considered as contributing to nonattainment in Denver.

With respect to the 1997 8-hour ozone standards, we believe that the submission adequately establishes that sources in Albuquerque/Bernalillo County are not significantly contributing to violations of that NAAQS in any other state. As noted previously, EPA will be acting on the other elements of Section 110(a)(2)(D)(i) in separate rulemakings.

V. Proposed Action

We are proposing to approve a revision to the New Mexico SIP which adequately demonstrates that air pollutant emissions from sources within Albuquerque/Bernalillo County do not significantly contribute to nonattainment of the relevant NAAQS on any other state.

Information provided by New Mexico Environment Department and AQCB in the technical demonstration sufficiently demonstrates that emissions from Albuquerque/Bernalillo County do not significantly contribute to downwind nonattainment. Thus, EPA concludes that the New Mexico SIP as it pertains to Albuquerque/Bernalillo County complies with CAA section 110(a)(2)(D)(i)(I).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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, this 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 20, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–18560 Filed 7–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2010–0585; FRL–9182–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Nevada; Redesignation of Las Vegas Valley to Attainment for the Carbon Monoxide Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State of Nevada's request to redesignate to attainment the Las Vegas Valley nonattainment area for the carbon monoxide national ambient air quality standard. EPA is also proposing to approve the carbon monoxide maintenance plan and motor vehicle emissions budgets for the area, as well as certain additional revisions to the Nevada State implementation plan. These revisions include the suspension of a local wintertime cleaner burning gasoline rule, and the relaxation of a State rule governing wintertime gasoline in Clark County. EPA's proposed approval is contingent upon receipt of a supplemental submittal from the State of Nevada containing a commitment to reinstate the existing vapor pressure limit in the State wintertime gasoline rule, if necessary, and thereby to implement the related contingency measure in the maintenance plan.

DATES: Comments must be received on or before August 30, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0585, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: oconnor.karina@epa.gov.*

3. Mail or deliver: Karina O'Connor (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2010–0585. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of the comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Air Planning, Environmental Protection Agency (EPA), Region IX, 75 Hawthorne Street, San Francisco, California. 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: Karina O'Connor, EPA Region IX, (775) 833–1276, *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA. This supplementary information is organized as follows:

Table of Contents

I. Summary of Today's Proposed Action

EPA is proposing to approve the Nevada Division of Environmental Protection's (NDEP's) request to redesignate to attainment the Las Vegas Valley [1] carbon monoxide (CO) nonattainment area located within Clark County, Nevada, and related revisions to the Nevada State implementation plan (SIP). The specific SIP revision submittals that we are proposing to approve are listed in the following table:

Plan or Rule	Adoption date(s)	State of Nevada submittal date(s)
Carbon Monoxide Redesignation Request and Maintenance Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada (September 2008).	Adopted by the Clark County Board of Commissioners on September 2, 2008.	Submitted by NDEP by letter dated September 18, 2008.
Clark County Air Quality Regulations, Section 54 ("Cleaner Burning Gasoline (CBG): Wintertime Program") (Suspended).	Adopted by the Clark County Board of Commissioners on September 15, 2009, effective September 29, 2010.	Submitted by NDEP by letter dated March 26, 2010.
Nevada Administrative Code (NAC) section 590.065 (amended).	Adopted by the Nevada Board of Agriculture on December 9, 2010, effective January 28, 2010.	Submitted by NDEP by letter dated March 26, 2010.

Specifically, we are proposing to approve NDEP's maintenance plan submittal dated September 18, 2008 titled *Carbon Monoxide Redesignation Request and Maintenance Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada* (September 2008) ("Las Vegas Valley CO Maintenance Plan" or "Maintenance Plan") [2] as a revision to the Nevada SIP, and to approve NDEP's request to redesignate Las Vegas Valley to attainment for the CO NAAQS. We are proposing to approve the Las Vegas Valley CO Maintenance Plan because we find that it meets all requirements for such plans in section 175A under the Clean Air Act ("Act" or CAA), and we are proposing to approve NDEP's redesignation request for Las Vegas Valley from nonattainment to attainment because we believe that the area has met all of the criteria for redesignation under CAA section 107(d)(3)(E). The Las Vegas Valley CO Maintenance Plan includes CO motor vehicle emissions budgets (MVEBs) for years 2008, 2010, and 2020,

[1] Specifically, the Las Vegas Valley CO nonattainment area is defined by reference to State hydrographic area #212. *See* 40 CFR 81.329. The Las Vegas Valley encompasses roughly 1,500 square miles within Clark County and includes the cities of Las Vegas, North Las Vegas, and Henderson. Roughly two million people reside in Clark County, mostly within Las Vegas Valley. NDEP is the State agency under State law that is responsible for SIP matters for the State of Nevada. Within Clark County, the Clark County Board of Commissioners, acting through the Department of Air Quality and Environmental Management (DAQEM), is empowered under State law to develop air quality plans and to regulate stationary sources within the county with the exception of certain types of power plants, which lie exclusively within the jurisdiction of NDEP.

[2] The Las Vegas Valley CO Maintenance Plan consists of the main body of the plan and three appendices: Appendix A ("Wintertime Gasoline Fuel Specification Study"), Appendix B (Technical Support Document, Carbon Monoxide Modeling for the Clark County Maintenance Plan"), Appendix C ("Documentation of the Public Review Process").

and we are proposing to approve these budgets for the purposes of transportation conformity based on our conclusion that they meet the criteria for such budgets in 40 CFR 93.118(e). Final approval of the redesignation request and maintenance plan would change the legal description of the Las Vegas Valley CO nonattainment area in 40 CFR part 81 from nonattainment to attainment, and would make Federally enforceable the commitments and contingency provisions contained in the maintenance plan.

In connection with the CO Maintenance Plan, Clark County and the State of Nevada have decided to suspend or relax two gasoline-related regulations that formed part of the control strategy that has provided for attainment of the CO standard in Las Vegas Valley but that they believe are not needed for the purposes of maintaining the CO standard now that the CO standard has been attained. These are Clark County Air Quality Regulations (AQR) Section 54 ("Cleaner Burning Gasoline: Wintertime Program") (herein, referred to as the "CBG Rule"), which establishes certain wintertime gasoline specifications related to sulfur and aromatic hydrocarbons ("aromatics"), and Nevada Administrative Code (NAC) section 590.065 (herein referred to as the "Low RVP Rule"), which establishes a low Reid vapor pressure (RVP) specification for gasoline sold during the late fall and winter months in Clark County. We are proposing to approve the suspension of Clark County's CBG Rule and the relaxation of the State's Low RVP Rule because we conclude, in accordance with CAA section 110(l), that doing so would not interfere with attainment or maintenance of any of the NAAQS or any applicable requirement of the Clean Air Act.[3]

The Las Vegas Valley CO Maintenance Plan includes reinstatement of the CBG Rule and the Low RVP Rule as contingency measures, as required under CAA section 175A(d). However, while Clark County, through adoption of the maintenance plan, has committed to reinstatement of the CBG Rule in accordance with the contingency provisions of the plan, the Nevada State Department of Agriculture, which is responsible for the Low RVP Rule, has not yet made a similar commitment with respect to the Low RVP Rule. Thus, our approval of the Maintenance Plan and redesignation request is contingent upon the submittal, and EPA approval, of such a commitment as a revision to the Nevada SIP.[4]

II. Background

Carbon monoxide (CO) is a colorless, odorless gas emitted in combustion processes. In most areas where elevated CO levels are found, CO comes primarily from tailpipe emissions of cars and trucks. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity and learning ability, and with illness and death for those who already suffer from cardiovascular disease, particularly angina or peripheral vascular disease.

On April 30, 1971 (*see* 36 FR 8186), pursuant to section 109 of the Act, as amended in 1970, EPA promulgated the original national ambient air quality standards (NAAQS) for several pervasive air pollutants, including CO. 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). The primary (*i.e.,* health-based) NAAQS for CO is 9 parts per million (ppm) averaged over an 8-hour period, and 35 ppm averaged over 1 hour, neither to be exceeded more than once per year. In our 1971 rulemaking, we established identical primary and secondary NAAQS for CO but later revoked the secondary (welfare) NAAQS for CO. *See* 50 FR 37484 (September 13, 1985). The (primary) CO NAAQS established by EPA in 1971, remain in effect today. *See* 40 CFR 50.8 ("National primary ambient air quality standards for carbon monoxide").

Under section 110 of the Act, each State is required to adopt and submit to EPA a plan that provides for the implementation, maintenance, and enforcement of the NAAQS within each State. These plans are referred to as "State implementation plans" or "SIPs." Under the Clean Air Act, as amended in 1970, SIPs were required to provide for attainment of the NAAQS within 3 years after EPA approval of the plan. However, many areas of the country did not attain the NAAQS within the statutory period.

In response, Congress amended the Act in 1977 to establish a new approach, based on area designations, for attaining the NAAQS, and on March 3, 1978 (43 FR 8962), we promulgated attainment status designations for all areas within each of the States. In the 1978 rulemaking, we designated Las Vegas Valley as a "nonattainment" area for the CO NAAQS based on monitored violations of the 8-hour CO NAAQS.[5] *See* 43 FR 8962, at 9013 (March 3, 1978).

The Clean Air Act, as amended in 1977, required States to revise their SIPs by preparing, adopting and submitting attainment plans (for EPA approval) that set forth a strategy to achieve the NAAQS in designated nonattainment areas. The original statutory deadline for attainment under the 1977 Amended Act was 1982, but extensions to 1987 were allowed if certain SIP requirements were met. In response, Clark County and the State of Nevada adopted and implemented various air quality plans and programs, including a vehicle inspection and maintenance (I/M) program, to reduce CO levels in Las Vegas Valley. EPA approved these plans and programs at various times as revisions to the Nevada State implementation plan (SIP). *See* 46 FR 21758 (April 14, 1981); 47 FR 15790 (April 13, 1982); 49 FR 44208 (November 5, 1984). Despite these programs, Las Vegas Valley did not attain the CO NAAQS by the then-applicable 1987 attainment date.

The CAA was significantly amended by Congress in 1990 to establish new attainment dates and planning and control requirements for areas, like Las Vegas Valley, that had failed to attain the NAAQS under the 1977 Amendments. Under the 1990 Amended Act, Las Vegas Valley was initially classified as a "moderate" nonattainment area for CO (based on a design value of 14.4 ppm) but was subsequently reclassified as a "serious" CO nonattainment area after having failed to attain the standard by the applicable attainment date (*i.e.,* December 31, 1995) for moderate areas.

[3] We are not including subsection (7) of amended NAC 590.065 in our proposed approval because the limits in subsection (7) of the amended rule are unrelated to the vapor pressure requirement and associated CO emissions reductions, and are severable from the rest of the rule.

[4] On July 12, 2010, the Nevada Department of Agriculture initiated a 30-day comment period to solicit comment (or request a public hearing) on the draft commitment regarding implementation of the contingency measure in the Maintenance Plan related to reinstatement of the Low RVP Rule. The Department's notice of intent to solicit public comment, which includes the commitment language, has been placed in the docket for this rulemaking. We have reviewed the language of the Department's draft commitment and expect to approve it if it is ultimately submitted to us without significant modification.

[5] Thus, the CO plans previously approved by EPA for Las Vegas Valley assume that the 8-hour CO standard, rather than the 1-hour CO standard, is the controlling standard. That is, attainment of the former necessarily means attainment of the latter. The same holds true in the submitted Las Vegas Valley CO Maintenance Plan, which includes a maintenance demonstration for the 8-hour CO standard, not the 1-hour CO standard.

See 62 FR 51604 (October 2, 1997). The Las Vegas Valley area was then subject to the applicable attainment deadline for "serious" CO nonattainment areas (*i.e.,* December 31, 2000). *See* CAA section 186(a)(1).

In response to nonattainment classifications and related CAA requirements, Clark County and the State of Nevada adopted and implemented new air quality plans and programs, including a "serious" area attainment plan titled *Carbon Monoxide State Implementation Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada* (August 2000) ("2000 Las Vegas Valley CO Plan" or "2000 CO Plan"). We approved the 2000 Las Vegas Valley CO Plan in 2004. *See* 69 FR 56351 (September 21, 2004).

In connection with the 2000 Las Vegas Valley CO Plan, we approved, among other plan elements, Clark County AQR Section 54 ("Cleaner Burning Gasoline (CBG): Wintertime Program") (*i.e.,* the CBG Rule) (originally adopted by Clark County in 1999), the State's alternate "low" enhanced vehicle I/M program for Las Vegas Valley and Boulder City, the State's regulation establishing a low RVP wintertime gasoline specification for Clark County (*i.e.,* the Low RVP Rule) (originally adopted by the State Board of Agriculture in 1995), the State's alternative fuels for government fleets program, the Regional Transportation Commission of Southern Nevada's (RTC's) Transportation Control Measures/Transportation Demand Management (TCM/TDM) program, and an amended version of previously approved Clark County AQR Section 53 ("Oxygenated Gasoline Program") (originally adopted by Clark County in 1991). The 2000 Las Vegas Valley CO Plan identifies the CBG Rule, I/M program, Low RVP Rule, and the oxygenated gasoline program, along with the Federal Motor Vehicle Control Program (FMVCP), as the primary control measures providing for attainment of the CO NAAQS in Las Vegas Valley by the applicable attainment date (2000). In 2004, we also approved the 2000 CO Plan's motor vehicle emissions budgets (MVEBs) for years 2000, 2010 and 2020.[6]

[6] While important for the purposes of attaining the CO standard by the applicable attainment date (2000), the Maintenance Plan shows that the Low RVP Rule and the CBG Rule are no longer necessary for the purposes of maintaining the CO standard. The consistent, but more gradual, emissions reduction benefits of the FMVCP and natural vehicle turnover (*i.e.,* replacement of older more polluting motor vehicles with newer cleaner vehicles) allow for the relaxation of these fuel rules consistent with continued maintenance of the CO standard.

In 2005, EPA determined that the Las Vegas Valley had attained the CO NAAQS by its applicable attainment deadline of December 31, 2000 [70 FR 31353 (June 1, 2005)], and had continued to attain through 2003 [70 FR 3174, at 3177 (January 21, 2005)]. This attainment determination did not constitute redesignation to attainment, however, because it did not include consideration or approval of the additional requirements for redesignation set forth in CAA section 107(d)(3)(E), *e.g.,* a maintenance plan satisfying CAA section 175A.

In 2006, EPA approved a Las Vegas Valley CO plan titled *Carbon Monoxide State Implementation Plan Revision, Las Vegas Valley Nonattainment Area, Clark County, Nevada* (October 2005) ("2005 Las Vegas Valley CO Plan" or "2005 CO Plan"), which amended the emissions inventories, attainment demonstration, and related MVEBs from the 2000 Las Vegas Valley CO Plan in response to changes in the EPA-approved motor vehicle emission factor model and higher-than-forecast increases in population growth in Las Vegas Valley. *See* 71 FR 44587 (August 7, 2006).

EPA today is proposing to approve the State's request to redesignate the Las Vegas Valley to attainment for the CO NAAQS, and to approve the Las Vegas Valley CO Maintenance Plan. We are also proposing approval of the suspension or relaxation of two specific control measures that had previously been approved into the SIP, but that Clark County has shown are no longer needed to maintain the CO NAAQS in Las Vegas Valley: the County's CBG Rule and the State's Low RVP Rule. Our evaluation of the submittals and the redesignation request is provided in the following sections of this document.

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 the following SIP revisions: The Las Vegas Valley CO Maintenance Plan, submitted by NDEP on September 18, 2008; and the suspended or relaxed wintertime gasoline regulations, submitted by NDEP on March 26, 2010.

Both of the SIP revision submittals cited above contain 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 CO maintenance plan was published on several dates in a newspaper of general circulation within the Las Vegas area beginning on May 11, 2008. The Clark County Board of Commissioners adopted the Las Vegas Valley CO Maintenance Plan by resolution on September 2, 2008 at the close of the public hearing. Appendix C to the plan documents the public review process used by the county to adopt the plan. Following adoption, Clark County DAQEM 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.

NDEP's March 26, 2010 SIP submittal documents the public review process used by the Clark County Board of Commissioners in suspending Section 54 (*i.e.,* the CBG Rule) and by the State Board of Agriculture in relaxing the wintertime gasoline vapor pressure requirement. Specifically, NDEP's March 26, 2010 submittal documents the Clark County Board of Commissioners' September 15, 2009 public hearing on, and subsequent adoption of, Ordinance No. 3809 suspending the CBG Rule, effective September 29, 2009. Notice of Clark County DAQEM's workshop to discuss suspension of the CBG Rule was published on several dates in a newspaper of general circulation within the Las Vegas area beginning on May 17, 2009.

The March 26, 2010 SIP revision submittal also documents the State Board of Agriculture's December 9, 2009 public hearing on, and subsequent adoption of, amendments to NAC section 590.065 (LCB File No. R111–08), effective January 28, 2010, including the relaxation of the RVP wintertime gasoline limit in Clark County from 9.0 to 13.5 pounds per square inch (psi). This action on the part of the Board of Agriculture was preceded by publication on September 16, 2009 by the Nevada Department of Agriculture of a notice of a workshop to be held on October 13, 2009 to solicit comments on amendments to NAC section 590.065, and by publication on November 4, 2009 of a notice of intent to act upon a regulation.

Based on the documentation submitted with the two SIP submittals and summarized above, we find that both SIP revisions cited above satisfy 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, including plan revisions meeting the requirements of part D (*i.e.,* CAA section 171 through section 193), and part D establishes the SIP requirements for nonattainment areas. Part D is divided into six subparts; the CO-specific nonattainment SIP requirements are found in part D, subpart 3, which includes CAA sections 186 and 187.

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 Las Vegas Valley nonattainment area to attainment for the CO NAAQS based on our conclusion that all of the criteria under CAA section 107(d)(3)(E) have been satisfied. For the reasons set forth in section V.D.5 of this document, our proposed approval is contingent upon NDEP's submission of a commitment by the Nevada Department of Agriculture to reinstate the Low RVP Rule if necessary to address future violations of the CO NAAQS in Las Vegas Valley and thereby implement the related contingency measure in the Maintenance Plan.

V. Evaluation of the State's Redesignation Request for Las Vegas Valley

A. Determination That the Area Has Attained the Applicable NAAQS

CAA section 107(d)(3)(E) requires that we determine that the area has attained the NAAQS. EPA makes the determination as to whether an area's air quality is meeting the CO NAAQS based upon air quality data gathered at CO monitoring sites in the nonattainment area which have been entered into the Air Quality System (AQS) database. This data is reviewed to determine the area's air quality status in accordance with 40 CFR 50.8; EPA policy guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," dated June 18, 1990; and EPA's General Preamble at 57 FR 13535.

The 8-hour and 1-hour CO design values are used to determine attainment of CO areas, and the design values are determined by reviewing 8 quarters of data, or a total of two complete calendar years of data for an area. The 8-hour design value is computed by first finding the maximum and second maximum (non-overlapping) 8-hour values at each monitoring site for each year of the two calendar years prior to and including the attainment date. Then the higher of the "second high" values is used as the design value for the monitoring site, and the highest design value among the various CO monitoring sites represents the CO design value for the area.

The CO NAAQS requires that not more than one 8-hour average per year equals or exceeds 9.5 ppm (values below 9.5 are rounded down to 9 and are not considered exceedances). If an area has a design value that is equal to or greater than 9.5 ppm, this means that there was a monitoring site where the second highest (non-overlapping) 8-hour average was measured to be equal to or greater than 9.5 ppm in at least one of the two years being reviewed to determine attainment for the area. This indicates that there were at least two values above the NAAQS during one year at that site and thus the NAAQS for CO was not met. Conversely, an 8-hour design value of less than 9.5 ppm indicates that the area has attained the CO NAAQS. The 1-hour CO design value is computed in the same manner. An area attains the one-hour CO NAAQS if the 1-hour design value is less than 35.5 ppm.

On June 1, 2005 (70 FR 31353), we determined that the Las Vegas Valley "serious" CO nonattainment area had attained the CO NAAQS by the applicable attainment date (2000) based on complete quality-assured data showing a design value of the area (from Sunrise Acres station) for 1999–2000 of 8.2 ppm, eight-hour average, and 10.2 ppm, one-hour average. (The corresponding NAAQS are 9 ppm, eight-hour average, and 35 ppm, one-hour average.) We also found that Las Vegas Valley had continued to attain the standard through year 2003. As part of that determination, we reviewed the ambient CO monitoring network operated by Clark County DAQEM and found that it met or exceeded our requirements. *See* 70 FR 3174 (January 21, 2005).

In our proposed determination that the area had attained by its attainment deadline (2000) (70 FR 3174, January 21, 2005), we described Clark County's CO monitoring network at that time as including 7 SLAMS sites, 4 NAMS sites, and 4 special purpose sites.[7] Since our 2005 finding of attainment, Clark County has closed a number of CO monitoring sites. There are now five CO monitoring sites in Las Vegas Valley: Winterwood, East Sahara, Sunrise Acres, Orr School and J.D. Smith. All of the monitoring sites are SLAMS, and the J.D. Smith site is also a NAMS site. All sites have population exposure as their monitoring objective except Sunrise Acres, which has "highest concentration" as its monitoring objective.

While the number of CO monitoring stations has been reduced, we conclude in our Technical Systems Audit Report (February 2010) that the network currently meets or exceeds the requirements for the minimum number of CO monitoring sites. Moreover, we note that the Sunrise Acres monitoring station, which is the site at which the highest CO concentrations have historically been recorded, remains among those that continue to be operated by Clark County DAQEM.

For the purposes of this proposed rule, we reviewed complete, quality-assured monitoring data that are

[7] EPA has established ambient air quality monitoring requirements and standards for State and Local Air Monitoring Stations (SLAMS) and for National Air Monitoring Stations (NAMS). These requirements and standards provide for operating schedules, data quality assurance, and for the design and siting of CO samplers.

uploaded to our Air Quality System (AQS) database. We found that no exceedances of the CO NAAQS were recorded in Las Vegas Valley during the entire period from 2004–2009. During this period, the highest 8-hour CO concentrations were 60% of the NAAQS or less at all of the monitoring stations. Table 1 summarizes the 2nd highest 8-hour and 1-hour average CO concentrations at the various monitoring stations during the most recent two-year period. As shown in the table, the 8-hour design value for the area based on 2008–2009 data is 3.7 ppm, eight-hour average, and 4.7 ppm, 1-hour average, both of which are well below the corresponding NAAQS of 9 and 35 ppm, respectively. Preliminary data available for 2010 show that there continue to be no exceedances of the CO NAAQS in the area.

TABLE 1—SUMMARY OF LAS VEGAS VALLEY CO MONITORING DATA, 2008–2009

Monitoring site name	2nd highest 8-hour concentration (ppm)			2nd highest 1-hour concentration (ppm)		
	2008	2009	Design value	2008	2009	Design value
Winterwood	2.9	2.8	2.9	3.8	3.7	3.8
East Sahara	3.7	3.1	3.7	4.7	4.2	4.7
Sunrise Acres	3.5	2.8	3.5	4.2	4.7	4.7
Orr School	2.6	2.6	2.6	3.2	3.2	3.2
J.D. Smith	2.5	2.4	2.5	3.6	3.2	3.6
Area Design Value	8-Hour CO Design Value = 3.7 ppm (East Sahara)			1-Hour CO Design Value = 4.7 ppm (East Sahara and Sunrise Acres)		
CO NAAQS	9 ppm			35 ppm		

Based on the AQS data presented above and the positive assessment of the Clark County DAQEM ambient CO monitoring network that we made in February 2010, we propose to determine that Las Vegas Valley has attained the CO NAAQS, and thus meets the criterion for redesignation set forth in section 107(d)(3)(E)(i).

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 Las Vegas Valley with respect to CO. 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 Las Vegas Valley 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.[8]

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 Las Vegas Valley portion of the SIP. We propose to conclude that NDEP and Clark County have met all SIP requirements for Las Vegas Valley applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements). With the exception discussed below in Section V.B.2.l of this document, the SIP for Las Vegas Valley also has been approved as meeting applicable requirements under part D of Title I of the CAA.

2. Part D Requirements

a. Introduction

The requirements that apply under part D (of Title I) of the Act to "serious" CO nonattainment areas are set forth in sections 172, 176, 187, and 211. In the General Preamble, we have issued guidance describing how we will review SIPs and SIP revisions submitted under part D (of Title I) of the Act, including

[8] 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 Las Vegas Valley 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.

those containing "serious" CO nonattainment area SIP provisions. In the following paragraphs, we explain how the State has met the applicable SIP revision requirements under part D for the Las Vegas Valley CO nonattainment area or where, in the case of certain requirements, how the requirement does not apply because Las Vegas Valley has attained the CO standard.[9]

b. RFP and Attainment Demonstration

Under CAA sections 172(c)(2) and 187(a)(7), with respect to a serious CO nonattainment area, States are required to a submit a SIP revision that provides, and a demonstration that the plan as revised will provide, for attainment of the CO NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date. In 2004, in approving the 2000 Las Vegas Valley CO Plan, we approved the area's RFP demonstration under sections 172(c)(2) and 187(a)(7) and attainment demonstration under section 187(a)(7). *See* 69 FR 56351, at 56353 (September 21, 2004). Thus, the area has met the SIP requirements under CAA sections 172(c)(2) and 187(a)(7).

c. Reasonable Available Control Measures/Control Technology

Section 172(c)(1) of the Act requires States to submit a SIP revision for nonattainment areas that provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) and shall provide for attainment of the NAAQS. RACM is a more general term that can refer to stationary, area or mobile sources while RACT is a term that refers to stationary sources.

Attainment of the CO NAAQS in Las Vegas Valley relied upon the Federal Motor Vehicle Control Program and five State or local control measures: The State's vehicle I/M program, the State's Low RVP Rule, Clark County's rules (AQR sections 53 (*i.e.,* wintertime oxygenated gasoline rule) and the CBG Rule) establishing wintertime gasoline requirements related to oxygen content, sulfur content, and aromatics, and to a lesser degree, the State's Alternative Fuels for Government Fleets program, and RTC's TCM/TDM program. We have previously approved all of these State and local control measures into the Nevada SIP. Based on our 2005 determination that Las Vegas Valley had attained the CO NAAQS by the applicable attainment date (2000), we believe that no additional measures need be submitted to fulfill the RACM/RACT requirement of CAA section 172(c)(1) in the Las Vegas Valley CO nonattainment area.

d. Emissions Inventory

Sections 172(c)(3) and 187(a)(1) of the Act require States to submit a comprehensive, accurate, current inventory of actual CO emissions for year 1990 from all sources within the nonattainment area. The inventory is to address actual CO emissions during the peak CO season for the area, 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. Section 187(a)(5) requires States to submit periodic (every three years) updates to the inventories required under section 187(a)(1).

We interpret the Act such that the emission inventory requirements of section 172(a)(3), 187(a)(1), and 187(a)(5) 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 Las Vegas Valley CO Maintenance Plan and related CO emission inventories satisfies the requirements of sections 172(a)(3), 187(a)(1), and 187(a)(5) for the purposes of redesignation of Las Vegas Valley to attainment for the CO NAAQS. *See* section V.D herein for details concerning the CO emission inventories in the Maintenance Plan.

e. Permits for New and Modified Major Stationary Sources

Under section 172(c)(5), the CAA requires States 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."

In 2004 (69 FR 54006, September 7, 2004), we approved Clark County's NSR rules as meeting the requirements of section 172(c)(5). *See* our proposed rule at 69 FR 31056, at 31059 (June 2, 2004) for details concerning how Clark County's NSR rules comply with CAA requirements for CO nonattainment areas. We have also made a finding under section 187(c)(1) that stationary sources do not contribute significantly to ambient CO levels in the Las Vegas Valley CO nonattainment area. *See* at 69 FR 56351, at 56353 (September 21, 2004).

For certain types of power plants in Clark County, NDEP rather than Clark County has the authority to issue air pollution permits under State law. In 2004, we approved a State rule (NAC section 445B.22083) that prohibits new power plants or major modification to existing power plants under State jurisdiction within the Las Vegas Valley nonattainment area. *See* 69 FR 31056, 31059 (June 2, 2004) and 69 FR 54006, at 54017 (September 7, 2004). In 2008, we approved an amended version of NAC section 445B.22083. *See* 73 FR 20536 (April 16, 2008).

Based on our previous approvals of Clark County's NSR rules and NAC section 445B.22083, we find that the State has met the requirements of CAA section 172(c)(5).

f. Contingency Provisions

Sections 172(c)(9) and 187(a)(3) of the Act require a State to submit contingency measures that will be implemented if an area fails to make reasonable further progress (RFP), if VMT estimates in the attainment plan are exceeded, or if the area fails to attain by the applicable attainment date. In 2005, based on our determination that Las Vegas Valley had attained the CO NAAQS by the applicable attainment date, we found that the CAA's requirement for the SIP to provide for CO contingency provisions under CAA sections 172(c)(9) and 187(a)(3) no longer applies to Las Vegas Valley. *See* 70 FR 31353 (June 1, 2005).

g. Conformity Requirements

Under section 176(c) of the Clean Air Act Amendments of 1990, States were required to establish criteria and

[9] 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) and 172(c)(8) (equivalent techniques). Thus, these provisions are not relevant to the request for redesignation for the Las Vegas Valley CO nonattainment area.

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).

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. 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 Las Vegas Valley 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.

h. VMT Forecasts and Annual Updates

Under CAA section 187(a)(2)(A), States are required to submit a SIP revision for serious CO nonattainment areas that contains a forecast of VMT in the nonattainment area concerned for each year before the year in which the plan projects the CO standard will be attained, and must provide for annual updates of the VMT forecasts. In 2004, we approved VMT forecasts and the responsible agencies' commitments to revise and replace the VMT projections as needed and to monitor actual VMT levels in the future, under section 187(a)(2)(A) of the Act (*see* RTC's Resolution No. 149, approved into the SIP in 2004). Thus, we find that the SIP requirement for VMT forecasts and annual updates for Las Vegas Valley under CAA section 187(a)(2)(A) has been met.

i. Vehicle Inspection and Maintenance Program

Under section 187(a)(6), the CAA requires States with serious CO nonattainment areas to submit a SIP revision that provides for a vehicle I/M program that meets applicable Federal I/M requirements, including the "enhanced" I/M performance standard. In 2004, we approved the "alternate low" enhanced vehicle I/M program for Las Vegas Valley and Boulder City as meeting the requirements of CAA section 187(a)(6) and EPA's I/M Regulation (40 CFR part 52, subpart S ("Inspection/Maintenance Program Requirements"). *See* at 69 FR 56351, at 56353 (September 21, 2004). Since then, we have approved an update to the statutory and regulatory elements of the vehicle I/M program. *See* 73 FR 38124, at 38127 (footnote 31), and 74 FR 3975 (January 22, 2009). Thus, the vehicle I/M SIP requirement for Las Vegas Valley under CAA section 187(a)(6) has been met.

j. TCMs To Offset VMT-Related Emissions Increases and To Provide for RFP

Section 187(b)(2) of the Clean Air Act applies the requirements of section 182(d)(1) to serious CO nonattainment areas with the purpose of reducing CO emissions rather than emissions of volatile organic compounds (VOC). Specifically, section 187(b)(2) requires States with a serious CO nonattainment area to submit a SIP revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures (collectively, "TCMs") to offset any growth in CO emissions from growth in VMT or numbers of vehicle trips in such area and to reduce motor vehicle CO emissions as necessary, in combination with other emission reductions requirements, to provide for RFP. As noted above, we approved the CO RFP demonstration for Las Vegas Valley as part of our approval of the Las Vegas Valley 2000 CO Plan.

EPA has concluded that States are not required to submit such measures if the SIP includes a demonstration that, despite growth in projected VMT, CO emissions will decline each year through the attainment year. *See, e.g.,* EPA proposed approval of California's redesignation request for the South Coast Air Basin at 72 FR 6986 (February 14, 2007); finalized at 72 FR 26718 (May 11, 2007). In the General Preamble, we state that: "If projected total motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before, given the control measures in the SIP, the VMT offset requirement is satisfied." General Preamble at 57 FR 13522. For CO areas, the General Preamble principle quoted above applies to motor vehicle emissions of CO during the CO season.

The Las Vegas Valley 2000 CO Plan includes CO emissions inventories for a base year (1996) and the attainment year (2000) that show a sharp decline in CO motor vehicle emissions during the 1996 through 2000 period. *See* page 6–3 of the Las Vegas Valley 2000 CO Plan. We approved the emissions inventories in 2004 (69 FR 56351, September 21, 2004). Thus, no TCMs for Las Vegas Valley were required to prevent an increase in emissions associated with a growth in VMT or vehicle trips, since emissions decline each year through the attainment year despite increases in VMT and vehicle trips. Nonetheless, the State did submit a TCM/TDM program (RTC's CAT MATCH commuter incentive program) as part of the Las Vegas Valley 2000 CO Plan. *See* 2000 CO Plan, appendix D, sections 2 and 9. In 2004, we approved the TCM/TDM program under section 187(b)(2) and our voluntary mobile source emissions reduction program policy. *See* 69 FR 56351, at 56353 (September 21, 2004).

Based on our 2004 approval of the emissions inventories and RFP demonstration from the Las Vegas Valley 2000 CO Plan that show that no additional TCMs are required to offset VMT-related emissions increases or to provide RFP, we find that the TCM-related requirements of CAA section 187(b)(2) for Las Vegas Valley have been met.

k. Oxygenated Gasoline Program

Under sections 187(b)(3) and 211(m), the CAA requires States with serious CO nonattainment areas to submit a SIP revision that provides for an oxygenated gasoline program. Such a program must require gasoline to be blended to contain not less than 2.7% oxygen by weight during the period of the year during which CO levels are elevated (*i.e.,* the winter months). In 1999, we approved Clark County's oxygenated gasoline rule, Section 53 ("Oxygenated

Gasoline Program") as meeting the requirements under sections 187(b)(3) and 211(m). *See* 64 FR 29573 (June 2, 1999). Clark County AQR Section 53 requires gasoline sold in Las Vegas Valley, Eldorado Valley, Ivanpah Valley, and the Boulder City limits to be blended to contain 3.5% oxygen by weight each year from October 1st through March 31st. In 2004, we approved administrative changes to the rule. *See* 69 FR 56351, at 56353 (September 21, 2004). Thus, the oxygenated gasoline requirement under CAA sections 187(b)(3) and 211(m) has been met.

l. Clean Data Policy and CO Milestone Requirement

CAA section 187(d) ("CO Milestone") applies to serious CO areas and requires: (1) The State to submit a demonstration that the area has achieved certain specific annual emission reductions; (2) EPA to determine whether the demonstration is adequate; and (3) the State to submit a plan revision, if EPA notifies the State that the CO milestone demonstration is inadequate, that implements CAA section 182(g)(4) economic incentive and transportation control programs sufficient to achieve the specific annual emission reductions by the attainment date. EPA has not approved a CO Milestone demonstration for Las Vegas Valley, but, as explained below, the CO Milestone requirement is linked to the RFP requirement in section 187(a)(7), and because RFP has no meaning when the area has attained the standard, the CO Milestone requirement similarly is no longer meaningful and no corresponding SIP revision is required to be approved for purposes of redesignation.

In some designated nonattainment areas, monitored data demonstrates that the NAAQS have already been achieved. Based on its interpretation of the Act, EPA has determined that certain SIP submission requirements of part D, subparts 1, 2, and 4 of the Act do not apply for purposes of evaluating redesignation requests and therefore we do not require certain submissions for an area that has attained the NAAQS. These include RFP requirements, attainment demonstrations and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

The Clean Data Policy is the subject of two EPA memoranda setting forth our interpretation of the provisions of the Act as they apply to areas that have attained the relevant NAAQS. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2 (Phase 2 Final Rule). *See* discussion in the preamble to the rule at 70 FR 71645–71646 (November 29, 2005). We have also applied the same approach to the interpretation of the provisions of subparts 1 and 4 applicable to particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). For detailed discussions of this interpretation with respect to the CAA's PM–10 requirements for RFP, attainment demonstrations, and contingency measures, *see* 71 FR 6352, 6354 (February 8, 2006); 71 FR 13021, 13024 (March 14, 2006); 71 FR 27440, 27443–27444 (May 11, 2006); 71 FR 40952, 40954 (July 19, 2006); and 71 FR 63642 (October 30, 2006).

EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" (Seitz memo), and our December 14, 2004 memorandum from Stephen D. Page entitled "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" (Page memo), are equally pertinent to the interpretation of provisions of subparts 1 and 3 applicable to CO. EPA's interpretation of how the provisions of the Act apply to areas with "clean data" is not logically limited to ozone, particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ("fine particles" or PM–2.5), and PM–10, because the rationale is not dependent upon the type of pollutant. Our interpretation that an area that is attaining the standard is relieved of obligations to demonstrate RFP and to provide an attainment demonstration and contingency measures pursuant to part D of the CAA, pertains whether the standard is CO, 1-hour ozone, 8-hour ozone, PM–2.5, or PM–10.

The reasons for relieving an area that has attained the relevant standard of certain part D, subpart 1 and 2 (sections 171 and 172) obligations, applies equally as well to part D, subpart 3, which contains specific attainment demonstration and RFP provisions for CO nonattainment areas. As we have explained in the 8-hour ozone Phase 2 Final Rule, our ozone and PM–2.5 clean data memoranda, and our approval of PM–10 SIPs, EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (*i.e.,* attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured air quality monitoring data for ozone and PM, and two consecutive years for CO). A number of U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying its interpretation of subparts 1 and 2 with respect to ozone. *Latino Issues Forum* v. *EPA,* Nos. 06–75831 and 08–71239 (9th Cir. March 2, 2009) (memorandum opinion); *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion). It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

> [R]equirements for RFP will not apply in evaluating a request for redesignation to attainment, since, at a minimum, the air quality data for the area must show that the area has already attained. A showing that the State will make RFP towards attainment will, therefore, have no meaning at that point. 57 FR at 13564.

See also page 6 of the Calcagni memo. EPA believes the same reasoning applies to the CO RFP provisions of part D, subpart 3.

With respect to RFP, CAA section 171(1) states that, for purposes of part D of title I, RFP:

> means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

The stated purpose of RFP is to ensure attainment by the applicable attainment date, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), the PM–10 specific RFP requirements of section 189(c)(1), or the CO-specific RFP requirements of section 187(a)(7).

Section 187(a)(7) states that the SIP for moderate CO areas with a design value greater than 12.7 ppm must:

> provide a demonstration that the plan as revised will provide for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

This same requirement also applies to serious CO areas in accordance with CAA section 187(b)(1).

It is clear that once the area has attained the standard, no further specific annual emission reductions are necessary or meaningful. With respect to CO areas, this interpretation is supported by language in section 187(d)(3), which mandates that a State that fails to achieve the milestone must submit a plan that assures that the State achieves the "specific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date." Section 187(d)(3) assumes that the requirement to submit and achieve the milestone does not continue after attainment of the NAAQS.

If an area has in fact attained the standard, the stated purpose of the RFP and specific annual emissions reductions requirements will have already been fulfilled.[10] The specific annual emission reductions required are only those necessary to attain the standard by the attainment date. EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 memorandum with respect to the requirements of sections 182(b) and (c). We are proposing to extend that interpretation to the specific provisions of part D, subpart 3.

As noted above, CAA section 187(d), CO Milestone, applies to serious CO areas and requires the State to submit a demonstration that the area has achieved certain specific annual emission reductions. EPA interprets this provision consistent with its interpretation of section 182(g) in subpart 2. *See* May 10, 1995 Seitz Memorandum at page 5. There, EPA included in its identification of SIP submission requirements linked with attainment and RFP requirements the "Section 182(g) requirements concerning milestones that are based on the section 182(b)(1) and 182(c)(2)(B) and (C) submissions." In Subpart 3, similarly, milestone requirements are based on the section 187(a)(7) specific annual emission reduction requirements.

Thus, while Las Vegas Valley does not have an approved SIP with respect to the CO Milestone demonstration, we believe that, for the reasons set forth here and established in our prior "clean data" memoranda and rulemakings, a CO nonattainment area that has "clean data" should be relieved of the part D, subpart 3 obligation to provide the CAA section 187(d) CO milestone demonstration. Based on our 2005 determination that Las Vegas Valley attained the CO NAAQS by the applicable attainment date, and the above detailed rationale, we conclude that the requirement for a CO milestone demonstration under section 187(d) no longer applies to Las Vegas Valley.

3. Conclusion With Respect to Section 110 and Part D Requirements

Based on our evaluation of the various SIP requirements and submittals discussed above, we propose to find that the State has a fully approved SIP for section 110 and part D requirements applicable for purposes of redesignation of Las Vegas Valley for the CO NAAQS, and that the criteria for redesignation in section 107(d)(3)(E)(ii) and (v) are met.

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. If EPA makes such a determination, then the criterion is satisfied.

The 2000 and 2005 Las Vegas Valley CO plans credit the following control measures in demonstrating attainment of the CO NAAQS in Las Vegas Valley: the Federal Motor Vehicle Control Program; the State's vehicle I/M program; the State's Low RVP Rule (NAC section 590.065); Clark County's wintertime gasoline requirements, including Clark County AQR Section 53 ("Oxygenated Gasoline Program") and the CBG Rule; and to a lesser extent, the State's Alternative Fuels for Government Fleets Program and RTC's voluntary TCM/TDM program. All of the State and local control measures listed above have been approved into the SIP and are thus Federally enforceable.

The Federal Motor Vehicle Control Program has 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 emissions reductions from the Federal Motor Vehicle Control Program 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. The State and local control measures further reduce CO emissions from on-road motor vehicles, the single largest source category in the CO emissions inventory for Las Vegas Valley.

A rough sense of the effectiveness of the control measures to reduce CO emissions can be gained by a comparison between area-wide CO emissions in 1996 (a nonattainment year) with those in 2006 (an attainment year). In 1996, area-wide CO emissions in Las Vegas Valley were estimated to be approximately 662 tons per day (average winter weekday), and in 2006, despite an increase in population and VMT of approximately 90% and 70%, respectively, area-wide CO emissions dropped approximately 10% (to 581 tons per day average winter weekday).[11]

With respect to permanence and enforceability, none of the State or local control measures relied upon for attainment have sunset clauses, and all would continue to be implemented under the Las Vegas Valley CO Maintenance Plan, with the exception of the State's Low RVP Rule, and the County's CBG Rule.[12] For the reasons set forth in section VI of this document, we are proposing to approve the suspension or relaxation of these two control measures because, among other reasons, the maintenance demonstration in the Las Vegas Valley CO Maintenance

[10] For PM–10 areas, we have concluded that it is a distinction without a difference that section 189(c)(1) speaks of the PM–10 nonattainment area RFP requirement as one to be achieved until an area is "redesignated as attainment", as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone and CO nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2) for ozone and 187(a)(7) for CO, which refer to the RFP requirements as applying until the "attainment date", since, section 189(c)(1) defines RFP by reference to section 171(l) of the Act. Reference to section 171(l) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2) and the CO-specific requirements of section 187(a)(7), the PM-specific requirements may only be required for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date. 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(l), to be a requirement that no longer applies once the standard has been attained.

[11] *See* tables 3–2 and 3–12 from the 2005 CO Plan for estimates of population, VMT, and area-wide CO emissions.

[12] The CO Maintenance Plan also lists the State's Alternative Fuels for Government Fleets Program and RTC's TCM/TDM program as contingency measures, meaning that the plan takes no credit for the measures in its maintenance demonstration. However, the State has not requested rescission, suspension, or relaxation of these two control measures and thus they will remain Federally enforceable control measures under the CAA until EPA approves such a request as a revision to the Nevada SIP.

Plan shows that they are not necessary to maintain the CO standard, at least through 2020. Moreover, as required under CAA section 175A(d), Clark County has committed to reinstating the CBG Rule as a contingency measure if needed to address any violations of the CO standard that might occur after redesignation to attainment. The Nevada Department of Agriculture has not yet made the commitment to seek reinstatement of the Low RVP Rule, and thus our proposed approval of the relaxation of the Low RVP Rule is contingent upon submittal of the necessary commitment. The commitments to reinstatement of the wintertime gasoline requirements by Clark County and the Nevada Department of Agriculture, once approved, will become Federally enforceable under the CAA.

With respect to the connection between the emissions reductions and the improvement in air quality, the Las Vegas Valley CO Maintenance Plan provides a demonstration that the air quality improvement in Las Vegas Valley, that resulted in attainment of the CO NAAQS by 2000 and continued attainment since then, is due to emission reductions from implementation of the control measures discussed above and is not the result of a local economic downturn or unusual or extreme weather patterns. The demonstration shows that from 1990 to 2007, despite increases in population, employment growth, increases in vehicle miles traveled (VMT), and strong economic conditions, CO levels decreased. The demonstration also examined wintertime meteorological data for the years 1998 through 2007 to determine if favorable meteorology influenced CO levels. The data showed that only a few periods had favorable meteorology. *See* pages 5–1 through 5–10 of the Las Vegas Valley CO Maintenance Plan.

Thus, we find that the improvement in CO air quality in Las Vegas Valley is the result of permanent and enforceable emissions reductions from a combination of the Federal Motor Vehicle Control Program 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 Las Vegas Valley CO Maintenance Plan because we believe that it meets the requirements of CAA section 175A.

1. Attainment Inventory

The plan must contain an attainment year emissions inventory to identify a level of emissions in the area that is sufficient to attain the CO NAAQS. This inventory is to 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 should also be based on actual "CO season data" (*i.e.,* wintertime) emissions for an attainment year.

In this case, we have already approved an "attainment year" emissions inventory in that we approved the 2006 emissions inventory contained in the 2005 CO plan. The emissions inventories in the Las Vegas Valley CO Maintenance Plan represent updates to the previously approved emissions inventories in the 2005 CO Plan. As with the previous plan, the emission inventories in the Las Vegas Valley CO Maintenance are comprehensive, including emissions from stationary point sources, area sources, nonroad mobile sources, and on-road mobile sources, and represent CO season data (weekday in December). As was the case with the inventories in the 2000 and 2005 CO attainment plans for Las Vegas Valley, the CO inventories in the Maintenance Plan are not used directly to demonstrate maintenance of the CO standard, but they reflect the same methods, factors, and assumptions used to develop the CO emission rates used for the dispersion modeling analysis which provides the basis for the maintenance demonstration.

As noted in our proposed approval of the 2005 CO Plan, the 2005 CO Plan provided a comprehensive revision to the base year (1996) emissions inventory and future year emissions projections reflecting updated underlying data, such as population and VMT forecasts, and updated methods, such as MOBILE6.2 and NONROAD2004. The 2005 CO Plan presented an emissions inventory for years 2006, 2010, 2015, 2020, and 2030. The Las Vegas Valley CO Maintenance Plan presents emissions inventories for 2008, 2010, and 2020 that were developed using similar emissions calculations procedures, models, and assumptions as were used for the 2005 CO Plan (and described in detail in our proposed approval of the 2005 CO Plan at 71 FR 26910, at 26913–26915, May 9, 2006), but that were revised to reflect use of:

- Updated population and vehicle activity projections developed by the Regional Transportation Commission (RTC) (from RTC's FY2006–2030 Regional Transportation Plan, approved by RTC in October 2006);
- Updated TransCAD travel demand model output from RTC;
- Revised wintertime gasoline properties that assume relaxation of the RVP limit from 9.0 psi to 13.5 psi, and suspension of the County's CBG Rule (*i.e.,* suspension of the local sulfur content and aromatic hydrocarbon limits);[13]
- An updated emissions factor model (NONROAD2005, Core Model Version 2005a, February 2006) to estimate emissions for the nonroad source category; and
- Updated emissions information for Nellis Air Force Base.

In addition, the emissions projections in the Las Vegas Valley CO Maintenance Plan take no credit for the RTC's TCM program or the State's alternative fuels for government vehicles program. More detailed descriptions of the 1996 base year inventory, the 2008 projected inventory, and the 2010 and 2020 projected inventory are documented in the Las Vegas Valley CO Maintenance Plan on pages 7–2 through 7–8, and in the plan's Technical Support Document (attached to the plan as appendix B).

We have summarized the emissions projections in table 2, below. As shown

[13] The revised wintertime gasoline specifications were used in developing the emissions inventories in the Maintenance Plan to calculate CO emissions from both on-road and nonroad gasoline-powered vehicles.

in table 2, on-road mobile sources would continue to dominate CO emissions within the nonattainment area through the initial maintenance period (*i.e.,* 10 years beyond redesignation). The 2005 CO Plan estimated on-road CO emissions at approximately 441 tons per day (*see* table 3–12 of the 2005 plan) for year 2006, and the increase in CO emissions from on-road mobile sources for 2008, 2010, and 2020 as shown in table 2 (relative to 2006) reflects the change in wintertime gasoline specifications, as described above. The change in wintertime gasoline specifications has not yet occurred, and will not occur until EPA approves the suspension/relaxation of the State and local gasoline rules, as proposed herein, thus, the emissions projections shown in table 2 below overestimate emissions that actually occurred in year 2008. Aggregate emissions of CO are expected to hold steady, or to increase slightly, over the course of the initial maintenance period.

TABLE 2—SUMMARY OF CO EMISSIONS IN TONS PER DAY

[For a weekday in December]

	2008	2010	2020
Point sources	15.8	15.8	15.8
Area sources	13.9	14.7	18.6
Aviation	39.7	42.2	53.5
Railway	0.3	0.3	0.4
Non-road mobile sources	57.7	60.8	71.2
On-road mobile sources	579.3	579.7	574.4
Total	706.7	713.5	733.9

Source: See Las Vegas Valley CO Maintenance Plan, Table 7–3.

Based on our review and prior approval of the emissions inventories (and related documentation) from the 2005 CO plan, and our review of the changes to the earlier-approved inventories, we find that the 2006 emission inventory from the 2005 CO Plan suffices as an attainment inventory for Las Vegas Valley, and that the emissions inventories in the Maintenance Plan reflect the latest planning assumptions and emissions models and provide a comprehensive and reasonably accurate forecast of CO emissions in Las Vegas Valley for years 2010 and 2020. As described in the next section in this document, dispersion modeling results derived from the same emissions methods, factors and assumptions used to develop the inventories provide the basis for the demonstration of maintenance of the CO NAAQS through 2020.

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 CO 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. Because the attainment demonstration for Las Vegas Valley in the 2000 CO Plan, and revised in the 2005 CO Plan, relied upon modeling techniques, the CO Maintenance Plan also relies on modeling techniques to demonstrate maintenance of the standard through the initial maintenance period.

The Las Vegas Valley CO Maintenance Plan builds upon, and updates, previous modeling efforts conducted, most recently, in support of attainment demonstration in the 2005 CO Plan. Like the previous approved plan, the maintenance plan includes both area-wide modeling analysis and micro-scale modeling analyses at heavily-traveled intersections and local airports. As before, area-wide analysis, was conducted using the Urban Airshed Model (UAM), and the micro-scale analyses were conducted using CAL3QHC for local intersections, and the Emissions Dispersion Modeling System (EDMS) for the local airports. Generally, the micro-scale analyses combine the results of UAM modeling with those using either CAL3QHC (for intersections) or EDMS (for airports) to generate worst-case maximum CO concentrations in the various analysis years. The maintenance demonstration is discussed on pages 7–6 through 7–14 of the Maintenance Plan, and at more length in appendix B to the plan.

The Maintenance Plan provides an area-wide UAM-based modeling demonstration of maintenance from year 2008 through year 2020 using December 8–9, 1996 episode conditions (which is the same episode used in the 2000 and 2005 CO plans) to determine peak CO concentrations. The UAM modeling for the Maintenance Plan uses updated emission inventories (*see* table 2, above) that reflect continued implementation of those control measures that are being retained for CO maintenance purposes, including the State's vehicle I/M program and the county's wintertime oxygenated gasoline program. The concentration estimates are shown in table 3, below. The estimates in table 3 do not include any CO emissions reductions from those measures in the maintenance plan that are identified as contingency measures, such as the State's Low RVP Rule and the County's CBG Rule.

In the area-wide modeling demonstration, spatial patterns of predicted 8-hour CO are similar to those predicted by previous modeling in the 2005 CO plan. While the CO concentrations estimated for the Maintenance Plan are higher than those estimated in previous modeling completed for the 2005 CO Plan (due to the suspended/relaxed gasoline requirements assumed for the maintenance plan), they are below the 8-hour CO standard of 9 ppm and decrease over time. Also, as in previous modeling, the area-wide impact of McCarran Airport increases over time with peak values increasing around the airport due to growth in airport activities.

TABLE 3—LAS VEGAS VALLEY CO MAINTENANCE PLAN AREA-WIDE MODELING RESULTS

[Peak 8-hour UAM concentrations]

Year	Concentration (ppm)
2008	8.8
2010	8.5
2020	7.7

Source: Table 7–4 of the Las Vegas Valley CO Maintenance Plan.

As noted above, in addition to the area-wide modeling effort, two micro-scale models, CAL3QHC and EDMS, were used to predict maximum CO concentrations at potential hot spot receptors at heavily traveled intersections and at local area airports. CAL3QHC is used to predict the micro-scale impacts of vehicles operating at congested intersections. Vehicles operating under congested conditions spend more time in idle mode that can contribute to high levels of CO near the roadways. As in the 2005 CO plan, micro-scale modeling was completed for three intersections (1) Eastern Avenue/Charleston Blvd., (2) Eastern Avenue/Fremont Street, and (3) Fremont Street/Charleston Blvd. These three intersections comprise the "5 points" area, which is near the Sunrise Acres CO monitoring station. Traffic data from the 2005 CO Plan were scaled based on updated TransCAD transportation modeling outputs and combined with emission factors from MOBILE6.2 and worst-case meteorological data to predict local hotspot concentrations. These hourly results from the micro-scale model were then combined with hourly concentrations from the background UAM grid cell to compute maximum running 8-hour concentrations. The combined results from CAL3QHC and UAM are shown in table 4, below.

TABLE 4—LAS VEGAS VALLEY CO MAINTENANCE PLAN MAXIMUM PREDICTED COMBINED MODELING RESULTS AT SELECTED INTERSECTIONS

[Peak 8-hour CO concentrations]

Intersection	Year		
	2008	2010	2020
Eastern Ave./Charleston Blvd.	8.1	7.7	6.9
Eastern Ave./Fremont St.	7.7	7.4	6.7
Fremont St./Charleston Blvd.	7.0	6.7	6.0

Source: Table 3–2 in appendix B to the Las Vegas Valley CO Maintenance Plan.

To model the impact of airport sources, EDMS was used again as in the 2005 CO Plan. This model was developed for evaluating the specific emission sources typically located at airports. The hotspot results from EDMS were combined with the results of the UAM analysis to predict the concentrations at receptors around the airports. The Maintenance Plan presents the results of the combined UAM and EDMS models for all the future years in table 3–3 of appendix B. No values were modeled above the 9.0 ppm CO standard at any publicly accessible receptor location. The peak combined concentration at McCarran International Airport for future years is 8.9 ppm for 2020.

Lastly, UAM was used to identify a safety margin [14] to be included in the on-road motor vehicle emissions budgets to facilitate future transportation conformity determinations for CO during the initial maintenance period. *See* section V.D.7 of this document for EPA's review and proposed approval of the budgets in the Las Vegas Valley CO Maintenance Plan.

To identify a safety margin consistent with maintenance of the CO standard through the initial maintenance period, the maintenance plan scaled up the on-road motor vehicle emissions initially estimated and used for concentration modeling purposes (*see* table 2 above) over the entire modeling domain to the point at which the peak 8-hour CO concentration reached 8.9 ppm in 2008, 2010, and 2020. The on-road motor vehicle emissions outside the central urban sub-domain were then increased by an additional 60% in each year to reach a maximum peak 8-hour CO concentration of just under 9.0 ppm in the peak UAM grid cell, at peak UAM plus CAL3QHC receptor, or at the peak UAM plus EDMS receptor. *See* pages 3–11 through 3–16 of appendix B to the Maintenance Plan.

The target CO concentration was reached at the point where on-road motor vehicle emissions were increased to 658 tpd (13% higher than baseline 2008 on-road emissions), 686 tpd (18% higher), and 704 tpd (23% higher), in 2008, 2010, and 2020, respectively. *See* table 3–5 of appendix B to the Maintenance Plan. The corresponding peak 8-hour modeled concentrations (assuming this higher level of on-road motor vehicle emissions) ranged from 8.87 ppm in 2008 to 8.98 ppm in 2020. The 2020 value reflects microscale analysis (combining UAM plus EDMS) for a receptor at McCarron Airport. We find this procedure to be a reasonable means to identify an acceptable safety margin for CO emissions in Las Vegas Valley.

Based on our review of the documentation provided in the CO maintenance plan as summarized above, we find that the revised modeling results are consistent with the underlying emission estimates and reflect reasonable methods and assumptions. Further, we find that the revised modeling results demonstrate continued maintenance of the CO NAAQS in Las Vegas Valley through 2020.

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, CO is currently monitored by Clark County DAQEM at five stations within Las Vegas Valley. In the Las Vegas Valley CO Maintenance Plan (*see* page 7–15 of the plan), Clark County DAQEM indicates its intention to continue operation of an air quality monitoring network consistent with EPA's monitoring requirements in 40 CFR part 58 ("Ambient Air Quality Surveillance") to verify continued attainment of the CO NAAQS within Las Vegas Valley. The Las Vegas Valley CO Maintenance Plan also states that, in addition, Clark County DAQEM's CO monitoring network will be reviewed annually pursuant to 40 CFR 58.10 to determine

[14] The term "safety margin" refers to the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance. *See* 40 CFR 93.101.

whether the system continues to meet the monitoring objectives in 40 CFR part 58, appendix D. We find the County's commitment for continued ambient CO monitoring as set forth in the Las Vegas Valley CO Maintenance Plan to be acceptable.

4. Verification of Continued Attainment

NDEP, the State Board of Agriculture, and the Clark County Board of County Commissioners have the legal authority to implement and enforce the requirements of the Las Vegas Valley CO Maintenance Plan. This includes the authority to adopt, implement and enforce any emission control contingency measures determined to be necessary to correct CO NAAQS violations. To verify continued attainment, Clark County DAQEM commits in the Maintenance Plan to the continued operation of a CO monitoring network that meets EPA monitoring requirements, and also to conduct studies to determine whether additional or re-sited CO monitors are necessary in response to measured changes in mobile source parameters (*e.g.,* VMT, fleet mix). *See* page 7–15 of the Las Vegas Valley CO Maintenance Plan. This is acceptable.

5. Contingency Provisions

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

Under section 175A(d), contingency measures identified in the contingency plan do not have to be fully adopted at the time of redesignation. However, the contingency plan is 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.

The Las Vegas Valley CO Maintenance Plan identifies four specific contingency measures: RTC's TDM/TCM program, the State's Alternative Fuels for Government Fleets Program, Clark County's CBG Rule, and the State's Low RVP Rule. All of these measures have been approved by EPA into the SIP and are currently in effect. The first two measures would remain in effect but are identified as "contingency measures" in the Maintenance Plan because the maintenance demonstration takes no emissions credit for these programs. EPA has concluded that contingency measures need not be new measures that would be triggered by a violation, but may consist of early implementation of measures that provide surplus reductions beyond those needed for attainment or maintenance. *See* "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas," memorandum from G.T. Helms to EPA Air Branch Chiefs, August 13, 1993. Identification of RTC's TDM/TCM program and the State's Alternative Fuels for Government Fleets Program as contingency measures in the Las Vegas Valley CO Maintenance Plan is acceptable because, based on the rationale presented above, we believe that the Maintenance Plan adequately demonstrates maintenance of the CO NAAQS without taking any credit for these two measures.

With respect to the Clark County's CBG Rule and the State Board of Agriculture's Low RVP Rule, we are proposing to approve the suspension of the former, and the relaxation of the latter, in this document. As noted above, contingency 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. In this instance, Clark County's CBG Rule and the State's Low RVP Rule are two measures that were contained in the SIP prior to redesignation and thus must be included as contingency measures in the maintenance plan. The Maintenance Plan does in fact list both measures as contingency measures (*see* page 5–8 of the Maintenance Plan), and we believe that, by adopting the Las Vegas Valley CO Maintenance Plan, Clark County has adequately committed to reinstate the suspended fuels program, if necessary in light of a monitored violation of the CO NAAQS, and thereby implement the related contingency measure. The State Department of Agriculture has yet to specifically commit to seek reinstatement by the Board of Agriculture of the Low RVP Rule if needed to remedy future CO NAAQS violations in Las Vegas Valley. Based on our discussions with Clark County, NDEP and the Department of Agriculture, however, we expect that such a commitment from the Department of Agriculture will be forthcoming in the near future, and we will not finalize our proposed approval of the Maintenance Plan and redesignation request unless and until we receive and approve the State's submittal of this commitment as a revision to the Nevada SIP.

The contingency provisions of the Las Vegas Valley CO Maintenance Plan (*see* pages 7–15 and 7–16 of the plan) are triggered upon the occurrence of an exceedance of the 8-hour CO standard (*i.e.,* a monitored level of 9.5 ppm or greater) at any of the monitoring stations in the area. Upon such an occurrence, Clark County DAQEM will review and verify the monitoring data within three months, and recommend contingency measures within six months. The types of contingency measures envisioned under these circumstances would be local, voluntary measures.

However, if a second exceedance occurs at the same monitoring site within a consecutive two-year period, DAQEM will make a recommendation to the Clark County Board of County Commissioners (within six months of the second exceedance) from among those contingency measures specifically listed in the Maintenance Plan, as described above, including reinstatement of Clark County's CBG Rule and reinstatement of the State's Low RVP Rule. The Maintenance Plan would not require implementation of these contingency measures unless the area experiences a violation of the 8-hour CO NAAQS (*i.e.* a second exceedance at the same site during the same calendar year). The Maintenance Plan states that the contingency measures will be implemented six to 12 months after approval by the Clark County Board of Commissioners, depending on the time needed to put the measures in place. *See* page 7–16 of the Maintenance Plan.

Upon our review of the plan, as summarized above, we find that the contingency provisions of the 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, with the exception of the absence of a commitment by the State Department of

Agriculture to seek reinstatement by the Board of Agriculture of the Low RVP Rule, the contingency provisions of the Las Vegas Valley CO Maintenance Plan are adequate to ensure prompt correction of a violation and therefore comply with section 175A(d) of the Act. We will not take final action to approve the Maintenance Plan until we receive the commitment by the State Department of Agriculture to seek reinstatement of the Low RVP Rule if needed to remedy a future CO NAAQS violation in Las Vegas Valley.[15]

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 Las Vegas Valley CO Maintenance Plan provides that Clark County DAQEM will prepare a revised maintenance plan eight years after redesignation to attainment. *See* page 7–17 of the 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 CO emissions allowed in the last year of the maintenance period, *i.e.,* the motor vehicle emissions budget (MVEB). 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.*

The Las Vegas Valley CO Maintenance Plan includes the CO MVEBs shown in table 5 below. The budgets are based on table 7–9 of the Maintenance Plan and other documentation in section 7.5 of the plan. *See also* the discussion of projected emissions in section V.D.2 ("Maintenance Demonstration") of this document.

TABLE 5—LAS VEGAS VALLEY CO MAINTENANCE PLAN, MOTOR VEHICLE EMISSIONS BUDGETS

[Winter weekday emissions in tons per day]

Year	MVEB
2008	658
2010	686
2020	704

In setting MVEBs, States generally use the on-road motor vehicle portion of the emission inventories in the associated plan. Clark County, however, did not cap MVEBs at projected motor vehicle emissions levels. Because overall projected levels of emissions from all sources are expected to be significantly less than the levels necessary to maintain the CO NAAQS, Clark County scaled up emissions in the maintenance demonstration to set MVEBs at a higher level. As long as emissions from all sources are lower than needed to provide for continued maintenance of the standard, the State may allocate additional emissions to future mobile source growth by assigning a portion of the safety margin to the MVEBs (*see* 40 CFR 93.124).

The criteria by which we determine whether a SIP's MVEBs are adequate and approvable for conformity purposes are outlined in 40 CFR 93.118(e)(4) and (5). The following paragraphs provide our review of the budgets in the Las Vegas Valley CO Maintenance Plan against our adequacy criteria and provide the basis for our proposed approval of the MVEBs.

Under 40 CFR 93.118(e)(4)(i), we review a submitted plan to determine whether the plan was endorsed by the Governor (or designee) and was subject to a public hearing. The Las Vegas Valley CO Maintenance Plan was submitted to EPA on September 18, 2008 by NDEP's Administrator, the Governor of Nevada's designee for all SIP revision submittals. This SIP submittal documents that the Clark County Board of Commissioners held a public hearing on the plan on September 2, 2008, and adopted the plan on that same date. Therefore, we conclude that the plan and related budgets meet the criterion under 40 CFR 93.118(e)(4)(i).

Under 40 CFR 93.118(e)(4)(ii), we review a submitted plan to determine whether the plan was developed through consultation with Federal, State and local agencies, whether full implementation plan documentation was provided to EPA, and whether EPA's stated concerns, if any, were addressed. Consultation for development of this plan largely consisted of public meetings (*see* appendix C to the Maintenance Plan); discussions with Federal, State, and local transportation planning agencies; and a public hearing, preceded by notices that were published in a newspaper of general circulation. Documentation was provided to EPA, and EPA's stated concerns were addressed. We conclude that adequate consultation occurred prior to submittal of the Maintenance Plan to EPA, and that EPA's concerns were adequately addressed for the purposes of 40 CFR 93.118(e)(4)(ii).

Under 40 CFR 93.118(e)(4)(iii), we review a submitted plan to determine whether the MVEBs are clearly identified and precisely quantified. The Maintenance Plan clearly identifies and precisely quantifies the CO MVEBs for the years 2008, 2010 and 2020 on page 7–15 of the plan (and table 5, above). We conclude therefore that the plan and related budgets meet the adequacy criterion under 40 CFR 93.118(e)(4)(iii).

Under 40 CFR 93.118(e)(4)(iv), we review a submitted plan to determine whether the MVEBs, when considered together with all other emissions sources, are consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to a given SIP submission). The Maintenance Plan shows how the MVEBs and related safety margins are consistent with maintenance of the CO NAAQS through 2020 (*see* pages 7–6 through 7–15 of the Maintenance Plan). In particular, Tables 7–6, 7–7, 7–8, and 7–9 of the Maintenance Plan show the extent to which maximum future year emissions (including the budget safety margins) fall below ambient concentration levels for the 8-hour CO NAAQS. Consequently, we find that the plan and related budgets meet this criterion for adequacy.

[15] On July 12, 2010, the Nevada Department of Agriculture initiated a 30-day comment period to solicit comment (or request a public hearing) on the draft commitment regarding implementation of the contingency measure in the Maintenance Plan related to reinstatement of the Low RVP Rule. The Department's notice of intent to solicit public comment, which includes the commitment language, has been placed in the docket for this rulemaking. We have reviewed the language of the Department's draft commitment and expect to approve it if it is ultimately submitted to us without significant modification.

Under 40 CFR 93.118(e)(4)(v), we review a plan to determine whether the MVEBs are consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy plan or maintenance plan. The MVEBs in the Maintenance Plan appropriately reflect the measures relied upon for continued maintenance of the CO standard in Las Vegas Valley, including the wintertime oxygenated gasoline program and the State's vehicle I/M program, as well as the decision by State and Clark County to suspend or relax certain other wintertime gasoline requirements (*i.e.,* suspend the CBG Rule and relax the Low RVP Rule) and to take no CO credit for certain other measures (*i.e.,* the Alternative Fuels for Government Fleets program and RTC's TDM/TCM program). Thus, we find that the MVEBs are consistent with and clearly related to the emissions inventory and the control measures in the submitted maintenance plan and thereby meet the criterion for adequacy under 40 CFR 93.118(e)(4)(v).

Under 40 CFR 93.118(e)(4)(vi), we review a submitted plan to determine whether revisions to previously submitted plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins; and reasons for the changes (including the basis for any changes related to emissions factors or estimates of vehicle miles traveled and changes in control measures). There are no previously submitted CO maintenance plans for the Las Vegas Valley. Changes in the MVEBs relative to the previously approved MVEBs from the attainment plans (*i.e.,* the Las Vegas Valley 2000 CO Plan and then later from the Las Vegas Valley 2005 CO Plan) reflect updates to EPA's MOBILE model, RTC's planning assumptions regarding employment and population, and RTC's travel activity and fleet mix projections; the decision to establish safety margins for motor vehicle emissions; and the decision to take no CO emission reduction credit for certain control measures (*e.g.,* CBG Rule and Low RVP Rule). Thus, we find that the Maintenance Plan meets the criterion for adequacy under 40 CFR 93.118(e)(4)(vi).

Under 40 CFR 93.118(e)(5), we review the State's compilation of public comments and response to comments that are required to be submitted with any SIP revision. Appendix C of the Maintenance Plan submittal documents the notice for public comments on the draft Maintenance Plan and documents the proceedings at the public hearing. The only comments on the draft Maintenance Plan were submitted by EPA, and appendix C (to the Maintenance Plan) documents how the draft Maintenance Plan was amended in response to those comments. We find Clark County DAQEM's responses to our comments on the draft plan to be acceptable, and thus, we find that the Maintenance Plan meets the criterion for adequacy under 40 CFR 93.118(e)(5).

For the reasons set forth above, we find that the MVEBs in the Las Vegas Valley CO Maintenance Plan meet the requirements under 40 CFR 93.118(e)(4) and (5), and that the maintenance plan as a whole will ensure maintenance of the CO NAAQS through the last year of the maintenance plan. Thus, we propose to approve the motor vehicle emissions budgets for transportation conformity purposes. If we finalize our action as proposed, RTC (which is the area's Metropolitan Planning Organization) and the U.S. Department of Transportation will be required to use the CO MVEBs from the Maintenance Plan for future transportation conformity determinations.[16]

EPA generally first reviews budgets submitted with an attainment, RFP, or maintenance plan for adequacy, prior to taking action on the plan itself. The availability of the Las Vegas CO Maintenance Plan with the 2008, 2010, and 2020 budgets was announced for public comment on EPA's adequacy Web page on September 30, 2008, at: *http://www.epa.gov/otaq/transp/conform/adequacy.htm.* The public comment period on the adequacy of the budgets closed on October 30, 2008. EPA did not receive any comments on the budgets, but did not complete the process and make an adequacy determination on the budgets. Instead, we are now proposing to approve the budgets.

8. Conclusion

For the reasons set forth above, we find that the Las Vegas Valley CO Maintenance Plan satisfies the applicable CAA requirements, including CAA section 175A, and thus, we propose to approve it as a revision to the Nevada SIP under section 110(k)(3), contingent upon receipt of a commitment from the State Department of Agriculture to seek reinstatement by the State Board of Agriculture of the Low RVP Rule if needed to remedy a future violation of the CO NAAQS in Las Vegas Valley.

VI. Evaluation of Suspended or Relaxed Wintertime Gasoline Specifications

As noted previously, NDEP's March 26, 2010 SIP revision includes an amended State fuels rule that relaxes the existing wintertime gasoline requirement for RVP (referred to herein as the "Low RVP Rule"), and includes the suspension by Clark County of their local Cleaner Burning Gasoline (CBG) rule (referred to herein as the "CBG Rule"). The CBG Rule established sulfur and aromatics limits for gasoline sold in Clark County during the period from November 1 to March 31.

On December 9, 2009, the State Board of Agriculture amended NAC section 590.065 (*i.e.,* the Low RVP Rule) to incorporate updated ASTM standard specifications and to relax the vapor pressure limit for wintertime gasoline sold in Clark from 9.0 psi to 13.5 psi.[17] EPA first approved the Low RVP Rule as a revision to the Nevada SIP in 2004 when EPA approved the rule as a CO control measure of the 2000 CO Plan. *See* 69 FR 56351 (September 21, 2004). EPA's proposed approval of the Low RVP Rule (68 FR 4141, January 28, 2003) describes how lower vapor pressure in gasoline reduces CO emissions and the relative magnitude in the corresponding reduction in vehicular CO emissions. Please *see* EPA's January 28, 2003 proposed rule for additional information on this topic at 68 FR 4141, 4150–4151.

In our 2003 proposed approval of the Low RVP Rule, we considered whether the RVP specification is preempted under the Act. Section 211(c)(4)(A) preempts certain State fuel regulations by prohibiting a State from prescribing or attempting to enforce "any control or prohibition respecting any characteristic or component of a fuel or fuel additive" for the purposes of motor vehicle emission control, if EPA has prescribed under section 211(c)(1), "a control or prohibition applicable to such characteristic or component of the fuel or fuel additive," unless the State

[16] The current approved CO motor vehicle emissions budgets from the 2005 CO (Attainment) Plan are: 690, 768, and 817 tons per winter weekday for 2010, 2015, and 2015, respectively. See 71 FR 44587 (August 7, 2006). The Maintenance Plan does not explicitly indicate that the budgets set forth therein are intended to replace the budgets from the 2005 CO Plan. Thus, if EPA takes final action to approve the Maintenance Plan budgets as proposed, then both sets of budgets (*i.e.,* those from the 2005 CO Plan, and those from the Maintenance Plan) would apply because they relate to different CAA requirements for the same years. As a practical matter, however, the Maintenance Plan budgets, being lower than the 2005 CO Plan budgets, would be the constraining budgets for determining conformity.

[17] The State's wintertime vapor pressure limit (raised from 9.0 psi to 13.5 psi) would continue to apply to gasoline sold within Clark County from October 1st through March 31st. Another revision to the rule would extend the wintertime vapor pressure limit in Clark County to "any blend of gasoline and ethanol."

control or prohibition is identical to the control or prohibition prescribed by EPA. In our 2003 proposed rule, we concluded that, because the Federal controls on RVP, promulgated under section 211(h) and section 211(c)(1), apply only in the summer months, there would be no Federal preemption of the State's Low RVP Rule. What was true in 2003 remains true today. There is still no Federal RVP control applicable to gasoline in the wintertime, and thus, no Federal preemption of the relaxed vapor pressure limit (13.5 psi) established in amended NAC section 590.065.

Further, in 2004, EPA approved CBG into the Nevada SIP. *See* 69 FR 56351 (September 21, 2004). The CBG Rule is described in detail in EPA's proposed approval of the rule and the related 2000 CO Plan on January 28, 2003 (68 FR at 4151–4152). At the time, we also considered whether the sulfur content and aromatics limits for CBG were preempted under CAA section 211(c)(4)(C).[18] As earlier explained, CAA section 211(c)(4)(A) preempts certain State fuel regulations by prohibiting a State from prescribing or attempting to enforce "any control or prohibition respecting any characteristic or component of a fuel or fuel additive" for the purposes of motor vehicle emission control, if EPA has prescribed under section 211(c)(1), "a control or prohibition applicable to such characteristic or component of the fuel or fuel additive," unless the State control or prohibition is identical to the control or prohibition prescribed by EPA. Further, under CAA section 211(c)(4)(C), a State may prescribe and enforce an otherwise preempted fuel control if EPA approves the control into the State's SIP. In order to approve a preempted control into a SIP, EPA must find that the State control is necessary to achieve a NAAQS either because no other measures that would bring about timely attainment exist or that such measures exist but are either unreasonable or impracticable. CAA section 211(c)(4)(C) is intended to ensure that a State resorts to a fuel measure only if there are no available practicable and reasonable non-fuel measures, and in our 2004 approval of the CBG Rule, we found that Clark County's requirements for sulfur and aromatics limits were "necessary" to achieve the CO NAAQS.

In addition, the Energy Policy Act of 2005 (EPAct) amended section 211(c)(4)(C) by including a number of provisions addressing State "boutique"fuel programs.[19] The EPAct required EPA, in consultation with the Department of Energy, to determine the total number of fuels approved into all SIPs under section 211(c)(4)(C) as of September 1, 2004, and to publish a list that identifies these fuels, the States and Petroleum Administration for Defense Districts (PADD) in which they are used. CAA section 211(c)(4)(C)(v)(II).

On December 28, 2006, EPA published a notice containing the final interpretation, which was by fuel type, of the EPAct provisions in the **Federal Register**. *See* 71 FR 78192. We also determined and published a list of a total of eight (8) fuel types approved into SIPs, under section 211(c)(4)(C) as of September 1, 2004, the States and the PADD in which they are used. Clark County CBG, which as earlier explained has sulfur and aromatics content limits for gasoline in use during the period from November 1 to March 31, is on the list.

The EPAct also placed the following three additional restrictions on EPA's authority to waive preemption by approving a State fuel program into SIPs under section 211(c)(4)(C):

- First, EPA may not approve a State fuel program into the SIP if it would cause an increase in the total number of fuel types approved into SIPs as of September 1, 2004.
- Second, in cases where EPA approval of a fuel would increase the total number of fuel types on the list but not above the number approved as of September 1, 2004, because the total number of fuel types in SIPs is below the number of fuel types as of September 1, 2004, we are required to make a finding after consultation with DOE, that the new fuel will not cause supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected or contiguous areas.
- Third, with the exception of 7.0 psi RVP, EPA may not approve a State fuel into a SIP unless that fuel type is already approved in at least one SIP in the applicable PADD. CAA Section 211(c)(4)(C)(v)(I), (IV) and (V).

Therefore, EPAct also amended section 211(c)(4)(C) to make any new EPA approvals of State fuels under section 211(c)(4)(C) significantly more difficult by, for example, limiting the total number of approved "boutique" fuel types to the number of fuel types approved into SIPs as of September 1, 2004. If there is no room on the list, for example, then EPA cannot approve any more boutique fuels regardless of the needs of a given area to address air pollution problems.

Lastly, CAA section 211(c)(4)(C)(v)(III) requires EPA to remove a fuel from the boutique fuels list described above if a fuel either ceases to be included in a SIP or if a fuel in a SIP is identical to a Federal fuel formulation implemented by EPA. CBG will not cease to be included in the SIP because, as earlier discussed, CBG is currently in the SIP and will continue in the SIP as a specific contingency measure in the Las Vegas Valley CO Maintenance Plan, and because we intend to synchronize our final actions on the Maintenance Plan and the (suspended) CBG Rule (and thereby avoid a gap in time when the CBG Rule would not be either an active or contingency measure in the SIP). Thus, in today's action, we are not proposing to remove CBG from the boutique fuels list. In addition, since we are not approving any new fuel into the SIP under section 211(c)(4)(C), no issues are raised concerning the three restrictions on such an approval described above.

As a general matter, under CAA section 110(l), EPA may approve relaxations or suspensions of control measures so long as doing so would not interfere with attainment or maintenance of any of the NAAQS or would otherwise conflict with applicable CAA requirements. In this instance, the relaxation of the Low RVP Rule and the suspension of the CBG Rule (and related sulfur and aromatics content limits) would not conflict with any applicable CAA requirement. However, the changes to the two fuels rules would affect the properties of the gasoline sold in Clark County during the winter and would thereby change vehicular emissions relative to those that would occur without these changes with concomitant effects on ambient pollutant concentrations (and potentially interfering with attainment or maintenance of the NAAQS).

To specify the changes in the properties of wintertime gasoline due to the changes in the fuels rules, Clark County DAQEM commissioned a study by ENVIRON and Sierra Research. The study was submitted as appendix A to the Las Vegas Valley CO Maintenance Plan. As far as changes to sulfur content are concerned, the study authors predict

[18] The CBG Rule establishes a maximum sulfur content limit of 80 ppm (by weight). With respect to sulfur content, producers and importers must also meet a 40 ppm flat limit or an average limit of 30 ppm subject to the 80 ppm cap. The standards for aromatic hydrocarbons include a 30% cap (by volume), with producers and importers required to meet a 25% flat limit or an average limit of 22% (subject to the 30% cap). The applicable geographic area is Clark County, and the applicable period for use of CBG is November 1st through March 31st.

[19] While the phrase "boutique"fuels programs can mean different things, it generally refers to State fuels programs that establish different requirements than the Federal fuels program required in a given area, typically for the purpose of addressing specific local air quality issues.

essentially no increase in gasoline sulfur content due to the applicability of Federal tier 2 gasoline sulfur limits [which are very similar (30 ppm average, with an 80 ppm cap) to the corresponding limits under the CBG rule]. We agree that any increase would be minimal due to the similarities between the Federal sulfur limits and those in the CBG Rule, and would expect the Federal gasoline sulfur content limits to essentially backstop the emissions reductions associated with the low sulfur content limit in the CBG Rule.

As far as aromatics are concerned, the study predicts an increase in aromatic content from the current (2006) wintertime average of approximately 20% (by volume) to approximately 23%, based on the average aromatics content in gasoline nationwide. *See* page 12 of appendix A to the Maintenance Plan. Moreover, wintertime gasoline RVP could increase from the current (2006) average of 8.8 psi to as high as 13.5 psi in response to the relaxation of the Low RVP Rule. The relative increases in aromatics and RVP would lead to higher emissions of CO and VOC, and potentially of particulate matter as well. We review these increases or potential increases, in the context of attainment and maintenance of the CO, ozone, and particulate matter NAAQS in the paragraphs that follow.

With respect to CO, we conclude that the changes in wintertime gasoline specifications due to the rules changes would not interfere with the NAAQS based on the modeling results documented in the Las Vegas Valley CO Maintenance Plan and our proposed approval of the Maintenance Plan herein. The modeling conducted for the Maintenance Plan relies on emissions factors that take no credit for either the CBG Rule or the Low RVP Rule and still demonstrates maintenance of the CO NAAQS in Las Vegas Valley through 2020.

For the ozone NAAQS, we recognize that a portion of Clark County is designated nonattainment for the 8-hour ozone NAAQS, and thus, absent modeling results or other convincing evidence showing non-interference, we would not normally approve a SIP revision that would result in an increase in ozone precursors within the nonattainment area. However, in the Las Vegas Valley CO Maintenance Plan, Clark County DAQEM contends that there would be no interference with the ozone NAAQS in this instance because the effect of the gasoline fuel changes is limited to the winter months whereas ozone exceedances occur during the summertime. *See* pages 6–2 and 6–3 of the Maintenance Plan. At the outset, we generally find this line of reasoning for a non-interference finding to be acceptable, but to gain a more detailed understanding of the seasonal nature of ozone exceedances in Las Vegas Valley, we reviewed ozone data by month to determine when exceedances of the 0.075 ppm, eight-hour average, ozone NAAQS occurred. The data indicates that, over the past 6 years (2004–2009), all exceedances of the 0.075 ppm standard occurred during and between the months of April and September. Conversely, no ozone NAAQS exceedances were recorded from October through March, which is the period of time affected by the suspension of the CBG Rule and relaxation of the RVP specification. Thus, we find that the changes in Clark County wintertime gasoline specifications would not interfere with attainment or maintenance of the ozone NAAQS.

With respect to the 1987 (24-hour average) PM–10, Las Vegas Valley is classified as a "serious" nonattainment area. *See* 40 CFR 81.329. In 2004, EPA approved the "serious" area PM–10 plan for Las Vegas Valley and approved the request to extend the applicable attainment date to the end of 2006. *See* 69 FR 32273 (June 9, 2004). In our 2004 final rule approving the PM–10 plan, we approved a number of fugitive dust rules, including Clark County Air Quality Regulations (AQR) Sections 90 through 94, that limit emissions from such sources as open areas and vacant lots; unpaved roads, unpaved alleys and unpaved easement roads; unpaved parking lots; construction sites; and paved roads and street sweeping equipment. In approving the Las Vegas Valley "serious" area PM–10 plan, we also indicated that we agreed with Clark County DAQEM's conclusion that nonroad and on-road vehicle exhaust are not significant source categories in Las Vegas Valley for the purpose of implementing Best Available Control Measures (BACM). *See* our proposed approval of the PM–10 plan at 68 FR 2954, at 2959 (January 22, 2003).

In the Las Vegas Valley CO Maintenance Plan, Clark County DAQEM contends that the changes in wintertime gasoline specifications would not interfere with the PM–10 NAAQS based on the determination in the approved serious area PM–10 plan that vehicular exhaust is not a significant source of PM–10 in Las Vegas Valley.[20] *See* pages 6–3 and 6–4 of the Maintenance Plan. Clark County DAQEM also contends that removing fuels controls has no impact on PM–10 emissions from vehicular exhaust. Lastly, Clark County DAQEM points to the most recent PM–10 emissions inventory that shows vehicular exhaust to account for less than one percent of the total PM–10 emissions in Las Vegas Valley in year 2006.

First of all, Clark County DAQEM is correct in pointing out that vehicular exhaust was determined not to be a significant source of PM–10 emissions in Las Vegas Valley for the purposes of implementing the BACM requirement. We also believe that Clark County DAQEM's most recent inventory presents reasonable estimates of existing sources of PM–10 in Las Vegas Valley. As a general matter, we do not agree that removal of fuels controls has no affect on vehicular exhaust emissions of PM–10, but we recognize that the extent to which the higher aromatics content (from 20% to 23%, by volume) and higher RVP (from 8.8 to 13.5 psi) would affect PM–10 from vehicle exhaust, and whether that effect would be positive or negative, is difficult to predict because EPA's MOBILE emissions factor model, which was used in the development of the Maintenance Plan, does not have the capability to quantify the resulting emissions changes.

However, even assuming the effect would be an increase in PM–10 from vehicle exhaust, we can still find that the changes in wintertime gasoline specifications due to the fuels changes would not interfere with attainment of the PM–10 NAAQS, because, in addition to the minimal impact of vehicular emissions on PM–10 concentrations in Las Vegas Valley (based on PM–10 inventories), the area appears to have attained the standard due to the implementation and enforcement of fugitive dust controls. To determine whether Las Vegas Valley is attaining the PM–10 standard, we reviewed 2007–2009 PM–10 monitoring data from the various monitoring stations for which Clark County DAQEM reports data into EPA's Air Quality Database (AQS). The review of the data reveals two exceedances (*i.e.,* 24-hour-average concentrations equal to or greater than 155 $\mu g/m^3$) over the 2007–2009 period, both of which were recorded during year 2008 at the Craig Road PM–10 monitoring site in North Las Vegas. The PM–10 monitor at the Craig Road site is a continuous monitor,

[20] The significant source categories identified in the serious area PM–10 plan for Las Vegas Valley are fugitive types of sources, including disturbed vacant land/unpaved parking lots, construction (including highway construction), and vehicular travel on paved and unpaved roads. See 68 FR 2954, at 2959 (January 22, 2003).

and thus the expected number of days per year, averaged over the 2007–2009 period, is less than 1.0,[21] which means that the PM–10 NAAQS has been met at the Craig Road monitor, and since the Craig Road monitor is the only site recording any exceedances, it follows that the entire valley has attained the standard.[22]

We do not believe that a hypothetical, incremental increase in PM–10 emissions, from a source category (vehicular exhaust) estimated to contribute less than 1% to the overall emissions inventory, would have a discernible effect on ambient PM–10 concentrations. This lack of discernible effect, coupled with an attainment finding, provides us with a sufficient rationale for concluding that the changes in wintertime gasoline properties, expected to occur with the relaxation of the Low RVP Rule and the suspension of the CBG Rule, would not interfere with attainment or maintenance of the PM–10 NAAQS in Las Vegas Valley.

With respect to the 1997 (annual) and 2006 (24-hour) PM–2.5 NAAQS, Las Vegas Valley and the various other hydrographic areas that comprise Clark County, are designated as "unclassifiable/attainment" areas. *See* 40 CFR 81.329. A review of AQS data from the various PM–2.5 monitoring sites in Clark County reveals that PM–2.5 concentrations are well below the PM–2.5 NAAQS. Over the past three years, the highest 98th percentile value (for the 24-hour average), recorded at the Sunrise Avenue site, is 23 μg/m^3, well below the corresponding 24-hour NAAQS of 35 μg/m^3. The highest annual concentration, also recorded as the Sunrise Avenue site, is 10.3 μg/m^3, well below the corresponding annual NAAQS of 15.0 μg/m^3.

As discussed above for PM–10, the changes to wintertime gasoline properties due to the relaxed Low RVP Rule and suspended County CBG Rule could result in increases in PM–10 emissions from vehicular exhaust. All of the PM–10 from vehicular exhaust can be assumed also to be fine particulate matter (*i.e.,* PM–2.5), and thus the changes to the wintertime gasoline properties could also result in increased PM–2.5 emissions from vehicular exhaust. However, we have no reason to believe that this hypothetical increase would be large enough to cause an exceedance of the 24-hour or annual PM–2.5 NAAQS. Therefore, we conclude that the changes in wintertime gasoline properties, expected to occur with the relaxation of the Low RVP Rule and the suspension of the CBG Rule, would not interfere with attainment or maintenance of the PM–2.5 NAAQS in Clark County.

Based on our previous approvals of NAC section 590.065 (*i.e.,* the Low RVP Rule) and the CBG Rule, and the nature of the regulatory changes submitted to us (*e.g.,* relaxing a vapor pressure limit (not subject to preemption), updating specifications and test methods in the State rule, suspension of the county CBG rule) as well as the above evaluation of the impact of the changes in wintertime gasoline properties in Clark County on ambient CO, ozone, PM–10, and PM–2.5 concentrations, we find that the changes would not interfere with attainment or maintenance of any of the NAAQS, nor would they interfere with any applicable requirement of the Act, and thus are approvable under CAA section 110(l). As such, we propose to approve the amendments to NAC section 590.065, and suspension of the CBG Rule, as submitted by NDEP on March 26, 2010, as revisions to the Nevada SIP.[23]

VII. Proposed Action and Request for Comment

Under section 110(k)(3) of the Act, EPA is proposing to approve NDEP's submittal dated September 18, 2008 of the Las Vegas Valley CO Maintenance Plan as a revision to the Nevada SIP because we find that it satisfies the requirements of section 175A of the CAA to include a reasonably accurate and comprehensive attainment inventory, an adequate maintenance demonstration, contingency provisions, and commitments to continue operation of an acceptable ambient monitoring network to verify continued attainment. Final approval of the Las Vegas Valley CO Maintenance Plan would make Federally enforceable the commitments, such as the commitment to continue operation of an adequate CO monitoring network, and the contingency provisions, contained therein. In addition, we are proposing to approve for transportation conformity purposes the motor vehicle emissions budgets in the Las Vegas Valley CO Maintenance Plan for years 2008, 2010, and 2020 because we find they meet the criteria found in 40 CFR 93.118(e). The budgets for 2008, 2010 and 2020 are 658 tons per day, 686 tons per day, and 704 tons per day, respectively (based on typical weekday during the winter).

Based in part on our proposed approval of the Las Vegas Valley CO Maintenance Plan, we are also proposing to approve NDEP's September 18, 2008 request to redesignate Las Vegas Valley to attainment for the CO NAAQS. In doing so, we find that the area has met all of the criteria for redesignation under CAA section 107(d)(3)(E), *i.e.,* the area has attained the CO standard; EPA has fully approved the Las Vegas Valley SIP for all requirements under section 110 and part D of the CAA that are applicable for purposes of redesignation; the improvement in CO conditions in Las Vegas Valley is due to permanent and enforceable reductions; and as described above, the State has submitted a maintenance plan for the area that meets the requirements of section 175A.

Contingency provisions in maintenance plans must include the measures contained in the SIP prior to redesignation, and for one such contingency measure included in the Las Vegas Valley CO Maintenance Plans, the State's Low RVP Rule, the responsible State agency (State Department of Agriculture) has not yet made the necessary commitment. Thus, our proposed approval of the Maintenance Plan and redesignation request is contingent upon submittal (and approval by EPA) of such a commitment as a revision to the Nevada SIP.[24]

We are also proposing to approve, under section 110(k)(3) of the CAA, NDEP's March 26, 2010 submittal of the

[21] The PM–10 NAAQS is 150 micrograms per cubic meter (μg/m^3), 24-hour average concentration. The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m^3, as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. See 40 CFR 50.6.

[22] An attainment finding is not the same as redesignation of an area to attainment. The latter type of action can only be approved by EPA if all of the criteria under CAA section 107(d)(3)(E) are met, including submittal of, and EPA approval of, a maintenance plan.

[23] In addition to gasoline vapor pressure requirements, NAC section 590.065 also includes maximum content limits in gasoline for lead, phosphorus, manganese, ethanol, and sulfur. See NAC section 590.065(7). Because none of these content limits relate to gasoline vapor pressure requirements in Las Vegas Valley nor the CO emissions reductions achieved therefrom, and because the subsection in NAC section 590.065 containing these limits (*i.e.,* subsection (7)) is severable from the rest of the rule, we are not including NAC section 590.065(7) in our proposed approval of amendments to NAC section 590.065.

[24] On July 12, 2010, the Nevada Department of Agriculture initiated a 30-day comment period to solicit comment (or request a public hearing) on the draft commitment regarding implementation of the contingency measure in the Maintenance Plan related to reinstatement of the Low RVP Rule. The Department's notice of intent to solicit public comment, which includes the commitment language, has been placed in the docket for this rulemaking. We have reviewed the language of the Department's draft commitment and expect to approve it if it is ultimately submitted to us without significant modification.

suspension of Clark County's Air Quality Regulations (AQR) Section 54 ("Cleaner Burning Gasoline: Wintertime Program") ("CBG Regulation"), and the amendments to the NAC section 590.065, including the relaxation in the State's wintertime gasoline RVP requirement for Clark County from 9.0 to 13.5 psi, because we find that doing so would not interfere with attainment or maintenance of any of the NAAQS or any applicable requirement of the Clean Air Act for the purposes of CAA section 110(l). We are not including subsection (7) of amended NAC section 590.065 in our proposed approval because the limits in subsection (7) of the amended rule are unrelated to the vapor pressure requirement and associated CO emissions reductions, and are severable from the rest of the rule.

We will accept comments from the public on this proposal for the next 30 days.

VIII. 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. A 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 imposed by State law. For these reasons, these actions:

- Are not "significant regulatory actions" 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 Clean Air Act; and
- Do 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, 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 Las Vegas Valley.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

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

Dated: July 21, 2010.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 2010–18645 Filed 7–28–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–AY10

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 17A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of Amendment 17A to South Atlantic Snapper-Grouper Fishery Management Plan; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. The amendment proposes to establish a rebuilding plan for red snapper, specify a proxy for the fishing mortality rate that will produce the maximum sustainable yield (MSY), specify the optimum yield (OY), specify the value for the minimum stock size threshold (MSST), and specify an annual catch limit (ACL) and accountability measures (AMs) for red snapper. Amendment 17A would also prohibit harvest and possession of red snapper in or from Federal waters of the South Atlantic and in or from state waters for vessels holding a Federal snapper-grouper permit, and implement an area closure that extends from southern Georgia to northern Florida where all harvest and possession of snapper-grouper would be prohibited (except when fishing with black sea bass pots or spearfishing gear for species other than red snapper). Additionally, Amendment 17A would require the use of non-stainless steel circle hooks north of 28° N. lat. and require a monitoring program for South Atlantic red snapper. The actions contained in Amendment 17A are intended to end overfishing of South Atlantic red snapper and rebuild the fishery.

DATES: Comments must be received no later than 5 p.m., eastern time, on September 27, 2010.

ADDRESSES: You may submit comments, identified by "0648–AY10", by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the