4th highest | 2011 4th highest | 2009–2011 average (ppm) |
|------------------|-------------|------------------|------------------|------------------|-------------------------|
| Orr .....        | 32–003–1021 | 0.071            | (*)              | N/A              | N/A                     |
| J.D. Smith ..... | 32–003–2002 | 0.072            | 0.068            | 0.072            | 0.070                   |

\* Monitor discontinued. N/A = not available.

\*\* 2011 was the first full year of operation of the Jerome Mack ozone monitor.

TABLE 2—PRELIMINARY 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR 2012<sup>a</sup>

| Monitor            | Site code   | 4th highest value (ppm) |
|--------------------|-------------|-------------------------|
| Apex .....         | 32–003–0022 | 0.076                   |
| Paul Meyer .....   | 32–003–0043 | 0.077                   |
| Walter Johnson ... | 32–003–0071 | 0.075                   |
| Palo Verde .....   | 32–003–0073 | 0.078                   |
| Joel Neal .....    | 32–003–0075 | 0.075                   |
| Winterwood .....   | 32–003–0538 | 0.074                   |
| Jerome Mack .....  | 32–003–0540 | 0.073                   |
| Boulder City ..... | 32–003–0601 | 0.077                   |
| Jean .....         | 32–003–1019 | 0.077                   |
| J.D. Smith .....   | 32–003–2002 | 0.076                   |

<sup>a</sup> The data in this table are from AQS Preliminary Design Value Report. Report Date: Oct. 11, 2012. See docket.

*B. The Area Must Have a Fully Approved SIP Meeting Requirements Applicable for Purposes of Redesignation Under Section 110 and Part D*

Section 107(d)(3)(E)(ii) and (v) require EPA to determine that the area has a fully approved applicable SIP under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation.

1. Basic SIP Requirements Under CAA Section 110

Section 110(a)(2) sets forth the general elements that a SIP must contain in order to be fully approved. Although section 110(a)(2) was amended in 1990, a number of the requirements did not change in substance, and therefore, EPA believes that the pre-amendment EPA-approved SIP met these requirements in Clark County with respect to ozone. As to those requirements that were amended, (see 57 FR 27936 and 27939, June 23, 1992), many are duplicative of other requirements of the Act. EPA has analyzed the Nevada SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The Clark County portion of the approved Nevada SIP contains enforceable emission limitations; requires monitoring, compiling and analyzing of ambient air quality data; requires preconstruction review of new or modified stationary sources; provides

for adequate funding, staff, and associated resources necessary to implement its requirements; and provides the necessary assurances that the State maintains responsibility for ensuring that the CAA requirements are satisfied in the event that Clark County is unable to meet its CAA obligations.<sup>8</sup>

On numerous occasions over the past 38 years, NDEP has submitted and we have approved provisions addressing the basic CAA section 110 provisions. There are no outstanding or disapproved applicable SIP submittals with respect to the Clark County portion of the SIP that prevent redesignation of

<sup>8</sup> The applicable SIP for NDEP and Clark County may be found at <http://yosemite.epa.gov/r9/r9sips.nsf/allsips?readform&state=Nevada>. We note that SIPs must be fully approved only with respect to applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). Thus, for example, CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the Clark County ozone planning area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). See also the discussion of this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), in the Pittsburgh redesignation 66 FR 50399 (October 19, 2001), and in the Los Angeles redesignation 72 FR 6986 (February 14, 2007) and 72 FR 26718 (May 11, 2007). EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation.

the Clark County 8-hour ozone nonattainment area for the 1997 8-hour ozone standard.<sup>9</sup> Therefore, we propose to conclude that NDEP and Clark County have met all SIP requirements for Clark County applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements).

2. Part D Requirements

a. Introduction

The CAA contains two sets of provisions, subparts 1 and 2, that address planning and emission control requirements for ozone nonattainment areas. Both of these subparts are found in title I, part D of the CAA; sections 171–179 and sections 181–185, respectively. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant, including ozone, governed by a NAAQS. Subpart 2 contains additional, more specific requirements for ozone nonattainment areas classified under subpart 2.

The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and 176 of the CAA. Under subpart 1, with respect to the Clark County 8-hour ozone nonattainment area, the State of Nevada is required to submit SIP revisions that provide for:

- Implementation of all reasonably available control measures (RACM), including, at a minimum, reasonably available control technology for existing sources and attainment of the standard (section 172(c)(1));
- Reasonable further progress (section 172(c)(2));

<sup>9</sup> Recently, EPA took final limited approval and limited disapproval on updated new source review (NSR) rules adopted by Clark County and submitted as a revision to the Nevada SIP (77 FR 64039, October 18, 2012) and issued a partial approval and partial disapproval of Nevada's "infrastructure" SIP for the 1997 8-hour ozone NAAQS (77 FR 64737, October 23, 2012). While these two final rules are not full approvals, they do not represent an obstacle to redesignation of the Clark County 8-hour ozone nonattainment area because EPA's rationale for finding that the State has met the requirements of CAA section 107(d)(3)(E)(ii) and (v) does not rely on a fully-approved nonattainment NSR program, and because the "infrastructure" SIP elements that EPA disapproved are not related to the nonattainment SIP requirements for the Clark County 8-hour ozone nonattainment area and thus are not relevant for the purposes of redesignation.

- A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area (section 172(c)(3));

- Identification and quantification of the emissions, if any, of any such pollutants which will be allowed in accordance with section 173(a)(1)(B) (*i.e.*, new or modified stationary sources located in established economic development zones) (section 172(c)(4));
- Permits for the construction and operation of new and modified major stationary sources in the nonattainment area (section 172(c)(5));

- Enforceable emission limitations as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date (section 172(c)(6));

- Compliance with section 110(a)(2) of the Act (section 172(c)(7));

- Use of equivalent modeling emission inventory, and planning procedures if approved by EPA (section 172(c)(8));

- Contingency measures (section 172(c)(9)); and

- Interagency consultation and enforceability for the purposes of transportation conformity (section 176(c)(5) and 40 CFR 51.390).

As noted above, EPA determined that the Clark County 8-hour ozone nonattainment area attained the 1997 8-hour ozone NAAQS based on 2007–2009 ozone data (76 FR 17343, March 29, 2011), and thereby suspended, under 40 CFR 51.918, the obligation on the State of Nevada to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS until such time as: the area is redesignated to attainment, at which time the requirements no longer apply; or EPA determines that the area has violated the 8-hour ozone NAAQS. As such, the State's compliance status with the attainment-related SIP requirements under subpart 1 is not relevant for the purposes of evaluating the State's redesignation request. In addition, we note that the State has not sought to exercise the options available under CAA sections 172(c)(4) (identification and quantification of certain emissions increases) or 172(c)(8) (equivalent techniques).

With respect to the requirements associated with subpart 2, we note that, as discussed in more detail above, the Clark County 8-hour ozone nonattainment area was initially designated nonattainment under subpart

1 of the CAA, but was subsequently classified as marginal nonattainment for the 1997 8-hour ozone standard under subpart 2 of part D of the CAA. See 77 FR 28424 (May 14, 2012). The effective date of EPA's classification of the Clark County 8-hour ozone nonattainment area as marginal was June 13, 2012, and under the final May 14, 2012 subpart 2 classifications rule, states have one year from the effective date of that final rule (*i.e.*, June 13, 2013) to submit SIP revisions.

NDEP has not submitted any SIP revisions for the Clark County 8-hour ozone nonattainment area in response to the area's recent classification to marginal.<sup>10</sup> However, EPA believes that this does not preclude this redesignation from being approved. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time redesignation request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted (*i.e.*, April 11, 2011), the Clark County 8-hour ozone nonattainment area was not classified under subpart 2, and thus, subpart 2 requirements were not yet due for this area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See the Calcagni memo and also the September 17, 1993, Michael Shapiro Memorandum ("State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after

<sup>10</sup> In any event, the State of Nevada would not be required to submit a SIP revision under section 182(a)(2)(A) to correct RACT rules for the Clark County 8-hour ozone nonattainment area because the area had not been identified by EPA under the pre-1990 CAA as an area that had RACT rule deficiencies. At that time, all of Clark County, including Las Vegas Valley, was designated as attainment for the then-current 1-hour ozone standard and had been so designated since 1986. See 51 FR 41788 (November 19, 1986). We also note that, for the purposes of meeting the SIP requirements for nonattainment areas for carbon monoxide, the State previously submitted, and EPA approved, SIP revisions that would meet the vehicle inspection and maintenance requirements under CAA section 182(a)(2)(B) for the Clark County 8-hour ozone nonattainment area, if those requirements were applicable for the purposes of redesignation. See at 69 FR 56351 (September 21, 2004), 73 FR 38124 (July 3, 2008), and 74 FR 3975 (January 22, 2009).

November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation), and 60 FR 12459, (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court has recognized the inequity in such retroactive rulemaking (see *Sierra Club v. Whitman* 285 F. 3d 63 (D.C. Cir. 2002)), in which the court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The court stated, "[a]lthough EPA failed to make the nonattainment determination within the statutory frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here, it would be unfair to penalize the Clark County 8-hour ozone nonattainment area by applying to it, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request, or the time that the Clark County 8-hour ozone nonattainment area attained the NAAQS.

In the following paragraphs, we explain how the State has met the SIP revision requirements for those remaining requirements under part D that are not currently suspended or not otherwise applicable.

#### b. Emissions Inventory

EPA regulations at 40 CFR 51.915 extend the SIP requirements under CAA sections 172(c)(3) to areas designated as nonattainment for the 1997 8-hour ozone standard. CAA section 172(c)(3) requires States to submit a comprehensive, accurate, current inventory of actual VOC and NO<sub>x</sub> emissions for the baseline year from all sources within the nonattainment area. The inventory is to address actual VOC and NO<sub>x</sub> emissions during the ozone season, and all stationary (generally referring to larger stationary source or "point" sources), area (generally referring to smaller stationary and

fugitive (non-smokestack) sources), and mobile (on-road, nonroad, locomotive and aircraft) sources are to be included in the inventory.

We interpret the Act such that the emission inventory requirements of section 172(a)(3) are satisfied by the inventory requirements of the maintenance plan. See 57 FR 13498, at 13564 (April 16, 1992). Thus, our proposed approval of the Clark County Ozone Maintenance Plan and related VOC and NO<sub>x</sub> emission inventories and our proposed approval of NDEP's redesignation request would satisfy the requirements of sections 172(a)(3) for the purposes of redesignation of the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS.

#### c. Permits for New and Modified Major Stationary Sources

To meet the requirements of CAA section 172(c)(5), states must submit SIP revisions that meet the requirements under 40 CFR 51.165 ("Permit requirements"), and EPA regulations at 40 CFR 51.914 extend the SIP requirements of 40 CFR 51.165 to areas designated as nonattainment for the 1997 8-hour ozone standard.

Under 40 CFR 51.165, states are required to submit SIP revisions that establish certain requirements for new or modified stationary sources in nonattainment areas, including provisions to ensure that major new sources or major modifications of existing sources of nonattainment pollutants incorporate the highest level of control, referred to as the Lowest Achievable Emission Rate (LAER), and that increases in emissions from such stationary sources are offset so as to provide for reasonable further progress towards attainment in the nonattainment area.

The process for reviewing permit applications and issuing permits for new or modified stationary sources of air pollution is referred to as "New Source Review" (NSR). With respect to nonattainment pollutants in nonattainment areas, this process is referred to as "nonattainment NSR." With respect to pollutants for which an area is designated as attainment or unclassifiable, states are required to submit SIP revisions that ensure that major new stationary sources and major modifications of existing stationary sources meet the Federal requirements for Prevention of Significant Deterioration" (PSD), including application of "best available control technology," for each applicable pollutant emitted in significant amounts, among other requirements.

As noted above, under Nevada law, specific electric steam-generating emission units (*i.e.*, power plants) within Clark County are under NDEP jurisdiction. See Nevada Revised Statutes (NRS) section 445B.500. Thus, state regulations govern air pollution permits issued by NDEP to those units. Clark County DAQ is responsible for all other stationary sources emissions units, and Clark County regulations govern air pollutant permits issued to them.

Under the Clean Air Act Amendments of 1977, States with designated nonattainment areas were required to amend their NSR rules to impose LAER and offset requirements on new major sources and major modifications of nonattainment pollutants in nonattainment areas. As noted previously, under the 1977 Act Amendments, we designated Las Vegas Valley as a nonattainment area for photochemical oxidant, later changed to ozone. To address the nonattainment NSR requirements flowing from the 1977 Act Amendments, the State of Nevada amended its nonattainment NSR rules (Nevada Air Quality Regulations (NAQR) Article 13), and NDEP submitted them to EPA for approval as part of the Nevada SIP. We approved the amended NSR rules in 1981. See 46 FR 21758 (April 14, 1981). Under these EPA-approved rules, LAER and offsets have been required for new "point sources" that cause emissions greater than 100 tons per year of ozone precursors in ozone nonattainment areas. In the 1980's EPA also approved Clark County NSR rules for Las Vegas Valley as meeting the related requirements under the 1977 Amended Act and EPA regulations.

The 1990 Clean Air Act Amendments retained the core nonattainment NSR elements of LAER and offsets but added other requirements. To address the nonattainment designations of Las Vegas Valley for carbon monoxide and particulate matter for sources under NDEP jurisdiction and in lieu of amending the rules to meet the additional NSR requirements under the 1990 Act Amendments, the State of Nevada submitted a rule (Nevada Administrative Code (NAC) section 445B.22083) establishing a construction ban for new major sources and major modifications within the nonattainment area. NAC 445B.22083, with a limited exception, prohibits new power plants or major modifications to existing power plants under State jurisdiction within four hydrographic areas in Clark County, including Las Vegas Valley (hydrographic area No. 212). See 69 FR 31056, 31059 (June 2, 2004) and 69 FR 54006, at 54017 (September 7, 2004).

We approved NAC 445B.22083 into the Nevada SIP most recently in 2008. See 73 FR 20536 (April 16, 2008). However, the prohibition in NAC 445B.22083 does not cover the entire Clark County 8-hour ozone nonattainment area, which includes the four hydrographic areas listed in NAC 445B.22083, but also includes all or portions of seven additional hydrographic areas in Clark County. See 40 CFR 81.329. Thus, the State of Nevada does not have a nonattainment NSR program meeting the requirements of 40 CFR 51.165 for those sources under NDEP jurisdiction within the Clark County 8-hour ozone nonattainment area.

With respect to Clark County regulations, EPA recently finalized a limited approval and limited disapproval of updated Clark County rules governing NSR, including nonattainment NSR, but also PSD. See 77 FR 64039 (October 18, 2012). Thus, Clark County does not have a nonattainment NSR program meeting the requirements of 40 CFR 51.165 for those sources under Clark County DAQ jurisdiction within the Clark County 8-hour ozone nonattainment area.

We have determined, however, that, since PSD requirements<sup>11</sup> will apply after redesignation, an area being redesignated to attainment need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the state demonstrates maintenance of the NAAQS in the area without implementation of nonattainment NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, titled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." See redesignation rulemakings for Detroit, Michigan (60 FR 12459, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31831, June 21, 1996).

Based on our review of the Clark County Ozone Maintenance Plan, we conclude the maintenance demonstration included therein does not rely on implementation of nonattainment NSR because the plan applies standard growth factors to stationary source emissions and does not rely on NSR offsets to reduce the rate of increase in emissions over time from point sources. The Ozone

<sup>11</sup> PSD requirements control the growth of new source emissions in areas designated as attainment for a NAAQS.

Maintenance Plan does include a line-item for emission reduction credits for VOC and NO<sub>x</sub> but adds them to future projected emissions rather than assuming that they would be used to reduce emissions growth from stationary sources. Therefore, EPA concludes that the State need not have a fully approved nonattainment NSR program as an applicable requirement for approval of the State's ozone redesignation request for the Clark County ozone planning area.

Because the State's PSD program has been disapproved with respect to sources under NDEP jurisdiction, the Federal PSD requirements under 40 CFR 52.21 will apply to new major sources or major modifications of ozone precursors under NDEP jurisdiction once the Clark County 8-hour ozone nonattainment area is redesignated to attainment. See 40 CFR 52.1485(b). NDEP implements and enforces the Federal PSD regulations under a delegation agreement with EPA Region IX.

With respect to stationary sources under Clark County DAQ jurisdiction, the County's PSD program will apply to ozone precursor emissions of new major sources or major modifications upon redesignation of the Clark County 8-hour ozone nonattainment area to attainment. We note that Clark County's PSD program is not fully approved, but the deficiencies that formed the basis for EPA's recent limited approval and limited disapproval action would not interfere with maintenance of the ozone standard for two reasons. First, the deficiencies that relate to ozone precursors are limited to a few definitions: "allowable emissions," "baseline actual emissions," "net emissions increase," and "major modification." See 77 FR 64039, at 64047 (October 18, 2012). Second, the limited disapproval triggered an obligation on EPA to promulgate a Federal implementation plan (FIP) to remedy the PSD deficiencies by November 19, 2014 unless NDEP submits, and EPA approves, amended Clark County rules that correct the deficiencies prior to that time. Thus, the overlap in time during which the Clark County 8-hour area would be redesignated to attainment but would not be subject to a fully-approved PSD program would be less than two years.

#### d. Compliance With Section 110(a)(2)

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we conclude the Nevada SIP meets the requirements of section 110(a)(2)

applicable for purposes of this redesignation.

#### e. Conformity Requirements

Under section 176(c) of the Clean Air Act Amendments of 1990, States are required to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. Section 176(c) further provided that State conformity provisions must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. EPA's conformity regulations are codified at 40 CFR part 93, subparts A (referred to herein as "transportation conformity") and B (referred to herein as "general conformity"). Transportation conformity applies to transportation plans, programs, and projects developed, funded, and approved under title 23 U.S.C. or the Federal Transit Act, and general conformity applies to all other Federally-supported or funded projects. SIP revisions intended to address the conformity requirements are referred to herein as "conformity SIPs."

In November 2008, EPA approved Clark County's transportation conformity criteria and procedures as meeting the related SIP requirements under part 51, subpart T ("Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Project Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws"). See 73 FR 66182 (November 7, 2008).

With respect to "general conformity," we note that, in August 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which eliminated the requirement for States to adopt and submit conformity SIPs addressing general conformity requirements. See 75 FR 17254 (April 5, 2010) for conforming changes to EPA's general conformity regulations. The State of Nevada is thus no longer required to submit a general conformity SIP for the Clark County 8-hour ozone planning area.

Therefore, based on our approval of Clark County's transportation conformity SIP and SAFETEA-LU's elimination of the general conformity SIP requirement, we find that Clark County and the State have met the requirements for conformity SIPs in the Clark County 8-hour ozone nonattainment area under CAA section 176(c). In any event, EPA believes it is reasonable to interpret the conformity requirements as not applicable for purposes of evaluating a redesignation request under section 107(d)(3)(E). See

*Wall v. EPA*, 265 F.3d 426, 439 (6th Cir. 2001) upholding this interpretation.

#### C. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) precludes redesignation of a nonattainment area to attainment unless EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollution control regulations and other permanent and enforceable regulations. Under this criterion, the state must be able to reasonably attribute the improvement in air quality to emissions reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emissions rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

The Clark County Ozone Maintenance Plan credits the following control measures as providing the emissions reductions sufficient to attain the 1997 8-hour ozone NAAQS in the Clark County 8-hour ozone nonattainment area through year 2022: the Federal Tier 2 motor vehicle emissions standards; the Federal highway diesel rule; the Federal large nonroad diesel engines rule; the Federal nonroad spark-ignition engines and recreational engines standards; the Federal nonroad spark-ignition engines and equipment standard; the State's vehicle I/M program; and the County's NSR and stationary source prohibitory rules. As discussed above, the State's vehicle inspection and maintenance (I/M) program and the County's NSR rules and VOC-related prohibitory rules (such as section 52 ("Handling of Gasoline at Service Stations, Airports and Storage Tanks")) have been approved into the SIP, and thus are federally enforceable.

The Federal on-road and nonroad vehicle and engine standards cited above have contributed to improved air quality through the gradual, continued turnover and replacement of older vehicle models with newer models manufactured to meet increasingly stringent Federal tailpipe emissions standards. The new Federal fuel standards cited above have resulted in more immediate emissions reductions of ozone precursors and provide for the use of advanced pollution control technology that would not otherwise be possible. The emissions reductions from

the Federal vehicle and fuel standards are reflected in the emissions inventories and maintenance demonstration discussed later in this document through the use of EPA's MOBILE emission factor model for on-road motor vehicles and NONROAD emission factor model for nonroad vehicles.

We note that some of the control measures cited in the Clark County Ozone Maintenance Plan provided emissions reductions since 2002, and thus, the improvement in air quality since 2002 may reasonably be attributed to them. For instance, the new Federal gasoline and diesel fuel standards have greatly lowered the allowable sulfur content of these fuels and have resulted in lower emissions from cars and trucks, particularly of sulfur dioxide, particulate matter, and NO<sub>x</sub>. The Clark County Ozone Maintenance Plan (see Figure 4-1 from the plan) illustrates the ambient ozone trend in the nonattainment area from 2003-to 2009 and layers the sequence of Federal engine and fuel standards phase-in over that period to support the inference that the standards have contributed to the declining trend in ambient ozone concentrations.

A rough sense of the effectiveness of the control measures to reduce VOC and NO<sub>x</sub> emissions can be gained by a comparison between area-wide emissions in 2002 (a nonattainment year) with those in 2008 (an attainment year). In 2002, area-wide VOC and NO<sub>x</sub> emissions in the Clark County 8-hour ozone nonattainment area were estimated to be approximately 318 and 279 tons per day (summer average day), respectively, and in 2008, despite an increase in population and vehicle-miles-traveled (VMT) of approximately 27% and 48%, respectively, area-wide emissions dropped significantly (to 302 tons per day of VOC and 164 tons per day of NO<sub>x</sub>).<sup>12</sup>

With respect to the connection between the emissions reductions and the improvement in air quality, we also conclude that the air quality improvement in the Clark County 8-hour ozone nonattainment area since 2002 is not the result of a local economic downturn or unusual or extreme weather patterns. To draw this conclusion, we reviewed temperature and precipitation data for Las Vegas<sup>13</sup>

and did not observe any anomaly over the period from 2002 relative to long-term averages. We do recognize that a significant economic slowdown occurred nationally starting in 2008, and that the Las Vegas metropolitan area was more significantly affected than most other areas, but we note that the downward ozone trend had already been established before that time (see Figure 4-1 on page 4-8 of the Ozone Maintenance Plan).

Thus, we find that the improvement in air quality in the Clark County 8-hour ozone nonattainment area is the result of permanent and enforceable emissions reductions from a combination of the Federal vehicle and fuel measures and EPA-approved State and local control measures. As such, we propose to find that the criterion for redesignation set forth at CAA section 107(d)(3)(E)(iii) is satisfied.

#### *D. The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A*

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. 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. See Calcagni memo, pages 8 through 13.

Under CAA section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after 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 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 Ozone Maintenance Plan because we believe that it meets the requirements of CAA section 175A.

#### 1. Attainment Inventory

A maintenance plan for the 1997 8-hour ozone standard must include an inventory of emissions of ozone

climate data discussed on pages 4-2 and 4-3 of the Ozone Maintenance Plan.

precursors (VOC and NO<sub>x</sub>) in the area to identify a level of emissions that are sufficient to attain the 1997 8-hour ozone NAAQS. This inventory must be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory must also be comprehensive, including emissions from stationary point sources, area sources, nonroad mobile sources, and on-road mobile sources, and must be based on actual "ozone season data" (*i.e.*, summertime) emissions.

Clark County DAQ selected year 2008 as the year for the attainment inventory in the Clark County Ozone Maintenance Plan. Year 2008 is one of the years of the three-year period (2007-2009) on which EPA made an attainment determination for the Clark County 8-hour ozone nonattainment area in 2011. See 76 FR 17343 (March 29, 2011). The attainment inventory will generally be the actual inventory during the time period the area attained the standard. Thus, Clark County DAQ's selection of 2008 for the attainment inventory is acceptable.

Based on our review of the Clark County Ozone Maintenance Plan, we find that the emissions inventories in the plan are comprehensive in that they include estimates of VOC and NO<sub>x</sub> emissions from all of the relevant source categories, which the plan divides among point sources,<sup>14</sup> nonpoint sources,<sup>15</sup> commercial aviation, Federal aviation (*i.e.*, Nellis Air Force Base), on-road mobile, nonroad mobile, and biogenic<sup>16</sup> sources. See table 6-2 and pages 6-2 through 6-5 in the Ozone Maintenance Plan. Appendix A to the Ozone Maintenance Plan contains source-specific descriptions of emission calculation procedures and sources of input data.

For point sources, Clark County DAQ based the inventory estimates on source-reported actual 2008 emissions data but adjusted the reported values to reflect a typical summer day at each emissions unit within the source facilities based on information provided by the

<sup>14</sup> The Ozone Maintenance Plan uses the term, "point sources," to refer to those stationary source facilities that are required to report their emissions to Clark County DAQ or NDEP.

<sup>15</sup> The Ozone 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.

<sup>16</sup> For the Ozone Maintenance Plan, "biogenic sources" include agricultural crops; lawn grass; forests that produce isoprene, monoterpene, alpha-pinene, and other VOC emissions; and soils that generate trace amounts of NO<sub>x</sub>.

<sup>12</sup> See table 4-1, and appendix A, table 3-1, from Clark County DAQ's 8-Hour Ozone Early Progress Plan for Clark County, Nevada (June 2008) and tables 4-1, 6-1, 6-2, and 6-3 from the Clark County Ozone Maintenance Plan.

<sup>13</sup> Our reference for climate data is "Climate of Las Vegas, Nevada," by Andrew Gorelow and Chris Stachelski, updated October 2012, as well as the

facilities. For nonpoint sources, Clark County DAQ 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. The documentation supplied in the emissions inventory submittal (*i.e.*, appendix A to the Ozone Maintenance Plan) shows how the specific emissions were calculated for each area source category.

With respect to most nonroad mobile sources, Clark County DAQ used EPA's nonroad emissions model NONROAD2008a, the current version of the model at the time the plan was created. The model includes both emissions factors and default county level population and activity data. The model estimates both emissions factors and emissions. This includes more than 80 basic and 260 specific types of non-road equipment, and further stratifies equipment by horsepower rating and fuel type. The model has default estimates, variables and factors used in the calculations. No local data sets were available for Clark County, therefore only model defaults were used.

With respect to commercial and Federal aviation sources, Clark County DAQ relied on airport-specific emissions inventory information provided by the Clark County Aviation Department for the five commercial airports located within the nonattainment area (McCarran International Airport, North Las Vegas Airport, Henderson Executive Airport, Jean Airport, and Perkins Field Airport) and information provided by the U.S. Air Force for Nellis Air Force Base. Airport support equipment and airport-

related stationary source emissions were included in the airport-specific inventories rather than in the general source categories such as point sources or nonroad mobile. Locomotive emissions were estimated by Clark County DAQ based on fuel consumption within the nonattainment area by the Union Pacific Railroad and included in the aggregate emissions estimates for "nonroad mobile." To estimate biogenic emissions, Clark County DAQ used the Model of Emissions of Gases and Aerosols from Nature (MEGAN) estimates, measured emission factors, and species information from completed surveys.

The on-road mobile source emissions estimates in the Ozone Maintenance Plan were prepared by Clark County DAQ using the CONCEPT MV emissions model,<sup>17</sup> EPA's MOBILE6.2 emissions factors, the Regional Transportation Commission of Southern Nevada's (RTC's) transportation demand modeling results,<sup>18</sup> and Highway Performance Monitoring System (HPMS) data from the Nevada Department of Transportation.

MOBILE6.2 estimates emissions by vehicle class, and provides emissions factors for exhaust emissions; evaporative emissions; and brake and tire wear emissions. There are a total of 28 vehicle classes used in MOBILE6.2. For the Ozone Maintenance Plan, Clark County DAQ aggregated the emissions factors calculated from MOBILE6.2 into eight vehicle classes, which are the same as used in MOBILE5. The VMT was adjusted by comparisons to observed vehicle counts by facility types, by using HPMS adjustment factors and to account for additional transit vehicles. The CONCEPT MV model processes detailed inputs (*e.g.*, VMT mix varying by hour of day, day of week, and month of year) and adjusts

speeds to account for congestion based on transportation demand modeling outputs. For areas outside of the Las Vegas Valley, county level VMT estimates based on HPMS data was used and no reductions associated with the State's motor vehicle inspection and maintenance (I/M) program were included since vehicles in the rural portions of the county are not required to participate in the program.

The on-road emissions estimates for the Ozone Maintenance Plan assumed the implementation of the Federal heavy-duty diesel rule, limits to Reid Vapor Pressure (RVP) of 9 pounds per square inch (psi) with a 1.0 psi waiver for ethanol-blended fuels<sup>19</sup> and the phase-in of tier 2 motor vehicle emission standards, and the operation of an enhanced vehicle I/M program in the urban areas of Clark County.

Table 3 presents the VOC and NO<sub>x</sub> emissions estimates contained in the Ozone Maintenance Plan for 2008 and also presents the plan's projected emissions inventories of ozone precursors in an interim year (2015) and the maintenance plan's horizon year (2022).<sup>20</sup> Based on the estimates in Table 3, on-road emissions sources accounted for approximately 22% of the VOC and 42% of the NO<sub>x</sub> emissions generated within the 8-hour ozone nonattainment area in 2008. Nonroad sources (including nonroad equipment, airports, and locomotives) accounted for approximately 15% and 34% of the VOC and NO<sub>x</sub> inventory, respectively. Point and area source emissions accounted for approximately 19% and 21% of the VOC and NO<sub>x</sub> inventory, respectively, while biogenic emissions contributed 44% of the VOC inventory but little (3%) to the overall NO<sub>x</sub> inventory.

TABLE 3—2008 AND PROJECTED 2015 AND 2022 VOC AND NO<sub>x</sub> EMISSIONS TOTAL DAILY EMISSIONS (Tons per day, average summer weekday)<sup>a</sup>

| Emission source  | Category                      | 2008  |                 | 2015  |                 | 2022  |                 |
|------------------|-------------------------------|-------|-----------------|-------|-----------------|-------|-----------------|
|                  |                               | VOC   | NO <sub>x</sub> | VOC   | NO <sub>x</sub> | VOC   | NO <sub>x</sub> |
| Point .....      | Clark County Point .....      | 1     | 12              | 1     | 12              | 1     | 12              |
|                  | Projected Power Plant .....   | 0     | 0               | < 0.5 | 3               | < 0.5 | 3               |
|                  | Clark County NDEP Point ..... | < 0.5 | 17              | < 0.5 | 17              | < 0.5 | 17              |
| Airports .....   | Clark County DOA .....        | 3     | 11              | 3     | 15              | 3     | 17              |
|                  | Ivanpah Airport .....         | 0     | 0               | < 0.5 | < 0.5           | 1     | 11              |
| Nellis AFB ..... | Nellis AFB .....              | 1     | 1               | 1     | 2               | 1     | 2               |

<sup>17</sup> "CONCEPT" refers to the CONSolidated Community Emissions Processor Tool (CONCEPT,) and "MV" refers to the motor vehicle module of the CONCEPT model.

<sup>18</sup> One of the principal sources of transportation data used to develop the emissions inventories in the Ozone Maintenance Plan is the Regional Transportation Plan 2009–2030, approved by the

RTC in November 2008. See page 6–1 of the maintenance plan.

<sup>19</sup> The market share of ethanol blend in summertime is assumed to be approximately 63% for 2008 and 100% for 2015 and 2022.

<sup>20</sup> 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.

TABLE 3—2008 AND PROJECTED 2015 AND 2022 VOC AND NO<sub>x</sub> EMISSIONS TOTAL DAILY EMISSIONS—Continued  
(Tons per day, average summer weekday)<sup>a</sup>

| Emission source                          | Category                          | 2008       |                 | 2015       |                 | 2022       |                 |
|--|-----------------------------------|------------|-----------------|------------|-----------------|------------|-----------------|
|  |                                   | VOC        | NO <sub>x</sub> | VOC        | NO <sub>x</sub> | VOC        | NO <sub>x</sub> |
| Nonpoint Sources .....                   | Nonpoint Sources .....            | 57         | 5               | 66         | 6               | 76         | 6               |
| Locomotive .....                         | Locomotive .....                  | < 0.5      | 2               | < 0.5      | 2               | < 0.5      | 2               |
| On-road Mobile .....                     | On-road Mobile .....              | 65         | 68              | 45         | 35              | 37         | 23              |
| Nonroad Mobile .....                     | Nonroad Mobile .....              | 43         | 41              | 32         | 28              | 30         | 18              |
| Biogenic .....                           | Biogenic .....                    | 132        | 5               | 132        | 5               | 132        | 5               |
| Banked Emission Reduction Credits (ERCs) | DAQ ERC Bank .....                | 0          | 0               | < 0.5      | 1               | < 0.5      | 1               |
|  | ERCs from Mohave Generating ..... | 0          | 0               | < 0.5      | 20              | < 0.5      | 20              |
|  | ERCs from Reid-Gardner .....      | 0          | 0               | 0          | 2               | 0          | 2               |
| <b>Total .....</b>                       | <b>.....</b>                      | <b>302</b> | <b>164</b>      | <b>282</b> | <b>146</b>      | <b>282</b> | <b>139</b>      |

<sup>a</sup> Derived from table 1–1 of appendix A to the Ozone Maintenance Plan. For the purposes of this table, the estimates contained in the maintenance plan have been rounded to the nearest whole number (except for values greater than zero but less than 0.5, which are shown as “< 0.5”). The sum of the values in each column may not equal the total shown due to rounding. DOA = Clark County Department of Aviation; AFB = Air Force Base; and ERCs = emission reduction credits.

Based on our review of the emissions inventories (and related documentation) from the Ozone Maintenance Plan, we find that the inventories for 2008 are comprehensive, that the methods and assumptions used by Clark County DAQ to develop the 2008 emission inventory are reasonable, and that the inventories reasonably estimate actual ozone season emissions in an attainment year. Moreover, we find that the 2008 emissions inventories in the Ozone Maintenance Plan reflect the latest planning assumptions and emissions models available at the time the plan was developed, and provide a comprehensive and reasonably accurate basis upon which to forecast ozone precursor emissions for years 2015 and 2022.

2. 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 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. For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should use the same type of modeling. Calcagni memorandum, page 9. The Clark County 8-hour ozone nonattainment area was not required to submit a modeled attainment demonstration, and thus, the Clark County Ozone Maintenance Plan may demonstrate maintenance based on

a comparison of existing and future emissions of ozone precursors.<sup>21</sup>

Clark County DAQ used projected emissions<sup>22</sup> for point and non-point sources from calendar years 2008 and 2018 to back calculate the growth factors for all ozone precursor emissions for both inventory years. The derived growth factors were then mathematically extrapolated to account for a 14-year (2008 through 2022) spread. These 2022 growth factors were then multiplied by the 2008 actual emissions to produce the 2022 projected point source emissions. An interim year (2015) projected emissions inventory is also included. The 2015 emissions were calculated using half of the growth value of the 2022 projections. Corrections for rule effectiveness were not applied to these projected emissions. On-road emissions were estimated for the 2008 base year and for projection years 2015 and 2022 and reflect a 26% increase in VMT from 2008 to 2015 and a 63% increase in VMT from 2008 to 2022 based on RTC projections. See table 6–1 in the Ozone Maintenance Plan.

In addition to accounting for area-wide growth trends, Clark County DAQ added emissions from specific projects that are expected to become operational during the maintenance period, including the Nellis Air Force Base F–35 beddown project, a new power plant, a new airport (Ivanpah), and new heliport (Sloan), in the future-year

<sup>21</sup> A maintenance demonstration need not be based on ozone modeling. See *Wall v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), and 68 FR 25413, 25430–25432 (May 12, 2003).

<sup>22</sup> The projected emissions were obtained from the 2005 Clark County Consolidated Emission Inventory Report (Environ, May 31, 2007, Appendix A).

emissions inventories, and also added in emissions reduction credits (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 DAQ used to project emissions to 2015 and 2022 for the various source categories and find them to be reasonable.

Table 3 compares the VOC and NO<sub>x</sub> emissions estimated for the Clark County 8-hour ozone nonattainment area for 2008 with those for 2015 and 2022 by source category. The projected VOC and NO<sub>x</sub> emissions show that VOC and NO<sub>x</sub> emissions would remain well below the attainment levels throughout the 10-year maintenance period and thereby adequately demonstrating maintenance through that period.

3. Monitoring Network

Continued ambient monitoring of an area is generally required over the maintenance period. As discussed in section V.A of this document, ozone is currently monitored by Clark County DAQ at ten sites within the Clark County 8-hour ozone nonattainment area. In the Ozone Maintenance Plan (see page 6–11 of the plan), Clark County DAQ indicates its intention to continue operation of an air quality monitoring network to verify continued attainment of the 1997 8-hour ozone NAAQS.<sup>23</sup> The Clark County Ozone

<sup>23</sup> Although the Ozone Maintenance Plan is not explicit in this regard, we presume that Clark County DAQ's intention to continue operation of a monitoring network means that the agency intends to do so consistent with EPA's monitoring

Maintenance Plan also notes that Clark County DAQ's SLAMS air quality monitoring system (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.<sup>24</sup> We find the County's commitment for continued ambient ozone monitoring as set forth in the Ozone Maintenance Plan to be acceptable.

#### 4. 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 Ozone Maintenance Plan. This includes the authority to adopt, implement and enforce any emission control contingency measures determined to be necessary to correct ozone NAAQS violations. To verify continued attainment, Clark County DAQ commits in the Ozone Maintenance Plan to the continued operation of an ozone monitoring network that meets EPA ambient air quality surveillance requirements.

Second, the transportation conformity process, which would require a comparison of on-road motor vehicle emissions that would occur under new or amended regional transportation plans and programs with the MVEBs in the Ozone Maintenance Plan, 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. See page 6–13 of the Ozone Maintenance Plan. Lastly, while not cited in the plan, NDEP and Clark County DAQ must inventory emissions sources and report to 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.

#### 5. Contingency Provisions

Section 175A(d) of the Act requires that maintenance plans include contingency provisions, as EPA deems necessary, to promptly correct any

requirements in 40 CFR part 58 ("Ambient Air Quality Surveillance").

<sup>24</sup> 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.

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 considered to be 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 DAQ has adopted a contingency plan to address possible future ozone air quality problems. See section 6.8 of the maintenance plan. Clark County DAQ commits to examining ambient air quality data within 30 days of collection to determine if the ozone NAAQS has been exceeded. The contingency plan will be triggered 60 days after Clark County DAQ confirms a violation of the 1997 8-hour ozone NAAQS (*i.e.*, a design value equal to or greater than 0.085 ppm). Within 45 days of the trigger date, Clark County will notify EPA that it is evaluating potential contingency measures. Within 90 days of that notification, Clark County will send a report to EPA and then will initiate a public process to consider the recommended contingency measures, including soliciting stakeholder involvement and holding public hearings. The necessary emission control measures will be adopted and implemented no later than 18 months after the information report is submitted to EPA.

Contingency measures contained in the maintenance plan are those emission controls or other measures that Clark County, the Nevada State Board of Agriculture, and/or the Nevada State Environmental Commission choose to adopt and implement in response to the contingency trigger. The contingency plan in the Ozone Maintenance Plan 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 cutpoints for VOCs and NO<sub>x</sub> 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, as summarized above, we find that the contingency provisions of the Ozone Maintenance Plan 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 Clark County Ozone Maintenance Plan are adequate to ensure prompt correction of a violation and therefore comply with section 175A(d) of the Act.

#### 6. Subsequent Maintenance Plan Revisions

CAA section 175A(b) provides that States shall submit a SIP revision 8 years after redesignation providing for maintaining the NAAQS for an additional 10 years. The Clark County Ozone Maintenance Plan provides that Clark County commits to prepare and submit a revised maintenance plan eight years after redesignation to attainment. See page 6–13 of the Ozone Maintenance Plan.

#### 7. Motor Vehicle Emissions Budgets

Transportation conformity is required by section 176(c) of the CAA. Our transportation conformity rule (codified in 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 or not they do so. Conformity to the SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

Maintenance plan submittals must specify the maximum emissions of transportation-related VOC and NO<sub>x</sub> emissions allowed in the last year of the maintenance period, *i.e.*, the motor vehicle emissions budgets (MVEBs). (MVEBs may also be specified for additional years during the maintenance period.) The MVEBs serve as a ceiling on emissions that would result from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble describes how to establish MVEBs in the SIP and how to revise the MVEBs if needed.

The submittal must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or "budgets" adequate and approvable, the submittal must meet the conformity adequacy provisions of 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 Web site at: <http://www.epa.gov/otaq/stateresources/transconf/index.htm>.

EPA's process for determining adequacy of a MVEB 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 MVEB is codified at 40 CFR 93.118.

The Clark County Ozone Maintenance Plan submitted by NDEP for Clark County, contains new VOC and NO<sub>x</sub> MVEBs for Clark County for 2008, 2015, and 2022. The availability of the SIP submission with MVEBs was announced for public comment on EPA's Adequacy Web site on June 14, 2011, at: <http://www.epa.gov/otaq/stateresources/transconf/cursips.htm>, which provided a 30-day public comment period. The comment period for this notification ended on July 14, 2011, and EPA received no comments from the public. Note, however, that a second mechanism is also provided for EPA review and public comment on MVEBs, as described in 40 CFR 93.118(f)(2). This mechanism provides for EPA's review of the adequacy of an implementation plan MVEB simultaneously with its review and approval and disapproval of the

implementation plan itself. In this action, EPA used the web notification discussed above to solicit public comments on the adequacy of Clark County's MVEBs, but is taking comment on the approvability of the submitted MVEBs through this proposed rule.

Clark County's ozone maintenance plan contains VOC and NO<sub>x</sub> MVEBs for 2008, 2015 and 2022. Any and all comments on the approvability of the MVEBs should be submitted during the comment period stated in the **DATES** section of this document.

EPA proposes to approve 2008, 2015, and 2022 MVEBs in the Clark County Ozone Maintenance Plan for transportation conformity purposes in the final rulemaking on Clark County's ozone redesignation request. If EPA approves the MVEBs in the final rulemaking action, the new MVEBs must be used in future transportation conformity determinations for Clark County. The new MVEBs, if approved in the final rulemaking, will be effective on the date of EPA's final rulemaking in the **Federal Register**. The existing 2008 VOC and NO<sub>x</sub> MVEBs from the Clark County EPP, which EPA found adequate in 2009, will be replaced by these budgets. The applicable VOC and NO<sub>x</sub> MVEBs for the Clark County ozone nonattainment area are defined in table 4.

TABLE 4—MOTOR VEHICLE EMISSIONS BUDGETS IN THE CLARK COUNTY OZONE MAINTENANCE PLAN<sup>a</sup>

| Budget year | VOC<br>(tpd, average<br>summer weekday) | NO <sub>x</sub><br>(tpd, average<br>summer weekday) |
|-------------|---|---|
| 2008 .....  | 65.08                                   | 68.46   |
| 2015 .....  | 45.32                                   | 34.69   |
| 2022 .....  | 36.71                                   | 23.15   |

<sup>a</sup>From Table 7-1 (page 7-1) of the Ozone Maintenance Plan.

The MVEBs are the on-road mobile source VOC and NO<sub>x</sub> emissions for Clark County for 2008, 2015 and 2022. The MVEBs are compatible with the 2008, 2015, and 2022 on-road mobile source VOC and NO<sub>x</sub> emissions included in Clark County's 2008, 2015, and 2022 VOC and NO<sub>x</sub> emission inventories, as summarized above in table 3. The derivation of the MVEBs is thoroughly discussed in appendix A, chapter 7 of Clark County's Ozone Maintenance Plan. Updated vehicle miles traveled (VMT) data from the Regional Transportation Commission's TRANSCAD transportation demand model was adjusted with Highway Performance Monitoring System (HPMS) data and then combined with

emission factors from MOBILE6 to estimate ozone precursor emissions.

We note that the MVEBs in the Ozone Maintenance Plan for 2008 differ from those contained for that same year in the Clark County Ozone EPP, but Clark County DAQ has explained the differences stem not from a different approach but from changes with regard to the fuel parameters and updated vehicle activity data for 2008. Specifically, the MOBILE input files used for the Ozone Maintenance Plan were updated to show the use of ethanol in summertime with a 1.0 psi waiver, resulting in higher VOC emissions, and the VMT estimates for 2008 were adjusted downwards to reflect the latest transportation data from RTC. The net

effect of these changes resulted in higher VOC emissions but lower NO<sub>x</sub> emissions for 2008 relative to the corresponding estimates in the Clark County Ozone EPP.

EPA is proposing to approve the MVEBs for 2008, 2015 and 2022 as part of our approval of Clark County's Ozone Maintenance Plan. EPA has determined that the MVEB emission targets are consistent with emission control measures in the SIP and that Clark County can maintain attainment of the 1997 8-hour ozone NAAQS. The details of EPA's evaluation of the MVEBs for compliance with the budget adequacy criteria of 40 CFR 93.118(e) are provided

in a separate memorandum<sup>25</sup> included in the docket of this rulemaking.

## VI. Proposed Action and Request for Public Comment

Under CAA section 110(k)(3), and for the reasons set forth above, EPA is proposing to approve NDEP's submittal dated April 11, 2011 of Clark County's *Ozone Redesignation Request and Maintenance Plan* (March 2011) ("Clark County Ozone Maintenance Plan") as a revision to the Nevada state implementation plan (SIP). In connection with the Clark County Ozone Maintenance Plan, EPA finds that the maintenance demonstration showing how the area will continue to attain the 1997 8-hour ozone NAAQS for 10 years beyond redesignation (*i.e.*, through 2022) 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. EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs) in the Clark County Ozone Maintenance Plan (shown in table 4 of this document) because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), we are proposing to approve NDEP's request, which accompanied the submitted of the maintenance plan, to redesignate the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard is in turn based on our proposed determination that the area has attained the 1997 8-hour ozone NAAQS, that relevant portions of the Nevada SIP are fully approved, that the improvement in air quality is due to permanent and enforceable reductions in emissions, that Nevada has met all requirements applicable to the Clark County 8-hour ozone nonattainment area with respect to section 110 and part D of the CAA, and based on our proposed approval as part of this action of the Clark County Ozone Maintenance Plan.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will

accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

## VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely propose to approve a State plan and redesignation request as meeting Federal requirements and do not impose additional requirements beyond those by State law. For these reasons, these proposed actions:

- Are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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

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

In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law. Nonetheless, EPA has discussed the proposed action with the one Tribe, the Las Vegas Paiute Tribe, located within the Clark County 8-hour ozone nonattainment area.

## List of Subjects

### 40 CFR Part 52

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

### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 2, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2012-27562 Filed 11-9-12; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 385 and 386

[Docket No. FMCSA-2011-0321]

RIN 2126-AB42

### Patterns of Safety Violations by Motor Carrier Management

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FMCSA proposes amendments to its regulations that would enable the Agency to suspend or revoke the operating authority registration of motor carriers that have

<sup>25</sup> See EPA memorandum dated October 15, 2012 titled, "Adequacy Documentation for Motor Vehicle Emission Budgets in April 2011 Clark County Ozone Maintenance State Implementation Plan."