

greater than 3 feet into the safety zone in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port. Movement of vessels with a draft greater than 3 feet within the safety zone will be prohibited except as specifically authorized by the Captain of the Port. The general requirements of § 165.23 also apply to this section.

(2) The Captain of the Port may waive any of the requirements of this section for any person, vessel or class of vessel upon finding that circumstances are such that application of the safety zone is unnecessary for port safety. The Captain of the Port can be contacted at telephone number (800) 325-4965.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(d) *Effective period.* The safety zone in paragraph (a) of this section will be effective from 3:30 p.m., December 3, 2003 through May 8, 2004.

Dated: December 03, 2003.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 03-30906 Filed 12-12-03; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NV 050-0073A; FRL-7595-3]

Approval and Promulgation of Implementation Plans; State of Nevada; Designation of Areas for Air Quality Planning Purposes; Lake Tahoe Nevada Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 27, 2003, the State of Nevada requested EPA to redesignate the Lake Tahoe Nevada "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standards (NAAQS) and submitted a CO maintenance plan for the area as a revision to the Nevada State Implementation Plan (SIP). In this action, EPA is approving the maintenance plan and redesignating the Lake Tahoe Nevada nonattainment area to attainment. EPA is also determining that the maintenance plan is adequate for transportation conformity purposes under the limited maintenance plan policy for CO.

DATES: This direct final rule is effective February 13, 2004, without further notice, unless we receive adverse comments by January 14, 2004. Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action. If adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

ADDRESSES: Please address your comments to Eleanor Kaplan, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to kaplan.eleanor@epa.gov, or submit comments at <http://www.regulations.gov>. A copy of the State's submittal is available for public inspection during normal business hours at EPA's Region IX office. Please contact Eleanor Kaplan if you wish to schedule a visit. A copy of the submittal is also available at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, EPA Region IX at (415) 947-4147 or kaplan.eleanor@epa.gov

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

Table of Contents

- I. What Is the Purpose of This Action?
- II. What Is the State's Process To Submit These Materials to EPA?
- III. EPA's Evaluation of the Redesignation Request and Maintenance Plan
 - A. The Area Must Have Attained the Carbon Monoxide NAAQS
 - B. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D
 1. Section 110 Requirements
 2. Part D Requirements
 - (a) Section 172(c)(3)—Emissions Inventory
 - (b) Section 172(c)(5)—New Source Review (NSR)
 - (c) Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements
 - C. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA
 - D. The Area Must Show the Improvement in Air Quality is Due to Permanent and Enforceable Emissions Reductions
 - E. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A
 1. Emissions Inventory—Attainment Year
 2. Demonstration of Maintenance

3. Monitoring Network and Verification of Continued Attainment
4. Contingency Plan
- IV. Conformity
 - A. How Is Transportation Conformity Demonstrated to a Limited Maintenance Plan?
 - B. What Is the Adequacy Status of This Limited Maintenance Plan?
 - C. Are the Requirements for General Conformity Altered Under This Limited Maintenance Plan?
- V. Final Action
- VI. Administrative Requirements

I. What Is the Purpose of This Action?

EPA is redesignating the Lake Tahoe, Nevada "not classified" CO nonattainment area from nonattainment to attainment and approving the maintenance plan that will keep the area in attainment for the next ten years.

We originally designated the Lake Tahoe Basin as nonattainment for CO under the provisions of the Clean Air Act (CAA or "Act"), as amended in 1977. See 43 FR 8962 (March 3, 1978). The Lake Tahoe Basin nonattainment area ("Lake Tahoe Nevada area") is defined by State hydrographic area 90, which includes the southwestern corner of Washoe County and the western-most portions of Carson City and Douglas counties.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted.¹ Under section 107(d)(1)(C) of the Act, as amended in 1990, the Lake Tahoe Nevada area was designated nonattainment for CO by operation of law because the area had been designated as nonattainment before November 15, 1990. Later, we categorized the Lake Tahoe Nevada area as an unclassified, or "not classified", CO nonattainment area because there were no violations of the CO standard during the two calendar years immediately preceding enactment of the 1990 Clean Air Act Amendments. See 56 FR 56694, at 56798 (November 6, 1991), codified at 40 CFR 81.329.

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the requirements for redesignation. These are:

- (i) EPA determines that the area has attained the NAAQS;
- (ii) EPA has fully approved the applicable implementation plan for the area under section 110(k) of the Act;
- (iii) EPA determines that the improvement in air quality is due to

¹ Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.

permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;

(iv) EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and

(v) The State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved.

II. What Is the State's Process To Submit These Materials to EPA?

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing.

The Nevada Division of Environmental Protection (NDEP),² which is the designated air planning agency for the Lake Tahoe Nevada area, developed the CO maintenance plan. On September 18, 2003, the State Environmental Commission, which acts on regulatory initiatives proposed by NDEP, held a public hearing "video conference" that was accessible from NDEP offices in Reno and Las Vegas. On September 18, 2003, the State Environmental Commission adopted the Carbon Monoxide Redesignation Request and Limited Maintenance Plan for the Nevada Side of the Lake Tahoe Basin. On October 27, 2003, NDEP submitted the maintenance plan and redesignation request to EPA. EPA has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's maintenance plan and redesignation request and is approving the maintenance plan as a revision to the

Nevada SIP and is approving the request to redesignate the area to attainment consistent with the requirements of CAA section 107(d)(3)(E). The following is a summary of EPA's evaluation and a description of how each requirement is met.

A. The Area Must Have Attained the Carbon Monoxide NAAQS

Section 107(d)(3)(E)(i) requires that EPA determine that the area has attained the applicable NAAQS as a prerequisite to redesignating an area to attainment. The primary NAAQS for CO is 9 parts per million (ppm) (10 milligrams per cubic meter) for an 8 hour average concentration not to be exceeded more than once per year as determined at each monitoring site in the area. See 40 CFR 50.8 and 40 CFR part 50, appendix C. EPA considers an area as attaining the CO NAAQS when all of the CO monitors in the area have an exceedance rate of 1.0 or less each calendar year over a two-calendar year period. EPA's interpretation of this requirement is that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least two consecutive years (see September 4, 1992, John Calcagni policy memorandum "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memorandum")). In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment in the **Federal Register**.

Nevada's redesignation request for the Lake Tahoe Nevada area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 2001 through 2002 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year at all monitoring sites. These data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, appendix C) and have been stored in EPA's Air Quality System (AQS) database, formerly referred to as the Aerometric Information Retrieval System (AIRS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AQS.

Ambient air quality monitoring data at the area's two monitors for past years, at Stateline for the years 2001 through 2002 and at Incline Village for the years 2000 and 2001, are shown in Tables 1 and 2 below. Table 1 shows no violations of the 8 hour CO NAAQS at the Stateline site for the years 2001 and 2002 and a design value of 6.1 ppm. Table 2 shows no violations of the CO

NAAQS at the Incline Village monitor for the years 2000 and 2001 and a design value of 1.6 ppm. Additionally, based on data retrieved from AQS, there have been no exceedances of the CO standard from 2002 to the present.

TABLE 1.—CO DESIGN VALUE FOR THE LAKE TAHOE NEVADA AREA FOR 2001 AND 2002 FROM DATA COLLECTED AT STATELINE MONITOR AT HARVEY'S RESORT HOTEL

Year	1st High	2nd High	Federal exceedances
2001	3.7	3.6	0
2002	8.8	6.1	0

TABLE 2.—CO DESIGN VALUE FOR THE LAKE TAHOE NEVADA AREA FOR 2000 AND 2001 FROM DATA COLLECTED AT INCLINE VILLAGE

Year	1st High	2nd High	Federal exceedances
2000	1.1	1.0	0
2001	1.8	1.6	0

Because the area has complete quality assured data showing no exceedance of the standard over at least two consecutive years (2001 and 2002), and has not violated the standard since that time, the area has met the first statutory criterion for designating a nonattainment area to attainment.

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

Section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets this requirement to mean the State must meet all requirements that applied to the area prior to, or at the time of, the submission of a complete redesignation request.

1. Section 110 Requirements

Section 110(a)(2) of the Act contains the general requirements for State Implementation Plans (SIPs) (*i.e.*, enforceable emission limits, ambient monitoring, permitting of new sources, adequate funding, etc.) Over the years we have approved Nevada's SIP as meeting the basic requirements of CAA section 110(a)(2).

2. Part D Requirements

Part D (of title I of the Act) contains general provisions that apply to all nonattainment plans and certain sections that apply to specific pollutants. Before the Lake Tahoe

² As noted above, the Lake Tahoe Nevada area consists of parts of three counties: Carson City, Douglas and Washoe Counties. With respect to air pollution control, Carson City and Douglas Counties are under NDEP's jurisdiction; Washoe County is under the jurisdiction of the Washoe County District Health Department (WCDHD). The WCDHD, in a letter to NDEP dated July 31, 2003, has asked NDEP to integrate their request for redesignation with NDEP's.

Nevada "not classified" CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D of the Act.

Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 to part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as not classified. However, the Act did not specify how the requirements of subpart 1 of part D (specifically, those under section 172(c) of the Act) apply to "not classified" nonattainment areas for CO. EPA has interpreted the requirements for those areas in the General Preamble to Title I of the Clean Air Act Amendments of 1990. See 57 FR 13498 at 13535 (April 16, 1992). According to this guidance, requirements for Lake Tahoe Nevada as a "not classified" nonattainment area for CO include the preparation and submittal of an emissions inventory as a SIP revision, adoption of New Source Review (NSR) programs meeting the requirements of section 173 as amended, and programs meeting the applicable monitoring requirements of section 110. The General Preamble also states that certain reasonably available control measures (RACM) beyond what may already be required in the SIP, reasonable further progress (RFP) and attainment demonstration requirements are not applicable to "not classified" CO nonattainment areas. See 57 FR 13498 at 13535 (April 16, 1992). Also, we interpret subpart 3 of part D, which contains specific requirements for moderate and above CO nonattainment areas, to be inapplicable to "not classified" CO nonattainment areas. See 57 FR 13498 at 13535 (April 16, 1992).

The remaining applicable requirements of section 172 are discussed below.

(a) Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources. Nevada included a CO emission inventory for the Lake Tahoe Nevada area in the submitted maintenance plan for calendar year 2001. This year corresponds to the year used in calculating the design value contained in the SIP and represents emissions that contributed to the design value in the plan. The design value shows that the area attains the CO standard. Therefore, the emissions are at a level that would maintain the standard.

The emissions inventory prepared by NDEP for the redesignation request and

maintenance plan estimates actual emissions during the peak CO season (specifically, the month of January) from mobile sources, including on-road and non-road vehicles. Stationary and area sources were not included in the inventory but are considered *de minimis* considering the lack of industrial activity in the area and the small residential population. Consistent with EPA guidance, NDEP used EPA's MOBILE6 on-road motor vehicle emissions factor model and the most recent planning assumptions for the transportation network, including vehicle miles traveled and vehicle speed, to estimate emissions from on-road sources. NDEP used EPA's emissions model, NONROAD, for nonroad sources. NDEP has provided sufficient documentation for these emissions estimates in appendices A and B of the redesignation request and maintenance plan.

We believe the inventory is comprehensive, accurate and current and meets the requirements of section 172(c)(3) of the CAA.

(b) Section 172(c)(5)—New Source Review (NSR)

The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5). Consistent with EPA guidance,³ EPA is not requiring as a prerequisite to redesignation to attainment EPA's full approval of a part D NSR program by Nevada for the Lake Tahoe Nevada area. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, so long as the program is not relied upon for maintenance. There are no major stationary sources in the Lake Tahoe Nevada area nor is the predominant basis for the economy (recreation and tourism) expected to change over the foreseeable future. Therefore, the area will not need a part D NSR program for CO sources to maintain the CO NAAQS.

EPA guidance indicates that the requirements of a part D NSR program will be replaced by the prevention of significant deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective immediately upon redesignation. As explained below, the Federal PSD regulation will become fully effective in the Lake Tahoe Nevada area immediately upon redesignation.

³ Memorandum from Mary D. Nichols entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," October 14, 1994.

In the Lake Tahoe Nevada area, NDEP administers the stationary source permitting program in the Carson City and Douglas counties portion of the area, and the Washoe County Health Department (WCDHD) administers the stationary source permitting program in the Washoe County portion of the area. We delegated PSD permitting authority to NDEP on May 27, 1983 and to WCDHD on April 5, 1985. NDEP and WCDHD administered the Federal PSD program in their respective jurisdictions under delegation agreements with EPA until March 3, 2003. On that date, EPA withdrew delegations of authority to issue Federal PSD permits from these two agencies as well as many other State and local air pollution control agencies in response to significant changes in the Federal PSD regulations published on December 31, 2002 (67 FR 80186) and the necessity for them to adopt conforming revisions in state and local laws and regulations. See 68 FR 19371 (April 21, 2003). However, EPA has taken action recently to implement a partial delegation of authority for PSD back to NDEP (see 68 FR 52837, September 8, 2003) and anticipates doing the same for WCDHD in the near future. Because the Lake Tahoe Nevada area is being redesignated to attainment by this action, the Federal PSD regulations, as administered by EPA and/or NDEP and WCDHD, will be applicable to any new or modified major sources of CO in the area.

(c) Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

EPA interprets section 172(c)(7) to require "not classified" CO nonattainment areas to meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA. See 57 FR 14498 at 13535 (April 16, 1992).

The State of Nevada currently operates one SLAMS monitor for the 8 hour CO NAAQS at the southern edge of Lake Tahoe at Stateline, Nevada. That monitor was located at the Horizon Casino Resort in Stateline for the years 1989 through June 1999 when it was moved to a site at Harvey's Resort Hotel also in Stateline. The State also operated a monitor at Incline Village but that site was shut down in March, 2002 because the values it recorded were very low.

The State of Nevada operates a monitoring network (including the CO monitoring station at Stateline but also including numerous other monitoring stations located outside the Lake Tahoe Nevada area) in accordance with 40 CFR part 58. The State has committed to continue to maintain that network.

The requirements of section 172(c)(7) are met.

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

Section 107(d)(3)(E)(ii) requires that EPA determine that the area has a fully approved SIP under section 110(k) of the Act. As described below, we have concluded that the Lake Tahoe Nevada area has a fully approved SIP.

On April 30, 1971 (36 FR 8186), pursuant to section 109 of the Clean Air Act, as amended in 1970, EPA promulgated NAAQS for various pollutants, including CO. Within 9 months thereafter, each State was required by section 110 of the Act to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of the NAAQS within each State. Nevada's original SIP was submitted on January 28, 1972. EPA approved this original SIP submittal later that year. See 37 FR 10842 (May 31, 1972).

Generally, SIPs were to provide for attainment of the NAAQS within 3 years after EPA approval of the plan. However, many areas of the country did not attain the NAAQS within the statutory period. In response, Congress amended the Act in 1977 to establish a new approach, based on area designations, for attaining the NAAQS, and on March 3, 1978 (43 FR 8962), under paragraph 107(d)(2) of the Act, EPA promulgated attainment status designations for all States. EPA designated the Lake Tahoe Nevada area nonattainment for CO at that time.

The Act, as amended in 1977, required States to revise their SIPs by January 1979 for all designated nonattainment areas. In response, on July 24, 1979, the State of Nevada submitted the Lake Tahoe Basin Nonattainment Area Plan ("1979 NAP") to EPA as a revision to the SIP. The 1979 NAP was intended to meet the requirements of part D (plan requirements for nonattainment areas) of the Act, as amended in 1977. The 1979 NAP identified a number of measures for adoption, including a motor vehicle inspection and maintenance program, traffic flow improvements, driver advisories, and bike and pedestrian facilities.

In 1980, EPA proposed to fully approve some elements of the 1979 NAP into the Nevada SIP, such as the emissions inventories and the demonstration of reasonable further progress (RFP), but to conditionally approve other elements of the plan, such as the modeling, emission reduction estimates, attainment

provision, and legally adopted measures. See 45 FR 59591 (September 10, 1980). In 1982, EPA took final action consistent with the 1980 proposal. See 47 FR 27065 (June 23, 1982). EPA's 1982 action is codified at 40 CFR 52.1470(c)(16)(vii).

On December 9, 1982, December 16, 1982, January 28, 1983, and May 5, 1983, NDEP submitted various supplemental materials intended to satisfy the conditions placed on the approval of the 1979 NAP. Based on those four submittals, EPA proposed to revoke the earlier conditions and to approve these four submittals as revisions to the Nevada SIP. See 48 FR 52093 (November 16, 1983). In 1984, we took final action consistent with this proposal. See 49 FR 6897 (February 24, 1984). EPA's 1984 action is codified at 40 CFR 52.1470(c)(27); 40 CFR 52.1470(c)(28), 40 CFR 52.1470(c)(29), and 40 CFR 52.1470(c)(30).

Therefore, based on the approval into the SIP of provisions under the Act as amended prior to 1990, our approval described below of a maintenance plan submitted under the Act as amended in 1990, and our approval of the State's commitment to maintain an adequate monitoring network, EPA has determined that, at the date of this action, Nevada has a fully approved SIP under section 110(k) for the Lake Tahoe Nevada nonattainment area.

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

Section 107(d)(3)(E)(iii) requires that EPA determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations and other permanent and enforceable reductions. As described below, we have concluded that the improvement in CO levels in the Lake Tahoe Nevada area is due to permanent and enforceable reductions in CO emissions.

The improvement in air quality in the Lake Tahoe Nevada area is due to implementation of measures contained in the 1979 NAP and to implementation of the Federal Motor Vehicle Control Program. The two control measures that comprised the attainment strategy for the Lake Tahoe Nevada area in the 1979 NAP included traffic flow improvements and improved pedestrian facilities, and in removing the conditions placed on our 1982 approval of the 1979 NAP, we determined that these two measures had been fully

implemented. See the related proposed rule, 48 FR 52093 (November 16, 1983) and final rule, 49 FR 6897 (February 24, 1984).

The Federal Motor Vehicle Control Program (40 CFR part 86) 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. In addition, the motor vehicle emission control program enacted by California benefits Nevada as well since the two states converge in the Lake Tahoe Basin. With these measures and programs, we have concluded that actual enforceable emission reductions are responsible for the air quality improvement and that the CO concentrations in the base year (used to document attainment) are not artificially low due to local economic downturn.

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

Section 107(d)(3)(E)(iv) requires that EPA fully approve a maintenance plan for the area as meeting the requirements of section 175A of the Act as a prerequisite to redesignation. As described below, we are approving the maintenance plan for the Lake Tahoe Nevada area in this action.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We have interpreted this section of the Act to require, in general, the following core provisions in maintenance plans: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. See Calcagni Memorandum, September 4, 1992. The purpose of a maintenance plan is to provide for the maintenance of the applicable NAAQS for at least 10 years after redesignation.

For areas such as Lake Tahoe Nevada that are utilizing EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum, "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards (OAQPS), dated October 6, 1995 ("Paisie Memorandum"), the maintenance demonstration is considered to be satisfied for "not classified" areas if the monitoring data show the design value is at or below 7.65 ppm, or 85 percent of the level of the 8-hour CO NAAQS.

The design value must be based on the 8 consecutive quarters of data. For such areas, there is no requirement to project emissions of air quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85% of the CO 8 hour NAAQS, the applicability of PSD requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled "Ozone and Carbon Monoxide Design Value Calculations", from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors.

Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates

continued maintenance of the CO 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 Lake Tahoe Nevada redesignation request and maintenance plan addressed these core provisions, and our evaluation of these provisions follows:

1. Emissions Inventory—Attainment Year

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.

As discussed above in connection with section 172(c)(3), the Lake Tahoe Nevada redesignation request and maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 2001.

2. Demonstration of Maintenance

As described in the Paisie Memorandum, the maintenance demonstration requirement is considered to be satisfied for "not classified" CO areas if the design value for the area is equal to, or less than 7.65 ppm. The CO design value for the Lake Tahoe Nevada is 6.1 ppm.

As assurance of maintenance, the NDEP, in an addendum to their SIP submittal letter dated October 27, 2003 has provided projections of CO emissions in tons per day (tpd) from on-road mobile sources for the years 2006, 2011 and 2016 during the peak annual CO season for each forecast year, compared to the baseline year of 2001, as shown in the following table.

TABLE 3.—PROJECTED CO EMISSIONS FROM ON-ROAD MOBILE SOURCES COMPARED TO 2001 BASELINE INVENTORY
[tpd]

Baseline year 2001	Projected 2006	Projected 2011	Projected 2016
17.72	13.00	11.41	10.25

The projections were calculated using EPA model MOBILE6.0, and separate emission factors for the two roadway facility types present in the Lake Tahoe Basin, arterial collector roads and local roads, which is the same approach that was used in calculating the 2001 base year inventory. The emission factors were then multiplied by future VMT estimates for both the arterial/collector and local roadway facilities. Based on these projections, CO emissions from on-road mobile sources show a marked decline from 2001 to 2016 and consequently we find that the NDEP has presented adequate evidence that the Lake Tahoe Nevada area will continue to maintain the CO NAAQS during the maintenance period.

3. Monitoring Network and Verification of Continued Attainment

Continued ambient monitoring of an area is required over the maintenance period. In the maintenance plan (see page 15 of the maintenance plan), NDEP indicates its intention to continue to operate an air quality monitoring network consistent with 40 CFR 58 and to maintain operation of the current CO

monitor at Stateline, located at Harvey's Resort Hotel on Highway 50. NDEP also intends to continue to download monitoring data to EPA's AQS database.

4. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Under section 175A(d), contingency measures 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 redesignation request and maintenance plan includes a contingency plan. The contingency plan implementation process for the Lake Tahoe Nevada area takes into consideration the fact that while jurisdiction over the Lake Tahoe Basin is divided between California and Nevada, the air quality on one side of the Lake tends to parallel the air quality

on the other side. However, the implementation of the control measures for each side of the Basin is the responsibility of either California or Nevada, whichever is relevant.

The Lake Tahoe Nevada contingency plan therefore has several phases. First, the contingency plan provides for a triggering mechanism through which NDEP will determine when a pre-violation action level is reached. Second, the contingency plan spells out the procedures that will be followed if the pre-violation action level is reached, including recommendations for action, and third, the contingency plan contains commitments from NDEP and the local jurisdictions in the Lake Tahoe Nevada⁴ area to implement expeditiously any and all measures necessary to achieve

⁴ The following local jurisdictions have passed resolutions promising to adhere to the provisions of the contingency plan in the 2003 Lake Tahoe Nevada Limited Maintenance Plan: the Tahoe Metropolitan Planning Organization, the Washoe County District Health Department and the State of Nevada Department of Transportation, which is a participant in the Interagency Consultation Procedures established by the Tahoe Metropolitan Planning Organization. See appendix C of the maintenance plan.

the level of CO emissions reductions needed to maintain the CO NAAQS.

The NDEP has selected two verified 8-hour average concentrations in excess of 85% of the CO NAAQS at any one monitor site in the Lake Tahoe Basin in any CO season (November through February) as the pre-violation action level.

The procedures for addressing a pre-violation action level are bi-state and multi-jurisdictional in nature. If the pre-violation action level is reached at any one monitor in the entire Lake Tahoe Basin (*i.e.*, including monitors located in California as well as the monitor at Stateline, Nevada) during the CO season, NDEP will notify the Tahoe Regional Planning Area (TRPA) which will in turn activate the Conformity Task Force, which consists of all of the air quality planning agencies in the Basin, regional planning agencies, state Departments of Transportation (DOTs) and federal agencies.

Under the direction of this Task Force, NDEP will analyze historic and current monitoring data from the Stateline site and California's Sandy Way site in South Lake Tahoe and will conduct studies to determine whether the event is confined to a local hot spot or if it is an area wide phenomenon. The Task Force will review the most recent microscale modeling at known hot-spot locations and conduct field studies at hot spot locations most likely to have high CO concentrations. If it is determined that the event is confined to a local hot spot and local transportation system improvements at that location can be implemented promptly and will fully mitigate the problem, the Task Force will recommend that action to the appropriate jurisdiction. If the problem is area wide, the Task Force will examine, prioritize and recommend general control measures, such as cleaner burning fuel, employer-based trip reduction, non-work trip reduction, parking supply and pricing management, high occupancy vehicle system or transit improvements.

The implementation of the recommended contingency measures for the Lake Tahoe Nevada area will be the responsibility of the NDEP and/or the appropriate local jurisdiction. Both in the transmittal letter (dated October 27, 2003) and in the plan itself, the NDEP has committed to track CO concentrations and to adopt, submit as a SIP revision, and implement expeditiously any and all measures to achieve the level of CO emissions reductions needed to maintain the CO NAAQS in the event of an exceedance of the CO NAAQS. In addition, NDEP has committed to work with the

involved jurisdictions to ensure that sufficient measures are adopted and implemented in a timely fashion to cure the violation.

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.

IV. Conformity

A. How Is Transportation Conformity Demonstrated to a Limited Maintenance Plan?

Section 176(c) of the Act defines transportation conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Federal Transportation Conformity Rule, 40 CFR part 93 subpart A, sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects which are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). The transportation conformity rule applies within all nonattainment and maintenance areas. As prescribed by the transportation conformity rule, once an area has an applicable state implementation plan with motor vehicle emissions budgets, the expected emissions from planned transportation activities must be consistent with ("conform to") such established budgets for that area.

In the case of the Lake Tahoe Nevada CO limited maintenance plan, however, the emissions budgets may be treated as essentially not constraining for the length of the initial maintenance period because there is no reason to expect that Lake Tahoe Nevada will experience so much growth in that period that a violation of the CO air quality standard would result. In other words, emissions from on-road transportation sources need not be capped for the maintenance period because it is unreasonable to believe that emissions from such

sources would increase to a level that would threaten the air quality in this area for the duration of this maintenance period. Therefore, for the Lake Tahoe Nevada CO maintenance area all federally funded and approved transportation actions that require conformity determinations under the transportation conformity rule can already be considered to satisfy the regional emissions analysis and "budget test" requirements in 40 CFR 93.118 of the rule.

However, since Lake Tahoe Nevada is still a maintenance area, transportation conformity determinations are still required for transportation plans, programs and projects. Specifically, for such determinations, transportation plans, transportation improvement programs, and projects must still demonstrate that they are fiscally constrained (40 CFR part 108) and must meet the criteria for consultation and Transportation Control Measure (TCM) implementation in the conformity rule (40 CFR 93.112 and 40 CFR 93.113, respectively). In addition, projects in Lake Tahoe Nevada area will still be required to meet the criteria for CO hot spot analyses (40 CFR 93.116 and 40 CFR 93.123) that must incorporate the latest planning assumptions and models that are available.

B. What Is the Adequacy Status of This Limited Maintenance Plan?

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on EPA's third set of transportation conformity revisions in response to a case brought by the Environmental Defense Fund. This decision stated that a conformity determination cannot be made using a submitted motor vehicle emission budget until EPA makes a positive determination that the submitted budget is adequate. In response to the court's decision, EPA issued guidance on our adequacy process on May 14, 1999.

In accordance with our guidance and the court decision, the Lake Tahoe Nevada maintenance plan was posted for adequacy review of the motor vehicle emissions budget on November 10, 2003 on EPA's conformity Web site: <http://www.epa.gov/otaq/traq>, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). As a general rule, however, limited maintenance plans, such as the Lake Tahoe Nevada maintenance plan, do not include budgets. Instead, for those areas that qualify under our limited maintenance plan policy for CO, we have concluded that the area will

continue to maintain the CO NAAQS regardless of the quantity of emissions from the on-road transportation sector, and thus there is no need to cap emissions from the on-road transportation sector for the maintenance period.

Therefore, EPA's adequacy review of the Lake Tahoe Nevada maintenance plan primarily focuses on whether the area qualifies for the applicable limited maintenance plan policy for CO. From our review, EPA has concluded that Lake Tahoe Nevada does meet the criteria for a limited maintenance plan, and therefore, finds the Lake Tahoe Nevada maintenance plan adequate for conformity purposes under our limited maintenance plan policy.

C. Are the Requirements for General Conformity Altered Under This Limited Maintenance Plan?

No. Although the requirements to perform a regional emissions analysis and budget test under the transportation conformity rule are altered under a limited maintenance plan, the requirements for general conformity are not changed. Upon today's approval of the Lake Tahoe Nevada limited maintenance plan, the criteria and procedures set forth in 40 CFR part 93, subpart B (Determining Conformity of General Federal Actions to State or Federal Implementation Plans) for those federal actions that are not covered under the transportation conformity rule still apply.

V. Final Action

Under section 110(k)(3) of the Clean Air Act, EPA is approving the Lake Tahoe Nevada CO maintenance plan, and under section 107(d)(3)(E) of the Clean Air Act, EPA is redesignating the Lake Tahoe Nevada area to attainment for the CO NAAQS. As a result, the chart in 40 CFR 81.329 entitled "Nevada—Carbon Monoxide" is being modified to change the designation for the Lake Tahoe Nevada area from "Nonattainment" to "Attainment," and to delete the "Not Classified" classification of the area, effective February 13, 2004. EPA is also determining that the maintenance plan is adequate for conformity purposes under the limited maintenance plan policy for CO.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision should

adverse comments be filed. This rule will be effective February 13, 2004 without further notice unless the Agency receives adverse comments by January 14, 2004.

If EPA receives such comments, then we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 (Public Law 104-4).

This 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 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 approves a state rule implementing a Federal standard, 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.

In reviewing SIP submissions, 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 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 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 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time

within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 20, 2003.

Laura Yoshii,
Acting Regional Administrator, Region IX.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(45) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(45) The following plan was submitted on October 27, 2003, by the Governor's designee.

(i) Incorporation by reference.
A. Carbon Monoxide Redesignation Request and Limited Maintenance Plan for the Nevada Side of the Lake Tahoe Basin, dated October 2003, adopted by the State Environmental Commission on September 18, 2003.

(1) Attainment year (2001) emissions inventory, monitoring network and verification of continued attainment, and contingency plan, including commitments to follow maintenance plan contingency procedures by the Nevada Division of Environmental Protection, the Tahoe Metropolitan Planning Organization, the Nevada Department of Transportation, and the Washoe County District Health Department.

B. Letter of October 27, 2003, from the Nevada Division of Environmental Protection, transmitting the redesignation request and maintenance plan for the Lake Tahoe Nevada CO nonattainment area and including a State commitment to track CO

concentrations and to adopt, submit as a SIP revision, and implement expeditiously any and all measures to achieve the level of CO emissions reductions needed to maintain the CO NAAQS in the event that an exceedance of the CO NAAQS is monitored, and to work with the involved jurisdictions to ensure that sufficient measures are adopted and implemented in a timely fashion to prevent a violation.

C. Additional material—Addendum to the October 27, 2003 letter of transmittal of the redesignation request and maintenance plan: emissions projections for on-road motor vehicles through 2016.

■ Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.329 the carbon monoxide table is amended by revising the entry for the Lake Tahoe Nevada Area to read as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Lake Tahoe Nevada Area Hydrographic Area 90 Carson City County (part) Douglas County (part) Washoe County (part).	February 13, 2004	Attainment		
*	*	*	*	*

¹ This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 03–30369 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES
ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 2003–06; FTR Case 2003–308]

RIN 3090–AH89

Federal Travel Regulation; Privately
Owned Vehicle Mileage
Reimbursement

AGENCY: Office of Governmentwide
Policy, General Services Administration
(GSA).

ACTION: Final rule.

SUMMARY: This final rule amends the mileage reimbursement rate for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a privately owned airplane from 95.5 to 99.5 cents per mile, the cost of operating a privately owned automobile from 36.0 to 37.5 cents per mile, and the cost of operating a privately owned motorcycle from 27.5 to 28.5 cents per mile.