

nonattainment plans meet the applicable requirements of CAA sections 172, 191, and 192. EPA is taking public comments for thirty days following the publication of this proposed action in the **Federal Register**. EPA will take all comments into consideration in our final action.

### VII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Illinois Administrative Code, Title 35, Subtitle B, Chapter I, Subchapter c, Part 214, Sections 214.121, 214.122, 214.161, 214.600, 214.601, 214.602, 214.603, 214.604, and 214.605, effective December 7, 2015. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 17, 2017.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2017-0377; FRL-9968-89-Region 9]

### Approval of Arizona Air Plan Revision; San Manuel, Arizona; Second 10-Year Sulfur Dioxide Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the second 10-year maintenance plan for the San Manuel area in Arizona for the 1971 National Ambient Air Quality

Standards (NAAQS or "standards") for sulfur dioxide (SO<sub>2</sub>).

**DATES:** Any comments on this proposal must arrive by November 6, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2017-0377 at <https://www.regulations.gov>, or via email to Ashley Graham, Air Planning Office at [graham.ashley@epa.gov](mailto:graham.ashley@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from [Regulations.gov](http://Regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.*, audio or video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** The index to the docket for this action is available electronically on the [www.regulations.gov](http://www.regulations.gov) Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at 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 below.

**FOR FURTHER INFORMATION CONTACT:** Ashley Graham, EPA Region IX, (415) 972-3877, [graham.ashley@epa.gov](mailto:graham.ashley@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the words "we," "us," or "our" mean the EPA.

### Table of Contents

- I. Summary of Action
- II. Background

- A. What National Ambient Air Quality Standards are considered in today's rulemaking?
  - B. What is a State implementation plan?
  - C. What is the background for this action?
  - D. What are the applicable provisions for second 10-year maintenance plans for SO<sub>2</sub>?
- III. The EPA's Evaluation of the Arizona State Submittal
- A. Did the State meet the CAA procedural requirements?
  - B. Has the State met the substantive maintenance plan requirements?
- IV. Proposed Action and Request for Public Comment
- V. Statutory and Executive Order Reviews

## I. Summary of Action

We are proposing to approve the second 10-year maintenance plan for the San Manuel, Arizona SO<sub>2</sub> maintenance area ("San Manuel maintenance area").<sup>1</sup>

## II. Background

### A. What National Ambient Air Quality Standards are considered in today's rulemaking?

Sulfur dioxide (SO<sub>2</sub>) is the pollutant that is the subject of this action. The NAAQS are health-based and welfare-based standards for certain ambient air pollutants. Sulfur dioxide is among the ambient air pollutants for which we have established a health-based standard. Sulfur dioxide causes adverse health effects by reducing lung function, increasing respiratory illness, altering the lung's defenses and aggravating existing cardiovascular disease. Children, the elderly, and people with asthma are the most vulnerable. Sulfur dioxide has a variety of additional impacts, including acidic deposition, damage to crops and vegetation, and corrosion of natural and man-made materials.

In 1971, the EPA established both short- and long-term primary NAAQS for SO<sub>2</sub>. The short-term (24-hour) standard of 0.14 parts per million (ppm) was not to be exceeded more than once per year. The long-term standard

specifies an annual arithmetic mean not to exceed 0.030 ppm.<sup>2</sup> See 40 CFR 50.4.

In 2010, the EPA revised the primary SO<sub>2</sub> NAAQS by establishing a new 1-hour standard of 75 parts per billion. The EPA revoked the existing 1971 primary standards at that time because they would not provide additional public health protection. See 75 FR 35520 (June 22, 2010). Today's action relates only to the revoked 1971 NAAQS. The State has requested that we act on this maintenance plan.<sup>3</sup>

### B. What is a State implementation plan?

The Clean Air Act (CAA or "Act") requires states to attain and maintain ambient air quality equal to or better than the NAAQS. The state's commitments for attaining and maintaining the NAAQS are outlined in the state implementation plan (SIP) for that state. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. The Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date, or a contingency plan if the area fails to maintain the NAAQS once redesignated. The state must make the SIP available for public review and comment, must hold a public hearing or provide the public the opportunity to request a public hearing, and the SIP must be adopted by the state and submitted to us by the governor or her/his designee. The EPA acts on the SIP submittal, thus rendering the rules and regulations federally enforceable. The approved SIP serves as the state's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to

the SIP must go through the formal SIP revision process specified in the Act.

### C. What is the background for this action?

#### 1. When was the nonattainment area established?

The San Manuel maintenance area is located in southern Arizona. On March 3, 1978, for lack of a state recommendation, the EPA designated Pima and Pinal counties as a primary SO<sub>2</sub> nonattainment area based on monitored violations of the primary SO<sub>2</sub> NAAQS in the area between 1975 and 1977. See 43 FR 8962 (March 3, 1978). At the request of the Arizona Department of Environmental Quality (ADEQ), the nonattainment area was subsequently reduced to eleven townships in and around San Manuel. See 44 FR 21261 (April 10, 1979). Thus, townships T8S, R16E; T8S, R17E; T8S, R18E; T9S, R15E; T9S, R16E; T9S, R17E; T9S, R18E; T10S, R15E; T10S, R16E; T10S, R17E; and T11S, R16E made up the nonattainment area. Townships T10S, R18E; T11S, R17E; T12S, R16E; and T12S, R17E were classified as "cannot be classified" areas.

On the date of enactment of the 1990 CAA Amendments, SO<sub>2</sub> areas meeting the conditions of section 107(d) of the Act were designated nonattainment for the SO<sub>2</sub> NAAQS by operation of law. Section 107(d) describes the processes by which nonattainment areas are designated, including the pre-existing SO<sub>2</sub> nonattainment areas. Thus, the San Manuel area remained nonattainment for the primary SO<sub>2</sub> NAAQS following enactment of the 1990 CAA Amendments on November 15, 1990.

#### 2. When was the San Manuel area redesignated for SO<sub>2</sub>?

During its operation, the BHP Copper Incorporated (Inc.) copper smelter was the largest SO<sub>2</sub> point source in the San Manuel nonattainment area, contributing more than 99.5 percent of total SO<sub>2</sub> emissions. The smelter was shut down in 1999, and in January 2005, BHP Copper Inc. notified the ADEQ that the company intended to permanently cease operating the smelter. In March 2005, the ADEQ terminated the permit for the facility, and the smelter stacks were dismantled in January 2007. Closure of the smelter reduced emissions and resultant ambient SO<sub>2</sub> concentrations. On January 18, 2008, the EPA finalized approval of the maintenance plan and redesignation request for the San Manuel area, effective March 18, 2008 (see 73 FR 3396).

<sup>1</sup> For the definition of the San Manuel maintenance area, see 40 CFR 81.303. The San Manuel maintenance area is located in southern Arizona. The EPA designated Pima and Pinal counties as nonattainment for SO<sub>2</sub> on March 3, 1978, for lack of a state recommendation. On April 10, 1979, the EPA approved the State's request that the SO<sub>2</sub>-affected portion of Pima and Pinal counties be limited to the townships surrounding the primary copper smelter located near San Manuel (44 FR 21261). Townships T8S, R16E; T8S, R17E; T8S, R18E; T9S, R15E; T9S, R16E; T9S, R17E; T9S, R18E; T10S, R15E; T10S, R16E; T10S, R17E; and T11S, R16E comprised the nonattainment area. Townships T10S, R18E; T11S, R17E; T12S, R16E; and T12S, R17E were designated as "cannot be classified."

<sup>2</sup> Secondary NAAQS are promulgated to protect public welfare. The secondary 1971 SO<sub>2</sub> NAAQS (3-hour) of 0.5 ppm is not to be exceeded more than once per year. The San Manuel area was not classified nonattainment for the secondary standard, and this action relates only to the primary 1971 SO<sub>2</sub> NAAQS.

<sup>3</sup> This action is consistent with the CAA's anti-backsliding provisions. The EPA's final rule on revocation of the 1971 SO<sub>2</sub> NAAQS discussed that maintenance SIPs would continue being implemented by states until they are subsumed by new planning and control requirements associated with the revised NAAQS. See 75 FR 35520, 35580 (June 22, 2010).

3. What is the current status of the area?

The remaining SO<sub>2</sub> point sources in the San Manuel maintenance area consist of the Oracle Compressor Station, the Bonito Quarry, Decorative Rock Sales, Saddlebrooke Ranch Water Reclamation Plant, and San Manuel schools, which have a combined Potential to Emit (PTE) of 4.54 tons per year (tpy) SO<sub>2</sub> (see Table 1).

TABLE 1—FACILITY-WIDE PTE FOR SOURCES OPERATING IN THE SAN MANUEL MAINTENANCE AREA

Facility	PTE (tpy SO <sub>2</sub> )
Oracle Compressor Station ..	1.90
Bonito Quarry .....	0.80
Biosphere 2 .....	0.71
Decorative Rock Sales .....	0.70
Saddlebrooke Ranch Water Reclamation Plant .....	0.40
San Manuel schools .....	0.03
Total .....	4.54

Currently, no ambient SO<sub>2</sub> monitors operate in the San Manuel area. However, we do not expect the cumulative impact of the sources in San Manuel to cause a violation of the NAAQS because the area's emissions are sufficiently low. Monitoring data collected between 1975 and 2007 indicate that the primary SO<sub>2</sub> NAAQS had not been violated since 1979, when the smelter was still in operation and emitted more than 200,000 tons of SO<sub>2</sub>. No new sources of SO<sub>2</sub> of the magnitude of the BHP Copper Inc. smelter have located in the area since our redesignation of the area to attainment in 2008.

D. What are the applicable provisions for second 10-year maintenance plans for SO<sub>2</sub>?

1. What are the statutory provisions?

Section 175A of the CAA provides the general framework for maintenance plans. The initial 10-year maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain contingency provisions necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation.

Section 175A(b) of the CAA requires states to submit a subsequent maintenance plan revision (second 10-year maintenance plan) eight years after redesignation. The Act requires only that this second 10-year maintenance plan maintain the applicable NAAQS for 10 years after the expiration of the first 10-year maintenance plan. Beyond these provisions, section 175A of the CAA does not define the content of a second 10-year maintenance plan.

2. What general EPA guidance applies to SO<sub>2</sub> maintenance plans?

The primary guidance on maintenance plans and redesignation requests is a September 4, 1992, memo from John Calcagni, titled "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memo"). Specific guidance on SO<sub>2</sub> redesignations also appears in a January 26, 1995, memo from Sally L. Shaver, titled "Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas" ("Shaver Memo").

While the Calcagni Memo primarily addresses redesignations, we find it is appropriate to apply the Calcagni Memo to second 10-year maintenance plans for areas that were redesignated in accordance with the memo and continue to experience similar conditions to those at the time of redesignation. For areas to qualify for redesignation to attainment, this policy recommends that the maintenance plan address otherwise applicable provisions, and include:

(1) An attainment emissions inventory that identifies the level of emissions in the area that is sufficient to attain the NAAQS;

(2) a maintenance demonstration showing that future emissions of the pollutant or its precursors will not exceed the level of the attainment inventory, or modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS;

(3) provisions for continued operation of air quality monitors to provide verification of the attainment status of the area;

(4) verification that the state has the legal authority to implement and enforce all measures necessary to maintain the NAAQS and information on how the state will track the progress of the maintenance plan; and

(5) contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area.

III. The EPA's Evaluation of the Arizona State Submittal

A. Did the State meet the CAA procedural requirements?

On April 21, 2017, the ADEQ submitted to the EPA the "San Manuel Sulfur Dioxide Maintenance Plan Renewal, 1971 Sulfur Dioxide National Ambient Air Quality Standards" ("2017 San Manuel Second Maintenance Plan"). The State verified that it had adhered to its SIP adoption procedures in Appendix B to the 2017 San Manuel Second Maintenance Plan, which includes the notice of public hearing; the agenda for the April 20, 2017 public hearing; the sign-in sheet; the public hearing officer certification and transcript of the hearing; and the State's responsiveness summary.

The EPA reviewed the 2017 San Manuel Second Maintenance Plan for completeness and found the plan to be complete on September 14, 2017. See 40 CFR part 51, Appendix V, for the EPA's completeness criteria, which must be satisfied before formal review of the SIP.

B. Has the State met the substantive maintenance plan requirements?

1. Has the State met the requirements for second 10-year maintenance plans?

The 2017 San Manuel Second Maintenance Plan covers the second 10 years of the 20-year maintenance period, as required by Section 175A(b) of the CAA. As discussed below, the State has addressed the recommendations in the Calcagni Memo for emissions inventories, a maintenance demonstration, provisions for continued operation of air quality monitors, a commitment to track continued maintenance, and contingency provisions. We provide more details on each requirement and how the 2017 San Manuel Second Maintenance Plan meets each requirement in the following sections.

a. Attainment Emissions Inventory

On June 7, 2007, the ADEQ submitted to the EPA its "Final Arizona State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area" and its request for redesignation to attainment ("2007 San Manuel Maintenance Plan"). The State's June 2007 submittal also requested that the EPA withdraw the June 2002 "Final San Manuel Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan." The June 2007 submittal updated the SIP to account for the closure of the dominant source of SO<sub>2</sub> emissions, the BHP Copper Inc. copper smelter.

The ADEQ’s 2007 San Manuel Maintenance Plan included updated emissions inventories for sources in the San Manuel maintenance area for 1998, a year in which the smelter was operating and the area was attaining the SO<sub>2</sub> standards, and 2005, a year in which the smelter was closed and the area was attaining the SO<sub>2</sub> standards. In the 2017 San Manuel Second Maintenance Plan, the ADEQ relied on the 2005 emissions inventory to demonstrate NAAQS attainment, and included the 1998 emissions inventory to highlight the difference in area emissions during a year when the smelter was operating (1998) and a year when the smelter had been shut down (2005). In 1998, emissions in the San Manuel maintenance area were approximately 10,440 tons; in 2005, emissions were approximately 27.6 tons.

b. Maintenance Demonstration

The Calcagni Memo recommends that a state demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.

The 2017 San Manuel Second Maintenance Plan demonstrates continued maintenance of the 1971 primary SO<sub>2</sub> NAAQS, in part, by showing that future emissions of SO<sub>2</sub> will not exceed the level of the attainment inventory. The plan includes emissions inventories representing current emissions for 2014 for sources in the San Manuel maintenance area; projected emissions for two interim years during the second maintenance period (2019 and 2023); and projected emissions for the tenth year of the second maintenance period (2028).

The emissions inventories in the 2017 San Manuel Second Maintenance Plan (see Section 3 and technical support document in Appendix A) include estimates of SO<sub>2</sub> from all relevant source categories, which the plan divides among point, mobile (nonroad and on-road), and area (non-point) source categories. The ADEQ used Pinal County’s point source database to identify point sources in the Pinal County portion of the maintenance area. The Pinal County portion of the San Manuel maintenance area contains six point sources (i.e., Oracle Compressor Station, Bonito Quarry, Biosphere 2, Decorative Rock Sales, Saddlebrooke Ranch Water Reclamation Plant, and San Manuel schools), which together emitted 3.80 tons of SO<sub>2</sub> in 2014. The

combined PTE of the point sources is 4.54 tpy SO<sub>2</sub>. The 2017 San Manuel Second Maintenance Plan includes a description of current facility types, permitted emissions limits, and emissions calculation methods for Pinal County sources. There are no point sources in the Pima County portion of the maintenance area.

Mobile and area source emissions in the ADEQ’s 2014 and subsequent year inventories were derived from the EPA’s National Emissions Inventory Version 1 and the EPA’s Motor Vehicle Emission Simulator model. In the 2014 base year, the ADEQ estimated that area sources contributed 2.58 tons of SO<sub>2</sub>, the on-road mobile source sector contributed 1.41 tons of SO<sub>2</sub>, and the non-road mobile source sector contributed 1.14 tons of SO<sub>2</sub> in the San Manuel maintenance area (see Table 2).<sup>4</sup> Future year SO<sub>2</sub> emissions for the on-road mobile source sector are projected to decline due to changes in vehicle emissions standards, whereas area source emissions are expected to increase due to projected population growth in the San Manuel maintenance area. The ADEQ projected that in 2028, area sources will contribute 3.49 tons of SO<sub>2</sub>, on-road mobile sources will contribute 0.80 tons of SO<sub>2</sub>, and non-road mobile sources will contribute 1.65 tons of SO<sub>2</sub> (see Table 2).

TABLE 2—SAN MANUEL MAINTENANCE AREA SO<sub>2</sub> EMISSIONS SUMMARY

	2005	2014	2019	2023	2028
Area .....	27	2.58	2.86	3.12	3.49
On-road Mobile .....		1.41	0.72	0.75	0.80
Non-road Mobile .....		1.14	1.30	1.45	1.65
Point .....	0.6	3.80	4.54	4.54	4.54
Total .....	27.6	8.92	9.43	9.86	10.48

Based on our review of the emissions inventories in the 2017 San Manuel Second Maintenance Plan, including the supporting information in Appendix A, we conclude that the inventories are complete and consistent with applicable CAA provisions and the Calcagni Memo.

As discussed above, no new sources of SO<sub>2</sub> that are similar in size to the BHP Copper Inc. copper smelter have located in the area since our redesignation of the area to attainment in 2008. The submittal shows that the current (2014)

and maximum expected level of emissions in the San Manuel SO<sub>2</sub> maintenance area through the end of the maintenance period (2028) are projected to be well below both the 1998 and 2005 attainment inventories. In 2005, emissions were 27.6 tons of SO<sub>2</sub>; 2014 emissions were 8.92 tons of SO<sub>2</sub>; and 2028 emissions are projected to be 10.48 tons of SO<sub>2</sub>.<sup>5</sup>

The Calcagni Memo also specifies that projected emissions should reflect permanent, enforceable measures. Emission reductions from source

shutdowns are considered permanent and enforceable if the shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly. The ADEQ terminated the permit for the BHP Copper Inc. copper smelter in March 2005, and the smelter stacks were dismantled in January 2007. The smelting facility cannot reopen without submitting New Source Review (NSR) and Title V (Part 70) permit applications to the ADEQ. We therefore propose to conclude that the State has demonstrated that the 1971 SO<sub>2</sub> NAAQS

<sup>4</sup>During the EPA’s review of the ADEQ’s submittal, we identified several inconsistencies in the 2014 population and land area values reported. However, the inconsistencies have only a minor impact, or in some cases no impact, on the emissions estimates derived. In cases where discrepancies did have a minor impact on

emissions estimates, the EPA found that they led to an overestimate in SO<sub>2</sub> emissions and thus do not alter the ADEQ’s findings that emissions through 2028 are projected to be well below the 2005 attainment inventory emissions, and that emissions estimates demonstrate continued attainment of the 1971 SO<sub>2</sub> NAAQS in the San Manuel maintenance

area. See memorandum dated June 21, 2017, from Ashley Graham, EPA Region 9, Air Planning Office, to docket EPA-R09-OAR-2017-0377, “Technical note regarding emissions inventories in Arizona’s San Manuel SO<sub>2</sub> 2nd 10-year maintenance plan.”

<sup>5</sup> See footnote 4.

is adequately protected due to permanent and enforceable measures.

#### c. Air Quality Monitoring

The Calcagni Memo recommends that once an area has been redesignated from nonattainment to maintenance, the state should continue to operate the appropriate air quality monitoring network to allow for continued verification of the attainment status of the area. However, following five years of clean data, SO<sub>2</sub> monitors were removed from the San Manuel area in accordance with 40 CFR 58.14(c)(3). Monitoring data collected during 1997 through 1999, while the smelter was still operating, indicate that maximum ambient SO<sub>2</sub> concentrations were less than 55 percent of the 3-hour NAAQS, less than 59 percent of the 24-hour NAAQS, and less than 33 percent of the annual NAAQS. Closure of the smelter in 1999 reduced emissions and resultant ambient SO<sub>2</sub> concentrations. Monitoring data for 2002 through 2007 indicate that maximum ambient SO<sub>2</sub> concentrations were two percent of the 3-hour NAAQS, less than three percent of the 24-hour NAAQS, and less than seven percent of the annual NAAQS.

The ADEQ does not anticipate a substantial increase in point source emissions in future years and commits to resume monitoring before any major source of SO<sub>2</sub> commences to operate in the San Manuel maintenance area. See 2017 San Manuel Second Maintenance Plan, p. 41. Since there are no remaining sources of SO<sub>2</sub> emissions of the magnitude of BHP Copper Inc., the projected future emissions through 2028 are sufficiently low relative to emissions during the 1998 and 2005 attainment years, and we do not anticipate any reason the 1971 SO<sub>2</sub> NAAQS would be violated, we conclude that future monitoring per the recommendations in the Calcagni Memo is not required and that the State's commitment to resume monitoring before any major source of SO<sub>2</sub> commences to operate in the San Manuel area satisfactorily addresses the CAA provisions.

#### d. Verification of Continued Attainment

The Calcagni Memo recommends that states ensure that they have the legal authority to implement and enforce all measures necessary to maintain the NAAQS, and that they specify how they will track progress of the maintenance plan in their submittal. One option for tracking maintenance would be through periodic updates to the emissions inventory.

The 2017 San Manuel Second Maintenance Plan submittal notes that the ADEQ, the Pima County Department

of Environmental Quality (PDEQ), and the Pinal County Air Quality Control District (PCAQCD) have permitting and planning jurisdiction in the San Manuel SO<sub>2</sub> maintenance area and general authority to implement and enforce all measures to maintain the 1971 SO<sub>2</sub> NAAQS per Arizona Revised Statutes (A.R.S.) §§ 49-104, 49-404, 49-422, and 49-424.

In the 2017 San Manuel Second Maintenance Plan, the State commits to track maintenance of the SO<sub>2</sub> NAAQS in the San Manuel area through updates to the annual statewide emissions inventory and review of permit applications for SO<sub>2</sub> sources. See 2017 San Manuel Second Maintenance Plan, p. 42. Permitted sources are subject to monitoring, reporting, and certification procedures contained in Arizona Administrative Code (A.A.C.) R18-2-306 and R18-2-309. The ADEQ has authority to monitor and ensure compliance with all applicable rules and permit conditions for sources in its jurisdiction, pursuant to A.R.S. § 49-101. The PCAQCD and the PDEQ have authority for sources under their jurisdiction under A.R.S. § 49-402. We find that the State's continued commitment to track maintenance of the SO<sub>2</sub> NAAQS through updates to the emissions inventory and the State's prevention of significant deterioration (PSD) permitting programs are sufficient to assure that the San Manuel area will maintain the NAAQS.

#### e. Contingency Plan

Section 175A(d) of the CAA requires that maintenance plans contain contingency provisions deemed necessary by the Administrator to assure that the state will promptly correct any violation of the standard that occurs after the redesignation of the area as an attainment area. The Calcagni Memo provides additional guidance, noting that although a state is not required to have fully-adopted contingency measures that will take effect without further action by the state for the maintenance plan to be approved, the maintenance plan should ensure that the contingency measures are adopted expeditiously once they are triggered. Specifically, the maintenance plan should clearly identify the measures to be adopted, include a schedule and procedure for adoption and implementation of the measures, and contain a specific time limit for action by the state. In addition, the state should identify specific indicators or triggers, that will be used to determine when the contingency measures need to be implemented.

Since there are no remaining sources of SO<sub>2</sub> emissions of the magnitude of the BHP Copper Inc. copper smelter, the primary cause of any future violations of the 1971 SO<sub>2</sub> NAAQS in the San Manuel area would be from new or modified point sources. The ADEQ and the PDEQ have PSD permitting programs (*i.e.*, A.A.C. R18-2-406 and Pima County Code 17.16.590) that were established to preserve the air quality in areas where ambient standards have been met. The PCAQCD's PSD program is under the ADEQ's jurisdiction. The ADEQ has jurisdiction over all refineries, copper smelters, coal-fired power plants, cement plants, and portable sources that will operate in multiple counties (*see* A.R.S. 49-402). These sources must obtain permits from the ADEQ. The State's updated PSD program was approved into the SIP on November 2, 2015 (80 FR 67319). Although the PDEQ's PSD program is not SIP-approved, the federal PSD permitting program at 40 CFR 52.21 was delegated to the PDEQ effective April 14, 1994. The PSD programs apply to any major source or major modification in the San Manuel area. Should a new facility be constructed in the San Manuel area or an existing facility want to upgrade or increase SO<sub>2</sub> emissions, the facility would be subject to PSD as recommended in the Calcagni Memo.

Furthermore, the ADEQ anticipates no relaxation of any implemented control measures used to attain and maintain the NAAQS, and commits to submit to us any changes to rules or emission limits applicable to SO<sub>2</sub> sources, as well as committing to maintain the necessary resources to promptly correct any violations of the provisions contained in the 2017 San Manuel Second Maintenance Plan.

Upon review of the contingency plan summarized above, we find that the ADEQ has established a contingency plan for the San Manuel area that satisfies the requirements of CAA section 175A(d) and the Calcagni Memo.

## 2. Other CAA Requirements

### a. Transportation and General Conformity

As discussed above, section 175A of the CAA sets forth the statutory requirements for maintenance plans, and the Calcagni and Shaver memos cited above contain specific EPA guidance. Additional maintenance plan elements not covered by the Calcagni Memo are the transportation and general conformity provisions.

Conformity is required under section 176(c) of the CAA to ensure that federal actions are consistent with ("conform

to”) the purpose of the SIP. Conformity to the purpose of the SIP means that federal activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Conformity applies to areas that are designated nonattainment and to maintenance areas. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. and the Federal Transit Act (“transportation conformity”), as well as to other federally supported or funded projects (“general conformity”).

Transportation conformity applies to projects that require Federal Highway Administration or Federal Transit Administration funding. 40 CFR part 93 describes the requirements for federal actions related to transportation plans, programs, and projects to conform to the purposes of the SIP. Because the EPA does not consider SO<sub>2</sub> a transportation-related criteria pollutant,<sup>6</sup> only the requirements related to general conformity apply to the San Manuel area.

Section 176(c)(4) of the CAA establishes the framework for general conformity. Besides ensuring that federal actions not covered by the transportation conformity rule will not interfere with the SIP, the general conformity regulations encourage consultation between the federal agency and the state or local air pollution control agencies before and during the environmental review process; public notification of and access to federal agency conformity determinations; and air quality review of individual federal actions.

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that federally supported or funded projects in nonattainment and maintenance areas “conform” to the air quality planning goals in the applicable SIP. SIP revisions intended to meet the conformity requirements in section 176(c) are referred to as “conformity SIPs.” In 2005, Congress amended section 176(c). Under the amended conformity provisions, states are no longer required to submit conformity SIPs for general conformity, and the conformity SIP requirements for transportation conformity have been reduced to include only those relating to consultation, enforcement, and enforceability. See CAA section 176(c)(4)(E).

The EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of a redesignation request under section 107(d)(3)(E)(v) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F. 3d 426 (6th Cir. 2001). Because the San Manuel area has already been redesignated for this standard, we believe it is reasonable to apply the interpretation of conformity SIP requirements as not applying for the purposes of redesignation to the approval of the second 10-year maintenance plan.

Criteria for making determinations and provisions for general conformity are contained in A.A.C. R18–2–1438. Arizona has an approved general conformity SIP.<sup>7</sup>

The ADEQ commits in the 2017 San Manuel Second Maintenance Plan to review and comment, as appropriate, on any federal agency draft general conformity determination it receives consistent with 40 CFR 93.155 for any federal plans or actions in this planning area, although none are currently planned for the area. See 2017 San Manuel Second Maintenance Plan, p. 18.

#### IV. Proposed Action and Request for Public Comment

We propose to approve the second 10-year SO<sub>2</sub> maintenance plan for the San Manuel area in Arizona under sections 110 and 175A of the CAA. As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the submitted SIP because we believe it fulfills all relevant requirements.

We will accept comments from the public on this proposal for 30 days from the date of publication of this notice, and we will consider any relevant comments in taking final action on today’s proposal.

#### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements

beyond those imposed by state law. For that reason, this action:

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

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: September 26, 2017.

**Alexis Strauss,**

*Acting Regional Administrator, EPA Region IX.*

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<sup>6</sup> See 40 CFR 93.102(b)(1).

<sup>7</sup> See 64 FR 19916 (April 23, 1999).