

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[NV-FDA-129; FRL-____-__]

Determination of Attainment by the Applicable Attainment Date
for the Carbon Monoxide National Ambient Air Quality Standard
within the Las Vegas Valley Nonattainment Area, Clark County,
Nevada; Determination Regarding Applicability of Certain
Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is finding that the Las Vegas Valley nonattainment area in the State of Nevada has attained the National Ambient Air Quality Standard for carbon monoxide by the applicable December 31, 2000 attainment date. EPA is taking this action pursuant to its obligations under the Clean Air Act to determine whether nonattainment areas have attained the applicable standard by the applicable attainment date. As a consequence of this finding, we find that certain statutory requirements no longer apply to this area and that the State of Nevada will not be subject to the additional statutory requirements for carbon monoxide that would otherwise have applied.

DATES: This finding is effective on [Insert date 30 days after the publication date].

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Air Planning Office of the Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105-3901.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, Telephone: (775) 833-1276. E-mail: occonnor.karina@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

Under sections 179(c)(1) and 186(b)(2) of the Clean Air Act (CAA or "Act"), EPA has the responsibility for determining whether a nonattainment area has attained the carbon monoxide (CO) national ambient air quality standard (NAAQS) by the applicable attainment date. In this case, the EPA was required to make a determination concerning the Las Vegas Valley CO nonattainment area. As a "serious" CO nonattainment area, Las Vegas Valley was subject to a December 31, 2000 attainment date.

On January 21, 2005 (70 FR 3174), we published a notice announcing a proposed finding that the Las Vegas Valley nonattainment area had attained the CO NAAQS by the applicable

attainment date (December 31, 2000) and that, based on our proposed finding of attainment, certain CAA requirements [specifically, the contingency provisions under sections 172(c)(9) and 187(a)(3)] would no longer apply to this area. A detailed discussion of EPA's proposal is contained in the January 21, 2005 proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

II. Public Comments

We received no comments in response to our proposed action.

III. Final Action

EPA finds, pursuant to sections 179(c)(1) and 186(b)(2) of the Act, that the Las Vegas Valley "serious" nonattainment area has attained the NAAQS for CO by the applicable attainment date.

This finding relieves the State of Nevada from the obligation under section 187(g) of the Act to prepare and submit a SIP revision providing for a reduction of CO emissions within Las Vegas Valley by at least five percent per year in each year after approval of the SIP revision until the CO NAAQS is attained.

It should be noted that this action does not redesignate this area from "nonattainment" to "attainment". Under section 107(d)(3)(E), the Clean Air Act requires that, for an area to be redesignated from nonattainment to attainment, five criteria must be satisfied including the submittal by the State (and approval

by EPA) of a maintenance plan as a SIP revision. Therefore, the designation status of Las Vegas Valley in 40 CFR part 81 is unaffected by this action, and Las Vegas Valley will remain a "serious" nonattainment area for CO until such time as EPA finds that the State of Nevada has met the Clean Air Act requirements for redesignation to attainment.

Based on our finding of attainment by the applicable attainment date, we also find that the CAA's requirement for the SIP to provide for CO contingency provisions under CAA sections 172(c)(9) and 187(a)(3) no longer applies to Las Vegas Valley and that our remaining obligation to promulgate a Federal implementation plan ("FIP") for CO contingency provisions in Las Vegas Valley under CAA section 110(c) is permanently lifted.

IV. 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 finds that an area has attained a national ambient air quality standard based on an objective review of measured air quality data and finds that certain Clean Air Act requirements no longer apply. This action

will not impose any new regulations, mandates, or additional enforceable duties on any public, nongovernmental, or private entity. 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 does not impose any additional enforceable duty, 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 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 finds that an area has attained a national ambient air quality standard and is therefore not

subject to certain specific requirements, 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.

This rule does not involve establishment of technical standards, and 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. section 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. section 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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. 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).)

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

List of Subjects in 40 CFR Part 81

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

May 20, 2005
Dated:

Alexis Strauss,
Acting Regional Administrator,
Region IX.