

state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule, proposing to approve the redesignation of the Allentown Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: December 18, 2007.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. E8-27 Filed 1-4-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R09-OAR-2007-0561; FRL-8513-6]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Nevada; Wintertime Oxygenated Gasoline Rule; Vehicle Inspection and Maintenance Program; Redesignation of Truckee Meadows to Attainment for the Carbon Monoxide Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve certain submittals by the State of Nevada of revisions to the Nevada state implementation plan that are intended to provide for attainment and maintenance of the carbon monoxide national ambient air quality standard in the Truckee Meadows nonattainment area located within Washoe County, Nevada. These revisions include a local wintertime oxygenated gasoline rule, a "basic" vehicle inspection and maintenance program (including a performance standard evaluation), current statutory provisions and State rules governing mobile sources, a maintenance plan and related motor vehicle emissions budgets. EPA is also proposing to approve Nevada's request to redesignate the Truckee Meadows carbon monoxide nonattainment area to attainment. Lastly, EPA is proposing to rescind a provision previously approved in error related to inspection and maintenance of vehicles operated on Federal installations. EPA proposes these actions pursuant to those provisions of the Clean Air Act that obligate the Agency to take action on submittals of revisions to state implementation plans and requests for redesignation. This proposed action is intended to make certain State and local measures and commitments related to attainment and maintenance of the carbon monoxide standard in Truckee Meadows federally enforceable as part of the Nevada state implementation plan.

**DATE:** Any comments on this proposal must arrive by *February 6, 2008*.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2007-0561, 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:* [kaplan.leanor@epa.gov](mailto:kaplan.leanor@epa.gov).

3. *Mail or deliver:* Eleanor Kaplan (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-2007-0561. 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:**  
Eleanor Kaplan, EPA Region IX, (415) 947-4147, [kaplan.eleanor@epa.gov](mailto:kaplan.eleanor@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
- II. Nature, Sources, and Health Effects of Carbon Monoxide
- III. Introduction to Truckee Meadows, Washoe County, Nevada
- IV. History of Carbon Monoxide Planning in Truckee Meadows
- V. Nevada’s Procedures for Adoption of these SIP Revisions
- VI. Washoe County’s Wintertime Oxygenated Fuel Requirements
- VII. Nevada’s Motor Vehicle Inspection and Maintenance (I/M) Program in Truckee Meadows
  - A. Background Information

- B. Evaluation of the State’s I/M Program in Truckee Meadows
- VIII. Clean Air Act Requirements for Redesignation to Attainment
- IX. Evaluation of the State’s Redesignation Request for Truckee Meadows
  - A. The Area Must Have Attained the Applicable NAAQS.
  - B. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA.
  - C. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions.
  - D. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D.
    - 1. Section 110 Requirements
    - 2. Part D Requirements
  - E. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A.
    - 1. Attainment Inventory
    - 2. Maintenance Demonstration
    - 3. Monitoring Network
    - 4. Verification of Continued Attainment
    - 5. Contingency Plan

- 6. Subsequent Maintenance Plan Revisions
- 7. Motor Vehicle Emissions Budgets
- 8. Conclusion
- X. Proposed Action and Request for Comment
- XI. Administrative Requirements

**I. Summary of Today’s Proposed Action**

Under section 110(k)(3) of the Clean Air Act, as amended in 1990 (CAA or “Act”), EPA is proposing to approve certain submittals of revisions to the Nevada state implementation plan (SIP) by the Nevada Division of Environmental Protection (NDEP). These revisions are intended to provide for attainment and maintenance of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Truckee Meadows nonattainment area located within Washoe County, Nevada. The specific SIP revision submittals that we are proposing to approve are listed in the following table:

Plan, plan element or rule	Adoption date(s)	State of Nevada submittal date(s)
Washoe County District Board of Health Regulations Governing Air Quality Management, section 040.095 (“Oxygen content of motor vehicle fuel”).	Originally adopted on Dec. 21, 1988 and amended on Apr. 18, 1990; amended on Sept. 23, 1992; amended on Sept. 22, 2005.	Submitted on Apr. 14, 1991; resubmitted as amended on Nov. 13, 1992; re-submitted as amended on Nov. 4, 2005.
State Implementation Plan for a Basic Program for the Inspection and Maintenance of Motor Vehicles for the Truckee Meadows Planning Area, Nevada (June 1994).	Regulations adopted at various times by the State Environmental Commission and Department of Motor Vehicles but superseded by SIP revision submittal dated May 11, 2007, as listed below.	June 3, 1994.
Basic I/M Performance Standard Evaluation ....	Sept. 28, 2006 .....	Nov. 2, 2006.
Nevada Mobile Source SIP, Update of the Regulatory Element (May 11, 2007).	Regulations adopted at various times by State Environmental Commission and Department of Motor Vehicles.	May 11, 2007.
Redesignation Request and Maintenance Plan for the Truckee Meadows Carbon Monoxide Non-Attainment Area (September 2005).	Sept. 22, 2005 .....	Nov. 4, 2005.

Specifically, we are proposing to approve NDEP’s SIP revision submittal dated November 4, 2005 of the wintertime oxygenated gasoline rule as amended on September 22, 2005 by the Washoe County District Board of Health (“District”) and codified as District Regulations Governing Air Quality Management section 040.095 (“District rule 040.095”). We are also proposing to approve the SIP revision submittal dated June 3, 1994 of the *State Implementation Plan for a Basic Program for the Inspection and Maintenance of Motor Vehicles for the Truckee Meadows Planning Area, Nevada* (June 1994) (“Basic I/M SIP”). In connection with the basic vehicle inspection and maintenance (I/M) program in Truckee Meadows, we are proposing to approve two subsequent SIP revision submittals: A “basic” I/M performance standard evaluation (“Basic I/M Performance Standard Evaluation”) submitted on November 2,

2006 and the *Nevada Mobile Source SIP, Update of the Regulatory Element* (May 11, 2007) (“Mobile Source SIP Update”) submitted on May 11, 2007. NDEP’s Mobile Source SIP Update contains current I/M-related statutory provisions, regulations, and updated exhaust gas analyzer specifications.<sup>1</sup> In

<sup>1</sup>The statutory provisions and rules submitted by NDEP on May 11, 2007 represent a comprehensive update to the regulatory portion of the State’s mobile source SIP (excluding the rules establishing fuels specifications, alternative fuels programs for government vehicles, and local rules related to mobile sources), including the regulatory portion of the State’s Truckee Meadows I/M SIP, which was last approved in 1984 (49 FR 44208, November 5, 1984), and the regulatory portion of the State’s Las Vegas Valley I/M SIP, which was last approved in 2004 (69 FR 56351, September 21, 2004). The current submitted versions of the I/M-related statutory provisions and rules are not significantly different than the corresponding versions of the statutory provisions and rules approved in 2004 for the State’s Las Vegas I/M program, and are consistent with the underlying assumptions used to develop the Las Vegas Valley 2005 CO Plan, which was approved by EPA on August 7, 2006 (71 FR 44587).

so doing, we find that the above submittals fulfill the applicable requirements under section 110 and part D (of title I) of the Act.

In connection with our proposed approval of the State’s Basic I/M SIP, as supplemented and amended in submittals dated November 2, 2006 and May 11, 2007, we are taking no action on submitted rule NAC 445B.595(2), which extends the State’s I/M requirements to motor vehicles operated on Federal installations located within I/M areas because the Federal government has not waived sovereign immunity in the context of vehicle I/M programs. Furthermore, we are proposing, under CAA section 110(k)(6), to rescind our previous, and erroneous, approval of NAC 445B.595(2) into the Nevada SIP in 2004, also on the grounds of sovereign immunity.

Lastly, we are proposing to approve NDEP’s SIP revision submittal (dated November 4, 2005) of the *Redesignation*

*Request and Maintenance Plan for the Truckee Meadows Carbon Monoxide Non-Attainment Area* (September 2005) (“Truckee Meadows CO Maintenance Plan”), adopted by the District on September 22, 2005, and to approve NDEP’s request for redesignation of the Truckee Meadows CO nonattainment area to attainment. In connection with our proposed approval of the Truckee Meadows CO Maintenance Plan, we are approving certain commitments by the District, contingency provisions, and CO motor vehicle emissions budgets for years 2010 and 2016 for the purposes of transportation conformity. In so doing, we find that the Truckee Meadows CO Maintenance Plan meets the requirements for maintenance plans under section 175A of the Act. In connection with our proposed approval of NDEP’s redesignation request, we find that the State has fulfilled the criteria for redesignation of the Truckee Meadows CO nonattainment area from nonattainment to attainment as set forth in section 107(d)(3)(E).<sup>2</sup>

## II. Nature, Sources, and Health Effects of Carbon Monoxide

Carbon monoxide (CO) is a colorless and odorless gas, formed when carbon in fuel is not burned completely. It is a component of motor vehicle exhaust, which contributes about 60 percent of all CO emissions nationwide. Nonroad vehicles account for the remaining CO emissions from transportation sources. High concentrations of CO generally occur in areas with heavy traffic congestion. Peak CO concentrations typically occur during the colder months of the year when CO automotive emissions are greater and nighttime inversion conditions (where air pollutants are trapped near the ground beneath a layer of warm air) are more frequent.

CO enters the bloodstream through the lungs and reduces oxygen delivery to the body’s organs and tissues. The health threat from levels of CO

<sup>2</sup> The Truckee Meadows CO Maintenance Plan relies upon three principal State or local control measures: The District’s wintertime oxygenated gasoline rule, the State’s vehicle inspection and maintenance (I/M) program, and the District’s residential wood combustion rule. We are proposing to approve the first and second of the three measures in this document. We approved the third measure (the residential wood combustion rule) in a separate document earlier this year. See 72 FR 33397 (June 18, 2007). We will not finalize the proposed approval of the redesignation request until we take final action approving the oxygenated gasoline rule and the I/M program. Also, for reasons set forth in this document, we find that we need not fully approve either the County’s nonattainment new source review rules or the County’s transportation conformity rules as a pre-condition to redesignation of Truckee Meadows to attainment for the CO NAAQS.

sometimes found in the ambient air is most serious for those who suffer from cardiovascular disease, such as angina pectoris. At much higher levels of exposure not commonly found in ambient air, CO can be poisonous, and even healthy individuals may be affected. Visual impairment, reduced work capacity, reduced manual dexterity, poor learning ability, and difficulty in performing complex tasks are all associated with exposure to elevated CO levels.

## III. Introduction to Truckee Meadows, Washoe County, Nevada

Truckee Meadows lies in the far southern portion of Washoe County. Washoe County lies in the northwestern portion of the State of Nevada and is bordered by the State of California to the west and the State of Oregon to the north. Within the State of Nevada, the counties of Humboldt, Pershing, Churchill, Lyon, and Storey and the city of Carson City bound Washoe County to the east and south. Located at an average elevation of 4,500 feet above sea level, Truckee Meadows lies in the rain shadow of the Sierra Nevada mountain range located to the west. The boundaries of Truckee Meadows are defined as equal to the State’s hydrographic area #87, and encompass a land area of approximately 200 square miles. It is surrounded by mountain ranges, which can lead to persistent wintertime temperature inversions where a layer of cold air is trapped in the valley. Warmer air above the inversion acts as a lid, containing and concentrating air pollutants emitted at ground-level.

Truckee Meadows has experienced rapid growth in population, with an increase in population from approximately 138,000 in 1977 to approximately 359,000 in 2002, an increase of 160 percent over that 25-year period. The two major cities are Reno and Sparks.

Air quality planning and monitoring in Truckee Meadows is the responsibility of the District, which administers air quality programs in Washoe County through the District Health Department’s Air Quality Management Division (“District AQMD”). The State Environmental Commission and the Nevada Department of Motor Vehicles are responsible for the motor vehicle I/M program in Truckee Meadows.

## IV. History of Carbon Monoxide Planning in Truckee Meadows

On April 30, 1971 (36 FR 8186), pursuant to section 109 of the Clean Air Act, as amended in 1970, EPA

promulgated NAAQS for six criteria pollutants, including CO. EPA set the NAAQS for CO at 35 parts per million (ppm), one-hour average, and 9 ppm, eight-hour average. The CO NAAQS remain the same today.

Under section 110 of the Clean Air Act Amendments of 1970, States were required to adopt and submit plans that provide for implementation, maintenance, and enforcement of the NAAQS. These original plans, generally submitted and approved in the early 1970’s, are referred to as state implementation plans (SIPs). Incremental changes to SIPs that a State submits, such as new or amended rules, attainment plans, and maintenance plans, are referred to as “SIP revisions.”

Generally, SIPs were to provide for attainment of the NAAQS within three years of EPA approval of the plan. However, many parts 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), under paragraph 107(d)(2) of the Act as amended in 1977, EPA promulgated attainment status designations for all States. EPA designated Truckee Meadows (with boundaries defined by reference to State hydrographic area #87) as a nonattainment area for the CO NAAQS. See 43 FR 8962, at 9013 (March 3, 1978).

The Act, as amended in 1977, required States to revise their SIPs by January 1979 for all designated nonattainment areas. The CO attainment plan for Truckee Meadows that was developed in the late 1970’s and early 1980’s relied upon implementation of such control measures as a vehicle inspection and maintenance (I/M) program, road improvements, traffic controls, and areawide ride-sharing programs to attain the CO NAAQS by the statutory deadline of 1982. In 1981, we approved most of the elements of the CO plan for Truckee Meadows and conditionally approved other elements. See 46 FR 21758 (April 14, 1981). In 1982, we revoked the remaining conditions resulting in full approval of the CO plan. See 47 FR 15790 (April 13, 1982).

Truckee Meadows did not attain the CO NAAQS by the 1982 attainment deadline, and thus, the District revised the CO attainment plan and requested an extension in the attainment date to 1987. In 1984, we approved parts of the revised CO attainment plan but deferred action on certain other parts based on our conclusion that the emissions reduction credit taken in the revised CO

plan for one of the principal control measures relied upon to show attainment, residential wood burning control, was not sufficiently documented. See 49 FR 31683 (August 8, 1984).

Like many other areas of the country, Truckee Meadows did not attain the CO NAAQS by the 1987 attainment date and remained nonattainment at the time of the 1990 Clean Air Act Amendments. Under section 107(d)(1)(C) of the 1990 Amended Act, the CO nonattainment designation in Truckee Meadows was brought forward by operation of law. Based on a design value of 9.8 ppm (eight-hour average), we further classified Truckee Meadows as a "moderate" CO nonattainment area for the CO NAAQS with an attainment date of (no later than) December 31, 1995. See 56 FR 56694, at 56798 (November 6, 1991) and CAA section 186(a)(1). A review of the data collected in 1994 and 1995 provided EPA with the basis to determine that Truckee Meadows in fact attained the CO NAAQS by the 1995 attainment date. See 70 FR 22803 (May 3, 2005).

In addition to extending the deadline for attainment of the CO NAAQS, the Act, as amended in 1990, also established new requirements for CO nonattainment areas that vary depending upon the severity of the problem. The additional requirements for "moderate" CO nonattainment areas are set forth in sections 172, 176, 187, and 211 of the Act, and include such elements as updated and periodic emission inventories, upgraded vehicle I/M programs, conformity requirements, and wintertime oxygenated gasoline requirements. To address these requirements, the District AQMD developed new plans and adopted new or amended rules, the State revised the vehicle I/M program, and NDEP submitted the plans, rules and revised vehicle I/M program to EPA as revisions to the Truckee Meadows portion of the Nevada SIP. In today's action, we are proposing to approve a number of elements contained in these submittals, including the wintertime oxygenated gasoline rule and an upgraded vehicle I/M program. In a separate action, we approved the District's residential wood combustion rule. See 72 FR 33397 (June 18, 2007).

Section 107(d)(3)(D) of the Act allows a State to request redesignation of an air quality planning area. On November 4, 2005, NDEP submitted such a request for the Truckee Meadows CO nonattainment area and submitted the Truckee Meadows CO Maintenance Plan to EPA for approval as a revision to the Nevada SIP. The purpose of the Truckee

Meadows CO Maintenance Plan is to provide for maintenance of the CO NAAQS in the Truckee Meadows area for ten years following redesignation. In this action, we are proposing to approve the Truckee Meadows CO Maintenance Plan and proposing to approve the request for redesignation of Truckee Meadows from nonattainment to attainment for the CO NAAQS.

#### **V. Nevada's Procedures for Adoption of These 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 to approve the following SIP revisions: the wintertime oxygenated gasoline rule (District rule 040.095), submitted on November 4, 2005; the Basic I/M SIP submitted on June 3, 1994, the Basic I/M Performance Standard Evaluation submitted on November 2, 2006, and current I/M-related statutory provisions and regulations and updated exhaust gas analyzer specifications submitted on May 11, 2007; and the Truckee Meadows CO Maintenance Plan submitted on November 4, 2005.

Each of the SIP revision submittals cited above contains evidence that reasonable notice of a public hearing was provided to the public (via newspaper advertisement) and that a public hearing was conducted prior to adoption by the District.<sup>3</sup> Following adoption, the District forwarded these SIP revisions to NDEP, the Governor of Nevada's designee for submitting SIP revisions and redesignation requests to EPA, and NDEP then submitted the SIP revisions to EPA for approval. We find that each of the SIP revisions cited above satisfies the procedural requirements of section 110(l) of the Act for revising SIPs.

#### **VI. Washoe County's Wintertime Oxygenated Fuel Requirements**

Under section 211(m) of the Act, as amended in 1990, States with CO nonattainment areas with design values of 9.5 ppm or greater (eight-hour average) are required to submit an oxygenated gasoline program as a SIP revision. The design value for Truckee Meadows based on data collected during 1988–1989 (and recorded in EPA's Air Quality System database) was

9.8 ppm, eight-hour average, and thus, the State of Nevada is required to submit an oxygenated gasoline program for the Truckee Meadows area as a SIP revision.

Section 211(m) of the 1990 Amended Act also specifies the minimum geographic extent for such an oxygenated gasoline program (larger of the Consolidated Metropolitan Statistical Area (CMSA) or MSA if the area is not in a CMSA), the minimum oxygen content (2.7% by weight), and the applicable portion of the year in which the program must be implemented (as determined by EPA). EPA determined that the applicable control period for the purposes of an oxygenated gasoline program in Truckee Meadows area is October 1 through January 31. See 57 FR 47853 (October 20, 1992). EPA labeling requirements for oxygenated gasoline are found at 40 CFR 80.35.

The District first adopted an oxygenated gasoline rule (i.e., District rule 040.095 "Oxygen Content of Motor Vehicle Fuel") on December 21, 1988, and implementation of the rule began in December 1989. This rule applied throughout Washoe County and required a minimum gasoline oxygen content of 2% by weight during a control period defined as December 1 through February 15. The District modified the oxygenated gasoline rule on April 18, 1990 to extend the control period to November 1 through the end of February. The April 18, 1990 version of the District's oxygenated gasoline rule was included in a SIP revision submittal from the Governor to EPA dated April 15, 1991. Meanwhile, five months prior to this SIP submittal, the Clean Air Act Amendments of 1990 were enacted, and the amended Act established new SIP requirements, discussed above, for oxygenated gasoline rules in CO nonattainment areas.

In response to the new requirements, the District again amended the oxygenated gasoline rule (on September 23, 1992) to increase the minimum oxygen content requirement to 2.7% and to extend the control period to October 1 through January 31. NDEP submitted this revised rule to EPA as a SIP revision on November 13, 1992 thereby superseding the April 15, 1991 submittal of the previous version of the rule. EPA did not take action on the November 13, 1992 submittal of the District's oxygenated gasoline rule. In the intervening years, the District has twice amended the oxygenated gasoline rule: on October 25, 2000, the District phased-out use of methyl tertiary butyl ether (MTBE) as the oxygenate to meet the oxygen content requirement, and on

<sup>3</sup> In the case of the Basic I/M SIP and the May 11, 2007 SIP submittal of current I/M statutory provisions and regulations, NDEP provided evidence of reasonable notice and public hearing for the various recent amendments to the I/M regulations. The submittal of the current I/M-related statutory provisions and regulations supersede the corresponding provisions and regulations submitted in 1994 as part of the Basic I/M SIP.

September 22, 2005, the District clarified labeling requirements consistent with related EPA requirements at 40 CFR 80.35 and made certain other changes to improve enforceability. The September 22, 2005 version of the wintertime oxygenated gasoline rule was submitted as a SIP revision by NDEP on November 4, 2005, thereby superseding the November 13, 1992 submittal of the rule.

We have evaluated the State's November 4, 2005 submittal of the wintertime oxygenated gasoline rule (District rule 040.095) and find that it meets the applicable statutory and regulatory requirements by establishing the necessary minimum oxygen content requirement (2.7% by weight) in the applicable geographic area (i.e., Reno MSA, which consists of Washoe County, Nevada) for the appropriate control period (October 1 through January 31) and also provides for the necessary labeling of gasoline dispensers, and for recordkeeping, sampling and for enforceability. The District AQMD enforces the oxygenated gasoline rule by obtaining fuel samples from retail gasoline distributors, which are then analyzed by the State of Nevada, Department of Agriculture. Each year, the District AQMD publishes a report summarizing the results of the oxygenated gasoline program for the prior year. A review of these annual reports reveals near-full compliance with the requirements of the rule.

For the above reasons, we find that District rule 040.095 ("Oxygen Content of Motor Vehicle Fuel"), as amended by the District on September 22, 2005, and submitted by NDEP to EPA on November 4, 2005, fulfills the requirements of section 211(m) of the Act and applicable EPA regulations, and, based on that finding, we propose approval of the rule as a revision to the Nevada SIP.

## VII. Nevada's Motor Vehicle Inspection and Maintenance (I/M) Program in Truckee Meadows

### A. Background Information

As noted in section IV of this document, EPA promulgated area designations for all states pursuant to the Act, as amended in 1977. See 43 FR 8962 (March 3, 1978). The Truckee Meadows area of Nevada was designated nonattainment for the NAAQS for CO and photochemical oxidant.<sup>4</sup>

<sup>4</sup> In 1979, EPA established a new NAAQS for ozone to replace the oxidant standard. In 1981, EPA changed the designation for Truckee Meadows from nonattainment for oxidant to attainment for ozone. See 46 FR 37896 (July 23, 1981).

During the late 1970's, the Nevada Legislature established the first motor vehicle I/M program for Truckee Meadows, and the Nevada Department of Motor Vehicles (DMV) began to implement this initial program in 1978. Nevada's motor vehicle I/M program is required in two counties, Washoe and Clark.

Originally, I/M requirements were triggered only by a change in vehicle ownership, but by 1983, I/M in Truckee Meadows had been expanded to apply annually upon vehicle registration or upon registration renewal. Implementation of a mandatory annual I/M program in Truckee Meadows was not a requirement of the 1977 amended Act but was one of the control measures selected by Washoe County and the State of Nevada to reduce CO emissions in that area.

The 1980's-era program in Truckee Meadows excluded certain types of vehicles including, among others, new cars, vehicles over 5,000 pounds unladen weight, and motorcycles. Waivers were allowed in certain cases for repairs costing over \$100 in labor plus parts. For more information on this early I/M program in Truckee Meadows and related EPA rulemaking actions, see 44 FR 26763 (May 7, 1979), 45 FR 59334 (September 9, 1980), 46 FR 21758 (April 14, 1981), 48 FR 5071 (February 3, 1983), 49 FR 6386 (February 21, 1984), and 49 FR 44208 (November 5, 1984).

As noted in section IV of this document, under the Clean Air Act Amendments of 1990, EPA classified Truckee Meadows as a "moderate" CO nonattainment area based on a design value of 9.8 ppm. Under section 187(a) of the Act, as amended in 1990, States with "moderate" CO nonattainment areas (with design values less than 12.7 ppm) were required to continue implementation of existing I/M programs and to submit I/M SIP revisions to meet the "basic" I/M performance standard and other new related requirements promulgated by EPA subsequent to the 1990 Act Amendments. See CAA section 187(a)(4).<sup>5</sup> On January 15, 1993, EPA

<sup>5</sup> In 1991, all of Washoe County was designated as a "marginal" nonattainment area for the 1-hour ozone NAAQS. See 56 FR at 56798 (November 6, 1991). For most such areas, a corrected and upgraded "basic" I/M program was required under CAA section 182(a)(2)(B); however, the Washoe County "marginal" ozone nonattainment area was not subject to the I/M requirement because the EPA-approved I/M program for Truckee Meadows (at the time of designation as a marginal ozone nonattainment area) did not include hydrocarbon emissions testing (but only CO emissions testing), and thus the I/M program was not part of the applicable ozone SIP. The State of Nevada deleted hydrocarbon emissions testing from the I/M

made a finding of failure to submit the required "basic" I/M SIP revision for Truckee Meadows. On November 15, 1993, the NDEP submitted a "basic" I/M SIP revision for Truckee Meadows, but by letter dated April 13, 1994, EPA made a finding of incompleteness for the November 15, 1993 SIP revision submittal.

On June 3, 1994, NDEP submitted the *State Implementation Plan for a Basic Program for the Inspection and Maintenance of Motor Vehicles for the Truckee Meadows Planning Area, Nevada* (June 1994) ("Basic I/M SIP"). By letter dated January 31, 1995, EPA found the Basic I/M SIP to be complete. The Basic I/M SIP includes I/M-related statutes and rules, as well as various other documents to satisfy EPA I/M requirements, but does not include the required performance standard evaluation.

On November 2, 2006, NDEP submitted a SIP revision containing a performance standard evaluation of the basic I/M program for motor vehicles in the Truckee Meadows planning area ("Basic I/M Performance Standard Evaluation") thereby fulfilling a requirement not addressed in the Basic I/M SIP. The November 2, 2006 SIP revision submittal contained the performance standard evaluation along with motor vehicle emissions modeling documentation and evidence of public process and adoption by the Washoe County District Board of Health on September 28, 2006.

Since the submittal of the Basic I/M SIP in 1994, the State of Nevada has revised many of the I/M-related statutory provisions and regulations and has established new specifications for exhaust gas analyzers. On May 11, 2007, NDEP submitted a SIP revision entitled *Nevada Mobile Source SIP, Update of the Regulatory Element* (May 11, 2007) ("Mobile Source SIP Update"), which includes current I/M-related statutory provisions and regulations as well as updated exhaust gas analyzer specifications. The current Nevada I/M statutory provisions and rules submitted by NDEP on May 11, 2007 are as follows:

- Nevada Revised Statutes (2005), chapter 365: section 365.060; chapter 366, section 366.060; chapter 445B, sections 445B.210, 445B.700–845 (excluding NRS 445B.776, 445B.777, and 445B.778); chapter 481, sections

program in 1983, and EPA approved the related changes in 1984. See 49 FR 6386 (February 21, 1984) and 49 FR 44208 (November 5, 1984). Hydrocarbon emissions testing requirements have since been restored to the program and are a part of the current I/M program that is the subject of today's proposal.

481.019–481.087; chapter 482, sections 482.029, 482.155–482.290, 482.385, 482.461, and 482.565; and chapter 484, sections 484.101, 484.644 and 484.6441;

- Nevada Administrative Code (NAC), chapter 445B (January 2007 revision by the Legislative Counsel Bureau), sections 445B.400 to 445B.735.<sup>6</sup>

The Mobile Source SIP Update supersedes the corresponding materials included in the Basic I/M SIP submitted in 1994 and represents a comprehensive update to the regulatory portion of the State's mobile source SIP (excluding the rules establishing fuels specifications, alternative fuels programs for government vehicles, and any local rules related to mobile sources), including the regulatory portion of the Truckee Meadows I/M SIP, which was last approved in 1984 (see 49 FR 44208, November 5, 1984), and the regulatory portion of the Las Vegas Valley I/M SIP, which was last approved in 2004 (see 69 FR 56351, September 21, 2004).

#### *B. Evaluation of the State's I/M Program in Truckee Meadows*

This subsection summarizes the applicable requirements of EPA's I/M requirements found in 40 CFR part 51, subpart S ("Inspection/Maintenance Program Requirements"), which is referred to herein as the "Federal I/M rule," and discusses whether the elements of the State's "basic" vehicle I/M program for Truckee Meadows as contained in SIP revisions submitted on June 3, 1994, November 2, 2006, and May 11, 2007 comply with Federal requirements.

#### *Applicability (40 CFR 51.350)*

Under the Federal I/M rule, any area classified as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 parts per million (ppm) or less shall continue operating I/M programs that were part of an approved SIP as of November 15, 1990, and shall update those programs as necessary to meet the basic I/M program requirements as set forth in part 51, subpart S. See 40 CFR 51.350(a)(3). This requirement applies to Truckee Meadows because the CO SIP for Truckee Meadows, as of November 15, 1990, included an I/M program and because, under the Act as amended in 1990, the Truckee Meadows CO nonattainment area was classified as "moderate" (with a design value of 12.7 ppm or less).

<sup>6</sup> As explained below in the subsection entitled "Vehicle coverage (40 CFR 51.356), we are taking no action on subsection (2) of NAC section 445B.595.

I/M programs are nominally required to cover at least the entire urbanized area, based on the 1990 census. See 40 CFR 51.350(b)(2). The State's legal authority necessary to establish program boundaries is contained in Nevada Revised Statutes (NRS) 445B.770. The applicable area for the basic I/M program is the urbanized area within "Truckee Meadows," which is defined by reference to the State's hydrographic area #87. Under Nevada Administrative Code (NAC) 445B.594, the State's basic I/M program applies within all of Washoe County, except for residents that live outside of the urbanized area and are serviced by one of the following post offices: (1) Crystal Bay, (2) Empire; (3) Incline Village, (4) Nixon, (5) Sutcliffe, or (6) Wadsworth. This is acceptable.

The Federal I/M rule requires a State I/M program to remain in operation even if the area is redesignated to attainment until the State submits and EPA approves a SIP revision which convincingly demonstrates that the area can maintain the relevant standard without benefit of the emission reductions attributable to the I/M program. See 40 CFR 51.350(c). The statutory authority for the "basic" I/M program in Truckee Meadows contains no automatic sunset provision and thus is consistent with EPA requirements.

#### *Basic I/M Performance Standard (40 CFR 51.352)*

"Basic" I/M programs must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels achieved from highway mobile sources as a result of the program. Areas are required to meet the performance standard for the pollutants which cause them to be subject to I/M requirements. The performance standard is based on the model I/M program inputs and local characteristics, such as vehicle mix and local fuel controls, and emission levels and emission reduction benefits must be calculated using the most recent version of EPA's mobile source emission factor model (MOBILE).

The Federal model "basic" I/M program has the following characteristics: (1) Network type (centralized testing); (2) Start date (for areas with existing I/M programs, 1983); (3) Test frequency (annual testing); (4) Model year coverage (testing of model year (MY) 1968 and later vehicles); (5) Vehicle type coverage (light-duty vehicles (excluding trucks)); (6) Exhaust emission test type (idle test); (7) Emission standards (no weaker than specified in 40 CFR part 85, subpart W);

(8) Emission control device inspections (none); (9) Stringency (a 20% emission test failure rate among pre-1981 model year vehicles); (10) Waiver rate (0% waiver rate); (11) Compliance rate (a 100% compliance rate); and (12) Evaluation date (1996 for CO nonattainment areas). Also, the basic I/M performance standard includes inspection of all 1996 and later light-duty vehicles equipped with certified on-board diagnostic (OBD) systems,<sup>7</sup> and repair of malfunctions or system deterioration identified by or affecting OBD systems.

The Nevada basic I/M program within Truckee Meadows has the following characteristics: (1) Network type (decentralized, test-and-repair); (2) Start date (1983); (3) Test frequency (annual testing); (4) Model year coverage (testing of MY 1968 and later vehicles); (5) Vehicle type coverage [light-duty (i.e., less than 8,500 pounds gross vehicle weight rating (GVWR)) vehicles (both gasoline- and diesel-powered) and heavy-duty gasoline-powered vehicles]; (6) Exhaust emission test type ("two-speed idle" test (i.e., at 2,500 revolutions per minute (rpm) and at idle) for light-duty gasoline-powered vehicles from 1968 through 1995 and heavy-duty gasoline-powered vehicles 1968 and newer; 1968 and newer light-duty diesel-powered vehicles are inspected for exhaust opacity on a dynamometer (i.e., steady state using load mode)); (7) Emission standards (based on those specified in 40 CFR part 85, subpart W); (8) Emission control device inspections (for 1968 and newer vehicles, a gas cap check; for gasoline-powered vehicles newer than 1980, the anti-tampering program (ATP) checks for air pump disablement, catalyst removal, fuel inlet restrictor disablement, exhaust gas recirculation (EGR) system disablement, evaporative system disablement, and positive crankcase ventilation (PCV) system disablement; for diesel-powered vehicles, visual tampering inspection is based on manufacturer's specifications); (9) Stringency (21% based on 1996 data); (10) Waiver rate (4% for pre-1981 and 3% for 1981 and newer based on 1996 data); (11) Compliance rate (96%); and (12) Evaluation date (year 1996). The State's basic I/M program includes inspection of all 1996 and newer light-duty gasoline-powered vehicles equipped with certified on-board diagnostic (OBD) systems. Repair of

<sup>7</sup> A certified OBD system consists of a computer, which performs checks of a number of different vehicle systems for malfunctions or deterioration, which could result in the vehicle exceeding its emissions standards, and a malfunction indicator light, which is required to be illuminated when the system detects a problem.

malfunctions or system deterioration is identified for emission compliance through the OBD system.

As noted above, the Basic I/M SIP submitted in 1994 does not include a performance standard evaluation, but NDEP submitted the required evaluation (referred to herein as the "Basic I/M Performance Standard Evaluation") to EPA for approval on November 2, 2006. District AQMD prepared this evaluation using the latest available version of MOBILE (MOBILE6.2.03). District AQMD used the various inputs for EPA's "basic" model program and the State's basic I/M program for Truckee Meadows as described above to estimate the composite CO emission rate in year 1996 of the vehicle fleet in Truckee Meadows under three scenarios: (1) no I/M program, (2) EPA's basic model program, and (3) the State's basic I/M program for Truckee Meadows. District AQMD assumed 50% effectiveness for the State's basic I/M program in Truckee Meadows to account for the decentralized, test-and-repair nature of the I/M program.

A comparison of the MOBILE6.2.03-based CO emissions rates for these three scenarios shows that EPA's basic model program would have reduced composite CO emissions by 8.9% (relative to the no I/M scenario) and that the State's basic I/M program for Truckee Meadows reduced the emissions rate by 9.5% (once again, relative to the no I/M scenario). We find that District AQMD used the appropriate model and reasonable methods and assumptions in developing the CO emission rates for the performance standard evaluation. Based on this finding and because the results of the evaluation show that State's basic I/M program achieves equivalent or greater reductions in the CO emissions rate as compared to EPA's basic model program, we find that the State's basic I/M program in Truckee Meadows meets the performance standard requirement under 40 CFR 51.352.

#### Network Type and Program Evaluation (40 CFR 51.353)

State law provides for a decentralized (i.e., privately-owned but licensed by the State), test-and-repair network for 1968 and newer gasoline-powered autos and trucks.<sup>8</sup> The network includes different types of test-and-repair stations. State law differentiates between two types of test-and-repair stations: (1) Test stations that are

allowed to do only specific types of repairs (such as oil changes, replacement of oil or air filters, and servicing of the fuel injection system) but are generally not allowed to perform repairs that affect exhaust emissions and (2) test stations that are allowed to do more extensive repairs. The former are referred to as "authorized inspection stations" and the latter are referred to as "authorized stations." NAC sections 445B.460 through 445B.480 specify requirements for facilities to obtain licenses as authorized test stations or authorized stations. For the purposes of the performance standard evaluation, Washoe County assumed 50% effectiveness for the program based on the decentralized, test-and-repair nature of the network. The 50% effectiveness value is the default value in MOBILE for such networks and is acceptable. We find that the State's I/M testing network for Truckee Meadows is adequately described in the State's I/M submittals, that the State has sufficient legal authority to enforce the requirements that must be met for stations to obtain and retain licenses as authorized inspection stations or as authorized stations, and that the network has been adequately modeled for performance standard purposes, and thus the requirements of 40 CFR 51.353 are satisfied.

We note that the program evaluation required under 40 CFR 51.353(c) applies to "enhanced" I/M programs, and because Truckee Meadows is subject only to the "basic" I/M program requirements, the program evaluation requirement under 40 CFR 51.353(c) does not apply.

#### Adequate Tools and Resources (40 CFR 51.354)

The Federal I/M rule requires the state to demonstrate that there is adequate funding of the program functions including quality assurance, data analysis and reporting, the holding of hearings and adjudication of cases. The state must also demonstrate that sufficient personnel have been employed to effectively carry out the duties related to the program and that equipment necessary to achieve the objectives of the program have been acquired.

Nevada law establishes annual fees to cover costs associated with implementation, administration and operation of the I/M program. See NRS 445B.830. The fees must be paid to the DMV and accounted for in the pollution control account, which is created in the Nevada general fund. The 1994 Truckee Meadows I/M SIP notes that the basic I/M program in Truckee Meadows is an

update to existing program whose funding has long been established. To illustrate how the funds paid to DMV are allocated to provide for employee salaries, the Basic I/M SIP includes a copy of the budget for the program, as approved by the 67th Session of the Nevada Legislature and the Governor, showing provisions for personnel sufficient to meet the oversight requirements of the program for fiscal year 1994. See appendix #3 of the Basic I/M SIP. EPA believes the State's I/M program plan for tools and resources is acceptable.

#### Test Frequency and Convenience (40 CFR 51.355)

The performance standards for I/M programs assume an annual test frequency, but under the Federal I/M rule, other schedules may be approved if the required emission targets are achieved. Also, under the Federal I/M rule, the SIP must include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process.

Nevada's motor vehicle I/M program is registration-enforced in the two affected counties (i.e., Washoe and Clark) and is tracked by continuing annual vehicle registration. Under NRS 482.206, vehicle registration must be renewed annually, and under NAC 445B.594, persons who are registering or reregistering their vehicle in Truckee Meadows (except for new vehicles) must provide evidence of compliance (with the emission inspection) as part of the annual registration process. New vehicles are exempt from testing until the third registration cycle. See NAC 445B.592.

The DMV has authority under NRS 445B.798 to require proof of compliance with the emission standards after a vehicle has been cited for needing mechanical repair or for a smoking vehicle. Nevada law thereby provides for out-of-cycle emission testing for high-emitting vehicles. Under NRS 482.461, cancellation of registration can result if the vehicle failing a test conducted under NRS 445B.798 has not been repaired as required.

On May 11, 2007, NDEP submitted all of the current versions of the statutory provisions and rules cited above for approval into the Nevada SIP. EPA believes these elements meet the requirements of the Federal I/M rule.

#### Vehicle Coverage (40 CFR 51.356)

The Federal model "basic" I/M program against which State programs are compared assumes coverage of all

<sup>8</sup> Under the Nevada I/M program, light-duty diesel-powered motor vehicles registered in the applicable portions of Washoe County and Clark County are also subject to annual inspections, which include a tampering inspection and an opacity test.

1968 and newer model year (MY) "light-duty" vehicles (*i.e.*, up to 8,500 pounds GVWR) and includes vehicles operating on all fuel types. The Federal "basic" I/M program does not assume coverage of light-duty trucks. Other levels of coverage may be approved if the necessary emission reductions are achieved.

Under Nevada's basic I/M program, the term "light-duty motor vehicles" refers to passenger cars and trucks up to 8,500 pounds GVWR; "heavy-duty motor vehicles" refers to vehicles of 8,500 pounds GVWR or more. Nevada's basic I/M program is more inclusive than required under the Federal I/M rule in some ways and less inclusive in others. For instance, the program is more inclusive in that, as mentioned above, it requires all 1968 and newer heavy-duty gasoline-powered vehicles to be tested annually in addition to light-duty gasoline-powered vehicles. On the other hand, Nevada's basic I/M program provides certain exemptions not included in the model program, such as the exemption for new vehicles, which are not emissions-tested until the third registration cycle (but still must be registered or re-registered). Other minor exemptions are set forth in NAC 445B.592 (such as motorcycles and motor vehicles permanently converted from gasoline to propane, compressed natural gas, methane or butane as a fuel). The Basic I/M Performance Standard Evaluation submitted by NDEP as a SIP revision on November 2, 2006 takes these exemptions into account.

Under the Nevada program, light-duty diesel-powered vehicles, 1968 and newer, are also subject to annual registration requirements and certain emissions-related requirements but are not subject to the emissions testing procedures that apply to gasoline-powered vehicles. In addition, the emissions evaluation for the State's I/M program takes no specific credit for inspection and maintenance of diesel-powered vehicles.

EPA believes that Nevada's "basic" I/M program adequately identifies and accounts for the vehicles covered by the program and thereby meets the requirements of the Federal I/M rule under 40 CFR 51.356.

The Federal I/M rule requires that vehicles operated on Federal installations located within an I/M program area be tested regardless of whether the vehicles are registered in the state or local I/M area. See 40 CFR 51.356(a)(4). However, we are not requiring states to implement 40 CFR 51.356(a)(4) at this time. The Department of Justice has recommended to EPA that this Federal regulation be

revised since it appears to grant states authority to regulate Federal installations in circumstances where the Federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not constitutionally authorized. EPA will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final. Therefore, for these reasons, EPA is neither approving nor disapproving the specific requirements which apply to Federal facilities at this time. Specifically, we are taking no action on submitted rule NAC 445B.595(2), which extends the State's I/M requirements to motor vehicles operated on Federal installations located within I/M areas. We are also proposing under CAA section 110(k)(6), which authorizes EPA to correct errors in SIP actions, to rescind our previous approval of NAC 445B.595(2) into the Nevada SIP on grounds of sovereign immunity. We approved NAC 445B.595(2) as part of our 2004 approval of the State of Nevada's I/M program for Las Vegas and Boulder City.

#### Test Procedures and Standards (40 CFR 51.357)

The Federal I/M rule requires that states establish written test procedures and pass/fail standards to be followed for each model year and vehicle type included in the program. The required test procedures are specified in 40 CFR 51.357(a). The Federal I/M rule also requires that beginning January 1, 2002, inspection of the OBD systems on MY 1996 and newer light-duty vehicles shall be conducted according to the procedure described in 40 CFR 85.2222, at a minimum. See 40 CFR 51.357(a)(12). The required test standards are specified in 40 CFR 51.357(b).

EPA's basic I/M performance standard assumes testing in idle mode, but Nevada's I/M program requires subject vehicles to pass the more demanding "two-speed idle" test (*i.e.*, exhaust emissions are tested in idle mode and at 2,500 rpm). In this instance, the subject vehicles include all gasoline-powered motor vehicles (except motorcycles, and other exempt categories), *i.e.*, light-duty gasoline-powered vehicles MY 1968 through MY 1995, and heavy-duty gasoline-powered vehicles MY 1968 and newer. See NAC 445B.580. Generally, the procedures require use of an approved exhaust gas analyzer and compliance with the emissions standards set forth in NAC 445B.596 (unless a waiver is granted). All light-duty gasoline-powered vehicles MY

1996 and newer are subject to OBD systems checks. See NAC 445B.5805. The State's procedures for the two-speed idle test and the OBD system check are consistent with EPA requirements. Testing procedures and standards for light-duty diesel-powered vehicles are found in NAC 445B.587 through 445B.589.

EPA's basic I/M performance standard assumes exhaust emission testing standards as specified in 40 CFR part 85, subpart W. Consistent with those standards, the State I/M program establishes, for those vehicles that are subject to emissions testing, maximum exhaust emissions for MY 1981 and newer of 1.2% for CO and 220 ppm for hydrocarbons (HC). For older light-duty gasoline-powered vehicles (MY 1968 through 1980), maximum CO (%) and HC (ppm) standards range from 4.0%–2.0% and 800 ppm–500 ppm, respectively. The standards for heavy-duty gasoline-powered vehicles MY 1981 and newer are 3.5% for CO and 1,000 ppm for HC; for older heavy-duty gasoline-powered vehicles (MY 1968 through 1980), maximum CO (%) and HC (ppm) range from 7.0%–4.0% and 1,400 ppm–1,000 ppm, respectively. See NAC 445B.596. In the event of an emission failure of any kind, all components are retested after repairs.

The Federal basic I/M performance standard does not assume that inspections are made of the emission control devices as part of the I/M program. Under the Nevada I/M program, however, such inspections are required. Specifically, inspectors perform visual checks for smoke from the exhaust system and for blowby gases from the crankcase. See NAC 445B.580. Also, inspectors visually inspect all vehicles to determine the presence of a properly installed gas cap. For light-duty gasoline-powered vehicles MY 1981 through MY 1995 (and MY 1996 and newer heavy-duty gasoline-powered vehicles), inspectors also check for the presence of an exhaust gas recirculation valve, catalytic converter, air injection system and fuel inlet restrictor, and whether this equipment appears to be operating in accordance with the specifications of the manufacturer of the vehicle. See NAC 445B.580. For MY 1996 and newer light-duty gasoline-powered vehicles, inspection stations administer OBD systems checks (see NAC 445B.5805) that substitute for the visual inspections that are part of the program for earlier models. If a vehicle has missing or malfunctioning emissions control equipment, Nevada's required I/M test will result in a failed vehicle notification. Under NAC 445B.582 and 445B.589, necessary

repairs must be completed before a second test can be performed.

We conclude that the State's test procedures and standards meet the corresponding Federal I/M rule requirements.

#### Test Equipment (40 CFR 51.358)

The Federal I/M rule requires computerized test systems for performing any measurement on subject vehicles, and the SIP is to include written technical specifications for all test equipment used in the program.

In 1994, when the Basic I/M SIP was submitted, the State's exhaust gas analyzer was the Nevada 94 analyzer, and the Basic I/M SIP included the written specifications for that analyzer. Since then, the State has replaced the Nevada 94 analyzer with the NV2000 analyzer and submitted the related written specifications to EPA in a SIP submittal dated January 30, 2002. The January 30, 2002 SIP submittal was made in connection with our review of the I/M program in Las Vegas and Boulder City, but we note that the same analyzer (*i.e.*, NV2000) is required for use in both the Las Vegas/Boulder City area and in the Truckee Meadows area. On May 11, 2007, NDEP submitted another I/M-related SIP revision that included, among other items, written specifications for a change in NV2000 as previously submitted to make emissions testing possible on motor vehicles containing a certified OBD system which uses controller area network communication.

NV2000 emission testing equipment has been used to inspect gasoline-powered vehicles since April 2001. NV2000 analyzers carry California Bureau of Automotive Repair (BAR 97) certification. Two-speed idle and OBD inspection procedures can be performed with NV2000 analyzers. The NV2000 emission analyzer has remained in the same configuration as when first implemented in April 2001 with one exception. In late 2004, a revised OBD scan hardware capable of communication with controller area network systems was approved as an option. Emissions stations were required to update their NV2000 emission analyzers to include the revised OBD scan hardware by September 2006.

*NV2000 test equipment features include:* Concentration measurements of CO, HC, carbon dioxide (CO<sub>2</sub>) and oxygen (O<sub>2</sub>); engine RPM; leak checks; anti-tampering checks; automatic test data recording; and lock-out measures. The test begins with a check of the vehicle's registration and for any recall notices for that model vehicle. Adoption

or use of alternate test equipment, test procedures or alternate methods requires prior approval by EPA. The exhaust gas analyzer specifications describe all the necessary components of the emission analysis process, test equipment and all necessary EPA requirements under 40 CFR 51.358. We found NV2000 to be acceptable in connection with our approval of Nevada's I/M program for Las Vegas and Boulder City (see 69 FR 56351 (September 21, 2004)) and believe that NV2000, as updated in NDEP's submittal dated May 11, 2007, is equally acceptable for the purposes of the basic I/M program in Truckee Meadows.

#### Quality Control (40 CFR 51.359)

The Federal I/M rule requires state programs to include measures to ensure emission testing equipment is calibrated and maintained properly. See 40 CFR 51.359. SIPs are to include a description of quality control and recordkeeping procedures and the procedure manual, rule, ordinance or law describing and establishing the quality control procedures and requirements. See 40 CFR 51.359(f). The specifications for Nevada's NV2000 analyzer include several quality control elements. Only State-certified analyzers may be used for emission testing purposes under the I/M program, and to qualify for certification, manufacturers of analyzers must demonstrate that their model complies with all NV2000 specifications. NV2000 specifications were submitted by NDEP as part of its January 30, 2002 SIP submittal to EPA and approved as a SIP revision on September 21, 2004 (69 FR 56351). NDEP submitted revisions to NV2000 on May 11, 2007. NV2000 requires that analyzers be designed to perform automatic two-point gas calibrations for HC, CO and carbon dioxide; ambient air zero and span check tests; and measurements of oxygen using ambient air. The specifications call for automatic gas calibration to be conducted every 72 hours as activated by the analyzer's internal clock. In addition, to meet NV2000 specifications, an analyzer must be designed with a system capable of requiring an automatic leak check of the vacuum side of the analyzer activated by the internal clock every 24 hours.

The NV2000 analyzer also includes a number of automated controls to ensure that the system is tamper-resistant. The inspection certificates are stored automatically by the exhaust gas emission analyzer. The analyzers provide security capable of preventing any unauthorized modifications to the software or test data. The performance

of licensed test and repair stations on repairing vehicles for retest is monitored. Emission certificates are counterfeit-resistant. Overt and covert audits are used to help verify the security of documents and emission test information. The Nevada DMV collects and inspects records from licensed test stations to detect discrepancies in testing and/or repairs. EPA believes the State's submitted basic I/M program for Truckee Meadows meets the quality control requirements of 40 CFR 51.359 and is acceptable.

#### Waivers and Compliance via Diagnostic Inspection (40 CFR 51.360)

Under the Federal I/M rule, state I/M programs may allow the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards, as long as certain prescribed criteria are met. See 40 CFR 51.360. For "basic" I/M programs, state I/M programs must require motorists to make an expenditure of at least \$75 for pre-1981 vehicles and \$200 for 1981 and newer vehicles to qualify for a waiver, but allows motorists to wait to repair a failed vehicle for the period of one test cycle for "economic hardship." See 40 CFR 51.360(a)(9).

The State of Nevada has adopted procedures for issuing waivers after an emission test failure (see NAC 445B.590). First of all, only Nevada DMV may grant a waiver under the emissions standards tests. Second, for the basic I/M program in Truckee Meadows, the Nevada program requires a minimum expenditure of at least \$200 at an authorized station on repair parts (other than a catalytic converter, fuel inlet restrictor or air injection system) or on labor to qualify for a waiver. See NAC 445B.590(2)(a). Such labor costs cannot include emission testing if the repairs evidenced by the receipt were directly related to the deficiency in emissions. If the vehicle is repaired by the owner, the waiver application must include receipts or other evidence that at least \$200 has been spent on parts (other than a catalytic converter, fuel inlet restrictor or air injection system). No allowance is permitted for labor on vehicles repaired by the owner. Also, a vehicle that qualifies for repairs under a warranty is not eligible for a waiver. The performance standard evaluation provided by the State in the Basic I/M Performance Standard Evaluation SIP submittal dated November 2, 2006 reflects the actual waiver rate that occurred during the first quarter of 1996: 4.2% for pre-1981 vehicles and 3.3% of 1981 and newer vehicles. We

find that Nevada's submitted basic I/M program for Truckee Meadows meets the requirements for issuing waivers under such programs under 40 CFR 51.360 and adequately accounts for waivers in the performance standard evaluation for the program.

#### Motorist Compliance Enforcement (40 CFR 51.361)

The Federal I/M rule requires the use of registration denial to ensure compliance with the requirements of the I/M program. However, the Federal I/M rule allows programs in "basic" I/M areas to use an alternative enforcement mechanism if the State demonstrates that the alternative will be as effective as registration denial.

The Nevada program includes a registration denial enforcement program. See NRS 445B.815 AND NRS 482.280. New residents to Nevada must register their motor vehicles within 60 days of becoming a resident. See NRS 482.385. Vehicle owners that do not renew vehicle registrations, and continue to drive an unregistered vehicle in the state, are subject to enforcement action by any law enforcement officer in the state. Local governments are responsible for establishing policies for the mandatory fines of all traffic violations including failure to comply with registration requirements.

Persons purchasing vehicles from used-car dealers must have the vehicle tested and obtain evidence of compliance from the dealers prior to sale (NRS 445B.800). All persons purchasing vehicles from individuals must have the vehicle tested and have a passing certificate of compliance to obtain registration. If a vehicle is not registered, it is unlawful to be operated on public highways, and NRS 445B.840 prohibits possession of unauthorized evidence of compliance or the making, issuance, or use of any imitation or counterfeit evidence of compliance.

Government fleets (any number of vehicles) and private fleets (consisting of 25 or more vehicles) can certify their vehicles in their own licensed fleet facility (see NAC 445B.461 and NAC 445B.478). I/M inspection facilities for fleets must also meet the requirements applicable to a licensed test station except for bonds and signs. Evidence of I/M compliance for vehicles serviced by a covered fleet must be submitted annually to Nevada DMV.

Emission control compliance is tied to vehicle registration or re-registration. Registration tags are color-coded with the date imprinted to make it easily visible to local, county or State law enforcement personnel. EPA believes

the submitted basic I/M program for Truckee Meadows meets the requirements under the Federal rule related to motorist compliance enforcement and is acceptable.

#### Motorist Compliance Enforcement Program Oversight (40 CFR 51.362)

The Federal I/M rule requires the State to audit the enforcement program on a regular basis and to follow effective program management practices, including adjustments to improve operation when necessary. A quality assurance program must be implemented to ensure effective overall performance of the enforcement system.

Under Nevada's program, compliance is monitored using computer records of vehicle registration through the Nevada DMV, in conjunction with the State, local and county law enforcement agencies. Denial of vehicle registration or re-registration is the main tool for compliance. The DMV issues and supplies all emission control documents. The DMV tracks all certificates of inspection issued, received, returned or voided by the individual licensed test stations. Licensed test stations are required to provide the DMV with a report on all control documents received, issued, or voided (see NAC 445B.472 and 445B.473).

The DMV is required to develop procedures for personnel engaged in I/M document management and processing. Periodic audits of test records and registration files for renewals must be performed. Evaluations of all personnel are conducted on a regular basis in accordance with the State Personnel Manual.

Emission test files are required to be updated periodically at the DMV. Procedures have been developed for inquiry into the host computer for specific vehicles, stations, and general program reporting. Information on complaints, waivers issued, and recall information is included in the data files. NV2000 specifications require automatic functions for such items as the following: Pass/fail determinations on all measurements; a record of all test data and vehicle data to the central computer; electronic calibration and system integrity checks; and lockouts for specified quality control.

The State has developed written procedures for all field auditors and personnel directly involved in the enforcement of the I/M program. The procedures include: Methods for performing covert and overt audits, preparation of enforcement documents, methods for operation of I/M test

equipment, public relation materials and other applicable information. EPA believes the submitted basic I/M program for Truckee Meadows meets the requirements under the Federal rule related to oversight of the motorist compliance enforcement program and is acceptable.

#### Quality Assurance (40 CFR 51.363)

The Federal I/M rule requires an ongoing quality assurance program to discover, correct, and prevent fraud, waste, and abuse and to determine whether procedures are being followed and are adequate, if equipment is measuring accurately, and if other problems may exist, which would impede program performance. The procedures must also be periodically evaluated to assess their effectiveness and relevance in achieving program goals. See 40 CFR 51.363.

The specifications for the NV2000 analyzer incorporate quality assurance procedures. Among its various software requirements, NV2000 provides the capability for generating station and inspector evaluation reports. NV2000 also provides for different types of reports generated for State audit purposes, such as a station performance report and details regarding analyzer maintenance. Each licensed test station must maintain records and have them available for collection for DMV evaluation (see NAC 445B.472).

The State's rules for inspecting test stations and inspectors are set forth in NAC 445B.7015-445B.7045. Nevada DMV conducts annual audits of test stations and may determine that additional inspections are necessary based on circumstances such as abnormal rates of failure of motor vehicles on exhaust emissions tests or receipt of complaints against stations or inspectors. In addition, a minimum of once every calendar month, DMV performs an audit of all exhaust gas analyzers located at a test station, and once every calendar quarter, DMV's audit includes an evaluation of the accuracy of the analyzers using specialty gas specifically designed for that purpose. See NAC 445B.472.

DMV has developed written standard operating procedures for quality assurance that were included as appendix 6 of the Basic I/M SIP submitted in 1994. These procedures cover such subjects as covert audits and use of covert vehicles. Nevada DMV auditors receive formal training in the use of analyzers, basics of air pollution control, basic engine repair, State administrative procedures, quality assurance practices, covert procedures and program rules and regulations. EPA

believes the State's submitted basic I/M program for Truckee Meadows meets the requirements under the Federal rule related to quality assurance and is acceptable.

#### Enforcement Against Contractors, Stations and Inspectors (40 CFR 51.364)

The Federal I/M rule requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against licensed stations or contractors, and inspectors. Procedures for actions against stations and inspectors are provided for in NAC sections 445B.463 and 445B.476 (stations) and sections 445B.489 and 445B.491 (inspectors). Violations and penalties are set forth in NRS section 445B.835 and 445B.845 and NAC sections 445B.7045 and 445B.727. Stations and inspectors are regulated by Nevada DMV with respect to license denials, suspension, reinstatements, temporary suspensions, revoked licenses, required bonds, reapplications, and hearings for reapplication [NAC sections 445B.463 through 445B.468 (stations) and sections 445B.489 through 445B.493 (inspectors)]. EPA believes the State's submitted basic I/M program for Truckee Meadows meets the requirements for enforcement against licensed stations or contractors, and inspectors in the Federal rule and is acceptable.

#### Data Collection (40 CFR 51.365)

An effective I/M program requires accurate data collection in order to manage, evaluate and enforce the program requirements. The Nevada I/M program contains data gathering provisions that meet all of the criteria of the EPA regulations. Vehicle test data storage and retrieval methods are enumerated. Test results are expressed as either pass or fail. Information related to the calibration check must be stored automatically by each analysis. EPA believes the State's submitted basic I/M program for Truckee Meadows meets the requirements for data collection in the Federal rule and is acceptable.

#### Data Analysis and Reporting (40 CFR 51.366)

Data analysis and reporting are required to monitor and evaluate the program by the State and EPA and must provide information regarding the types of program activities performed and their final outcomes, including summary statistics and effectiveness evaluations of the enforcement mechanism, the quality assurance system, the quality control program, and the testing element. The Federal I/M

rule requires four annual reports to be submitted to EPA: A test data report, a quality assurance report, a quality control report, and an enforcement report. In addition, on a biennial basis, the States must submit a report that addresses programmatic changes, such as funding or personnel changes and new regulations, and problems identified in the program and steps taken to correct those problems.

Nevada DMV is responsible, in cooperation with NDEP, for data analysis and reporting. The State of Nevada has consistently submitted the reports on time (by July of each year), and the reports contain the required information. Nevada's annual data analysis and reporting includes: The number of vehicles tested by MY; pass/fail data; basic statistics on the quality assurance program for the previous year that include the number of inspection stations operating through the year; overt and covert audit information; quality control reporting that includes the number of scheduled station audits that were conducted and the number of analyzers that failed a calibration audit; enforcement-related information including the motorist compliance level and the number of waivers granted; and a description of any changes made to the I/M program. The most recent report covers calendar year 2006.

EPA believes that the State's submitted basic I/M program for Truckee Meadows meets the requirements for data analysis and reporting in the Federal rule and is acceptable.

#### Inspector Training and Licensing or Certification (40 CFR 51.367)

The Federal I/M rule requires all inspectors to receive formal training and be licensed or certified to conduct inspections. NAC sections 445B.485 through 445B.502 set forth the procedures for the required training and licensing of inspectors. Nevada DMV's requirements for an approved inspector include a verified training program for "class 1" and "class 2" inspectors (including a course approved by DMV), a written and practical testing program, and a separate certification process. All trainees are required to pass a comprehensive hands-on and written examination which requires inspectors to demonstrate an understanding of Nevada's regulations, test procedures, equipment usage, quality control procedures and safety and health issues. Certified repair technicians must comply with the training and licensing requirements of "class 2" inspectors in order to perform service on vehicle exhaust emission components. All test

stations must employ approved inspectors of the appropriate class and rating. Nevada DMV provides the appropriate inspector training and licensing to meet the requirements listed in 40 CFR 51.367. EPA believes that the State's submitted basic I/M program for Truckee Meadows meets the requirements for inspector training and licensing or certification in the Federal rule and is acceptable.

#### Public Information and Consumer Protection (40 CFR 51.368)

The Federal I/M rule requires that an I/M program include a plan for informing the public on an ongoing basis throughout the life of the I/M program of: Local air quality problems, the requirements of Federal and State law, and the impact of motor vehicles to local air quality problems. The educational program should also include information on: The need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. In addition, the program must describe procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the I/M program.

Pursuant to NRS 445B.785 and NAC 445B.471, Nevada DMV issues a pamphlet for the purpose of providing the general public with a description of the methods of, and reasons for, the I/M program. NDEP included such a pamphlet in appendix 8 of the Basic I/M SIP submitted in 1994. In addition, Nevada DMV operates a Web site (<http://www.dmvnv.com/emission.htm>) that describes the emissions testing program. Nevada DMV has developed a public relations program to disseminate information to the public through the local offices of the DMV and civic events throughout the year. Information is made available to the motorist, whose vehicle fails the test, regarding repair facilities. The consumer is protected through covert audits, regular inspections and public reports of improprieties. EPA believes the State's submitted basic I/M program for Truckee Meadows meets the requirements for public information and consumer protection in the Federal rule and is acceptable.

#### Improving Repair Effectiveness (40 CFR 51.369)

I/M program goals are achieved through effective repairs of vehicles which have failed the initial test. Under the Federal I/M rule, the State must provide the repair industry with

information and assistance on vehicle inspection, diagnosis and repair. Also, the State I/M program must provide feedback, including statistical and qualitative information to individual repair facilities on a regular basis regarding their success in repairing failed vehicles. Lastly, the State must assess the availability of adequate repair technician training in the I/M area and if such training is not currently available, shall ensure training is made available to all interested persons in the community either through private or public facilities.

Nevada DMV provides technical assistance to the repair industry by requiring the manufacturer of NV2000 exhaust gas analyzers to train all approved inspectors at the time of installation in the proper use, maintenance and operation of the analyzer and to provide on-site service calls to address specific issues or problems. See NAC 445B.5075. To provide Nevada DMV with the basis to evaluate the success in repairing failed vehicles, each authorized station is required to maintain, and have available for collection, records of all repairs at the request of Nevada DMV. See NAC 445B.472. Lastly, Nevada DMV's inspector regulations (NAC 445B.485 through 445B.502) require specific training and licensing of "class 2" inspectors, who are then approved as repair technicians. The training and certifying of mechanics is under the auspices of the DMV in cooperation with the Community College System.

We find that the State's I/M program for repair technician training meets the requirements of 40 CFR 51.369 thereby justifying the technician training credit taken in the Basic I/M Performance Standard Evaluation SIP submitted on November 2, 2006.

#### Compliance With Recall Notices (40 CFR 51.370)

States are required to establish a method to ensure that vehicles subject to "enhanced" I/M and that are included in either a voluntary emissions recall as defined at 40 CFR 85.1902(d), or in a remedial plan determination made pursuant to section 207(c) of the Act, receive the required repairs. "Basic" I/M programs, such as the one required for Truckee Meadows, are not subject to this requirement.

#### On-Road Testing (40 CFR 51.371)

On-road testing is required in areas subject to "enhanced" I/M requirements but is an option for areas subject to "basic" I/M. Because Truckee Meadows is subject to the "basic" I/M requirements, no on-road testing is

required in that area, and none is being conducted.

#### State Implementation Plan Submission (40 CFR 51.372)

The Federal I/M rule requires State I/M SIP submittals to address the following elements: (1) Schedule of implementation of the program including interim milestones leading to mandatory testing; (2) an analysis of emission level targets for the program showing that the program meets the performance standard; (3) a description of the geographic coverage of the program; (4) a detailed discussion of each of the required design elements; (5) legal authority requiring or allowing implementation of the I/M program; (6) legal authority for I/M program operation until such time as it is no longer necessary; (7) implementing regulations, interagency agreements, and memorandum of understanding; and (8) evidence of adequate funding and resources to implement all aspects of the program.

The State of Nevada has implemented a mandatory I/M program in Truckee Meadows since 1983. The changes that the State adopted to meet EPA's "basic" I/M program requirements were implemented in 1994. For MY 1996 and newer light-duty gasoline-powered vehicles, mandatory OBD system checks replaced the previous two-speed idle test beginning in 2002.

All of the required SIP I/M elements listed above were included in the Basic I/M SIP submitted by NDEP on June 3, 1994 except for the performance standard evaluation, which was contained in the Basic I/M Performance Standard Evaluation SIP submitted on November 2, 2006. Also, since 1994, the State has updated certain elements of the Basic I/M SIP, including the legal authority for the program, the implementing regulations, and the specifications for the approved exhaust gas analyzer. On May 11, 2007, NDEP submitted a third related SIP revision entitled *Nevada Mobile Source SIP: Update of the Regulatory Element* (May 11, 2007) ("Mobile Source SIP Update"), which includes a complete set of current I/M-related statutory provisions and implementing rules as well as the changes to the specifications for the NV2000 exhaust gas analyzer made since approval of NV2000 as part of Nevada's I/M program in Las Vegas and Boulder City in 2004. Thus, NDEP has submitted all of the required I/M elements. We note also that Nevada's I/M program does not undergo a sunset review, and thereby has the legal authority to operate until such time as it is no longer necessary.

#### Implementation Deadlines (40 CFR 51.373)

The Federal I/M rule requires I/M programs to be implemented as expeditiously as practicable. Decentralized "basic" I/M programs were required to be fully implemented by January 1, 1994. On-board diagnostic system checks must be implemented in all "basic" I/M areas by January 1, 2002. Nevada's "basic" I/M program was implemented in 1994, and Nevada's requirements for OBD checks were implemented in 2002. This is acceptable.

#### Conclusion

Based on our review of the various elements of the program as discussed above, we propose to approve the basic I/M program for Truckee Meadows as meeting all applicable requirements under the CAA and our implementing regulations under 40 CFR part 51, including the requirement that the basic program meets the "basic" performance standard applicable to "moderate" CO nonattainment areas with design values less than 12.7 ppm.

#### VIII. Clean Air Act Requirements for Redesignation to Attainment

The CAA establishes the requirements for redesignating 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.

EPA provided guidance on redesignations in the form of a General Preamble for the Implementation of Title I of the CAA Amendments of 1990 published in the **Federal Register** on April 16, 1992 (57 FR 13498), as supplemented on April 28, 1992 (57 FR 18070). Other relevant EPA guidance documents include:

- "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from

G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards (OAQPS), June 1, 1992 (Helms memo);

- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, September 4, 1992 (Calcagni memo 1992a);

- “Public Hearing Requirements for 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, September 29, 1992 (Calcagni memo 1992b);

- “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, October 28, 1992 (Calcagni memo 1992c);

- “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (Shapiro memo);

- “Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, OAQPS, November 30, 1993 (Berry memo);

- “Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 (Nichols memo).

For the reasons set forth below in section IX of this document, we propose to approve NDEP’s request for redesignation of the Truckee Meadows 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.

## IX. Evaluation of the State’s Redesignation Request for Truckee Meadows

### A. The Area Must Have Attained the Applicable NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment EPA must determine that

the area has attained the applicable NAAQS. In this case, the applicable NAAQS is the CO NAAQS.

On May 3, 2005 (70 FR 22803), we determined that the Truckee Meadows “moderate” CO nonattainment area attained the CO NAAQS by the applicable attainment date (1995) and had continued to attain the standard since that time. As part of that determination, we reviewed the ambient CO monitoring network operated by the District AQMD and found that it meets or exceeds our requirements. See 70 FR 3170 (January 21, 2005). For a description of District AQMD’s ambient CO monitoring network in Truckee Meadows and our requirements for such networks, please see our January 21, 2005 proposed CO attainment finding (70 FR 3170).

We based our May 3, 2005 determination of attainment on ambient monitoring data through year 2004. For the purposes of this proposed rule, we have reviewed the most recent data input to our Air Quality System (AQS) database and have found that no exceedances of the CO NAAQS have been recorded in the 2005–2006 period. (The highest 8-hour CO concentrations were less than 50% of the NAAQS at all of the stations over the 2005–2006 period.) Thus, based on the attainment finding and positive assessment of the District AQMD ambient CO monitoring network that we made in May 2005 and our current review of the most recent data in AQS, we find that Truckee Meadows has attained the CO NAAQS thereby satisfying the criterion for redesignation set forth in section 107(d)(3)(E)(i).

### B. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) precludes redesignation of a nonattainment area to attainment until EPA has fully approved the applicable implementation plan for the area under section 110(k). Pursuant to the CAA amendments of 1977, the State of Nevada submitted a CO plan for the Truckee Meadows nonattainment area. In 1981, we approved in part, and conditionally approved in part, the submitted CO plan, and in 1982, we found that the conditions imposed on approval of certain elements of the CO plan for Truckee Meadows had been fulfilled. In 1984, we approved revisions to many of the elements contained in the CO plan for Truckee Meadows, and deferred action on other elements. We proposed disapproval of a subsequent CO plan for Truckee Meadows in 1987, but we consider the plan elements for which we deferred action or proposed

disapproval in the 1980’s to be superseded by the SIP revision submittals made pursuant to the 1990 Clean Air Act Amendments.

With respect to post-1990 SIP submittals, upon final approval of the required plan elements proposed for approval herein (wintertime oxygenated gasoline rule and “basic” I/M program), we will have fully approved the applicable implementation plan for the Truckee Meadows CO nonattainment area, and thereby satisfied this criterion for redesignation.

### 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 improvement in CO air quality in the Truckee Meadows area is due to the Federal Motor Vehicle Control Program (40 CFR part 86), the local wintertime oxygenated gasoline rule, the State’s “basic” vehicle I/M program, and the local residential wood combustion rule. 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 Truckee Meadows CO Maintenance Plan provides estimates of the emissions reductions associated with the State and local measures in years 2002, 2010 and 2016 (see page 7 of the Truckee Meadows CO Maintenance Plan). Based on those estimates, the three State and local control measures together reduced CO emissions that would otherwise have occurred in Truckee Meadows by approximately 20 percent in 2002.

With respect to permanence and enforceability, we are proposing approval of the wintertime oxygenated gasoline rule and the “basic” vehicle I/M program in this action, and upon

their final approval, the local wintertime oxygenated gasoline rule and basic I/M program will become federally enforceable as part of the Nevada SIP. (The wintertime oxygenated gasoline rule and basic I/M program are already enforceable by the District and State, respectively.) Upon the effective date of our approval of the residential wood combustion rule, it became federally enforceable. None of these measures include sunset clauses, and thus, upon approval by EPA, the measures will become permanent features of the Nevada SIP until such time as the State submits, and EPA approves, future SIP revisions that amend or delete them.

With respect to the connection between the emissions reductions and the improvement in air quality, the Truckee Meadows CO Maintenance Plan provides a demonstration that the air quality improvement in Truckee Meadows, that has resulted in attainment of the CO NAAQS by 1995 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. See pages 6 through 11 of the Truckee Meadows CO Maintenance Plan.

Thus, we find that the improvement in CO air quality in Truckee Meadows is the result of permanent and enforceable emissions reductions from a combination of the Federal Motor Vehicle Control Program and certain State and local measures. As such, the criterion for redesignation set forth at CAA section 107(d)(3)(E)(iii) is satisfied.

#### *D. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D*

Section 107(d)(3)(E)(v) requires a State to have met all requirements applicable to a nonattainment area under section 110 and part D of the Act as a prerequisite to redesignation of that nonattainment area to attainment.

##### 1. Section 110 Requirements

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 Truckee Meadows 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 SIP and determined that it

is consistent with the requirements of amended section 110(a)(2). The Truckee Meadows portion of the 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 the District is unable to meet its CAA obligations.

##### 2. Part D Requirements

The requirements that apply under part D of title I of the Act to “moderate” CO nonattainment areas are set forth in sections 172, 176, 187, and 211. The CAA, as amended in 1990, distinguishes between moderate CO nonattainment areas with design values of 12.7 ppm (eight-hour average) or less and those with design values greater than 12.7 ppm at the time of initial classification. Truckee Meadows had a design value of 9.8 ppm at the time of initial classification and thus is subject to those specific requirements that apply to “moderate” CO nonattainment areas with a design value of 12.7 ppm or less and is not subject to the additional requirements of “moderate” CO nonattainment areas with design values greater than 12.7 ppm. We have issued guidance in a General Preamble<sup>9</sup> describing how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate CO nonattainment area SIP provisions.

*Reasonably Available Control Measures / Reasonably Available Control Technology (RACM/RACT).* 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.

<sup>9</sup>“General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (57 FR 13498, April 16, 1992, as supplemented 57 FR 18070, April 28, 1992).

Attainment of the CO NAAQS in Truckee Meadows relies upon three State or local control measures: The State’s I/M program, Washoe County’s rule establishing a wintertime oxygenated fuel requirement and Washoe County’s rule establishing requirements for residential wood combustion. We are proposing to approve the State’s I/M program for Truckee Meadows as well as the District’s rule establishing a wintertime oxygenated fuel requirement as part of this action (see sections VI and VII of this document). In a separate action, we approved the District’s rule governing residential wood combustion. See 72 FR 33397 (June 18, 2007). Because the area has attained the CO NAAQS, no additional measures need be submitted to fulfill the RACM/RACT requirement of CAA section 172(c)(1) in the Truckee Meadows CO nonattainment area.

*Reasonable Further Progress (RFP).* Section 172(c)(2) of the Act requires States to submit a SIP revision for nonattainment areas that provide for reasonable further progress (RFP). Reasonable further progress is defined in CAA section 171(1) as 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 national ambient air quality standard by the applicable date.

EPA interprets the Act such that the requirements for RFP do 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. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point. See 57 FR 13498, at 13564 (April 16, 1992). See also our September 4, 1992 memorandum from John Calcagni, entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” (Calcagni memo), p. 6. Based on our finding above that Truckee Meadows has attained the CO NAAQS, we find that the requirements for RFP do not apply for the purposes of our evaluation of the State’s request to redesignate the area to attainment.

*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 compilation. Under sections 172(c)(3) and 187(a)(5) of the Act, States are required to submit, no later than September 30, 1995, and no later than the end of each 3-year period thereafter, until redesignation, an updated inventory of CO emitted within CO nonattainment areas.

On November 13, 1992, NDEP submitted a revision to the Truckee Meadows portion of the Nevada SIP that contained a number of items, including the 1990 Base Year CO Inventory. The 1990 Base Year CO Inventory was the responsibility of and complied by the staff of the District AQMD. In the process of developing this base year inventory, the District AQMD submitted an Inventory Preparation Plan (IPP), which was officially accepted and approved by EPA.<sup>10</sup> In 1993, the District AQMD revised the 1990 Base Year CO Inventory to reflect, among other things, an update of EPA's on-road motor vehicle emission factor model (MOBILE) and updated EPA methods for calculating emissions from nonroad mobile sources. NDEP submitted the revised inventory ("Revised 1990 Base Year CO Inventory") to EPA on June 3, 1994 as appendix 4 to NDEP's "basic" vehicle I/M SIP revision submittal for Truckee Meadows.

On January 19, 1996; April 14, 1999; February 5, 2002; and February 3, 2005, NDEP submitted SIP revisions that contained updates of the CO emissions inventories for Truckee Meadows for years 1993, 1996, 1999, and 2002, respectively, as required under CAA sections 172(c)(3) and 187(a)(5). Each successive inventory update reflects the changes in activity levels within each of the various source categories, the effects of on-going emissions control programs such as the Federal Motor Vehicle Control Program and the District's residential wood combustion program, as well as the updates to methods and emissions factors used to develop emissions inventories, such as updates to EPA's "MOBILE" emission factor model.

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 submitted maintenance plan and

related base year (2002) CO emission inventory satisfies the requirements of section 172(a)(3), 187(a)(1), and 187(a)(5) for the purposes of redesignation of Truckee Meadows to attainment for the CO NAAQS. See section IX.E.1 herein for details concerning the base year (2002) CO emission inventory. We plan no further action on the previously submitted CO inventories for years 1990, 1993, 1996, and 1999.<sup>11</sup>

#### *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."

Under the Clean Air Act Amendments of 1977, States with designated nonattainment areas were required to amend their NSR rules to impose LAER and offsets requirements on new major sources and major modifications of nonattainment pollutants in nonattainment areas. Under the 1977 Act Amendments, we designated Truckee Meadows as a CO nonattainment area. In Washoe County, the District AQMD administers the NSR program for all stationary sources except for certain fossil-fueled power plants that are subject under State law to NDEP jurisdiction.

To address the nonattainment NSR requirements flowing from the 1977 Act Amendments, the District amended its NSR rules; NDEP submitted them to EPA on July 24, 1979 as a revision to the

Truckee Meadows portion of the Nevada SIP; and we approved them on April 14, 1981. See 21758 (April 14, 1981). In that same April 1981 final rule, we also approved NDEP's revised nonattainment NSR rules. Under these EPA-approved rules, LAER and offsets have been requirements for any new major sources or major modifications of CO in the Truckee Meadows nonattainment area.

The 1990 Clean Air Act Amendments retained the core nonattainment NSR elements of LAER and offsets but added additional requirements, and in response, the District again revised its NSR rules, and NDEP submitted the revised rules to EPA on April 7, 1994. We have not taken action on the April 7, 1994 NSR SIP submittal.

We have determined, however, that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that an NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without nonattainment NSR in effect. The rationale for this determination is described in the Nichols memo cited in section VIII of this document.

The Truckee Meadows CO Maintenance Plan anticipates an increase in CO emissions that is proportional to expected growth in population in the Truckee Meadows area from the types of sources potentially subject to LAER and offsets<sup>12</sup> rather than assuming that any increases in CO from such sources would be offset. See pages 18–20 in the Truckee Meadows CO Maintenance Plan. Thus, we find that the maintenance demonstration for the Truckee Meadows CO nonattainment area does not rely on nonattainment NSR, and the State need not have a fully-approved nonattainment NSR program for Truckee Meadows prior to approval of the CO redesignation request.

Prevention of Significant Deterioration (PSD) is the NSR program that applies to new major sources or major modifications of attainment pollutants and is the replacement program for nonattainment NSR after redesignation to attainment, and part of the obligation under PSD is for a new source to review increment consumption and maintenance of the air quality standards. The PSD program requires stationary sources to undergo preconstruction review before facilities

<sup>12</sup> The source categories with sources potentially subject to LAER and offsets include stationary source fuel combustion and waste disposal, treatment and recovery.

<sup>10</sup> See letter from Julia Barrow, Chief, Air Quality Section, Air Division, EPA-Region IX, to Jack Sheen, Air Pollution Control Officer, District AQMD, dated February 21, 1992.

<sup>11</sup> We are also not taking specific action on NDEP's submittal of the 2002 periodic inventory update. However, because the 2002 inventory was used as the base year inventory in the Truckee Meadows CO Maintenance Plan, we are relying on the technical documentation submitted with the 2002 periodic inventory update in our evaluation of the Truckee Meadows CO Maintenance Plan. See section IX.E.1 of this document.

are constructed or modified, and to apply Best Available Control Technology (BACT). The PSD program will apply to any major source or major modification of CO emissions wishing to locate in the Truckee Meadows area once the area is redesignated to attainment. EPA currently administers the PSD program in Washoe County except for certain types of sources for which EPA has delegated PSD authority to NDEP. See 68 FR 19371 (April 21, 2003) and 70 FR 52837 (September 8, 2003).

*Contingency Provisions.* Section 172(c)(9) of the Act requires a State to submit contingency measures that will be implemented if an area fails to make reasonable further progress<sup>13</sup> (RFP) or fails to attain by the applicable attainment date.

On October 20, 1993, the District adopted a request to the Nevada State Environmental Commission to require and implement an “enhanced” vehicle I/M program in Truckee Meadows, upon the occurrence of future CO NAAQS exceedances, as the contingency measure intended to fulfill the requirement of CAA section 172(c)(9). NDEP included this contingency measure as appendix 7 to the State’s “basic” vehicle I/M program for the Truckee Meadows area and submitted the “basic” vehicle I/M program for the Truckee Meadows to EPA in a SIP revision submittal dated June 3, 1994.

As noted above, the section 172(c)(9) requirement for contingency measures are directed at ensuring RFP and attainment by the applicable date. We interpret the Act such that this requirement no longer applies when an area has attained the standard and is eligible for redesignation. See 57 FR 13498, at 13564 (April 16, 1992). See also Calcagni memo 1992a, at page 6. Furthermore, we note that CAA section 175A for maintenance plans provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Therefore, based on our finding above that Truckee Meadows has attained the CO NAAQS, we find that the requirement for contingency measures under section 172(c)(9) does not apply for the purposes of our evaluation of the State’s request for redesignation, and we consider the contingency provisions submitted as part of the Truckee

Meadows CO Maintenance Plan to supersede the contingency measure submitted on June 3, 1994 and plan no further action on the latter measure.

*Section 176 Requirements.* Under section 176(c) of the Clean Air Act Amendments of 1990, States were required to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. Section 176(c) further provided that State conformity provisions 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 (“transportation conformity”) and B (“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.”

To address the statutory and regulatory requirements related to transportation and general conformity, on July 31, 1995, NDEP submitted the conformity procedures and criteria that had been adopted by the District on December 14, 1994 and by the Truckee Meadows Regional Planning Governing Board on February 9, 1995. We have not taken action on the July 31, 1995 SIP revision submittal.<sup>14</sup>

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). The rationale for this is based on a combination of two factors. First, the requirement to submit a conformity SIP continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. See

CAA section 176(c)(5)(B). Second, the EPA’s conformity rules require the performance of conformity analyses in the absence of Federally-approved State rules. See 40 CFR 51.390(b) and 51.851(b). Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not applicable for purposes of evaluating a redesignation request. See *EPA v. EPA*, 265 F.3d 426, 439 (6th Cir. 2001) upholding this interpretation.

For the reasons stated above, EPA believes the approval of conformity rules into the State’s SIP is not a prerequisite for redesignation and thus, our inaction on NDEP’s July 31, 1995 submittal is no obstacle to redesignation of Truckee Meadows to attainment for the CO NAAQS. Federal transportation and general conformity rules will continue to apply with respect to CO emissions associated with transportation plans, programs, and projects as well as other Federally-supported or funded projects within Truckee Meadows.

*Vehicle Inspection and Maintenance Program.* Under section 187(a)(4), the CAA requires States with moderate CO nonattainment areas to submit a SIP revision that provides for a new or amended vehicle I/M program that meets applicable Federal I/M requirements, including the “basic” I/M performance standard. As described in section VII of this document, we are proposing to approve the State’s “basic” I/M program for Truckee Meadows, and if we finalize this action as proposed, the vehicle I/M requirement for Truckee Meadows under CAA section 187(a)(4) will be fulfilled.

*Oxygenated Gasoline Program.* Under section 211(m), the CAA requires States with CO nonattainment areas with design values of 9.5 ppm or greater (based on 1988–1989 data) to submit a SIP revision that provides for an oxygenated gasoline program. As described in section VI of this document, we are proposing to approve the District’s wintertime oxygenated gasoline rule, and if we finalize this action as proposed, the fuel requirement under CAA section 211(m) will be fulfilled.

*Conclusion with respect to Section 110 and Part D Requirements.* Based on our evaluation of the various SIP requirements and submittals discussed above, we conclude that upon our final approval of the SIP submittals evaluated in this action, the State will have met all

<sup>13</sup> 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 national ambient air quality standard by the applicable date.” See section 171(1) of the Act.

<sup>14</sup> On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted, and among its provisions, this law amended section 176(c) of the CAA to reduce the content requirements for transportation conformity SIPs. Under SAFETEA-LU, with respect to transportation conformity, States are required only to develop criteria and procedures for interagency consultation and enforcement (and enforceability) of commitments for certain control measures and mitigation measures. In response to SAFETEA-LU, NDEP is now free to request that EPA approve only the three provisions that are required to be included in transportation conformity SIPs and that EPA take no action on the remainder of the transportation conformity portion of the July 31, 1995 SIP submission; however, other options are available as well. See 72 FR 24472, at 24484–24485 (May 2, 2007).

section 110 and part D requirements that apply to the Truckee Meadows moderate CO nonattainment area and thereby satisfied the criterion for redesignation under CAA section 107(d)(3)(E)(v).

*E. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A*

Section 107(d)(3)(E)(iv) of the CAA requires, as a pre-condition to being redesignated to attainment, that EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act. Section 175A 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 1992a.

The purpose of a maintenance plan is to provide for the maintenance of the applicable NAAQS for at least 10 years after redesignation. Eight years after redesignation, the State must submit a revised maintenance plan which demonstrates continued maintenance of the applicable NAAQS for an additional 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. The *Redesignation Request and Maintenance Plan for the Truckee Meadows Carbon Monoxide Non-*

*Attainment Area* (September 2005) (“Truckee Meadows CO Maintenance Plan”), which was prepared by the District AQMD and adopted by the District Board of Health, addresses these core elements, and our evaluation of these elements follows.

1. Attainment Inventory

The plan must contain an attainment year emissions inventory to identify a level of emissions in the area which 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 the attainment year.

The District’s Truckee Meadows CO Maintenance Plan presents CO emissions estimates and projections for years 2002, 2010, and 2016. We find year 2002 to be an acceptable year for the baseline year because it represents a year in which the Truckee Meadows was in attainment of the CO NAAQS. See 70 FR 22803 (May 3, 2005). Based on monitoring data collected during 2002, the design value for CO in Truckee Meadows in the attainment year was 4.4 ppm, eight-hour average, which is well below the NAAQS of 9 ppm. The baseline (2002) inventory in the maintenance plan is not documented in detail in the Truckee Meadows CO Maintenance Plan itself but is so documented in a separate SIP submittal of the same date as the Truckee Meadows CO Maintenance Plan

(November 4, 2005) of the 2002 CO periodic inventory update.

As shown in table 1 below, the baseline inventory (2002) covers stationary area sources (including stationary source fuel combustion; waste disposal, treatment, & recovery; residential wood combustion; and miscellaneous area sources (such as wildfires, structure fires, and prescribed burning)), nonroad mobile sources (including aircraft, nonroad gasoline and diesel vehicles, and railroads), and on-road mobile sources (i.e., cars, trucks, and motorcycles) and reflects activity profiles and temperatures characteristic of the CO season (i.e., Winter). On-road estimates were made based on EPA’s MOBILE6 (high altitude) emission factors, vehicle I/M and anti-tampering programs, the oxygenated gasoline requirement, Regional Transportation Commission (RTC) transportation activity estimates (VMT, vehicle speeds, etc.), and demographic data provided by the planning departments for Washoe County, the City of Reno, and the City of Sparks. Nonroad mobile source emissions (not including aircraft or locomotives) were estimated using EPA’s NONROAD emissions model. The baseline emissions estimates reflect the basic control measures relied upon for attainment and maintenance of the CO NAAQS in Truckee Meadows: The Federal Motor Vehicle Control Program, The District’s oxygenated gasoline requirement, the State’s vehicle I/M program for motor vehicles, and the District’s residential wood combustion program.

TABLE 1.—CARBON MONOXIDE EMISSIONS INVENTORY, TRUCKEE MEADOWS, 2002, 2010, AND 2016

[Pounds per typical CO season day]

Source	2002	2010	2016
Stationary Source Fuel Combustion .....	2,920	3,321	3,619
Waste Disposal, Treatment & Recovery .....	18	20	22
Residential Wood Combustion .....	31,918	35,344	35,344
Miscellaneous Area Sources .....	613	697	760
Aircraft .....	4,175	4,748	5,175
Nonroad Gasoline Vehicles .....	68,578	68,712	77,226
Nonroad Diesel Vehicles .....	1,645	1,834	1,873
Railroads .....	155	176	192
On-road Vehicles (without safety margin) .....	335,508	263,938	236,754
Subtotal (excluding safety margins) .....	445,530	378,790	360,965
Safety Margin (assigned to on-road vehicles) .....	N/A	66,740	84,565
Total (including safety margin) .....	445,530	445,530	445,530

Source: District AQMD, Truckee Meadows CO Maintenance Plan, pages 20 and 21.

The baseline inventory estimates that on-road motor vehicles accounted for

approximately 75%, residential wood combustion accounted for

approximately 7%, and nonroad mobile sources (including locomotives and

aircraft) accounted for approximately 17% of the daily (wintertime) CO emissions within Truckee Meadows in 2002.

The methodologies used by the District AQMD to prepare the baseline (2002) CO inventory, as described in the appendices to the 2002 CO periodic inventory update SIP submittal (dated November 4, 2005), are acceptable, and we find the baseline CO inventory for Truckee Meadows to be reasonably comprehensive and accurate.

## 2. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. In either case, to satisfy the demonstration requirement, the State should project emissions for at least 10 years beyond redesignation.

Table 1, above, summarizes the baseline (2002) CO emissions estimates and future year (2010 and 2016) projections from the Truckee Meadows CO Maintenance Plan. The Truckee Meadows CO Maintenance Plan projects future year inventories (2010 and 2016) by adjusting the 2002 baseline inventory to account for changes in population, vehicle miles traveled (VMT), and the underlying composite emissions factors for such sources as motor vehicles and nonroad mobile sources (using such emissions models as MOBILE6 and NONROAD, consistent with the baseline (2002) inventory). The population projections used in developing the future year emissions projections are consistent with those that were adopted by the Truckee Meadows Regional Planning Commission for use in developing the Truckee Meadows Regional Plan. The vehicle activity assumptions used for the emissions projections are consistent with those developed and used by the local Metropolitan Planning Organization (MPO), the Regional Transportation Commission of Washoe County.

The projections for 2010 and 2016 reflect the control measures relied upon for attainment and maintenance of the CO NAAQS in Truckee Meadows, including the Federal Motor Vehicle Control Program, the District's oxygenated gasoline program, the State's vehicle I/M program, and the District's residential woodburning combustion program.

Based on the inventory estimates, CO emissions in Truckee Meadows are expected to decrease significantly

between 2002 and 2016, despite a projected 24% increase in population and 38% increase in VMT over that period, primarily due to decreases from the on-road motor vehicle category associated with increasingly stringent EPA exhaust standards for new cars and trucks and the gradual turnover from older more polluting, to newer cleaner burning, vehicles. The District AQMD has also established safety margins for years 2010 and 2016 and assigned the safety margins to the on-road motor vehicle source category. Based on our review of the emissions projections, we find that the methods used to make the future year projections are acceptable.

Assuming redesignation of Truckee Meadows for CO early in 2008, the plan does not quite project emissions for 10 years beyond redesignation, but given how close the out-year in the maintenance plan (2016) is to a 10-year horizon year (2018), the low design value (4.4 ppm) of Truckee Meadows in the attainment year (2002), the flat trend in CO emissions documented by the maintenance plan (even assuming use of the safety margin), and the expected continuation of all of the measures that brought the area to attainment, we find that the plan adequately demonstrates maintenance of the CO NAAQS for the initial maintenance period (i.e., first 10 years after redesignation).

## 3. Monitoring Network

Continued ambient monitoring of an area is required over the maintenance period. In the Truckee Meadows CO Maintenance Plan (see page 22 of the plan), the District AQMD indicates its intention to continue to operate an air quality monitoring network consistent with 40 CFR part 58 to verify the attainment status. The Truckee Meadows CO Maintenance Plan also states that, in addition, Washoe County's CO monitoring network will be reviewed annually pursuant to 40 CFR 58.20(d) to ensure the network meets the monitoring objectives defined in 40 CFR part 58, appendix D.

## 4. Verification of Continued Attainment

The District AQMD and NDEP have the legal authority to implement and enforce the requirements of the Truckee Meadows 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. As noted above, to implement the Truckee Meadows CO Maintenance Plan, the District AQMD will continue to monitor CO levels in Truckee Meadows. To track progress on the plan, the District AQMD has also

committed to continue preparing (and submitting to EPA) CO emission inventory updates on a triennial schedule (see page 23 of the Truckee Meadows CO Maintenance Plan). The District AQMD also intends to continue residential wood combustion surveys on a triennial basis to monitor changes in the types and number of woodburning devices operating, and the amount of wood being burned, in Truckee Meadows and thereby maintain up-to-date information on this important CO source category.

## 5. Contingency Plan

Section 175A(d) of the Act requires that maintenance plans include contingency provisions, as necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the 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 Truckee Meadows CO Maintenance Plan includes a contingency plan consisting of two tiers. As background to the first tier, we note that, under the District's emergency episode plan, now codified as District rule 050.001, an exceedance of the 8-hour CO NAAQS (i.e. a value exceeding 9 ppm (eight-hour average), which means an actual recording of 9.5 ppm or greater due to rounding conventions) at any of the monitors located in the Truckee Meadows area triggers a Stage 1 (Alert) Episode. Stage 1 (Alert) Episode actions include cessation of open burning and use of incinerators that are subject to District AQMD operating permits, and a request to the public to curtail unnecessary motor vehicle use through the District's public outreach program. Under certain conditions, Stage 1 (Alert) Episode actions may also include the suspension of the burning of any solid fuel in commercial or residential stoves and/or fireplaces unless such fuels supply the only heat available to the person burning it. We approved the current version of the District's emergency

episode plan on June 18, 2007 (72 FR 33397).

Under tier 1 of the contingency plan, the District would initiate a rulemaking process to redefine the CO stage 1 (alert) episode level from 9 ppm to 9.0 ppm. This will have the effect of triggering the actions cited above at pre-exceedance levels due to the convention of rounding all values from 9.1 ppm through 9.4 ppm down to 9 ppm. In other words, under tier 1, the Stage 1 (Alert) Episode criteria level for CO will be reduced, as a practical matter, from 9.5 ppm to 9.0 ppm. The plan indicates that the District will adopt and implement this regulatory change before the next CO season following the triggering event.

Tier 2 will be triggered by a violation of the CO NAAQS (i.e., a second non-overlapping exceedance of the 8-hour CO NAAQS in the same calendar year from any National Ambient Monitoring Station (NAMS), State and Local Monitoring Stations (SLAMS), or Special Purpose Monitoring (SPM) site operated within Washoe County). If triggered, under tier 2 of the contingency plan, the District AQMD will bring to the District Board of Health (within 45 days of the tier 2 triggering event) a recommendation for regulatory action, including a timeline for adoption and implementation. The contingency plan contains the current list of potential CO contingency measures, including an increase in the oxygen content requirement under the District's wintertime oxygenated gasoline rule, and a request to the State Environmental Commission to revise certain provisions of the vehicle I/M program to achieve additional CO emissions reductions in Truckee Meadows. The District AQMD intends to update this list of potential measures on a triennial basis.

EPA finds that the contingency plan provided in the maintenance plan is adequate to ensure prompt correction of

a violation and thereby complies with section 175A(d) of the Act.

6. Subsequent Maintenance Plan Revisions

Section 175A(b) of the CAA requires States to submit a subsequent maintenance plan revision eight years after the original redesignation request and maintenance plan have been approved by EPA. The subsequent revision is to provide for maintenance of the air quality standard for an additional 10 years following the initial ten-year maintenance period. Through adoption of the Truckee Meadows CO Maintenance Plan, the District has committed (see page 16 of the Truckee Meadows CO Maintenance Plan) to prepare, adopt and submit a revised CO maintenance plan eight years after redesignation to attainment.

7. Motor Vehicle Emissions Budgets

A maintenance plan must contain motor vehicle emissions budgets (MVEBs) that, in conjunction with all other sources, are consistent with maintenance of the applicable NAAQS. In this case, an MVEB represents the total allowable CO emissions allocated to highway and transit vehicle use during the maintenance period. The rules and requirements governing transportation conformity (codified at 40 CFR part 93, subpart A) require certain transportation activities to be consistent with the MVEBs contained in control strategy or maintenance SIPs (40 CFR 93.118). The projected emissions resulting from the transportation activities must be less than or equal to the emissions budget levels (40 CFR 93.118(a)).

The MVEBs for years 2010 and 2016 that are contained in the Truckee Meadows CO Maintenance Plan were developed using emission factors generated using EPA's MOBILE6 model

but also include a safety margin equal to the difference between the projected level of overall CO emissions in Truckee Meadows in those years and the actual CO emissions that were estimated for the baseline year (2002). Safety margins are allowed under our transportation conformity rule so long as such margins are explicitly quantified in the applicable plan and are shown to be consistent with attainment or maintenance of the NAAQS (whichever is relevant to the particular plan). See 40 CFR 93.124(a). In this instance, the safety margin has been explicitly quantified and shown to be consistent with continued maintenance of the CO NAAQS in Truckee Meadows through the applicable maintenance period. See section IX.E.2 of this document.

We found the MVEBs in the Truckee Meadows CO Maintenance Plan adequate in a letter to Leo M. Drozdoff, P.E., Administrator, NDEP, dated February 14, 2006. See 71 FR 13386 (March 15, 2006). The adequacy finding on the maintenance plan budgets was effective as of March 30, 2006.

Our adequacy finding is a preliminary determination that MVEBs are consistent with the purposes of the submitted plan (in this case, a maintenance plan) and does not constitute an approval action, and in today's action, EPA is taking the next step by proposing to approve the MVEBs in the Truckee Meadows CO Maintenance Plan for transportation conformity purposes. EPA believes that the MVEBs are consistent with the control measures identified in the SIP, and that the SIP as a whole demonstrates maintenance with the CO NAAQS. The 2010 and 2016 motor vehicle emissions budgets included in the Truckee Meadows Truckee Meadows CO Maintenance Plan are shown in Table 2 below.

TABLE 2.—ON-ROAD MOTOR VEHICLE CARBON MONOXIDE EMISSIONS BUDGETS, TRUCKEE MEADOWS, 2010 AND 2016 [Pounds per typical CO season day]

	2010	2016
On-Road Motor Vehicle Emissions Budgets .....	330,678	321,319

8. Conclusion

Based on the review presented above of the various elements of the submitted plan, we propose to approve the Truckee Meadows CO Maintenance Plan as a revision to the Truckee Meadows portion of the Nevada SIP. In so doing, we find that the Truckee Meadows CO Maintenance Plan, adopted on September 22, 2005 by the Washoe

County District Board of Health and submitted by NDEP to EPA on November 4, 2005, satisfies the requirements of section 175A of the Act. Our final approval of the Truckee Meadows CO Maintenance Plan would satisfy the criterion for redesignation under CAA section 107(d)(3)(E)(iv).

X. Proposed Action and Request for Comment

For the reasons given above, we are proposing to approve, under section 110(k)(3) and part D (of title I) of the Act, certain submittals by NDEP of revisions to the Nevada SIP that are required to provide for attainment of the CO NAAQS in the Truckee Meadows "moderate" CO nonattainment area, to

approve a maintenance plan under section 110(k)(3) and 175A of the Act, and to approve, under section 107(d)(3) of the Act, NDEP's request to redesignate Truckee Meadows to attainment for the CO NAAQS.

First, we are proposing to approve the local oxygenated gasoline regulation (Rule 040.095 of the Washoe County District Board of Health Regulations Governing Air Quality Management, as amended on September 22, 2005) as fulfilling the requirements of section 211(m) of the CAA.

Second, we are proposing to approve the State of Nevada's SIP revisions containing the "basic" vehicle I/M program for Truckee Meadows because we find that the program meets all applicable requirements under CAA section 187(a)(4) and EPA regulations. Specifically, we are proposing to approve three I/M-related SIP revisions submitted by NDEP:

(i) *State Implementation Plan for a Basic Program for the Inspection and Maintenance of Motor Vehicles for the Truckee Meadows Planning Area, Nevada* (June 1994), submitted on June 3, 1994; we are excluding the following outdated or superseded elements included in the June 3, 1994 SIP revision: the statutory provisions and rules, the exhaust gas analyzer specifications, and a contingency measure adopted by the Washoe County District Board of Health;

(ii) Basic I/M Performance Standard Evaluation for motor vehicles in the Truck Meadows planning area, submitted on November 2, 2006; and

(iii) Current Nevada I/M statutory provisions and rules and updated exhaust gas analyzer (NV2000) specifications, submitted by NDEP on May 11, 2007. The submitted Nevada I/M statutory provisions and regulations that are proposed for approval are as follows:

- Nevada Revised Statutes (2005), chapter 365: section 365.060; chapter 366, section 366.060; chapter 445B, sections 445B.210, 445B.700–845 (excluding NRS 445B.776, 445B.777, and 445B.778); chapter 481, sections 481.019–481.087; chapter 482, sections 482.029, 482.155–482.290, 482.385, 482.461, and 482.565; and chapter 484, sections 484.101, 484.644 and 484.6441;
- Nevada Administrative Code, chapter 445B (January 2007 revision by the Legislative Counsel Bureau), sections 445B.400 to 445B.735, excluding subsection (2) of section 445B.595.

The May 11, 2007 SIP revision submittal is a comprehensive update of the statutory and regulatory portion of Nevada's mobile source SIP (excluding

the rules establishing fuels specifications, alternative fuels programs for government vehicles, and any local rules related to mobile sources) and is an update of the exhaust gas analyzer specifications as approved in 2004 for the State's I/M program in Las Vegas and Boulder City.

In connection with the approval of the State's I/M program, we are taking no action on submitted rule NAC 445B.595(2), which extends the State's I/M requirements to motor vehicles operated on Federal installations located within I/M areas because the Federal government has not waived sovereign immunity in the context of vehicle I/M programs. Furthermore, we are proposing, under CAA section 110(k)(6), to rescind our previous, and erroneous, approval of NAC 445B.595(2) into the Nevada SIP in 2004, also on the grounds of sovereign immunity.

Third, under section 107(d)(3), we are proposing to approve NDEP's request (dated November 4, 2005) to redesignate the Truckee Meadows CO nonattainment area to attainment. In so doing, we find that:

- The Truckee Meadows nonattainment area has attained the CO NAAQS;
- EPA has fully approved the applicable SIP for this area under section 110(k) of the CAA;
- The improvement in ambient CO conditions in Truckee Meadows is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;
- The State has met all requirements applicable to Truckee Meadows under section 110 and part D (of title I) of the CAA;<sup>15</sup> and
- The State has submitted a maintenance plan, the *Redesignation Request and Maintenance Plan for the Truckee Meadows Carbon Monoxide Non-Attainment Area* (September 2005) ("Truckee Meadows CO Maintenance Plan"), adopted by the Washoe County District Board of Health on September 22, 2005, and submitted by NDEP to EPA on November 4, 2005, for which we are proposing approval as a revision to the Truckee Meadows portion of the Nevada SIP.

<sup>15</sup> With respect to this criterion, we will not finalize this proposed redesignation until we have finalized proposed approvals of the District's wintertime oxygenated gasoline rule and the State's basic I/M program, both of which are addressed herein. Also, we find that we need not fully approve either the District's nonattainment new source review rules or conformity rules as a precondition to redesignation of Truckee Meadows to attainment for the CO NAAQS.

In connection with the Truckee Meadows CO Maintenance Plan, we find the following plan elements to be acceptable:

- Baseline (2002) emissions inventory and future year (2010 and 2016) inventory projections;
- Commitment to continue operating an appropriate ambient CO monitoring network;
- Commitment to verify continued attainment through ambient monitoring and the preparation and submittal of periodic inventory updates and surveys of residential woodburning;
- Contingency provisions under CAA section 175A(d), specifically, the adopted two-tier approach with specific triggering events and regulatory responses: the first involving a lowering of the stage 1 (alert) episode level (tier 1) by the next CO season and the second involving a recommendation and timetable for action by the Washoe County District Board of Health or the State Environmental Commission to tighten certain requirements, potentially including a higher wintertime gasoline oxygen content or higher waiver amounts in the State's vehicle I/M program, to promptly correct any violation of the CO NAAQS after redesignation;
- Commitment to prepare and submit a subsequent CO maintenance plan for the Truckee Meadows area eight years after redesignation; and
- CO motor vehicle emissions budgets (in terms of pounds per typical CO season day) of 330,678 pounds per typical CO season day in year 2010 and 321,319 pounds per typical CO season day in year 2016.

We are soliciting comments on all aspects of this proposed SIP and redesignation rulemaking action. We will consider your comments in deciding our final action if your comments are received by *February 6, 2008*.

## XI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state plan revisions as meeting Federal requirements and redesignate an area to attainment for air quality planning purposes and imposes no additional requirements beyond those imposed by

state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve state plan revisions implementing a Federal standard and to redesignate an area to attainment for air quality planning purposes and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

In reviewing SIP submissions and redesignation requests, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission or redesignation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission or redesignation request, to use VCS in place of a SIP submission that otherwise satisfies the

provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.).

#### 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, National parks, Wilderness areas.

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

Dated: December 26, 2007.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E7-25636 Filed 1-4-08; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[MB Docket No. 07-51; FCC 07-189]

#### Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The *Further Notice of Proposed Rulemaking* ("Notice") solicits comment on whether providers of Direct Broadcast Satellite ("DBS") service and Private Cable Operators ("PCOs") should be allowed to have exclusive access to so-called Multiple Dwelling Units ("MDUs," such as apartment and condominium buildings). Also, the *Notice* considers prohibiting all providers of video programming service from using exclusive marketing arrangements (which allow one MVPD to be the preferred video provider in an MDU) and bulk billing arrangements (which require MDU dwellers to pay for a video provider in their rental or condominium fees). The intended effect of the *Notice* is to determine whether each of these practices benefits or harms video consumers in MDUs on the whole.

**DATES:** Comments for this proceeding are due on or before February 6, 2008; reply comments are due on or before March 7, 2008.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 07-51, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, please contact John W. Berresford, (202) 418-1886, or Holly Saurer, (202) 418-7283, both of the Policy Division, Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Further Notice of Proposed Rulemaking in MB Docket No. 07-51, FCC 07-189, adopted October 31, 2007, and released November 13, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).