

## PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

**Authority:** 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Amend § 2.64 by revising paragraphs (b) and (c)(1) to read as follows:

### § 2.64 Final action.

\* \* \* \* \*

(b)(1) During the three-month period after issuance of a final action, the applicant may request that the examining attorney reconsider the final action. The request must be filed through TEAS. The filing of a request for reconsideration will not extend the time for filing an appeal or petitioning the Director.

(2) During the six-month period after issuance of a final action, the applicant may submit amendments. Any such amendments will be examined, and will be entered if they comply with the rules of practice in trademark cases and the Act of 1946. The filing of such an amendment will not extend the time for filing an appeal or petitioning the Director.

(c)(1) If an applicant in an application under section 1(b) of the Act files an amendment to allege use under § 2.76 during the six-month period after issuance of a final action, the examiner shall examine the amendment. The filing of such an amendment will not extend the time for filing an appeal or petitioning the Director.

\* \* \* \* \*

Dated: February 8, 2007.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R09-OAR-2007-0101; FRL-8277-9]

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: California

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to grant a request submitted by the State to

redesignate the South Coast from nonattainment to attainment for the CO National Ambient Air Quality Standards (NAAQS). EPA is also proposing to approve a state implementation plan (SIP) revision for the South Coast nonattainment area in California as meeting the Clean Air Act (CAA) requirements for maintenance plans for carbon monoxide (CO). EPA is proposing to find adequate and approve motor vehicle emission budgets, which are included in the maintenance plan. Finally, EPA is proposing to approve the California motor vehicle inspection and maintenance (I/M) program as meeting the low enhanced I/M requirements for CO in the South Coast.

**DATES:** Comments must be received by March 16, 2007.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2007-0101, by one of the following methods:

1. Agency Web site: <http://www.regulations.gov>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

3. E-mail: [jesson.david@epa.gov](mailto:jesson.david@epa.gov)

4. Mail or deliver: Marty Robin, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

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

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard

copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

### FOR FURTHER INFORMATION CONTACT:

David Jesson, U.S. EPA Region 9, 415-972-3961, [david.jesson@epa.gov](mailto:david.jesson@epa.gov) or <http://www.epa.gov/region09/air/actions>.

### SUPPLEMENTARY INFORMATION:

Throughout this document, the terms “we,” “us,” and “our” mean U.S. EPA.

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## I. Summary of Today's Proposed Action

We are proposing to approve the 2005 Carbon Monoxide Redesignation Request and Carbon Monoxide Maintenance Plan for the South Coast Air Basin (Maintenance Plan) as meeting the requirements of CAA sections 107(d)(3)(E) and 175A, which provide, in part, that plans must demonstrate continued attainment for at least 10 years and must include contingency measures. The submittal included evidence that the South Coast attained the CO NAAQS in 2002 and continues to attain the NAAQS. We are also proposing to approve and find adequate the motor vehicle emissions budgets (MVEBs) submitted with the Maintenance Plan.

We are proposing to approve the request by the State of California to redesignate the area to attainment for CO under the provisions of CAA section 107(d)(3)(E). Section 107(d)(3)(E) authorizes the EPA Administrator to redesignate areas to attainment if the area has attained the NAAQS due to permanent and enforceable emission reductions, and the approved SIP for the area meets all of the applicable requirements of CAA section 110 (basic requirements applicable to SIPs generally), Part D (special SIP requirements applicable to nonattainment areas), and 175A (SIP requirements for maintenance areas).

As part of our proposed determination that California has met applicable Part D provisions, we propose to adapt to CO nonattainment areas the provisions of our Clean Data Policy, which was initially established for ozone (see discussion below in section III.B.2.). Under the Clean Data Policy, certain CAA Part D requirements—including the requirements for developing attainment demonstrations, reasonable further progress (RFP) plans, reasonably available control measures (RACM) and contingency measures—no longer apply because the area has already attained the NAAQS.

Finally, because our interim approval of California's I/M program for CO in the South Coast expired on August 7, 1998, California has now submitted a demonstration that the I/M program meets the low-enhanced requirements applicable to the South Coast CO nonattainment area (see discussion in section III.B.4.) We are proposing to approve that demonstration.

## II. CO SIPs for the South Coast

### A. Requirements for Serious CO Nonattainment Areas

The CAA was substantially amended in 1990 to establish new planning

requirements and attainment deadlines for the NAAQS, including CO.<sup>1</sup> Under section 107(d)(1)(C) of the Act, areas designated nonattainment prior to enactment of the 1990 amendments, including the South Coast, were designated nonattainment by operation of law.<sup>2</sup> Under section 186(a) of the Act, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either moderate or serious, depending on the severity of the area's air quality problem. CO areas with design values at and above 16.5 ppm, such as the South Coast, were classified as serious.

Section 172 of the Act contains general requirements applicable to SIPs for nonattainment areas. Sections 186 and 187 of the Act set out additional air quality planning requirements for CO nonattainment areas. The most fundamental of these provisions is the requirement that CO nonattainment areas submit by November 15, 1992, a SIP demonstrating attainment of the NAAQS as expeditiously as practicable, but no later than the deadline applicable to the area's classification: December 31, 1995, for moderate areas, and December 31, 2000, for serious areas like the South Coast. CAA sections 186(a)(1), 187(a)(7), and 187(b)(1). Such a demonstration must include enforceable measures to achieve emission reductions each year leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area.

EPA has issued a General Preamble describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of EPA's preliminary interpretations of the CAA's Title I requirements.

### B. Serious CO SIP for the South Coast

On February 5, 1997, California submitted a CO plan for the South

<sup>1</sup> Under section 109 of the CAA, EPA has established primary, health-related NAAQS for CO: 9 parts per million (ppm) averaged over an 8-hour period, and 35 ppm averaged over 1 hour. Attainment of the 8-hour CO NAAQS is achieved if not more than one non-overlapping 8-hour average in any consecutive 2-year period per monitoring site exceeds 9 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances). See 40 CFR 50.8; William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," dated June 18, 1990; and EPA's General Preamble (see 57 FR 13535).

<sup>2</sup> For a description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305. The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

Coast, which had been adopted by the South Coast Air Quality Management District (SCAQMD) on November 15, 1996. Because the South Coast had continuously achieved the 1-hour CO NAAQS for more than 20 years, this plan primarily addressed the 8-hour CO NAAQS. On April 21, 1998 (63 FR 19661), we fully approved the SIP as meeting the applicable CO requirements for the South Coast, with the following exceptions: (1) We took no action on the plan with respect to the CAA section 187(b)(2) requirement for transportation control measures (TCMs) to offset any growth in emissions from vehicle miles traveled (VMT) or numbers of vehicles trips; (2) we took no action on the plan with respect to the contingency measure requirements of CAA sections 172(c)(9) and 187(a)(3);<sup>3</sup> (3) we granted interim approval to the RFP provisions under CAA sections 171(1), 172(c)(2), and 187(a)(7); (4) we granted interim approval to the attainment demonstration under CAA section 187(a)(7); and (5) we granted interim approval to the enhanced I/M program required by CAA 187(a)(6), as discussed below.

Interim approval is authorized under section 348(c) of the National Highway System Designation Act ("Highway Act," Public Law 104-59, enacted on November 28, 1995) for certain types of I/M programs and, by extension, to SIP provisions dependent upon reductions from these I/M programs. We had previously granted interim approval to California's enhanced I/M program (62 FR 1160, January 8, 1997). Our 1997 interim approval established August 7, 1998, as the expiration of the approval if by such date EPA had not approved a SIP submittal demonstrating that the credits claimed for the I/M program are appropriate and the program is otherwise in full compliance with the applicable enhanced I/M requirements. Because the State did not submit the needed demonstration, the approval of the I/M program and the South Coast CO SIP with respect to RFP and attainment demonstration expired on August 7, 1998.

<sup>3</sup> CAA section 172(c)(9) requires contingency measures that would be implemented if an area fails to make RFP or to attain the NAAQS by the applicable deadline. For CO areas, CAA section 187(a)(3) requires contingency measures to be implemented if any estimate of vehicle miles traveled (VMT) in the area for any year prior to the attainment year that is submitted in an annual report under section 187(a)(2)(A) ("VMT tracking report") exceeds the number predicted in the most recent prior forecast or if the area fails to attain the NAAQS by the attainment year.

### C. CO Maintenance Plan for the South Coast

In 2002, the South Coast attained the 8-hour CO NAAQS, and on March 4, 2005, the SCAQMD adopted the Maintenance Plan, following 30-day public notice (SCAQMD Board Resolution No. 05-8). On February 24, 2006, the California Air Resources Board (CARB) adopted the Maintenance Plan (CARB Executive Order G-125-332) and submitted it to EPA as a SIP revision, along with a request that we approve a redesignation request to attainment (Letter from Lynn Terry, CARB, to Wayne Nastri, EPA Region 9). On August 11, 2006, CARB submitted additional technical information relating to the I/M program in the South Coast (Letter from Kurt Karperos, CARB, to Lisa Hanf, EPA Region 9). The attachment to the letter addressed the requirement associated with EPA's 1997 interim approval of the enhanced I/M program under the Highway Act, by demonstrating that the California smog check program meets minimum requirements applicable to an enhanced I/M program for CO. In accordance with CAA section 110(k)(1)(B), the submittal became complete by operation of law on August 25, 2006.

### III. South Coast Redesignation to Attainment

The criteria for approval of a redesignation request are set out in CAA section 107(d)(3)(E). We review the State's request against each of these criteria in our discussion below.

#### A. Attainment of the NAAQS

##### 1. Basis for Determining Attainment

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

The 8-hour and 1-hour CO design values are used to determine attainment of CO areas, and the design values are determined by reviewing 8 quarters of

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

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

The 1-hour CO design value is computed in the same manner. An area attains the one-hour CO NAAQS if the 1-hour design value is less than 35.5 ppm.

##### 2. Record of Attainment in the South Coast

The Maintenance Plan presents the attainment air quality data for the South Coast's 22 monitoring stations in Table 2-2 on p. 8. During the period 2002-2003, there was only one maximum 8-hour average concentration above the standard, a 10.1 ppm concentration recorded at the Lynwood (South Central Los Angeles) site on January 8, 2002, under very stagnant conditions and a strong inversion. The maximum 8-hour concentration at Lynwood was 7.7 ppm in 2001 and 7.3 ppm in 2003. There were no exceedances of the 8-hour NAAQS recorded in 2001 and 2003 at any station, and the design value at all stations for the periods 2001-2002 and 2002-2003 was well below the NAAQS.

A review of data input to AQS indicates that the South Coast has continued to attain the CO NAAQS since 2003. The highest second maximum 1-hour and 8-hour CO concentrations measured at the various monitoring stations during the 2004 through the first quarter of 2006 were 8.7 ppm and 6.1 ppm, respectively, both

recorded in 2004 at the Lynwood station in south central Los Angeles County. These values are well below the corresponding CO NAAQS of 35 and 9 ppm. A "quick look" report generated using AQS for the South Coast CO monitoring stations for 2004 through the third quarter of 2006 is included in the docket for this proposed rule. The Maintenance Plan indicates that the 1-hour CO NAAQS has not been violated for 25 years in the South Coast.

Based on the monitoring data presented in the Maintenance Plan and AQS data for the past two years, we propose to determine that the South Coast attained the CO NAAQS in 2002 and has continued to attain the NAAQS.

### B. Fully Approved Applicable Implementation Plan Under CAA Section 110(k) Meeting Requirements Applicable for Purposes of Redesignation Under Section 110 and Part D

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

#### 1. Basic SIP Requirements Under CAA Section 110

The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following: Kubmittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of Part C requirement for Prevention of Significant Deterioration (PSD); provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

On numerous occasions over the past 35 years, CARB and SCAQMD have submitted and we have approved provisions addressing the basic CAA section 110 provisions. There are no outstanding or disapproved applicable SIP submittals with respect to the State and SCAQMD.<sup>4</sup> We propose to conclude

<sup>4</sup> The applicable SIP for CARB and South Coast may be found at <http://yosemite.epa.gov/r9/r9sips.nsf/Casips?readform&state=California>.

We note that SIPs must be fully approved only with respect to applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). Thus, for example, CAA

that CARB and SCAQMD have met all SIP requirements for the South Coast area applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements). With the exceptions discussed below in Sections III.B.2–4, the SIP for the South Coast also has been approved as meeting applicable requirements under Part D of Title I of the CAA. See our approval of the South Coast CO attainment SIP at 63 FR 19661–2.

## 2. Clean Data Policy and Outstanding Part D Requirements

### a. Introduction

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

The Clean Data Policy is the subject of two EPA memoranda setting forth our interpretation of the provisions of the

section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

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

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

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

### b. RFP and Attainment Demonstration

The reasons for relieving an area that has attained the relevant standard of certain part D, subpart 1 and 2 (sections 171 and 172) obligations, applies equally as well to part D, subpart 3, which contains specific attainment demonstration and RFP provisions for CO nonattainment areas. As we have explained in the 8-hour ozone Phase 2 Final Rule, our ozone and PM–2.5 clean data memoranda, and our approval of PM–10 SIPs, EPA believes it is reasonable to interpret provisions regarding RFP and attainment

demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured air quality monitoring data for ozone and PM, and two consecutive years for CO). Three U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying its interpretation of subparts 1 and 2 with respect to ozone. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion). It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

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

See also page 6 of the guidance memorandum entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, to Regional Air Division Directors, dated September 4, 1992 (Calcagni Memo, available at <http://www.epa.gov/ttn/naaqs/ozone/ozonetech/940904.pdf>).

EPA believes the same reasoning applies to the CO RFP provisions of part D, subpart 3.

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

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

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

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

provide a demonstration that the plan as revised will provide for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date. This same requirement also applies to serious CO areas in accordance with CAA section 187(b)(1).

It is clear that once the area has attained the standard, no further specific annual emission reductions are necessary or meaningful. With respect to CO areas, this interpretation is supported by language in section 187(d)(3), which mandates that a state that fails to achieve the milestone must submit a plan that assures that the state achieves the “specific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date.”<sup>5</sup> Section 187(d)(3) assumes that the requirement to submit and achieve the milestone does not continue after attainment of the NAAQS.

If an area has in fact attained the standard, the stated purpose of the RFP and specific annual emissions reductions requirements will have already been fulfilled.<sup>6</sup> The specific

<sup>5</sup> AA section 187(d), CO Milestone, applies to serious CO areas and requires:

(1) The state to submit a demonstration that the area has achieved certain specific annual emission reductions (187(d)(1));

(2) EPA to determine whether the demonstration is adequate within 90 days (187(d)(2)); and

(3) the state to submit a plan revision within 9 months of EPA’s notification that the state has not met the milestone, such plan to implement CAA section 182(g)(4) economic incentive and transportation control programs sufficient to achieve the specific annual emission reductions by the attainment date (187(d)(3)).

EPA interprets these provisions consistent with its interpretation of Section 182(g) in Subpart 2. See May 10, 1995 Seitz Memorandum at p. 5. There, EPA included in its identification of SIP submission requirements linked with attainment and RFP requirements the “Section 182(g) requirements concerning milestones that are based on the section 182(b)(1) and 182(c)(2)(B) and (C) submissions.” In Subpart 3, similarly, milestone requirements are based on the section 187(a)(7) specific annual emission reduction requirements.

<sup>6</sup> For PM-10 areas, we have concluded that it is a distinction without a difference that section 189(c)(1) speaks of the PM-10 nonattainment area RFP requirement as one to be achieved until an area is “redesignated as attainment”, as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone and CO nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2) for ozone and 187(a)(7) for CO, which refer to the RFP requirements as applying until the “attainment date”, since, section 189(c)(1) defines RFP by reference to section 171(l) of the Act. Reference to 171(l) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2) and the CO-specific requirements of section 187(a)(7), the PM-specific requirements may only be required for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” 42 U.S.C.

annual emission reductions required are only those necessary to attain the standard by the attainment date. EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 memorandum with respect to the requirements of sections 182(b) and (c). We are proposing to extend that interpretation to the specific provisions of part D, subpart 3.

With respect to the attainment demonstration requirements of section 187(a)(7), an analogous rationale leads to the same result. Section 187(a)(7) requires that the State submit a revision to provide, and a demonstration that the plan as revised will provide for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memo and of the section 182(b) and (c) requirements set forth in the Seitz memo. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since “attainment will have been reached.” (57 FR at 13564).

#### c. Contingency Provisions

##### (1) CAA Section 172(c)(9)

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of CAA section 172(c)(9), and the special contingency provisions applicable to ozone and CO plans. Section 172(c)(9) requires a State to submit contingency measures that will be implemented if an area fails to make “reasonable further progress” or fails to attain by the applicable attainment date.<sup>7</sup> Thus, the

section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(l), to be a requirement that no longer applies once the standard has been attained.

<sup>7</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.” CAA Section 171(1).

stated purpose of the contingency measure requirement is to ensure RFP (the purpose of which is to ensure attainment by the applicable attainment date) and attainment by the applicable attainment date. If an area has in fact attained the standard by the applicable attainment date, the stated purpose of the contingency measure requirement will have already been fulfilled. Consequently, we believe that the requirement for a State to submit revisions providing for measures to meet the contingency provisions of section 172(c)(9) no longer applies for an area that we find as having attained the relevant NAAQS by the applicable attainment date.

We note that we took this view with respect to the general contingency measure requirement of section 172(c)(9) in our General Preamble. In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the “section 172(c)(9) requirements for contingency measures \* \* \* no longer apply 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, p. 6.

We propose to extend the same reasoning to CO plans with respect to the section 172(c)(9) contingency provision requirements, since our reasoning is equally applicable regardless of the pollutant. Moreover, just as we concluded that the pollutant-specific contingency measure requirements of section 182(c)(9) for ozone areas also no longer apply to areas attaining the ozone NAAQS, we propose below that the CO-specific contingency provisions of section 187(a)(3) no longer apply at the time we find that an area has attained the CO NAAQS.

##### (2) CAA Section 187(a)(3)

Section 187(a)(3) requires contingency measures to be implemented

if any estimate of vehicle miles traveled in the area which is submitted in an annual report under paragraph (2) exceeds the number predicted in the most recent prior forecast or if the area fails to attain the national primary ambient air quality standard for carbon monoxide by the primary standard attainment date.

Thus, the Act establishes two triggers for implementation of contingency measures required under this provision. The first trigger is associated with CAA section 187(a)(2), which requires plans for areas with a design value above 12.7 ppm at the time of classification to

include "a forecast of vehicle miles traveled in the nonattainment area concerned for each year before the year in which the plan projects the national ambient air quality standard for carbon monoxide to be attained in the area," along with

annual updates of the forecasts to be submitted to the Administrator together with annual reports regarding the extent to which such forecasts proved to be accurate. Such annual reports shall contain estimates of actual vehicle miles traveled in each year for which a forecast was required.

The plan's contingency measures must be implemented "if the prior forecast has been exceeded by an updated forecast \* \* \*." Both the forecasts and reports are required only until the SIP's projected attainment year. Following the plan's projected attainment year, which is the last year of the VMT forecasts, this trigger disappears.

The second trigger of the contingency provision is a failure of the area to attain the primary CO standard by the applicable deadline, for the evident purpose of ensuring that such an area further reduces emissions as needed to attain the NAAQS. Once an area has actually attained the CO NAAQS, this second trigger is clearly eliminated.

Thus, the CAA section 187(a)(3) contingency provision has no further practical effect when the two contingency triggers cease to exist. Moreover, the implicit goal of the contingency provision, to reduce motor vehicle-related CO emissions to the extent needed to achieve annual progress and eventual attainment, would have been accomplished when an area comes into attainment. Therefore, we propose to conclude that an area that is attaining the CO standards is relieved of an obligation to provide contingency measures pursuant to CAA section 187(a)(3).

CAA section 187(b)(2) requires that CO serious area plans include TCMs as prescribed in CAA section 182(d)(1) for ozone areas, except that the TCMs relate to CO emissions rather than volatile organic compound emissions. Section 182(d)(1) requires that plans for severe ozone areas must include TCMs to be implemented

to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) (pertaining to periodic emissions reduction requirements).

The section 187(b)(2) TCMs are required to be submitted if CO

emissions are expected to increase from growth in VMT or vehicle trips, and to meet RFP or attainment. For the same reason that the requirement for RFP no longer applies to an area that has attained the NAAQS, the requirement for measures to contribute to RFP no longer applies following a finding of attainment. Thus EPA interprets the provisions of section 187(b)(2)(A) that cross-reference section 182(d)(1) so as to suspend those provisions pertaining to periodic emissions reductions requirements for so long as the area is attaining the standard. In a May 10, 1995 Seitz memorandum, we identified as among those requirements that could be suspended upon finding of attainment "the elements of the \* \* \* requirements of section 182(d)(1)(A) concerning vehicle miles traveled that are related to RFP requirements." (p. 2). With respect to the requirement for TCMs to offset any growth in emissions from VMT, see Section 3 below.

#### d. Conclusion

As noted above, the South Coast area does not currently have an approved SIP with respect to the requirements for RFP, attainment, contingency provisions, and TCMs related to RFP requirements. However, we believe that, for the reasons set forth here and established in our prior "clean data" memoranda and rulemakings, a CO nonattainment area that has "clean data," should be relieved of the part D, subpart 3 obligations to provide an attainment demonstration with specific annual emission reductions pursuant to CAA section 187(a)(7); the CAA section 187(d) milestone demonstration requirement; contingency provisions pursuant to CAA section 187(a)(3)); and TCMs related to RFP requirements pursuant to 187(b)(2); as well as the attainment demonstration, RFP, and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act.

Here, as in both our 8-hour ozone Phase 2 final rule and 1-hour ozone and PM-2.5 clean data memoranda, we emphasize that the suspension of a requirement to submit these SIP revisions exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Therefore, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a determination that an area need not submit one of the SIP submittals

amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard. However, once EPA ultimately redesignates the area to attainment, the area will be entirely relieved of these requirements to the extent the maintenance plan for the area does not rely on them.

Should we at some future time determine that an area that had clean data, but which has not yet been redesignated as attainment for a NAAQS, has violated the relevant standard, the area would again be required to submit the pertinent requirements under the SIP for the area. Attainment determinations under the policy do not shield an area from other required actions, such as provisions to address pollution transport.

As set forth, above, we propose to find that because the South Coast area has continued to attain the NAAQS the requirement of an attainment demonstration, reasonable further progress, milestone demonstration, TCMs related to RFP, and contingency measures no longer apply.

### 3. TCMs To Offset Growth in Emissions From VMT Increases

As noted above, the section 187(b)(2) TCMs are required to be submitted if CO emissions are expected to increase from growth in VMT or vehicle trips.

EPA has concluded that states are not required to submit such measures if the SIP includes a demonstration that, despite any growth in projected VMT, CO emissions will decline each year through the attainment year.<sup>8</sup> In the General Preamble, we state that: "If projected total motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before, given the control measures in the SIP, the VMT offset requirement is satisfied." General Preamble at 57 FR 13522.

The 1997 CO Plan contains a demonstration that CO emissions from motor vehicles decline each year through the attainment year (Appendix V, page V-5-4, Table 5-2 "Carbon Monoxide Emissions (tons/day) Projected from 1993 through 2000 for the South Coast Air Basin"). This table shows that no additional TCMs are required to prevent an increase in emissions associated with a growth in VMT or trips, since emissions are shown to decline each year through the attainment year despite increases in

<sup>8</sup> See, for example, EPA's final approval of Illinois' VMT SIP at 60 FR 48896, 48897 (September 21, 1995).

VMT and trip numbers.<sup>9</sup> The Maintenance Plan includes revised and updated VMT forecasts for each year from 1997 through 2006 (Table 4-1). The Maintenance Plan also includes revised and updated projected CO emissions from motor vehicles from 1997 through 2006 (Table 4-2), showing a continuing sharp decline in CO emissions despite the growth in VMT and trips. Consequently, we conclude that no TCMs are required to satisfy the progress requirements of the Act or to offset growth in CO emissions from growth in VMT or vehicle trips. We therefore propose to approve the 1997 CO Plan, and the update through the year of attainment (2002) in the Maintenance Plan, as meeting the provisions of CAA section 187(b)(2).

4. Requirement for Enhanced I/M Program

The requirement for an enhanced motor vehicle I/M program under CAA section 187(a)(6) applies to the South Coast by virtue of the area's designation as a serious nonattainment area for CO, in accordance with CAA section 187(b)(1). On January 22, 1996, CARB submitted a SIP revision to satisfy the requirements for basic and enhanced I/M programs in the various ozone and CO nonattainment areas in the State.

On January 8, 1997 (62 FR 1150), we approved the State's basic I/M program as meeting the CAA section 182(b)(4)

requirement for moderate ozone areas within California, and the CAA section 187(a)(4) requirement for I/M program corrections applicable to California's moderate CO areas with a design value of less than 12.7 ppm at the time of classification. In the same rule, we granted interim approval to the State's enhanced I/M program under section 348(c) of the Highway Act, as meeting the CAA section 182(c)(3) requirement for serious and above ozone areas, and CAA 187(a)(6) for serious CO areas.

In accordance with the State's request, we approved the I/M program as meeting the high enhanced requirements (see discussion below). As provided in the Highway Act, the interim approval was for a period of 18 months (i.e., until August 7, 1998), by which time the approval would expire unless we had approved a SIP demonstrating that the credits claimed for the program are appropriate and the I/M program is otherwise in compliance with the Clean Air Act. See 40 CFR 52.241.

When we subsequently ruled on the South Coast CO SIP, we also granted interim approval to the progress and attainment provisions of the plan, since fulfillment of those requirements depended upon emission reductions from the enhanced I/M program. (63 FR 19661, April 21, 1998).

California failed to make the SIP submittal required under the Highway

Act to substantiate the emission reductions claimed for the enhanced I/M program and, as a result, the interim approval of the enhanced I/M program and the progress and attainment demonstration provisions of the South Coast CO SIP expired by operation of law on August 7, 1998. In Section III.B.2.b, we discuss this lapsed approval and our interpretation that the Clean Data Policy allows us to suspend the requirements for progress and attainment demonstration as they apply to the South Coast CO SIP.

With the submittal of the South Coast CO Maintenance Plan and redesignation request, the State included a SIP revision documenting that: (1) The I/M program delivered CO emission reductions sufficient, along with other control measures, to lead to attainment of the CO NAAQS in the South Coast, and (2) the I/M program meets the low-enhanced I/M performance requirements for CO in the South Coast.

The State's transmittal letter included a table of the wintertime CO emissions reduction benefits in the South Coast from the current I/M program, along with a copy of the September 2005 Report to the Legislature regarding ARB's & "April 2004 Evaluation of the California Enhanced Vehicle Inspection and Maintenance (Smog Check) Program." The table shows the following reductions:

TABLE 1.—WINTER SEASON CO EMISSIONS REDUCTION BENEFITS IN THE SOUTH COAST AIR BASIN ASSOCIATED WITH THE ENHANCED I/M PROGRAM  
[In tons per day]

Year .....	1990	1993	2000	2006	2010	2020
Reductions .....	494	459	291	671	618	377

Because these substantial emission reductions did, in fact, result in attainment of the CO NAAQS in the South Coast, we agree with the State that the enhanced I/M program proved adequate to meet attainment needs for the area.

The State requests that we also now determine that the program meets other low enhanced I/M program requirements. This would allow us to conclude, for purposes of the redesignation provisions of CAA section 107(d)(3)(E)(v), that the area has met the applicable requirement for an enhanced I/M program under CAA sections 187(a)(6) and 187(b)(1).

On September 18, 1995, we amended our regulatory requirements for

enhanced I/M programs (60 FR 48029). Among other changes, we established a low enhanced performance standard as an option for areas subject to the enhanced I/M requirement and meeting the following requirements set out in 40 CFR 51.351(g) regarding RFP and attainment: (1) The area is either not subject to or has an approved SIP for RFP in 1996, and (2) the area does not have a disapproved post-1996 RFP plan or a disapproved attainment plan for ozone or CO. South Coast meets these requirements because it has an approved plan for RFP in 1996 for ozone, (62 FR 1150, January 8, 1997) and has no disapproved post-1996 RFP plan or a disapproved attainment plan for ozone or CO.

The low enhanced I/M requirements set out in 40 CFR 51.351(g), and further described in the preamble, establish specific program test elements generally equivalent to those for a basic I/M program, as set out in 40 CFR 51.352. The key difference in test requirements between the basic and the low enhanced I/M program are two additional requirements for low enhanced programs: visual inspection of emission control device inspections in accordance with 40 CFR 51.351(g)(8), and testing of light duty trucks rated up to 8,500 pounds gross vehicle weight rating (GVWR) as prescribed in 40 CFR 51.351(g)(5). Additionally, 40 CFR 51.351(b) requires on-road testing of 0.5% of the subject fleet or 20,000

<sup>9</sup> Motor vehicle VMT forecasts for each year are shown in Table 5-1. Despite this annual growth,

emissions from motor vehicles are shown in Table 5-2 to decline as follows: 1993-5909, 1994-5522,

1995-5135, 1996-4596, 1997-4057, 1998-3784, 1999-3511, 2000-3298.

vehicles, whichever is less, and 40 CFR 51.351(c) requires inspection of all 1996 and later vehicles equipped with on-board diagnostics (OBD) systems.

As mentioned above, we fully approved California's I/M program as meeting the basic I/M performance standard on January 8, 1997. 62 FR 1150 and 40 CFR 52.220(c)(234). California has now shown that its I/M program also meets the low enhanced I/M performance standard and meets the four requirements mentioned above.<sup>10</sup>

(1) Since March 1984, the State has required visual inspection of the positive crankcase ventilation valve and of the exhaust gas recirculation valve on all vehicles subject to the I/M program, in accordance with 40 CFR 51.351(g)(8). See Health & Safety Code, Division 26, Part 5, Section 44012(f); Title 16, California Code of Regulations, Division 33, Bureau of Automotive Repair, Article 5.5, Motor Vehicle Inspection Program, section 3340.42; and BAR 97 Specifications sections 3.3.9 and 3.6.18.

(2) Since March 1984, the State I/M program has applied to light duty trucks rated up to 8,500 pounds GVWR, in accordance with 40 CFR 51.351(g)(5). See Health & Safety Code, Division 26, Part 5, Section 44011, and Title 16, California Code of Regulations, Division 33, Bureau of Automotive Repair, Article 5.5, Motor Vehicle Inspection Program, Section 3340.5.

(3) Since 1998, California has conducted random roadside pullover inspections in accordance with 40 CFR 51.351(b), under the authority of Health & Safety Code, Division 26, Part 5, Section 44081.

(4) Since 2002, California has inspected 1996 and later OBD-equipped vehicles in accordance with 40 CFR 51.351(c). See Health & Safety Code, Division 26, Part 5, Section 44036(b)(10); Title 16, California Code of Regulations, Division 33, Bureau of Automotive Repair, Article 5.5, Motor Vehicle Inspection Program, Section 3340.42; and BAR 97 Specifications, Sections 2 and 3.

In summary, we conclude that: (1) The State was entitled to elect to implement a low enhanced I/M program for CO in the South Coast; (2) the program, as implemented by the State, delivered actual CO emission reductions sufficient (along with reductions from other measures) to attain the CO NAAQS in the South Coast; (3) the State's program has been federally approved as meeting the basic I/M performance standard; and (4) the

State's program meets the low enhanced I/M performance standard.

Consequently, we find that the State met the CAA section 187(a)(6) and 187(b)(1) enhanced I/M requirements that applied to the South Coast CO nonattainment area prior to and at the time of the submission of the redesignation request.

Finally, we note that the State has indicated that it intends to continue to implement the enhanced I/M program in the South Coast, and continued CO emission reduction benefits from the program are incorporated in the projected emissions inventory that is part of the maintenance demonstration in the submitted maintenance plan.

#### 5. Wintertime Oxygenated Gasoline Program

Pursuant to CAA section 211(m), CO nonattainment areas with design values of 9.5 ppm or higher must implement a wintertime oxygenated gasoline program requiring that gasoline contain not less than 2.7 percent oxygen by weight. In addition, CAA section 187(b)(3) requires that all serious CO areas implement such a program. California submitted its motor vehicle fuels regulations, including requirements for wintertime oxygen content, on November 15, 1994. We approved the regulations on August 21, 1995, as meeting the applicable CAA requirements. 60 FR 43379. The requirements remain in effect in the South Coast area, although the State has amended the program in other areas.

#### 6. Conclusion

For the reasons discussed above, we propose to determine that all of the provisions of CAA section 110 and part D applicable to the South Coast CO area for purposes of redesignation have been approved into the California SIP.

#### C. Improvement in Air Quality Is Due to Permanent and Enforceable Measures

CAA section 107(d)(3)(E)(iii) establishes that, as a prerequisite to redesignation to attainment,

the Administrator determines 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 pollutant control regulations and other permanent and enforceable reductions \* \* \*.

The Maintenance Plan provides evidence that the meteorological conditions for the years when the South Coast attained the CO NAAQS were more conducive to higher ambient CO concentrations than the long term mean. During the same period, daily VMT increased at the normal rate of growth,

from 322.8 million miles in 2001 to 330.4 million miles in 2003, so activity levels associated with motor vehicles, the primary CO source in the South Coast, were not abnormal. Maintenance Plan, p. 6. Increasing CO emission reductions associated with State and Federal motor vehicle standards, coupled with SCAQMD's CO emission limits on stationary and area sources, provide additional evidence that attainment results from the SIP's permanent and reliable controls on CO emissions rather than favorable meteorology or depressed activity levels. The largest source of emissions reductions during this period came from progressively more stringent State emission standards for cars, trucks, buses, and nonroad equipment, including forklifts, lawn and garden equipment, and marine pleasurecraft.<sup>11</sup>

We propose to find that this prerequisite to redesignation has been met.

#### D. Fully Approved Maintenance Plan

CAA section 107(d)(3)(E)(iii) requires that, before we redesignate an area to attainment, we must have "fully approved a maintenance plan for the area as meeting the requirements of section 175A \* \* \*."

##### 1. Applicable Requirements

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule

<sup>11</sup> Documentation on these and other California mobile source standards may be found at: <http://www.arb.ca.gov/msprog/msprog.htm>. EPA has acted over the years to waive Federal preemption of State standards for California's motor vehicle standards as authorized by CAA section 209(b) and nonroad engine standards as authorized by CAA section 209(e)(2). Under these CAA sections, EPA must grant the waiver unless the Administrator finds that: (1) California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious; (2) California does not need such State standards to meet compelling and extraordinary conditions; or (3) California's standards and accompanying enforcement procedures are not consistent with section 202(a) [or 209 for nonroad] of the CAA.

<sup>10</sup> See August 11, 2006, letter from Kurt Karperos, CARB, to Lisa Hanf, EPA Region 9, for technical information about this demonstration.

for adoption and implementation, that are adequate to assure prompt correction of a violation.

We have issued guidance on maintenance plans, including most notably: (1) The General Preamble (57 FR 13498, April 16, 1992), and (2) the Calcagni memo. In this action, we propose to approve the Maintenance Plan because we believe that it meets the requirements of CAA section 175A and is consistent with the documents referenced above and other documents identified in the discussion below.

2. Maintenance Plan Provisions

a. Emissions Inventories for Attainment Year and Future Years

The Maintenance Plan includes emissions inventories for the attainment year (2002) and for future years 2005, 2010, and 2015, along with motor vehicle emissions for 2020. The methodologies for the inventories are discussed on pages 14–16, including an extensive discussion of adjustments to projected mobile source emissions to reflect the impact of possible suspension of wintertime oxygenate requirement for gasoline in the South Coast.<sup>12</sup> Table 2 below reproduces emissions data primarily from Table 3–2 of the Maintenance Plan. For 2020, the

onroad emissions data are presented in Attachment 3 to the plan. Attachment 3 provides winter emissions for motor vehicles under two scenarios, SCAG 2001 RTP baseline case (1078 tpd) and SCAG 2001 RTP plan case (941 tpd). The Maintenance Plan does not include inventories for stationary, areawide, and nonroad sources for 2020. In Table 2, the 2020 projected emissions are derived from CARB’s latest annual updated emissions analysis for these inventory categories. The data are taken from *The California Almanac of Emissions and Air Quality*, 2006 Edition, Table 4–10, available at: <http://www.arb.ca.gov/aqd/almanac/almanac06/chap406.htm>.

TABLE 2.—SOUTH COAST PROJECTED WINTER CO EMISSIONS INVENTORY  
[In tons per day]

Category	2002	2005	2010	2015	2020
Stationary .....	53	55	59	64	69
Areawide .....	315	318	325	332	79
Onroad .....	3402	2668	2018	1428	1078
Onroad with oxygenated fuel adjustment .....	3402	2668	3041	1444	
Nonroad .....	1065	987	912	890	953
Nonroad with oxygenated fuel adjustment .....	1065	987	921	899	
<b>Total .....</b>	<b>4835</b>	<b>4028</b>	<b>3346</b>	<b>2739</b>	<b>2179</b>

The table shows that maintenance of the NAAQS would be expected primarily from large reductions in the onroad category, which result from the turnover of cars and trucks, as older and more polluting vehicles are retired and replaced with newer and much cleaner vehicles.

The projected 2015 and 2020 onroad emissions were generated using CARB’s motor vehicle emissions factor model, EMFAC2002v2.2, interpolating vehicle populations from calendar year 2010 and 2020 populations, as set out in Maintenance Plan, Attachment 2 (CO Modeling Attainment Demonstration Extracted from the 2003 Air Quality Management Plan, Appendix V, Section 4), Attachment 3 (CARB Assessment 549: South Coast Air Basin CO Maintenance Plan Winter Emissions).

EMFAC2002v2.2 was the most recent EPA-approved motor vehicle emissions factor model at the time the Maintenance Plan was prepared, but

CARB expects to update the model in the near future as part of the preparation of SIPs due to be submitted by the State in 2007.<sup>13</sup> Other aspects of the emissions inventory were current, accurate, and complete at the time of plan preparation, and comply with applicable EPA guidance on the preparation of emission inventories. We therefore propose to approve the Maintenance Plan with respect to its emissions inventories.

b. Maintenance Demonstration

CAA section 175A(a) requires that the maintenance plan “provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.” Generally, a state may demonstrate maintenance of the CO NAAQS by either showing that future emissions will not exceed the level of the attainment inventory or by modeling to

show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should use the same type of modeling. Calcagni memo, p. 9. Because the design value for the South Coast exceeded 12.7 ppm and the area is classified as serious, modeling would have been required as part of the attainment demonstration under CAA section 187(b)(7)(i). The Maintenance Plan includes a modeled maintenance demonstration.<sup>14</sup>

The modeling demonstration is discussed on pages 12–13 of the Maintenance Plan, and at more length in Attachment 2. Regional modeling used the Comprehensive Air Quality Model (CAMx) and an October 31–November 1, 1997 meteorological episode, which ranked in the 98th percentile in stagnation severity. Additional hot-spot roadway intersection modeling using

<sup>12</sup> Section 3.1.2 of the Maintenance Plan discusses the possibility that the State might determine in future to rescind the wintertime oxygenated fuel requirement as a primary measure. As discussed below, data from the *California Almanac of Emissions and Air Quality*, 2006 Edition, were used to complete the emissions profile for 2020. The Almanac does not provide projected emissions for a future scenario in which the wintertime oxygenated fuel requirement is shifted from a

primary measure to a contingency measure. Therefore, the 2020 column in Table 2 does not show these projections. If the State wishes in future to change the wintertime oxygenated fuel program from an active measure to a contingency measure, the State will need at that time to update the quantification of the impact on CO emissions, and demonstrate that the proposed revision will not interfere with continued maintenance or any other applicable requirement.

<sup>13</sup> We approved the use of EMFAC2002 to estimate motor vehicle emissions on April 2, 2003 (68 FR 15720).

<sup>14</sup> However, where there is a determination of attainment, the requirement for an attainment demonstration is suspended and demonstrations of maintenance can be either by emissions inventory or modeling. See *Wall v. EPA*, 265 F.3d 426, 435–436 (6th Cir. 2001).

the CAL3QHC model was used to demonstrate attainment at high-volume intersections. The modeling estimated the South Coast CO carrying capacity to be 4,527 tpd. For the 2005 emissions inventory level of 4028, modeling predicted the 8-hour maximum concentration to be 7.8 ppm, and the 1-hour maximum to be 8.5 ppm. Concentrations still further below the NAAQS are associated with the 2015 and 2020 inventory levels, primarily due to significant reductions in the dominant motor vehicle emissions category (2668 tpd in 2005, 1428 in 2015, and 1078 in 2020). The demonstration covers a 13-year period (from 2007 through 2020), although primarily referencing the 2015 year.

The CAMx modeling approach used in the Maintenance Plan is an EPA-approved model and the modeling performance is fully acceptable. Moreover, the declining projected emissions inventories for the span of the maintenance demonstration also support continued maintenance of the NAAQS. We therefore propose to approve the demonstration of maintenance.

#### c. Monitoring Network and Verification of Continued Attainment

The Calcagni Memo provides that areas must continue to operate an air quality monitoring network to verify attainment. CO is currently monitored in accordance with 40 CFR Part 50, Appendix C and 40 CFR Part 58 at 22 stations. SCAQMD continues to assure the quality of the measured data by conducting routine calibrations, pre-run and post-run test procedures, and routine service checks. The District also completes an annual review of the monitoring network to document continued compliance with siting criteria. The SCAQMD commits in the Maintenance Plan to verify continued maintenance by daily analysis of air quality data collected (pp. 22–23). Furthermore, the District commits to a formal review of the Maintenance Plan in 2007 and 2010 (p. 24). We propose to approve the Maintenance Plan with respect to the obligation to continue to monitor and verify attainment.

#### d. Contingency Provision

CAA section 175A(d) requires that maintenance plans include provisions that EPA deems are necessary to assure that the State will promptly correct any NAAQS violation, and further requires that such provisions include a requirement that the State will

implement all measures contained in the SIP before redesignation. We have concluded that contingency measures need not be new measures that would be triggered by a violation, but may consist of early implementation of measures that provide surplus reductions beyond those needed for attainment or maintenance. See “Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,” memo from G.T. Helms to EPA Air Branch Chiefs, August 13, 1993.

The Maintenance Plan takes this approach, providing a large margin of emissions from fully adopted State regulations, such as tighter emission standards for all categories of motor vehicles and for nonroad engines, such as forklifts, lawn and garden equipment, and marine pleasure craft. See discussion above in Section III.C., providing a more extensive list of measures, referencing the extensive CARB documentation available for each measure, and discussing the EPA waiver process applicable to these California mobile source standards. There is no reason to expect that these standards, which are all currently in effect, will be relaxed in the future. Nor is there reason to believe that compliance will be inadequate, since CARB has for many decades maintained a successful enforcement program. For details on CARB’s mobile source enforcement program for new and existing vehicles and engines, see: <http://www.arb.ca.gov/enf/enf.htm>.

As a result, the predicted emissions for 2015 are approximately 43 percent below the 2002 attainment year emissions levels, and this margin of excess reductions is projected to increase further in future years due to the State’s progressively tighter emissions standards for new mobile source engines coupled with fleet turnover of the onroad and nonroad fleet.

The SCAQMD and CARB have committed to continue to implement all existing measures to achieve permanent, enforceable CO emission reductions that will further reduce CO levels (Maintenance Plan, Chapters 2 and 3; CARB’s letter to EPA dated February 24, 2006). The Maintenance Plan does evaluate, however, the relatively small emissions impact of a possible future decision to suspend implementation of the wintertime oxygenate program in the South Coast (see Table 2 above). The methodology and assumptions for calculating the impact are discussed at

length on pp. 15–16 and in Attachment A to the Maintenance Plan. If the State decides in future to suspend the wintertime oxygenated fuel requirement, the State would need to submit a SIP revision complying with applicable CAA requirements.

For the above reasons, we propose to approve the contingency provisions in the Maintenance Plan as meeting the requirements of CAA section 175A(d).

#### e. Commitment To Submit Subsequent Maintenance Plan Revisions

CAA section 179A(b) provides that States shall submit a commitment to submit a SIP revision 8 years after redesignation providing for maintaining the NAAQS for an additional 10 years. SCAQMD has made this commitment as part of the Maintenance Plan (see p. 22), and we propose to approve it.

#### f. Motor Vehicle Emissions Budgets

Transportation conformity is required by section 176(c) of the CAA. Our transportation conformity rule (codified in 40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to the SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

Maintenance plan submittals must specify the maximum emissions of transportation-related CO emissions allowed in the last year of the maintenance period, i.e., the motor vehicle emissions budget (MVEB). The submittal must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or “budgets” adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5), and be approvable under all pertinent SIP requirements. For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity Web site at: <http://www.epa.gov/otaq/stateresources/transconf/index.htm>.

The Maintenance Plan includes the CO MVEBs shown in Table 3 below. The budgets are based on Table 3–5 of the plan and other documentation in Section 3.1.3 of the plan.<sup>15</sup> See also the

<sup>15</sup> The MVEB for 2020 was clarified in letters from Syla Oey, CARB, to Dave Jesson, EPA Region 9,

dated February 2, 2007, and from Laki Tisopoulos, SCAQMD, to Dave Jesson, dated February 2, 2007,

and an e-mail from Jonathan Nadler, SCAG, to Dave Jesson, dated February 2, 2007.

discussion of projected emissions in Section III.D.2.a., above.

TABLE 3.—SOUTH COAST CO MAINTENANCE PLAN MOTOR VEHICLE EMISSIONS BUDGETS  
[Winter season emissions in tons per day]

Category	2005	2010	2015	2020
Total Air Basin Emissions .....	4028	3346	2739	2179
Motor Vehicle Emissions .....	2668	2041	1444	1078
Safety Margins .....	220	96	693	1059
Motor Vehicle Emissions Budgets .....	2888	2137	2137	2137
Total Air Basin Emissions with Safety Margin .....	4248	3442	3432	3196
Modeled Air Basin Emissions .....	4528	4528	4528	4528

In setting MVEBs, States generally use motor vehicle emission inventories. California took this approach, for example, in the 1997 CO attainment plan. California need not, however, cap MVEBs at projected motor vehicle emissions levels. Because overall projected levels of emissions from all sources are expected to be less than the levels necessary to maintain the CO NAAQS, California has a “safety margin” that the State may use to set MVEBs at a higher level. As long as emissions from all sources are lower than needed to provide for continued maintenance, the State may allocate additional emissions to future mobile source growth by assigning a portion of the safety margin to the MVEBs (see 40 CFR 93.124). California stated in the Maintenance Plan that the safety margins described in Table 3 above are allocated to the MVEBs.

Attainment was achieved in 2002 when the CO emissions level in the basin was 4835 tpd. The modeled attainment level is 4527 tpd. As can be seen from Table 3, total basin emissions, with the safety margin, are substantially below actual and modeled attainment levels. Thus, the safety margins comply with the requirement that the budgets with safety margins are lower than the maintenance level.

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

Under 40 CFR 93.118(e)(4)(i), we review a submitted plan to determine whether the plan was endorsed by the Governor (or designee) and was subject to a public hearing. The February 24, 2006 transmittal letter for the Maintenance Plan was signed by the CARB Executive Officer, the Governor’s designee for SIP purposes. CARB Executive Order G–125–332 provides

evidence of State adoption and legal authority. SCAQMD’s April 19, 2005 transmittal letter documents that the District held a public hearing on the Maintenance Plan on March 4, 2005, after proper public notice. Therefore, we propose to conclude that the submitted plan meets the criterion under 40 CFR 93.118(e)(4)(i).

Under 40 CFR 93.118(e)(4)(ii), we review a submitted plan to determine whether the plan was developed through consultation with Federal, State and local agencies and whether full implementation plan documentation was provided to EPA and EPA’s stated concerns, if any, were addressed. Consultation for development of this plan largely consisted of public meetings (page 75 of the plan); discussions with Federal, State, and local transportation planning agencies; and a public hearing, preceded by notices that were published in newspapers of general circulation. Documentation was provided to EPA and EPA’s stated concerns were addressed. We propose to conclude that this consultation is sufficient for the purposes of 40 CFR 93.118(e)(4)(ii).

Under 40 CFR 93.118(e)(4)(iii), we review a submitted plan to determine whether the MVEBs are clearly identified and precisely quantified. The Maintenance Plan clearly identifies and precisely quantifies the CO MVEBs as shown in Table 3 above. The budgets are derived from EMFAC2002 with travel activity data provided by the Southern California Association of Governments (SCAG). The methodology and rationale for determining the MVEBs is discussed on pages 17 through 22 of the plan. This portion of the plan also indicates that modeling sensitivity analyses confirm that the budgets would provide for maintenance even assuming possible changes in future to the estimation of motor vehicle emissions. We propose that the plan thereby meets the adequacy criterion under 40 CFR 93.118(e)(4)(iii).

Under 40 CFR 93.118(e)(4)(iv), we review a submitted plan to determine whether the MVEBs, when considered together with all other emissions sources, are consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to a given SIP submission). The Maintenance Plan shows how the MVEBs and related safety margins are consistent with maintenance of the CO NAAQS through 2015 (see pages 12 through 16 of the Maintenance Plan) and 2020 (see Attachment 3). In particular, Table 3–1, 3–2, 3–4, and 3–6 of the Maintenance Plan show the extent to which maximum future year emissions (including the budget safety margins) fall below emissions for the 2002 attainment year and below the modeled 2003 emissions, which are associated with ambient concentration levels that are below both the 1-hour and 8-hour NAAQS. “Assessment 549” on page 74 of the plan shows that this trend of lower CO emissions continues through 2020, despite projected VMT increases. Consequently, we propose to find that the plan meets this criterion for adequacy.

Under 40 CFR 93.118(e)(4)(v), we review a plan to determine whether the MVEBs are consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy plan or maintenance plan. The Maintenance Plan contains no new measures but the budgets appropriately reflect the State’s adopted emissions standards, fuel regulations, and the vehicle inspection and maintenance program, as applicable to the area. Thus, we propose to conclude that the submitted plan meets this criterion for adequacy.

Under 40 CFR 93.118(e)(4)(vi), we review a submitted plan to determine whether revisions to previously submitted plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any

changes to established safety margins; and reasons for the changes (including the basis for any changes related to emissions factors or estimates of vehicle miles traveled). The Maintenance Plan explains and documents the various changes that have been made to the CO emissions inventories, etc.<sup>16</sup> Thus, we propose to find that the submitted plan meets this criterion for adequacy.

Under 40 CFR 93.118(e)(5), we review the State's compilation of public comments and response to comments that are required to be submitted with any SIP revision. Attachments 6 and 7 of the Maintenance Plan submittal provide transcripts and minutes of the public hearing, during which there was a single comment, supporting adoption of the plan. We reviewed this compilation and concluded that the comment does not affect our proposed approval of the MVEBs. Thus, we propose that the Maintenance Plan meets this criterion for adequacy.

Therefore, we propose to approve the CO MVEBs contained in the submitted Maintenance Plan because the plan and budgets meet the requirements under 40 CFR 93.118(e)(4) and (5) and because we find that ARB has met all statutory requirements for submittals of maintenance plans under sections 110 and part D of the Act. Should we finalize our approval, the Southern California Association of Governments (SCAG) and the U.S. Department of Transportation must use these new CO MVEBs from the Maintenance Plan for future transportation conformity determinations. We are also announcing our proposed approval on our conformity adequacy Web site: <http://www.epa.gov/otaq/stateresources/transconf/currsips.htm>.

In the submittal letter dated February 24, 2006, CARB requested that we limit the duration of any final approval of the MVEBs in the Maintenance Plan to last only until the effective date of future EPA adequacy findings for replacement budgets. This would mean that if CARB decides to amend the CO MVEBs sometime in the future, then the new MVEBs would become effective as soon as EPA determined adequacy, rather than after comprehensive rulemaking (which is a longer process).

CARB had made a similar request, and EPA granted it, in connection with the MVEBs in other plans submitted by the State (see 67 FR 69139, November

15, 2002). That prior CARB request was accompanied by significant documentation that demonstrated why limiting the duration of our MVEB approval provided an advantage to air quality and public health protection.

With the current request, however, CARB has not provided supporting documentation to address our criteria for granting limited approval. The criteria are set out on page 69141 of the rulemaking, and include: (1) State acknowledgment that its current budgets are outdated or deficient; (2) State commitment to update the budgets as part of a comprehensive update of its SIP; and (3) State request that we limit the duration of the approval of the State's current approved SIP. We note that CARB's request to limit the duration of the approvals of the MVEBs was contained only in the submittal letter and the request is not, therefore, considered a part of the maintenance plan itself. Therefore, our denial of ARB's request does not affect our approval of the plan or the budgets contained therein.

#### g. Conclusion

Because the Maintenance Plan satisfies applicable CAA requirements, we propose to approve it under section 175A.

#### IV. Proposed Action

We are proposing to approve the 2005 Carbon Monoxide Redesignation Request and Carbon Monoxide Maintenance Plan for the South Coast Air Basin as meeting the requirements of CAA section 175A. We are proposing to find adequate the MVEBs and to approve the budgets under CAA section 176(c).

We are also proposing to approve the State's request to redesignate the area to attainment for CO under the provisions of CAA section 107(d)(3)(E). As prerequisite to this action, we are proposing to find that the area has attained the NAAQS due to permanent and enforceable emission reductions under the SIP, and that the SIP for the area meets all of the requirements of CAA section 110, Part D, and section 175A applicable for purposes of redesignation.

As part of our proposed determination that the South Coast area has met applicable Part D provisions, we are proposing to adapt to CO areas the provisions of our Clean Data Policy, which we have established for 1-hour ozone, PM-10, 8-hour ozone, and PM-2.5 areas. Under our proposed extension of the Clean Data Policy to CO, we are proposing to interpret certain CAA Part D provisions as suspending the

requirements for submission of RFP, attainment demonstrations, contingency measures, and TCMs related to RFP due to the fact that the South Coast has already attained the CO NAAQS. We are proposing to approve the 1997 CO plan and the Maintenance Plan as meeting the requirements of CAA section 187(b)(2) relating to TCMs to offset emissions associated with growth in VMT and vehicle trips.

Finally, because our interim approval of California's I/M program for CO in the South Coast expired on August 7, 1998, California has now submitted a demonstration that the I/M program meets the low-enhanced requirements applicable to the South Coast CO nonattainment area. We are proposing to approve that demonstration and to conclude that the State has satisfied the CAA section 187(a)(6) and 187(b)(1) enhanced I/M requirements that applied to the South Coast CO nonattainment area.

#### V. Statutory and Executive Order Reviews

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 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 law as meeting Federal requirements and to redesignate the 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 action 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

<sup>16</sup> The most significant technical difference between the attainment SIP and the maintenance plan is the change from EMFAC7G to EMFAC2002v2.2, which results in a significant improvement in the quantification of motor vehicle emissions, and updates to SCAG's growth projections.

(65 FR 97249, 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 a State rule implementing a Federal standard and to redesignate the area to attainment for air quality planning purposes, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed 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 proposes to approve a state plan implementing a Federal Standard and to redesignate the area to attainment for air quality planning purposes. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This proposed rule is not subject to EO 13045 because it proposes to approve a State plan and to redesignate the area to attainment for air quality planning purposes.

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 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, Intergovernmental relations, Carbon monoxide, Reporting and recordkeeping requirements.

##### 40 CFR Part 81

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

Dated: February 6, 2007.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*  
[FR Doc. E7-2538 Filed 2-13-07; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on A Petition to List *Astragalus debequaeus* (DeBeque milkvetch) as Threatened or Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list *Astragalus debequaeus* (DeBeque milkvetch) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing *A. debequaeus* may be warranted. Therefore, we will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of *A. debequaeus* or threats to its habitat at any time. This information will help us monitor and encourage the conservation of the species.

**DATES:** The finding announced in this document was made on February 14, 2007. You may submit new information concerning this species for our consideration at any time.

**ADDRESSES:** The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Western Colorado Field Office, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, CO 81506. Submit new information, materials, comments, or questions concerning this species to us at the address above.

**FOR FURTHER INFORMATION CONTACT:** Allan R. Pfister, Field Supervisor, Western Colorado Field Office (see

**ADDRESSES** section) (telephone 970-243-2778, extension 29; facsimile 970-245-6933). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we rely on information provided by the petitioner and evaluate that information in accordance with 50 CFR 424.14(b). Our 90-day finding process under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold. A substantial finding should be made when the Service deems that adequate and reliable information has been presented that would lead a reasonable person to believe that the petitioned action may be warranted.

On October 26, 2004, we received a formal petition, dated October 25, 2004, submitted by the Center for Native Ecosystems and the Colorado Native Plant Society (2004), requesting that we list *Astragalus debequaeus* as threatened or endangered, and designate critical habitat concurrently. The petition identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). We acknowledged receipt of the petition in a January 20, 2005, letter to Mr. Joshua Pollock. In that letter, we advised the