Response to Comments Document

Finalizing Approval of

- **State of Nevada State Implementation Plan for an Enhanced Program for the Inspection and Maintenance of Motor Vehicles for Las Vegas Valley and Boulder City, Nevada, March 1996, and**
- **Carbon Monoxide State Implementation Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada, August 2000**

This final approval also includes:

State of Nevada statutory provisions related to the vehicle inspection and maintenance program:

Nevada Revised Statutes (NRS), title 40, section 445B.210 and sections 445B.700-445B.845; and NRS, title 43, sections 481.019-481.087, 482.155-482.290, 482.385, 482.461, 482.565, and 484.644-484.6441.

Regulations adopted by the Nevada State Environmental Commission or the Nevada Department of Motor Vehicles:

Nevada Administrative Code, chapter 445B, sections 445B.400-445B.735 (excluding 445B.576, 445B.577, and 445B.578); and Regulation R178-01, adopted by the Nevada Department of Motor Vehicles.

Regulations adopted by the State Board of Agriculture:

Nevada Administrative Code, chapter 590, section 590.065.

Regulations adopted by the Clark County Board of County Commissioners:

Section 53, Oxygenated Gasoline Program, and
Section 54, Cleaner Burning Gasoline (CBG): Wintertime Program.

DATE: June 18, 2004

Karina O'Connor, Planning Office, Air Division
Jefferson Wehling, Office of Regional Counsel
U.S. Environmental Protection Agency - Region 9

I. COMMENTS RECEIVED

On January 28, 2003, EPA proposed approval of state implementation plan (SIP) revisions submitted by the State of Nevada to comply with the requirements under the Clean Air Act, as amended in 1990 (CAA or "Act"), that apply to an area within Clark County that is designated as "nonattainment," and classified as "serious," for the carbon monoxide (CO) national ambient air quality standards (NAAQS). See 68 FR 4141 (January 28, 2003). The boundaries of this "serious" CO nonattainment area within Clark County coincide with State hydrographic area #212, referred to herein as "Las Vegas Valley." The comment period closed on February 27, 2003.

We received comments from the following parties on our proposed approval:

1. Peter Krueger, Executive Director, Nevada Emission Testers Council, comment letter dated February 19, 2003.

2. Edward C. Barry, Western Environmental Manager, Chemical Lime Company, comment letter dated February 24, 2003.

3. Fredrick R. Stater, Plant Manager, Kerr-McGee Chemical, LLC, comment letter dated February 26, 2003.

4. Robert W. Hall, Nevada Environmental Coalition, Inc. ("NEC"), comment letter dated February 27, 2003.[1]

The comment letters are included in the administrative record for this action. In this

[1] On February 27, 2003, NEC submitted to EPA an email to which two files were attached: a comment letter on our January 28, 2003 proposed rule and a list of supporting documents. Later that same day, NEC submitted to EPA a second email to which a file containing an agenda item (#7) from a May 14, 2002 meeting of the Regional Transportation Commission of Southern Nevada (RTC) was attached. Subsequently, NEC sent copies to EPA of the supporting documents referred to in the list provided on February 27, 2003. These supporting documents were organized by NEC into nine volumes. Collectively, the February 27, 2003 comment letter, the list of supporting documents, the supporting documents themselves organized into nine volumes, and the RTC agenda item comprise the entire NEC comment package. On March 6, 2003, NEC sent another email referred to as a "clarifying supplement and addendum" to NEC's comments submitted on February 27, 2003. We have included the March 6, 2003 email in the administrative record for this action but do not provide a specific response to it given that it was not timely submitted. Nonetheless, we have reviewed NEC's March 6, 2003 email for any new issues not already raised in NEC's previously-submitted comments and found no such new issues.

document, we respond to all of the comments. Throughout this document, "we," "us," and "our " refer to EPA.

In this Response to Comment Document, our notice of proposed rulemaking published on January 28, 2003 in the *Federal Register* is referred to as the "proposed rule," "proposed approval," or "proposed action." We refer to the *Carbon Monoxide State Implementation Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada* (August 2000), which was submitted to EPA on August 9, 2000, as the "2000 CO plan," "serious area CO plan," or "2000 CO attainment plan." We refer to the *State of Nevada State Implementation Plan for an Enhanced Program for the Inspection and Maintenance for Motor Vehicles for Las Vegas Valley and Boulder City, Nevada* (March 1996), which was submitted to EPA on March 20, 1996, as the "1996 vehicle I/M program." As amended and supplemented by subsequent SIP revision submittals (including updated I/M-related statutes and regulations), the 1996 vehicle I/M program is referred to simply as the "vehicle I/M program." Together, the SIP revision submittals that contain the 2000 CO attainment plan, the vehicle I/M program, and the wintertime gasoline program in Clark County (including the most recently adopted and submitted versions of the State's low Reid Vapor Pressure regulation, and Clark County air pollution regulations sections 53 (oxygenated gasoline program) and 54 (cleaner burning gasoline)) are referred to herein as the "CO SIP revision for Las Vegas Valley ".[2]

II. RESPONSE TO COMMENT FROM THE NEVADA EMISSION TESTERS COUNCIL

Comment 1: The Nevada Emission Testers Council requests that our final action await the end of the 2003 session of the Nevada State Legislature to ensure that the State does not pass legislation that would make a significant change to the vehicle inspection and maintenance (I/M) program that is one of the basic elements relied upon in the CO plan. The Nevada Emission Testers Council refers to a bill draft request that seeks to revise the vehicle I/M program for 1996 and newer model-year (MY)

[2] Clark County air pollution regulation section 53 (oxygenated gasoline program) was fully approved into the Clark County portion of the Nevada SIP in 1999 (see 64 FR 29573 (June 2, 1999)) and was not proposed for any further action in our proposed rule. However, as discussed in the final rule, following publication of our proposed rule, the State submitted an amended section 53, one that incorporates only administrative-type changes, to EPA as a SIP revision on November 10, 2003, and we are approving the amended section 53 into the SIP as part of this final action. We note that, while the CO SIP revision for Las Vegas Valley that is addressed in this proceeding covers almost all of the requirements for the Las Vegas Valley CO nonattainment area under the Act, as amended in 1990, there are some requirements that are not covered. For example, the requirements related to new source review (i.e., permitting requirements for new or modified stationary sources) are not covered in either our proposed or final action. In that regard, Clark County amended their new source review rules in 2003, and EPA will be proposing action on those amended rules in a separate notice to be published in the *Federal Register*.

vehicles from the current annual frequency to biennial. The Nevada Emission Testers Council acknowledges that the failure rate is lower for the newer vehicles, but asserts that many of the vehicles that do fail are gross polluters, and thus, the proposal could reduce the effectiveness of the vehicle I/M program and thereby jeopardize the plan.

Response 1: The current vehicle I/M program that was the subject of our proposed approval requires annual testing for vehicles located in Clark County meeting the following criteria: 1) Gasoline powered; 2) Diesel powered with a gross vehicle weight under 8,500 pounds; and 3) 1968 model-year or newer. (new vehicles on their first or second registration are exempted; a test is required upon a vehicle's third registration). MY 1996 and newer vehicles are subject to onboard diagnostics testing rather than the "two-speed idle" test. The current vehicle I/M program meets the performance standard and is one of the principal emission reduction elements relied upon by the 2000 CO plan to attain the standard. In its 2003 session, the Nevada State Legislature did not change the vehicle I/M program for 1996 and newer MY vehicles from the current annual frequency to biennial. In fact, the only change the Legislature made to Nevada vehicle I/M program was to add "medium duty" vehicles to the Nevada heavy duty I/M program. No changes were made to the vehicle I/M program that was the basis for approval in our proposed action. Note that future changes to that program should be carefully considered to ensure that they will not interfere with attainment and maintenance of the CO standard. Biennial programs are approvable, so long as the performance standard continues to be met and so long as the program continues to provide the necessary emissions reductions to demonstrate attainment and maintenance of the standard.

III. RESPONSE TO COMMENT FROM CHEMICAL LIME COMPANY

Comment 1: Chemical Lime Company operates an industrial facility in Apex Valley, which lies outside of, but near, the Las Vegas Valley CO nonattainment area, and expresses concern that the CO emissions estimate cited in the 2000 CO plan for its facility will be interpreted, upon EPA approval of the plan, as an emission limit which cannot be exceeded without a SIP revision.

Response 1: The emissions inventories in the 2000 CO attainment plan are intended to reflect actual emissions for the base year 1996 and projections of actual emissions predicted to occur in future years 2000, 2010 and 2020. For industrial facilities located outside of the nonattainment area, such as the Chemical Lime Company facility, such inventory estimates do not have a direct effect on a source's ability to secure future permit modifications to reflect physical changes, changes in the method of operation, or increased throughput at the plant. The requirement to secure a permit modification is triggered by a physical change or change in the

method of operation of an existing source that would result in a "net emissions increase" (NEI), and "actual emissions" are relevant in calculating the NEI. However, in the permitting context, "actual emissions" are not based on the inventory in the attainment plan but are generally based on the two-year period prior to the application for a permit modification. See, e.g., Clark County Department of Air Quality Management (DAQM), Air Quality Regulations, section 0 (Definitions) for the terms, "net emissions increase " and "actual emissions," as adopted on December 4, 2001.

The 2000 CO attainment plan's emissions inventory of stationary sources could potentially affect the amount of emissions reductions that a source can claim as emission reduction credits (ERCs), but ERCs are created, banked and used for the purposes of providing offsets from emissions of nonattainment pollutants from new or modified stationary sources in nonattainment areas. Since Chemical Lime Company's facility is located within an area designated as unclassifiable / attainment for CO, it is neither subject to the offset requirement nor allowed to bank CO ERCs for use in the nonattainment area (Las Vegas Valley). See section 173(c) of the Clean Air Act, as amended in 1990 (CAA or "Act ").

IV. RESPONSE TO COMMENT FROM KERR-MCGEE CHEMICAL, LLC

Comment 1: Kerr-McGee Chemical, LLC ("Kerr-McGee") operates a facility in Henderson, Nevada, which lies within the Clark County CO nonattainment area (Las Vegas Valley) and requests EPA to reconsider the overall approach to review and approval of the "serious area" CO plan into the Clark County portion of the Nevada SIP in light of ambient CO monitoring data that suggests that the area has already attained the CO NAAQS. Rather than follow-through on the action as proposed, Kerr-McGee requests that EPA redesignate the area as attainment and work with local authorities to develop a maintenance plan instead. Kerr-McGee cites sections 187(f) and 107(d)(3)(A) of the Clean Air Act as statutory authority for this alternative approach. Alternatively, if EPA chooses not to change course and proceed directly to development of a maintenance plan, Kerr-McGee requests that EPA proceed in redesignating the area to attainment as soon as possible.

Response 1: We recognize the regulatory efforts made by the State of Nevada and Clark County to reduce CO emissions and the substantial improvements in ambient CO concentrations over the past decade despite dramatic increases in population and vehicle miles traveled within the nonattainment area, and have concluded that the appropriate approach is to finalize our proposed action on the CO SIP revision for Las Vegas Valley.

First, we note that, while section 187(f) of the Act provides authority to EPA to adjust the deadlines for submittal by States of SIP revisions under certain

circumstances, it does not provide EPA with the authority to delay taking action on SIP revisions that have already been submitted. EPA has an obligation to act on SIP submittals within the statutory deadlines set forth in section 110(k)(2) of the Act.

Second, we note that redesignations from "nonattainment" to "attainment" are governed by the provisions in section 107(d)(3)(E). Under this section of the Act, EPA may not redesignate an area from "nonattainment" to "attainment" until five criteria are met. Three of the criteria include: (1) full approval by EPA of the applicable implementation plan for the area; (2) determination by EPA that the improvement in air quality is due to permanent and enforceable reductions in emissions; and (3) compliance by the State of all requirements applicable to the area under section 110 and part D (of title I) of the Act. EPA's approval of the CO SIP revision for Las Vegas Valley into the Clark County portion of the Nevada SIP will serve to fulfill these three criteria and, thereby, pave the way towards redesignation of the area to attainment. Another criterion under section 107(d)(3)(E) involves a finding of attainment. We expect to be proposing such a finding for the Las Vegas CO nonattainment area in the *Federal Register* in the near future. Lastly, before redesignation, EPA must review and approve a maintenance plan for the area, and Clark County is currently in the process of developing such a plan for Las Vegas Valley.

V. RESPONSE TO COMMENTS FROM THE NEVADA ENVIRONMENTAL COALITION (NEC)

The following comments and responses are organized by the corresponding numbered "allegations" listed in NEC's February 27, 2003 letter or, with respect to those comments that are not numbered in NEC's comment letter or other related document, by an assigned number along with the subject heading from NEC's letter or other related document.

Comment 1: NEC asserts that the EPA has erred and abused its discretion in proposing to approve the CO SIP revision for Las Vegas Valley (68 FR 4141, January 28, 2003), including but not limited to EPA's finding of adequacy (65 FR 71313, November 30, 2000) with respect to the CO motor vehicle emission budgets for transportation conformity purposes.

Response 1: EPA reviewed the various SIP submittals that comprise the CO SIP revision for Las Vegas Valley and reasonably concluded that the appropriate action was to propose approval. Consistent with the requirements of the Administrative Procedure Act, the proposed rule on the Las Vegas Valley CO plan notifies the public of the terms, substance, and rationale of the proposed action; the statutory authority under which the action is proposed; and the process for submitting comments. As such, EPA did not abuse its discretion in proposing approval of the

CO SIP revision for Las Vegas Valley.

With respect to EPA's November 2000 adequacy determination for the motor vehicle emissions budgets, the question of whether EPA abused its discretion in making a positive determination of adequacy was resolved in EPA's favor by the Ninth Circuit Court of Appeals in *Hall v. EPA* (No. 00-71676). In an unpublished memorandum filed March 28, 2002, the court concluded that EPA did not act arbitrarily or capriciously in finding the budgets adequate.

Comment 2/3: NEC asserts that EPA cannot rely on a conflicted applicant like Clark County to answer for the EPA when the EPA was served directly, and for a different purpose. NEC asserts that EPA failed or refused to answer the petitions directed to the agency. Alternatively, even assuming the documents were only directed at the EPA as comment documents and not petitions, NEC states that EPA still has its own responsibility to acknowledge and answer the issues directed to the EPA.

Response 2/3: EPA's response, or lack thereof, to petitions or comment documents that have been submitted to the Agency by NEC over the past few years and related to a number of different regulatory issues in Clark County is not germane to the Agency's specific action set forth in the proposed rule published on January 28, 2003 (68 FR 4141). As such, no further response to this issue is required for the purposes of this final Agency action.

Comment 4/5: NEC cites the discussion in the proposed rule of applicable deadlines as an admission of the failure of Clark County to meet those deadlines, and asserts that, where extensions of time were granted, the EPA failed to include the statutory authority for each extended deadline.

Response 4/5: The proposed rule provides the regulatory background for the development of a serious area CO plan for Las Vegas Valley, and in doing so, it notes an instance where EPA approved an extension request and another where, in contrast to allowing an extension, EPA made a finding of failure to submit (a required plan revision) (in 1999), which triggered sanctions clocks under section 179 of the Act. See 68 FR 4141, at 4142-4143.

The statutory basis and rationale for EPA's grant of an extension of the attainment date applicable to Las Vegas Valley under its original classification under the Act as amended in 1990 as a "moderate" nonattainment area is provided in the *Federal Register* notices published for that specific EPA action. See 61 FR 41759 (August 12, 1996) (proposed rule) and 61 FR 57331 (November 6, 1996) (final rule). Subsequent to our approval of that extension, EPA determined that Las Vegas Valley had failed to attain the CO NAAQS by the revised attainment date and did not qualify for another one-year extension, which had the effect of "bumping up" the classification of the Las Vegas Valley for CO from "moderate" to "serious."

The "serious" classification pushed back the attainment date (to December 31, 2000) but also triggered additional requirements, including the preparation and submittal of a new attainment plan. The State of Nevada and Clark County failed to submit the "serious area" attainment plan by its due date, which led EPA to make a finding of failure to submit, which triggered sanctions clocks under section 179 of the Act. See 64 FR 49084 (September 10, 1999). In August 2000, Clark County adopted a revised "serious area" CO plan, and the Nevada Division of Environmental Protection (NDEP) submitted the revised plan to EPA. EPA found that plan to be complete in September 2000 which stopped the sanctions clocks that had been triggered by our 1999 finding. The "serious area" CO plan (also referred to as the "2000 CO attainment plan" or "2000 CO plan") is one of the basic elements that EPA proposed to approve in its January 28, 2003 notice.

The 2000 CO attainment plan was developed to provide for attainment by December 31, 2000, and we expect to be proposing a finding of attainment (i.e., attainment by December 31, 2000) for the CO NAAQS in Las Vegas Valley in the near future in a separate *Federal Register* notice. At the present time, Clark County and the State of Nevada have submitted all of the applicable SIP revisions that are required under the Act with respect to Las Vegas Valley CO nonattainment area.

Comment 6: NEC concludes that the premise behind the 2000 CO plan is that the valley can absorb huge increases in population and VMT while enjoying substantial reductions in CO emissions in the process. NEC asserts that there is no explanation for exactly how that will happen.

Response 6: Motor vehicle emissions in Las Vegas Valley are reduced primarily by a combination of natural fleet turnover, which effectively replaces older higher-emitting vehicles with models manufactured to meet more stringent exhaust emissions standards established under the Federal motor vehicle control program, a vehicle I/M program for in-use vehicles, and wintertime specifications for gasoline. The 2000 CO attainment plan anticipates that, through 2010, the beneficial effect of motor vehicle and fuel-related CO control measures on CO emissions will more than offset region-wide increases in vehicle-miles-traveled (VMT) and thereby provide for a net downward trend in CO emissions. After 2010, however, the CO plan expects the trend to reverse but concludes that the CO NAAQS will continue to be attained through 2020 even though the overall CO emissions predicted in 2020 would exceed those that occurred in 1996, a year in which CO exceedances were measured in Las Vegas Valley. At 68 FR 4156 (column 1), the proposed rule explains that the wider geographic distribution of traffic and related CO emissions in 2020 compared to conditions in 1996 will result in lower CO ambient values at the location of the hotspot in 1996. In addition, no new hotspot violations are expected.

Comment 7: NEC contends that the State of Nevada and Clark County have been in serious financial difficulties from before the date of the 2000 CO attainment plan, that Clark County has not kept the EPA current regarding the impact of serious revenue shortfalls by the State and the County on the current plan, and that Clark County does not have the funding to implement all of the promises that it has made in connection with the 2000 CO plan and other related SIP submittals.

Response 7: Since all of the controls relied upon for attainment purposes in the 2000 CO attainment plan have already been implemented, the funding requirements relate only to operational-phase needs rather that start-up expenditures. In the case of the vehicle I/M program, revenue for the funds necessary to provide State oversight for the program is generated from the vehicle emission test certification fee. See page 71 of the technical support document (TSD) for our proposed rule. The other measures that are most heavily relied upon under the 2000 CO attainment plan include the wintertime gasoline measures, including the State low Reid Vapor Pressure (RVP) regulation and DAQM's Cleaner Burning Gasoline (CBG) regulation. As explained on pages 30 and 31 of the TSD, the State low RVP gasoline regulation is enforced through funding provided by the annual vehicle emission testing certificate fee. Clark County enforces the CBG regulation through agreements with the California Air Resources Board and the State Department of Agriculture (see pages 37 and 38 of the TSD).

In addition, the State of Nevada ultimately has responsibility for ensuring adequate implementation of the Clark County air pollution control program. Nevada Revised Statue 445B.520 allows the State Environmental Commission to supersede a County's program in instances when the Commission determines that a local air quality program is inadequate. This provides adequate assurance that the Plan commitments will be funded for purposes of meeting CAA section 110(a)(2)(E)(i). Finally, EPA has authority to impose sanctions on a State where EPA "finds that any requirement of an approved plan (or approved part of a plan) is not being implemented," which provides a remedy available to EPA in the event that a State or locality reduces, or discontinues, funding necessary to implement the control measures relied upon in the 2000 CO attainment plan. See section 179(a)(4) of the Act.

Comment 8: NEC questions Clark County claims that the valley has not had any CO exceedances recently, and asserts that the County dealt with the problem of CO exceedances by re-locating the monitor with the highest levels (East Charleston) to a location with lower CO levels, that the County took monitors off line during periods of elevated CO concentrations, that EPA completed a monitoring site audit without accounting for information provided by NEC, and that problems with the integrity of the monitoring network continue unresolved.

Response 8: U.S. EPA - Region 9 technical evaluation staff conducted a Technical Systems

Audit (TSA) of the Clark County monitoring network in August 2001. A TSA is an on-site review and inspection of a State or Local agency's ambient air monitoring program to assess its compliance with established regulations governing the collection, analysis, validation, and reporting of ambient air quality data. One of the specific tasks conducted by the audit team was an inspection of a number of the monitoring sites operated by DAQM. The site inspections consisted of an interview with the site operator, reviewing station and instrument logbooks, and evaluating the station siting with respect to EPA requirements for probe siting. In their review of the CO monitoring sites, the TSA report indicated that four sites of the sixteen CO monitors in the Las Vegas Valley are located southeast of the urban core, and the remaining sites are located west, north and east of the urban center. The replacement for the East Charleston site referenced by NEC is located in the urban core. As stated in the TSA report (February 2002), "based on the prevailing wind direction of the Las Vegas valley and the demographics of the Las Vegas urban area, we believe this design for the CO network is appropriate and adequately represents CO air quality in the Las Vegas air basin." For information on the re-location of the East Charleston site, please see our discussion of this issue in our finding of failure to submit (a SIP revision) for CO at 64 FR 49084, at 49085, column 1 (September 10, 1999)

Comment 9: NEC notes that the 2000 CO plan is based upon the Clark County District Board of Health as the State's designated enforcement authority for the purposes of air pollution control but the proposed approval names the Clark County Board of Commissioners as the regulatory, enforcement and permitting authority. NEC thus concludes that the plan is written for the wrong agency and is legally insufficient for that reason.

Response 9: Our proposed rule addresses this issue at 68 FR 4143, column 2, by describing the transfer of authority from the Clark County District Board of Health to the Clark County Board of County Commissioners, sitting as the Clark County Air Quality Management Board, as the regulatory, enforcement and permitting authority for implementing the Federal Clean Air Act within Clark County, consistent with the Governor's recommendation in June 2001. Various documents related to the transition from the Board of Health to the Clark County Commissioners are attached to the TSD for our proposed rule (see attachments D through G of the TSD). Pursuant to this transition, all of the Board of Health's responsibilities and commitments under the 2000 CO attainment plan have been legally transferred to the Clark County Board of County Commissioners. We note that, since publication of the proposed rule, the Clark County Board of County Commissioners has dispensed with the Clark County Air Quality Management Board (which had the same membership as the Board of County Commissioners) and re-affirmed local air pollution control authority in the Board of County Commissioners.

Comment 10: NEC notes that the proposed approval refers to "additional I/M and fuel regulation information to supplement the 2000 CO plan" in January and June, 2002, without a discussion of public notice and hearing. NEC asserts that the public has no idea what this "information" is and is not clear on how to keep track of events subsequent to the initial CO SIP submittal, and cannot comment on information it has not yet seen. NEC asserts that the EPA has allowed Clark County to make substantial changes to the SIP submittal without evidence of public notice and hearing, that the public is now being asked to comment on a document with major changes the public has not seen, and that, as a result, the plan is legally insufficient without evidence that major changes were subject to full public disclosure with public notice and hearing.

Response 10: Our action published on January 28, 2003 proposes approval of two fundamental SIP revisions, the 1996 vehicle I/M program and the 2000 CO attainment plan. The other SIP revisions included in the overall proposed action generally contain materials that EPA requested from the State to supplement or update the materials contained in those two submitted plans, such as current vehicle I/M-related statutory and regulatory provisions, and, with respect to regulatory provisions, evidence of reasonable notice and public hearing prior to adoption.

One exception to this general approach is the State's wintertime low RVP gasoline regulation, which was submitted as part of the 1995 CO plan, but that was "baselined" (i.e., assumed) for the purposes of the 2000 CO attainment plan. EPA requested the State to submit the current State low RVP regulation, with evidence of notice and hearing, as a SIP revision because the low RVP regulation is one of the most important control measures that provide for attainment of the CO NAAQS in Las Vegas Valley, and should not be subject to significant revision unilaterally by the State without consideration of that revision in the context of attainment and maintenance of the CO NAAQS in Las Vegas Valley. The means to ensure that such consideration occurs is through EPA approval of the regulation into the SIP. Revisions to SIP-approved rules must be submitted to EPA for approval, which necessitates a review of the change in the context of Las Vegas Valley CO planning. As requested, the State submitted the current low RVP regulation and related evidence of notice and hearing as part of the SIP revision dated June 4, 2002. Our proposed rule provides a brief description of the contents of the January and June 2002 SIP submittals. See 68 FR 4143, column 3. Also, our proposed rule, at 68 FR 4141, column 2, indicates that the rulemaking docket, which includes all of the SIP submittals as well as related documents, was available for inspection and copying at U.S. EPA - Region IX offices during the public comment period and that the SIP materials were also available for inspection at NDEP and DAQM offices.

Comment 11: NEC asserts that the proposed approval has not complied with the requirements of 40 CFR part 51, appendix V, 2.2(d) without a CAA section 116 demonstration

regarding the protections included in Clark County's EPA-approved SIPs. NEC notes that EPA's approved SIP reasonable further progress requirements and visibility protections must be protected, and notes that the CAA section 116 demonstration is missing from the proposed approval.

Response 11: There is no direct connection between section 116 of the Act and EPA's completeness determination under section 110(k)(2) of the Act and the related completeness regulations in 40 CFR part 51, appendix V. Section 116 provides that States may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation approved into the SIP or established under sections 111 (new source performance standards) or 112 (hazardous air pollutants) of the Act. Section 116 is not a limitation on EPA's authority to approve SIP revisions. EPA may approve SIP relaxations if they would not interfere with reasonable further progress or attainment or any other applicable requirement of the Act as required under section 110 of the Act and so long as, with respect to control requirements established prior to the 1990 Amendments to the Clean Air Act, they provide for equivalent emissions reductions of nonattainment pollutants in nonattainment areas as required under section 193 of the Act. See CAA Sections 110(l) and 193.

The provisions in 40 CFR part 51, appendix V identify the criteria EPA uses to determine whether a given SIP submittal is "complete." The completeness determination is a preliminary review by EPA of a SIP submittal and is not intended to be a detailed substantive review. Once EPA determines that all the appropriate elements of a given plan have been submitted (such as evidence of public notice and hearing, demonstration of attainment or reasonable further progress, as applicable, etc.) or, in other words, once EPA determines that the SIP submittal is "complete," then EPA begins its detailed review of SIP submittals against the various applicable requirements in title I of the Act. Submittals deemed "incomplete" are sent back to the State with the reasons for a negative completeness determination. However, under section 110(k)(1)(B) of the Act, if EPA does not affirmatively act to determine whether a given SIP submittal is complete, the submittal becomes complete by operation of law. As noted at 68 FR 4143, column 2 of the proposed rule, EPA made a completeness determination on the 2000 CO attainment plan and notified the State by letter dated September 12, 2000. Under 40 CFR part 51, appendix V, 2.2(d), we reviewed the 2000 CO attainment plan to confirm that it contained demonstrations of attainment and reasonable further progress as required under part D of title I of the Act. We found these determinations in chapters 5 and 6 (and related plan appendix materials) of the 2000 CO attainment plan. Thus, our determination of completeness with respect to 40 CFR part 51, appendix V, 2.2(d) was reasonable. We note that the 2000 CO attainment plan was not required to address visibility protection.

Comment 12: NEC asserts that the proposed approval has not complied with the requirements of

40 CFR part 51, appendix V, 2.2(c) without quantification of changes in actual emissions from affected sources through calculations of the differences between certain EPA approved, 1979 SIP baseline levels and allowable emissions. NEC notes that the submitted plan projects a huge emissions increase from the EPA approved SIP baseline. NEC asserts that the proposed approval cannot lawfully ignore the 1979 EPA approved SIP and that the increase in emissions will not attain the NAAQS. NEC believes that the new baseline is arbitrary and that it ignores the EPA approved SIP and concludes that the EPA is proposing to approve a SIP that facially contains "demonstrations" that are absurd.

Response 12: As explained in response to NEC comment #11, above, the completeness determination that EPA makes under 40 CFR part 51, appendix V, is a determination that a SIP submittal contains all of the elements that are required for a given SIP submittal, which then triggers EPA's detailed and substantive evaluation of the submittal against the applicable CAA requirements. As such, EPA determined, under 40 CFR part 51, appendix V, 2.2(c), that the 2000 CO attainment plan contains estimates of changes in current actual emissions from affected sources and quantifies changes in actual emissions from affected sources through calculation of the differences between certain baseline levels and allowable emissions anticipated as a result of the revision (i.e., the 2000 CO attainment plan). In the context of the 2000 CO attainment plan, "current actual emissions" refer to 1996 base year emissions, "baseline levels" refer to year 2000 (attainment deadline) uncontrolled emissions, and "allowable emissions anticipated as a result of the revision" refer to "controlled" emissions reflecting the control measures adopted as part of the 2000 CO attainment plan. Chapters 3 (emission inventory summary), 4 (control measures), and 6 (demonstration of attainment) of the 2000 CO plan, along with the related plan appendix materials, provide these emissions calculations. Thus, EPA's determination of completeness with respect to 40 CFR part 51, appendix V, 2.2(c) was reasonable. We also note that a direct comparison between the emissions estimates prepared in the early 1980's to support early CO attainment planning in Las Vegas Valley and those prepared for the 2000 CO attainment plan is not possible because of changes in EPA-approved emissions calculation procedures and models, particularly for the most significant CO source category, on-road motor vehicles. Lastly, the baseline emission estimates in these older SIPs do not represent caps or limitations on emissions that must be met despite growth. Rather, they represent estimates of future actual emissions (evaluated for reasonableness at the time they are prepared and approved), and if they prove over time to underestimate emissions, then they must be re-calculated to provide a new, more realistic baseline from which to evaluate additional control measures for the purpose of future SIP revisions if needed to attain and maintain the NAAQS.

Comment 13: NEC indicates that the completeness statement in II. EPA Action, subsection B does not include supplemental SIP submittals received after August 1, 2000.

Response 13: As described in response to NEC comment #10, above, with the exception of the State's low RVP regulation, the January and June 2002 SIP submittals contain materials that supplement or update materials previously submitted as part of the 1996 vehicle I/M program or the 2000 CO attainment plan and thus were not subject to a full completeness determination. In any event, under section 110(k)(1)(B) of the Act, if EPA does not affirmatively act to determine whether a given SIP submittal is complete within 6 months of receipt, the submittal becomes complete by operation of law. As noted in our proposed rule at 68 FR 4143, column 1, the 1996 vehicle I/M program was deemed complete by operation of law in September 1996. Likewise, the two supplemental SIP submittals from January and June 2002 became complete by operation of law six months after receipt of them by EPA.

Comment 14: NEC is concerned that the proposed approval has not justified the information required by 40 CFR part 51, appendix V, 2.2(e) in the CO plan. Quoting the proposed rule at 68 FR 4131, column 3, NEC asserts that the justification for assumptions are particularly lacking regarding "updated vehicle miles traveled (VMT) projections reflecting new forecasts prepared by the Clark County Regional Transportation Commission (RTC), revised motor vehicle emission modeling, new emissions inventories, amended control measures, and updated area wide Urban Airshed Modeling (UAM) and hotspot (CAL3QHC) air quality analyses using updated inventories and improvements to other modeling inputs."

Response 14: As explained in response to NEC comment #11, above, the completeness determination that EPA makes under 40 CFR part 51, appendix V, is a determination that a SIP submittal contains all of the elements that are required for a given SIP submittal, which then triggers EPA's detailed and substantive evaluation of the submittal against the applicable CAA requirements. Under 40 CFR 51, appendix V, section 2.2(e), we check to see whether a plan revision contains modeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis.

In this instance, the 2000 CO attainment plan contains detailed documentation with respect to the updated VMT forecasts (see chapter 7.2 of the 2000 CO plan, and more generally concerning the TRANPLAN model, see appendix B, sections 2 and 3, of the 2000 CO plan), updated motor vehicle emissions modeling (see appendix A, section 4, and appendix E, section 7, of the 2000 CO plan), updated emissions inventories (see appendix A of the 2000 CO plan), amended control measures (see appendix E, sections 5 and 6), and updated area wide and hotspot modeling (see appendix C, and appendix E, sections 5 and 6, of the 2000 CO plan). In this context, "amended" and "updated" elements of the plan generally refer to changes

made to the estimates contained in the 1999 CO attainment plan, which was superceded by the 2000 CO attainment plan, and the 1995 "moderate area" CO attainment plan. Thus, EPA's determination of completeness with respect to 40 CFR part 51, appendix V, 2.2(e) was reasonable. In addition, we note that in the latest RTC forecasts, from the August 2003 RTC updated transportation plan, current VMT estimates for the 2000 attainment year are slightly lower than those used in the plan. Therefore, the VMT used in the 2000 CO attainment plan are conservative.

Comment 15: NEC is concerned that EPA has used the "parallel processing" procedure to unlawfully avoid statutory requirements such as CAA section 116.

Response 15: EPA's "parallel processing" procedure is described in our proposed rule at 68 FR 4143, column 3, footnote 5. As explained there, under this procedure, EPA proposes rulemaking action concurrently with the state's procedures for approving a SIP submittal and amending its regulations (40 CFR part 51, appendix V, 2.3). EPA reviews that SIP submittal, even though the regulation is in draft form, i.e., not yet adopted in final form by the State, as if it were a final, adopted regulation. In doing so, EPA evaluates the draft regulation against the same approvability criteria as any other SIP submittal, such as sections 110(l) and 193 of the Act, as applicable. (As explained above under response to NEC comment #11, section 116 of the Act is not a limitation on EPA's authority to approve SIP revisions.) Thus, we have not used the "parallel processing" procedure to avoid any statutory requirements. In this rulemaking, we invoked the "parallel processing" procedure in proposing to approve the State's procedures for administering on-board diagnostics systems tests (as a required element of the State's vehicle I/M program). See 68 FR 4150, column 1. The risk of using this procedure is the possibility that EPA must re-propose an action in light of any substantial changes that the State makes to the draft regulations between the time when the draft regulations are submitted to EPA (and that become a basis for EPA's proposed action), and when the final regulations are adopted and submitted to EPA for final action. However, in this case, the final regulations related to on-board diagnostics systems testing were consistent with those submitted in draft form (and that formed a basis for EPA's proposed action) so that no re-proposal of our action is necessary.

Comment 16: NEC suggests that without a CAA section 116 analysis, comparing the proposed action with the corresponding existing SIP provisions from the late 1970's and early 1980's, the various SIP submittals covered by EPA's proposal were incomplete and must be returned to Clark County under the completeness determination criteria in 40 CFR part 51, appendix V, 1.1.

Response 16: As discussed in response to NEC comment #11, above, there is no direct connection between section 116 of the Act and EPA's completeness determination

under section 110(k)(2) of the Act and the related completeness regulations in 40 CFR part 51, appendix V. There are, however, CAA statutory provisions that do require that EPA consider SIP submittals in light of the existing SIP provisions that they would replace. These statutory provisions include section 110(l) and section 193. Please see our response to NEC comment #51 in which we discuss these two statutory sections and their implications for our proposed rulemaking on the CO SIP revision for Las Vegas Valley.

Comment 17: NEC notes that the proposed approval refers to "guidance" documents (in connection with the emissions inventories prepared for the 2000 CO attainment plan) without reference to the preceding statutes and regulations. NEC also notes that the Supreme Court and appellate courts have made it clear that guidance documents are opinion, not law, and NEC objects to any reference to guidance documents that is not preceded by appropriate statute and CFR citations to law.

Response 17: The "guidance" documents to which NEC refers include: (1) Emission Inventory Requirements for Carbon Monoxide State Implementation Plans, EPA--450/4-91-011; (2) Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources, EPA--450/4-91-016; and (3) Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources, EPA 450/4-91-026d Revised. See 68 FR 4144, footnote 7. EPA was required to develop these guidance documents in response to CAA section 130, which requires that EPA review and revise, if necessary, the methods used to estimate emissions of CO, and other pollutants, from sources of such air pollutants. Furthermore, the Act requires that CO emission inventories be prepared "in accordance with guidance provided by the Administrator." See section 187(a)(1) of the Act. Therefore, the citation and use of EPA guidance documents by Clark County in preparing the 2000 CO attainment plan and by EPA in evaluating the plan are appropriate.

Comment 18: NEC states that the section of our proposed rule that addresses emissions inventories, while descriptive of how the inventories were prepared, lacks the necessary statutory and regulatory citations and provides insufficient justification for the assumptions that were made and the "updated" data that were used.

Response 18: The section of our proposed rule to which NEC refers includes a description of the 2000 CO attainment plan's emission inventory and a description of the techniques that were used to prepare the emission inventory that was used as the basis of the attainment demonstration. As noted on page 4146, column 1 of the proposed rule, the emission inventory in the plan must meet the requirements of CAA sections 172(c)(3) and 187(a)(1). Section 172(c)(3) covers general inventory requirements, indicating that inventories should include "a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant." Section 187(a)(1) refers back to the requirements under section 172(c)(3). The proposed

rule clearly states that the emission inventory is approved under these sections and that the methodologies used to develop the inventory are consistent with the EPA guidance documents which contain the detailed procedures. Assumptions and the explanation for those assumptions are discussed both in the proposed rule and in the 2000 CO attainment plan. See, e.g., 68 FR 4144-4146; section 4 of the TSD for the proposed rule; and appendix A, and appendix E, section 5, of the 2000 CO plan. Finally, both sections 172(c)(3) and 187(a)(1) of the Act require that *current* data be used when the emission inventory is developed, and thus, plan revisions typically, and appropriately, rely on "updated" data.

Comment 19: NEC indicates that EPA must also show that all of the data, assumptions, and technical justifications related to the preparation of the emissions inventories and attainment demonstration in the 2000 CO attainment plan were available to the public prior to local adoption of the plan.

Response 19: Detailed information on the assumptions used in development of the emission inventory and modeling used in the 2000 CO attainment plan are included in appendices A, B, C, and E of the plan. Appendix A contains information used to develop the 1990, 1996, 2000, 2010 and 2020 emission inventories. The information is organized into general source categories: (1) stationary sources, (2) small stationary and area sources, (3) on-road mobile sources, and (4) non-road mobile sources. Additional information regarding methods used by the Clark County Regional Transportation Commission to predict VMT is given in appendix B, sections 2 and 3. Appendix C provides the technical description of methods, assumptions, and justifications for the area-wide and hot spot dispersion modeling used for the plan. Appendix E, sections 5 and 6, contains a technical discussion of updated emissions inventories, and related area-wide and hot spot dispersion modeling, that was completed in mid-2000. This information was available, along with the rest of the CO plan, for public review and comment before local adoption of the plan and subsequent submittal of the plan to EPA. EPA's proposed approval of the emission inventory and attainment demonstration reasonably relied upon the information contained in these appendices.

Comment 20: NEC contends that table 1 (in our proposed rule at 68 FR 4144) shows that "employment" was used rather than "population," for the purposes of preparing the emissions inventories in the 2000 CO attainment plan with the result that 40% of the population, that is retired, is not represented in the emission inventories.

Response 20: Table 1 of our proposed rule summarizes population and employment projections used for the 2000 CO attainment plan. Contrary to NEC's contention, both population and employment figures were used in developing the emissions inventories for the plan. The Clark County Regional Transportation Commission uses population, residential household, hotel/casino, retail, nonretail, industrial and office employee data and special trip generator (e.g., University of Nevada - Las

Vegas) information to estimate vehicle trips generated and distributed throughout Las Vegas Valley.

Comment 21: NEC objects to the use of year 1996 as the base year for the 2000 CO attainment plan. NEC also asserts that table 2 (in our proposed rule at 68 FR 4144-4145) is severely deficient in listing CO emissions sources based on the supporting documentation NEC provides with the comment letter (and which detail the air pollution emissions of most of the significant air pollution sources in the valley).

Response 21: EPA reclassified Las Vegas Valley from "moderate" to "serious," effective November 3 , 1997. See 62 FR 51604 (October 2, 1997). Because development of a "serious area" plan began in 1997, the year 1996 was the most recent complete year for which actual emissions could be estimated and, thus, was an appropriate baseline year for the updated emissions inventory and attainment demonstration. With respect to apparent discrepancies in the CO emissions inventory, please see response to NEC comment #56.

Comment 22: NEC criticizes the CO emissions inventory on various grounds. First, NEC asserts that the stationary source inventory may be inaccurate because of an offset trading scheme that might occur between two of the listed sources and because a power plant (Nevada Power) was not specifically listed as a stationary point source. NEC also points to unjustified assumptions regarding area sources such as residential natural gas consumption. Also, by using a base year of 1996, NEC contends that significant new sources, such as new power plants and significant population growth, are not accounted for in the CO estimates for future years.

Response 22: Emission estimates for major stationary sources in the 2000 CO attainment plan are unchanged in years after the 1996 base year due to the offset requirement in the Clark County's locally adopted new source review program (which has been submitted to EPA for approval). However, CO emissions from minor stationary sources (Nevada Power is listed as a minor source in appendix A, section 3 of the 2000 CO plan) increase in proportion to growth projections for the manufacturing sector, which is also consistent with the submitted new source review program because new or modified minor CO sources under the submitted program are not subject to offset requirements and thus would be expected to increase in relative proportion to activity in the applicable economic sector. Emissions from other area sources (e.g., residential natural gas combustion, and fireplaces) are scaled up from the 1996 emission levels using Bureau of Economic Analysis growth factors and local data (e.g., population). Details regarding the growth factors are included in the 1992 BRW study, Las Vegas Air Quality Implementation Plan Update, Phase II: Carbon Monoxide Modeling and Attainment Demonstrations, as referenced in appendix A, section 7, "emission inventory adjustments."

Comment 23: NEC points out that emissions credits of any kind including offsets for the vehicle

I/M program or the CAT MATCH program delay attainment by a 2 to 1 ratio. NEC notes that emission credits do not lead to CAA attainment as soon as practicable and that it is practical to eliminate emissions credits and achieve cleaner air attainment faster.

Response 23: In this context, the reference in the proposed rule to "credits" should be distinguished from "emission reduction credits" or "ERCs." With respect to such programs as CAT MATCH and vehicle I/M, the term, "credits," simply refers to the emissions reduction estimates associated with the program and incorporated into the attainment demonstration or into the performance standard evaluation (in the case of I/M). In other words, a given program is given "credit" for reducing emissions and associated concentrations by a certain amount. In contrast, ERCs represent emissions reductions that are "banked" by stationary sources that reduce their emissions beyond the required level and that are then available for use by other new or modified major CO stationary sources to fulfill requirements for such major sources to offset their emissions of CO (at a two to one ratio) in Las Vegas Valley under DAQM new source review rules. In contrast, the "credits" that are associated with the CAT MATCH and vehicle I/M program and accounted for in the emissions projections contained in the 2000 CO attainment plan are not available for use by any other source.

Comment 24: NEC acknowledges receipt of administrative record documents from EPA on February 3, 2003, but contends that the documents did not include the two supplemental SIP submissions dated January 30, 2002 and June 4, 2002. NEC indicates that our proposed rule erroneously refers to draft revisions as "regulatory authority."

Response 24: NEC requested, and received, the documents attached to the Technical Support Document (TSD) that was prepared in connection with the proposed rule. The documents attached to the TSD did not include any of the SIP submittals, including those from January and June 2002, which were, however, included as part of the docket. As noted on page 4141, column 2 of the proposed rule, docket materials, including the supplemental SIP submittal materials, were available for inspection and copying at several locations throughout the comment period. With respect to draft regulations, EPA applied its "parallel processing" procedure in reviewing the regulations and proposing approval. As explained on 68 FR 4143, footnote 5, we indicated that we would be waiting for the final regulation to be submitted before taking final action on the CO SIP revision for Las Vegas Valley.

Comment 25: NEC characterizes the SIP submittals to EPA subsequent to submittal of the 2000 CO attainment plan in August 2000 as "major changes" to that plan and demands that the plan be withdrawn and re-noticed locally by Clark County to include the major changes that have occurred since the plan was originally adopted and submitted to EPA.

Response 25: Contrary to NEC's characterization, the post-2000 CO attainment plan SIP submittals largely represent updates of portions of the two principal elements on which we proposed action: (1) the 1996 vehicle I/M program, and (2) the 2000 CO attainment plan. Over the course of EPA's review of this program and this plan, EPA discovered that some of the vehicle I/M-related statutory and regulatory provisions had been revised since the March 1996 submittal of the 1996 vehicle I/M vehicle program; that the documentation for the on-road testing element of the vehicle I/M program was not complete; that the State's low Reid Vapor Pressure gasoline regulation for Clark County, which had been an integral part of the 1995 "moderate area" CO attainment plan, had been "baselined" (or assumed) for the 2000 CO attainment plan and had in any event been revised since the November 1995 submittal of the 1995 CO plan; and that on-board diagnostics systems testing had become a required procedure under Federal regulations governing vehicle I/M programs. Also, EPA was notified that certain local air pollution control responsibilities in Clark County (such as enforcement of the cleaner burning gasoline (CBG) regulation (section 54)) were transferred in mid-2001 from the Clark County District Board of Health, acting through the Air Quality Division of the Clark County Health District, to the Clark County Board of County Commissioners, sitting as the Clark County Air Quality Management Board and acting through the Clark County Department of Air Quality Management (DAQM).

In response, and at EPA's request, the State of Nevada submitted updated I/M-related statutory and regulatory provisions (and related public notice and hearing materials); additional documentation for the on-road testing element of the vehicle I/M program; the State's current low Reid Vapor Pressure gasoline regulation for Clark County (and related public notice and hearing materials); and a draft regulation implementing on-board diagnostics systems testing for the vehicle I/M program. These items are contained in the January and June 2002 SIP submittals. Both of these submittals are discussed in our proposed rule and have undergone public notice and hearings at the local level where applicable. As noted, the submittals were mainly administrative in nature, providing EPA with a complete and updated record of the vehicle I/M program and a certain wintertime gasoline rule. The updated provisions in these submittals were consistent with the assumptions used to estimate emission reductions from the I/M program and fuels programs in the plan, and therefore were consistent with the emission inventories and attainment demonstration included in the 2000 CO attainment plan.

Our proposed rule anticipated receipt of a final regulation implementing on-board diagnostics systems testing for the vehicle I/M program and a revised CBG regulation (section 54). The latter was expected to be revised only to the extent necessary to reflect the transfer of authority from the Clark County District Board of Health to the Clark County Board of County Commissioners. The State submitted these items on September 9 and 24, and November 10, 2003 (with

related public notice and hearing materials). The final version of the on-board diagnostics systems testing regulation (for the I/M program) and the revised CBG regulation (reflecting the change in applicable administrative agency) do not differ in any significant way from the versions used as the basis for our proposed approval. Thus, we can take final action at this time without the need for additional notice and comment.

Comment 26: NEC indicates that the statements in the proposed rule are confusing in that the year 2000 TSD is discussed as complete without reference to the 2002 late submittal documents and in that there is no reference to lawfully adopted State Nevada Administrative Code regulations.

Response 26: The statement on page 4147, column 2 of the proposed rule refers to EPA's Technical Support Document (TSD), dated January 2003, which provides an evaluation of the State's low enhanced vehicle I/M program (including the 2002 submittals) relative to EPA's requirements for such programs. We reiterate that the 2002 submittals did not represent fundamental changes in the vehicle I/M program subsequent to the adoption of the 2000 CO plan (with the exception of the on-board diagnostics systems testing procedures, which were discussed separately in our proposed rule), but rather these submittals reflect statutory and regulatory revisions in the I/M program made subsequent to the March 1996 submittal of the program to EPA and assumed for the purposes of the 2000 CO attainment plan. The 2000 CO plan (inventories, control measures, and attainment demonstration) reflect the I/M program as revised through 1999, but the revised statutory and regulatory provisions were not submitted as part of the 2000 CO plan. Hence, we requested the State to submit these provisions as a supplemental SIP submittal, and the State responded with the January and June 2002 SIP submittals. The State's September 9, 2003 SIP submittal contains additional updated I/M statutory provisions. Once again, these updated provisions do not affect the inventories, control measures, or attainment demonstration of the 2000 CO attainment plan but do provide EPA with the basis for taking final action on the most current applicable statutory and regulatory provisions that provide for implementation and enforcement of an "alternate low" enhanced vehicle I/M program in Las Vegas Valley and Boulder City.

Comment 27: NEC asks for clarification of the following statement from the proposed rule, "overall, they are not less stringent" in connection with our proposed approval of the vehicle I/M program.

Response 27: This statement from 68 FR 4147, column 3, refers to the fact that, although the State's vehicle I/M program for Las Vegas Valley and Boulder City differs in some respects from the applicable "alternate low" enhanced *model program* established in EPA regulations (see 40 CFR 51.351(g)), the State's program meets the applicable EPA performance standard. See 68 FR 4149, column 2. The

performance standard is one measure of the overall effectiveness of the program in reducing emissions from in-use motor vehicles. Since the State's vehicle I/M program meets the EPA performance standard applicable to "alternate low" enhanced I/M programs, it is accurately described as "not less stringent" than the Federal I/M *model program* on which the EPA performance standard is based.

Comment 28: NEC asks for clarification of the statement in the proposed rule that the low enhanced I/M performance standard assumes that the exhaust emissions of the subject vehicles are subject to the idle test.

Response 28: This statement, at 68 FR 4147, column 3, means that the model program that forms the basis for EPA's alternate low enhanced vehicle I/M performance standard specifies the idle emissions test for the exhaust emission test type program element. See 40 CFR 51.351(g)(6), and compare to the corresponding test for the "high" enhanced performance standard ("transient mass-emission testing") listed in 40 CFR 51.351(f)(6). Consistent with the applicable model program, the State's low enhanced vehicle I/M program for Las Vegas Valley and Boulder City incorporates the two-speed idle test, which is a variant of the idle emissions test provided for in EPA regulations. See 40 CFR part 51, subpart S, appendix B.

Comment 29: NEC claims that EPA disregards the requirements for public notice and hearing by proposing to approve Clark County's wintertime Cleaner Burning Gasoline (CBG) regulation "prior to taking final action" and without knowing what the County is going to submit.

Response 29: Clark County adopted the CBG regulation (section 54) in 1999, well before Clark County released the draft 2000 CO attainment plan for public review (in June 2000). See appendix D, section 1, of the 2000 CO plan. However, as discussed in the proposed rule, the CBG regulation, one of the principal control measures in the 2000 CO attainment plan, had been adopted by an agency (the Clark County District Board of Health) that no longer was responsible for air pollution control activities, including enforcement of the CBG regulation, in Clark County as of mid-2001. Those responsibilities had been transferred to Clark County Board of County Commissioners sitting as the Clark County Air Quality Management Board and acting through a new Department of Air Quality Management. See 68 FR 4151, columns 2 and 3.

In our proposed rule, we proposed approval of the CBG regulation based on our substantive review of the Board of Health's adopted version of that rule, since that was the version that had been submitted to EPA as part of the 2000 CO attainment plan and since we anticipated that the CBG regulation would be revised only to the extent necessary to reflect the mid-2001 transfer of air pollution control responsibilities in Clark County. We indicated in our proposed rule that we would wait to finalize our approval of the CBG regulation until we received the CBG

regulation as adopted by the Clark County Board of County Commissioners. As anticipated, only administrative-type changes were made to the revised CBG regulation, which was adopted by the County Commissioners in June 2003 and submitted to EPA (along with related public notice and hearing materials) as part of the November 10, 2003 SIP submittal. All public notice and hearing requirements in connection with local adoption and EPA approval of the CBG regulation into the Nevada SIP have been satisfied.

Comment 30: In connection with our proposed approval of the CBG regulation, NEC quotes the proposed rule for the statement that section 211(c)(4) of the Act is intended to ensure that a State resorts to a fuel measure only if there are no available practicable and reasonable non-fuel measures, and NEC provides specific non-fuel measures that Clark County should have implemented first before resorting to a fuel measure. NEC-recommended non-fuel measures include (1) enforcement by Clark County of the EPA-approved SIP; (2) restriction of building permits; (3) restriction of water hook-ups; (4) an end to the practice of making purported "misleading" conformity determinations to federal agencies for federal funding; and (5) an end to the local offset credit program, which slows down cleaner air attainment.

Response 30: Our proposed rule describes the public process Clark County conducted to evaluate possible future emissions control options other than the wintertime CBG requirements for sulfur and aromatics. See 68 FR 4152, column 1. The end result of this process was the conclusion that none of these measures provides significant emission reductions for CO, and that only the CBG measure would provide the necessary emissions reductions to attain the CO NAAQS by the attainment date. This process is sufficient to comply with section 211(c)(4) of the Act.

However, we also note that NEC's recommended control measures would have little impact on the regional effort to attain the CO NAAQS. First of all, to the extent that increased enforcement by Clark County of the EPA-approved SIP (which presumably refers to the new source review program approved by EPA in 1981 and 1982) and calling a halt to the local offset program would have any effect on CO concentrations, the effect would be negligible given that stationary sources are such a small fraction of the overall CO emissions inventory. The CO emissions inventory is dominated by mobile sources (see, e.g., table 2 of our proposed rule at 68 FR 4144), and the CO attainment strategy logically relies on mobile source control measures. Second of all, while restrictions on building permits and water hookups could hypothetically provide for significant CO emissions reductions over the long term, primarily by reducing the growth in vehicle trips and vehicle miles traveled associated with new growth and land use development, they would have been ineffective in providing emissions reduction by the attainment date given the short interval between the public workshops evaluating the alternatives analysis (in 1998) and the applicable CO attainment date (year 2000). See appendix D, section

1, of the 2000 CO plan for documentation on the non-fuel alternatives analysis. The CBG regulation was found to be the only measure that would provide significant CO emissions reductions by the attainment date. The remaining recommendation (an end to "misleading" conformity determinations) is not a control measure. The conformity analysis performed by the Clark County Regional Transportation Commission (RTC) must comply with EPA's transportation conformity rule, and thus must show conformity to emission budgets established in the 2000 CO attainment plan once EPA finds such budgets to be "adequate." RTC determinations that are based on budgets found to be adequate by EPA, such as those in the 2000 CO attainment plan, are not misleading in any way.

Comment 31/32/33: NEC cites the following excerpts from the proposed rule as evidence of a fatal flaw in the 2000 CO attainment plan generally and as evidence that the plan does not justify the necessity of the CBG regulation in attaining the CO NAAQS as required under section 211(c)(4)(C) of the Act: "CCHD did not identify the estimated quantity of CO emissions that must be reduced in order to achieve the CO NAAQS" and "it did estimate the CO emissions reductions attributable to each of the individual control measures ... that were subject to further evaluation. Therefore, the emission reductions from the CBG regulation are necessary to achieve the CO NAAQS."

Response 31/32/33: The full paragraph from which NEC's excerpts are taken is as follows: "Although CCHD did not identify the estimated quantity of CO emissions that must be reduced in order to achieve the CO NAAQS, it did estimate the CO emissions reductions attributable to each of the individual control measures (including the CBG regulation) that were subject to further evaluation. CCHD's modeling calculations showed that, without the emissions reductions attributable to the CBG regulation, Las Vegas Valley would not achieve the CO NAAQS by the end of the year 2000. Therefore, the emission reductions from the CBG regulation are necessary to achieve the CO NAAQS." See 68 FR 4152, column 2. Thus, the 2000 CO attainment plan does provide emissions reduction estimates from all measures included in the attainment demonstration. These emission reduction estimates for the individual measures were used in the dispersion modeling analysis which predicted the resultant reduction in CO *concentrations.* The modeling analysis provides for the direct comparison with the NAAQS and thereby provides the basis for the attainment demonstration.

The excerpts cited by NEC in this comment indicate that CCHD did not first estimate the total *emissions* reductions needed before determining if the existing and proposed measures would bring the area into attainment by year 2000 (the applicable deadline under the Act) using dispersion modeling techniques. We recognize that, in this regard, CCHD's approach was a departure from the steps we have outlined generally for "necessity" demonstrations under section 211(c)(4)(C) of the Act in our guidance document ("Guidance on Use of Opt-in to RFG and

Low RFP Requirements in Ozone SIPs", August 1997). However, that guidance was developed for use in ozone SIPs, and while the general principles for necessity demonstrations set forth in the guidance apply equally to fuel measures in CO SIPs, the specific application of those principles may well differ due to the difference between the nature of the two pollutants: CO is a primary pollutant and, as such, is of concern on a localized hot-spot basis whereas ozone is a secondary, and, thus, regional pollutant. In this instance, for example, a departure from our guidance is warranted because the rapidly expanding urbanized areas in Las Vegas Valley (which includes such high-growth cities as Las Vegas, Henderson, and North Las Vegas) has reduced the utility of the area-wide emissions reduction estimate cited in our 1997 Guidance as a key indicator of the level of control needed to attain the standard in the areas of historic CO violations. In Las Vegas Valley, the new development (and associated increases in population and VMT) is occurring primarily in outlying areas, where CO background concentrations are relatively low, whereas the historic violations have occurred in the older developed areas, and thus the trend in CO concentrations in the area of historic violations would not be expected to mirror the area-wide trend in CO emissions.

As discussed on pages 4151 and 4152 of the proposed rule, an extensive public process was completed to evaluate possible non-fuel emission control options to determine the necessity for implementation of wintertime gasoline sulfur and aromatics specifications (i.e., as set forth in the CBG regulation). The analysis of the alternative measures showed that implementation of all of the non-CBG measures would result in a 8-hour average CO concentration reduction of only 0.3 ppm in year 2000. See page 21 of the County's TSD on the CBG regulation (contained in appendix D, section 1, of the 2000 CO plan). Such a reduction would be insufficient to reach attainment of the 9 ppm standard given that the corresponding base case concentration (no additional controls) was 10 ppm. In contrast, the analysis of the CBG regulation showed that it would provide a reduction of 0.9 ppm. Thus, it is clear that the CBG regulation, and its associated reductions in emissions and ambient CO concentrations, was necessary to reach the CO NAAQS by the 2000 attainment date. Thus, our proposed approval of the CBG regulation pursuant to section 211(c)(4)(C) of the Act is reasonable. We also found the CBG regulation to be enforceable as required under section 110 of the Act. See 68 FR 4152, columns 2 and 3.

Comment 34: NEC cites EPA as having failed to acknowledge that its EPA approved new source review program is the program found in the 1979 EPA approved SIP and as having refused to acknowledge its EPA approved SIP as a basis for the proposed approval of the Las Vegas Valley CO plan. Further, NEC asserts that the Las Vegas Valley SIP submittals that are the subject of our proposed rule cannot be reconciled with the EPA approved SIP pursuant to CAA section 116 and must therefore be disapproved.

Response 34: The proposed rule discusses controls on stationary sources of CO at 68 FR 4153-4154. For a detailed discussion on the status of new source review rules in Clark County, please see response to NEC comment #45. We note that EPA is working with DAQM to revise the new source review rules that comprise the local permitting program for new or modified stationary sources (DAQM sections 0, 11, 12, 58, and 59) and will take action on this revised new source review program in a separate rulemaking process.

For a detailed discussion of CAA section 116 and the existing CO SIP for Las Vegas Valley, please see response to NEC comment #51. As noted in that response, the only element of the existing CO SIP for Las Vegas Valley that would be replaced under our action would be the vehicle I/M program, and our action would approve a more stringent (or "enhanced") vehicle I/M program into the SIP, replacing a less stringent vehicle I/M program approved by EPA in the 1980's.

Comment 35: NEC faults as legally insufficient the explanation for how the locally-adopted new source review program is consistent with the 2000 CO plan by citing the following statements that are purportedly contained in the proposed rule: "However, we note here that the emissions inventory and attainment demonstration from the 2000 CO plan that we are proposing to approve in this notice includes stationary sources and the projections of emissions from those sources appear to be generally consistent with the new source review program as submitted to EPA" and "Specifically, the 2000 CO plan assumes that CO emissions from major stationary sources (which are not subject to federally-enforceable offsets under their program)." NEC notes that major stationary sources of air pollution in Nevada are subject to federally-enforceable offsets and asserts that EPA is well aware that Clark County has created thousands of non-federally enforceable offsets which have no basis in federal law. Furthermore, NEC contends that EPA has ignored its own EPA approved SIP in proposing approval of the Las Vegas Valley CO plan, which it must consider under CAA section 116.

Response 35: The full paragraph from which NEC's excerpts are taken is as follows: "We intend to re-propose an action on the new source review program in a separate notice in the near future. However, we note here that the emissions inventory and attainment demonstration from the 2000 CO plan that we are proposing to approve in this notice includes stationary sources and the projections of emissions from those sources appear to be generally consistent with the new source review program as submitted to EPA. Specifically, the 2000 CO plan assumes that CO emissions from major CO stationary sources will remain unchanged (which is consistent with the offset requirement in their new source review program) whereas the plan projects growth in CO emissions from non-major stationary sources (which are not subject to federally-enforceable offsets under their program)." See 68 FR 4154, column 1. The full paragraph provides the specific explanation, lacking from NEC's excerpts, for how the new source review program

and CO plan are consistent with one another.

For a detailed discussion of CAA section 116 and the existing CO SIP for Las Vegas Valley, please see response to NEC comment #51. As noted in that response, the only element of the existing CO SIP for Las Vegas Valley that would be replaced under our action would be the vehicle I/M program, and our action would approve a more stringent (or "enhanced") vehicle I/M program into the SIP, replacing a less stringent vehicle I/M program approved by EPA in the 1980's.

Comment 36: NEC states that there is no evidence of legally sufficient annual VMT data or updates in the 2000 CO plan. NEC asserts that Clark County has an obligation to amend the submittal, after public notice and hearing, to include annual VMT data updates based on the most recent data and failed to do so. NEC finds no sufficient justification for 5% or 4% annual VMT increases and notes that the estimates for all years fail to include analyses for the eventual gridlock discussed in the proposed approval. NEC also states that there is no legally sufficient basis for approving emissions budgets, or VMT forecasts, through 2020 and asserts that there is no reasonable and legally sufficient discussion of the tradeoffs that are routinely made when forecasting and that the proposed approval provides evidence that the EPA simply accepted Clark County's data without any attempt to replicate or quantify any of it. Furthermore, NEC asserts that emissions budgets may not lawfully stand on their own without relation back to the EPA-approved SIP.

Response 36: The VMT forecasts used in the 2000 CO plan were current Clark County Regional Transportation Commission (RTC) forecasts in 2000, when the plan was submitted to EPA. As noted in our proposed rule, the VMT estimates in the proposed rule were estimated using recent transportation modeling results from RTC that incorporated more recent socioeconomic data than had been used for VMT forecasts contained in earlier plans. See 68 FR 4154, column 2. Areas have no obligation to update plans for changes in planning assumptions even if EPA does not act on the plan soon after the plan is submitted. In addition, when compared to the latest RTC forecasts, from the August 2003 RTC updated transportation plan, current VMT estimates for the 2000 attainment year are slightly lower than those used in the 2000 CO attainment plan. Therefore, the VMT used in the plan for the attainment year are conservative.

For years beyond the attainment year, we found the VMT forecasts through 2020 to be reasonable and note, as a rough check of reasonableness, that the increase in VMT from 2000 to 2020 roughly tracks the projected increase in population. See table 1 of the proposed rule at 68 FR 4144. The 2000 CO plan reasonably anticipates that, through 2010, the beneficial effect of CO control measures (i.e., a combination of natural fleet turnover, a vehicle I/M program, and wintertime gasoline controls) will more than offset region-wide increases in VMT and thereby provide for a net downward trend in CO emissions. After 2010, however, the trend

reverses, but the plan predicts that the CO NAAQS will continue to be attained through 2020 due to the anticipated wider geographic distribution of traffic and related CO emissions. In addition, no new hotspot violations are expected in new growth areas of Las Vegas. We explicitly did not approve the VMT forecasts in the 2000 CO plan for the years beyond 2020 in which the plan predicts that gridlock conditions would lead to a modal shift from auto use to mass transit and ride sharing and thereby inhibit additional VMT increases. See 68 FR 4154, column 3. We note in this regard that the CAA does not require VMT estimates so far beyond the attainment date and thus our withholding of approval of the VMT estimates beyond 2020 does not compel us to revise our proposed approval or to trigger sanctions.

Comment 37: NEC indicates that the contingency measure discussion may be read as an admission that Clark County failed to meet the CAA contingency requirements by accepting a plan that was not able to satisfy a contingency requirement. NEC claims that Clark County has failed to actually implement submitted plans. Throughout the discussion, NEC claims that citations to statutory authority for the choices made in the proposed approval are lacking and claims that emissions reduction estimates for implementation of on-board diagnostics systems testing are required.

Response 37: At 68 FR 4154-4155, our proposed rule provides for our evaluation of the 2000 CO plan against CAA contingency measure requirements. On page 4155, column 1, we explain how, during the period in which the 2000 CO plan was being developed, the implementation deadline for mandatory testing of standardized on-board diagnostics systems (referred to as OBD II - see footnote 9 on page 4155) in I/M programs had not yet passed, how the 2000 CO plan identified OBD II testing as a contingency measure, and how early implementation, contingent upon the occurrence of certain events, qualified OBD II testing as a short-term contingency measure. Following adoption of the 2000 CO plan, OBD II became required, not as a contingency, but rather, because the implementation deadline for mandatory OBD II testing had passed. We proposed to approve OBD II testing as a contingency measure under section 187(a)(3) of the Act in recognition of the fact that implementation deadline for OBD II testing had not passed when the 2000 CO plan was being prepared and adopted, that the emission reduction benefits of OBD II had not been included in the attainment demonstration (and thus would be beyond those assumed for attainment), and in recognition of Clark County's commitment to provide documentation of the emissions reductions from OBD II testing and to provide for additional measures, if necessary. Our proposed rule also provides a legitimate explanation for why the 2000 CO plan did not quantify the emission reductions for implementation of OBD II testing (i.e., limitations of the vehicle emissions model (MOBILE5b) available at the time of plan preparation). In this regard, we note Clark County's commitment to prepare and submit a plan revision to EPA that quantifies the actual benefits of OBD II testing within one

year of the release date of pending applicable guidance protocols and models; however, we have not yet received an analysis of the emission reductions associated with OBD II testing. In light of the objections raised by this comment and the fact that the County has not provided the quantification of emissions reductions associated with OBD II testing, we have reconsidered our proposed approval of OBD II as the sole contingency measure needed to satisfy the requirements of section 187(a)(3) of the Act in the Las Vegas Valley serious CO nonattainment area and have decided not to finalize our action as to the contingency provisions at this time.

We believe that the contingency measure requirements under CAA sections 172(c)(9) and 187(a)(3) are independent requirements from the RFP and attainment demonstration requirements under CAA sections 172(c)(1), 172(c)(2), and 187(a)(7). The contingency measure requirements are to address the event that an area exceeds the VMT forecasts used in the attainment demonstration or fails to attain the CO NAAQS by the attainment date established in the SIP. The contingency measure requirements have no bearing on whether a State has submitted a SIP that projects attainment of the CO NAAQS or the required RFP reductions toward attainment. The attainment or RFP SIP provides a demonstration that attainment or RFP requirements ought to be fulfilled, but the contingency measure SIP requirements concern what is to happen only if the VMT forecasts are exceeded or attainment is not actually achieved. The EPA acknowledges that contingency measures are an independently required SIP revision but does not believe that approval of them is necessary before EPA may approve an attainment or RFP SIP.[3]

We recently addressed this issue in the context of responding to comments on our proposed approval of the San Joaquin Valley (California) PM-10 plan. See our final rule on the San Joaquin Valley PM-10 plan (69 FR 30066, May 26, 2004). In that final rule, we set forth our rationale explaining why we are not required to act on contingency measures in a SIP at the same time that we act on other elements of the plan. See 69 FR at 30028-30029. We apply the same rationale to explain how we are able to take final action today on the Las Vegas Valley 2000 CO plan, including the RFP and attainment demonstration, but to defer final action on the

[3] The U.S. Court of Appeals for the D.C. Circuit addressed this issue in the context of a challenge to the Washington D.C. ozone attainment demonstration SIP, and concluded that contingency measures were required as part of an attainment demonstration SIP. *See Sierra Club v. EPA*, 294 F.3d 155, 164 (D.C. Cir. 2002). However, EPA believes that the court misconstrued the statute, and declines to follow the court's reasoning outside of the D.C. Circuit. EPA believes that the statute does not compel contingency measures as part of attainment demonstration SIPs because they are required as a separate submission under a separate statutory provision. See sections 172(c)(9) and 182(c)(2).

contingency measures contained in that plan. In so doing, we cite the language and structure of the Act as supporting the conclusion that we are not required to act on all elements of a SIP at the same time we take action on other elements. For example, by referring to "plan provisions" and "plan items," the introductory language of section 172(c), which sets forth the basic requirements of a SIP for a nonattainment area, makes clear that the contingency plan provision and other subsections under section 172(c) each set forth independent components of the overall plan. The specific plan requirements for CO nonattainment areas were not at issue in the San Joaquin Valley rulemaking, which involved PM-10 nonattainment requirements, but we note that section 187(a) too refers to "plan provisions" and "plan items" in setting forth the independent components of the overall plan, such as contingency measures, that are required for CO nonattainment areas.

We will address the statutory obligations of the Las Vegas Valley serious CO nonattainment area under CAA sections 172(c)(9) and 187(a)(3) of the Act in a separate rulemaking. Lastly, we note that the contingency measure itself, OBD II testing, is being approved into the Clark County portion of the Nevada SIP in this rulemaking, not as a contingency measure, but as an element of the vehicle I/M program.

Comment 38: NEC notes that EPA proposed to disapprove the "other" contingency measures in the 2000 CO plan, but objects to EPA's conclusion that these measures (on-road remote sensing and lower I/M program cutpoints) are not necessary for the 2000 CO plan to satisfy the contingency measure requirements under the Act. NEC further objects to our conclusion in light of the prior statement in our proposed rule that "CCHD did not identify the estimated quantity of CO emissions that must be reduced in order to achieve the CO NAAQS."

Response 38: NEC correctly notes that, in our proposed rule, we proposed to disapprove two of the three contingency measures in the 2000 CO plan (lower I/M program cutpoints and on-road remote sensing) and we concluded that such disapproval would not prevent our approval of the plan itself or result in sanctions because we found that implementation of OBD II testing and related commitments provide the necessary compliance with section 187(a)(3) of the Act. In other words, we found that implementation of OBD II testing alone would be sufficient for the 2000 CO plan to fully comply with the Act's applicable contingency measure requirements. However, as explained in response to NEC comment #37, we have decided not to finalize our action as to the contingency provisions at this time, which means that we are not finalizing our proposed disapproval of on-road remote sensing and lower I/M program cutpoints as contingency measures nor are we finalizing our proposed approval of OBD II testing as the sole contingency measure needed to satisfy the contingency provisions under section 187(a)(3) of the Act for the Las Vegas Valley serious CO nonattainment area. We will address the statutory

obligations of the Las Vegas Valley serious CO nonattainment area under section 187(a)(3) of the Act in a separate rulemaking..

Comment 39: NEC notes that EPA has proposed to approve OBD II testing based on Clark County's commitments without discussing Clark County's record of actually following through on all of its past commitments. NEC asserts that Clark County's record of actually following through on commitments is poor.

Response 39: First, we note that the State of Nevada is responsible for implementing the vehicle I/M program for Las Vegas Valley and Boulder City, not Clark County, and thus is responsible for revising the I/M regulations to require OBD II testing. The Nevada Department of Motor Vehicles has fulfilled this commitment by adopting Regulation R178-01 on July 11, 2002. Regulation R178-01 establishes requirements for OBD II testing in their vehicle I/M program. This regulation became effective on August 21, 2002. Additionally, the State has implemented pass/fail functionality for OBD II emissions inspections in Clark County beginning July 1, 2003 after about a year advisory period. Their program has had a relatively smooth implementation overall. More recently, this regulation was submitted by NDEP to EPA on September 24, 2003 as a SIP revision consistent with our proposed rule, and we will be taking action on the September 24, 2003 SIP submittal, including Regulation R178-01, as part of this final rule. However, with respect to our reliance on County commitments in our proposed approval of OBD II testing as a contingency measure, please see our response to NEC comment #37, above. In that response, we explain our decision not to finalize our action with respect to the contingency provisions in this notice but will address the remaining obligations of the Las Vegas Valley CO nonattainment area as to the requirements under section 187(a)(3) in a separate rulemaking.

Comment 40: NEC asserts that EPA has ignored the language, spirit, and intent of section 176(c)(1), which prohibits federal agencies and metropolitan planning organizations from permitting, approving or funding any activity in nonattainment or maintenance areas that does not conform to a SIP once the SIP has been approved by EPA. Further, NEC asserts that there has never been a legally sufficient conformity determination in the Las Vegas Valley, that EPA has allowed Clark County to ignore its EPA approved SIP in favor of local, non-approved and less stringent "shadow" regulations along with a misleading local offset credit program, and that EPA's proposed approval ignores the existing approved SIP and must therefore be rescinded.

Response 40: To the extent that NEC believes that Federal agencies and the regional metropolitan planning organization have failed to conduct adequate conformity determinations for their actions within the Valley, the comment does not relate to EPA's proposed approval action. The responsibility for making conformity determinations consistent with EPA regulations lies with those individual Federal

agencies and metropolitan planning organizations responsible for permitting, approving or funding actions within Las Vegas Valley. We note that EPA itself is not required to determine conformity of an approval action for a submitted SIP revision. In the approval process, however, EPA must be cognizant of the existing approved SIP under sections 110(l) and 193 of the Act, and we have concluded that those portions of the submitted plan that would supercede existing portions of the approved SIP are more stringent than the requirements they would supercede and are consistent with the overall strategy to attain the CO NAAQS. For a discussion of supercession of the existing SIP, please see response to NEC comment #51.

Comment 41: NEC notes that EPA announced receipt of the 2000 CO plan and requested public comment submittals by September 29, 2000 (as part of the emissions budget adequacy process), but EPA's proposed rule fails to note that NEC filed comments with the EPA on September 28, 2000, and that the September 28, 2000 comment letter referred to a previous comment letter that NEC had filed on the draft 2000 CO plan (dated July 21, 2000). NEC objects to EPA's purported lack of acknowledgment of, and response to these two comment letters prior to the EPA's finding of adequacy (for the CO motor vehicle emissions budgets in the 2000 CO plan). NEC contends that EPA has never responded to these comments and that the adequacy determination was and is misleading for that reason and for other reasons set forth in this comment letter.

Response 41: NEC challenged EPA's adequacy determination for the CO motor vehicle emissions budgets from the 2000 CO plan in the U.S. Court of Appeals for the Ninth Circuit (*Hall v. EPA*, No. 00-71676). In an unpublished opinion filed March 28, 2002, the Ninth Circuit upheld EPA's determination. The court examined EPA's responses to NEC's September 28, 2000 comment letter and found that they were not arbitrary or capricious. The court also found that EPA's failure to respond separately to the previous NEC comment letter cited above (dated July 21, 2000) was not arbitrary or capricious under the circumstances present at the time that EPA made the adequacy determination. Therefore, the issue of sufficient consideration of NEC comments related to EPA's adequacy determination has been resolved. In this document, we provide responses to some of the comments contained in the July 21, 2000 comment letter (which NEC re-submitted in this proceeding as a supporting document.) Please see responses to NEC comments #54 through #62 and response to NEC comment #66.

Comment 42: NEC asserts that, regardless of whether EPA has made an adequacy determination on the submitted motor vehicle budgets, conformity must be made to an EPA approved SIP, which, in the case of Las Vegas Valley, involves plans approved by EPA prior to the 1990 Clean Air Act Amendments. NEC cites *Environmental Def. Fund v. EPA*, 167 F.3d 641 (D.C.Cir. 1999), in support of this contention.

Response 42: First of all, we note that this rulemaking action concerns approval of a SIP revision and does not concern either EPA's conformity regulations or any federal agency's prior conformity findings. Second, the case cited by NEC recognizes that section 176 of the CAA (i.e., the conformity provisions) does not specify how conformity should be determined if no approved SIP exists or if the approved SIP contains no adequate motor vehicle emissions budgets (see *Environmental Def. Fund v. EPA*, 167 F.3d 641, at 650 (D.C. Cir. 1999)). EPA's regulations (see 40 CFR part 93, subparts A and B) establish the procedures by which federal agencies and MPOs must determine conformity to the SIP. Different procedures apply depending upon whether the action relates to transportation plans, programs or projects ("transportation conformity") or whether the action relates to some other Federal action ("general conformity"). Under both transportation conformity and general conformity rules, conformity to SIP prior to EPA approval or prior to a determination of adequacy of emission budgets is generally demonstrated by a "build versus no build" test or by a comparison with 1990 baseline emissions rather than by a direct comparison to emissions estimates. See, generally, 40 CFR 93.119 and 40 CFR 93.158(a)(5)(iv). Once EPA has found submitted motor vehicle budgets to be adequate, those budgets must be used for the purposes of transportation conformity (referred to as the "budget" test). See 40 CFR 93.118(e)(1). The "budget" test is one of the criteria that must be met for a positive conformity determination under the transportation conformity rule, but it is not the only requirement. Other requirements include timely implementation of transportation control measures, some of which may have been approved into the SIP by EPA prior to the Clean Air Act Amendments of 1990. Upon finalization of this rulemaking, the budgets in the 2000 CO plan that we have already found to be "adequate," will be fully approved, and thus the "budget" test will still apply.

Comment 43: NEC contends that EPA must reverse its proposed approval of the motor vehicle CO emissions budgets in the 2000 CO plan based upon NEC's previous comments on this issue.

Response 43: We have responded to all of the comments NEC has made on the budgets and conformity. NEC's comments have not caused us to modify our proposal (set forth at 68 FR 4155-4156), and thus, we intend to finalize our approval of the emissions budgets as proposed.

Comment 44: NEC notes that Clark County is currently in the process of revising a number of local air pollution regulations (local sections 0, 12, 58, 59, 26, 34, 49, 93, and 94), including the regulations that apply to new or modified stationary sources, and asserts that adoption by Clark County of these revised regulations will require that EPA re-evaluate its proposed action on the CO SIP revision for Las Vegas Valley.

Response 44: EPA is working with DAQM to revise the rules that comprise the local permitting program for new or modified stationary sources (DAQM sections 0, 11, 12, 58, and

59) and will take proposed and final action on this revised new source review (NSR) program in a separate rulemaking process. See the related discussion in the proposed rule, at 68 FR 4153-4154. The CO SIP revision for Las Vegas Valley does not rely on DAQM sections 26 (Emission of Visible Air Contaminants), 34 (New Source Performance Standards for Nonmetallic Mineral Mining and Processing), 49 (Emission Standards for Boilers and Steam Generators Burning Fossil Fuels), 93 (Fugitive Dust from Paved Roads and Street Sweeping Equipment), and 94 (Permitting and Dust Control for Construction Activities). Thus, EPA's proposed action on the CO SIP revision for Las Vegas Valley need not be re-visited on the basis of proposed changes to those rules.

Comment 45: NEC asserts that EPA has condoned the use of unapproved, local, "shadow" regulations, which are not as stringent as the corresponding EPA-approved regulations and that the public does not have an opportunity to demand a CAA section 116 review when the EPA tells Clark County to use unapproved regulations in lieu of EPA-approved SIP regulations. NEC concludes that this administrative practice of the EPA is a major reason why the Valley has not reached CO or PM-10 attainment.

Response 45: EPA generally will not consider an area to be in violation of approved SIP rules if they are implementing revised rules on which we have not yet completed rulemaking so long as the revised rules are at least as stringent as the SIP-approved rules and therefore could be considered to comply with them. EPA had the understanding that the revised set of regulations that were adopted by Clark County pursuant to the Act, as amended in 1990, and that provide for review and permitting of new or modified stationary sources (i.e., new source review, or NSR) were, on balance, at least as stringent as the pre-existing NSR rules (County air pollution regulations: sections 1, 11, and 15) that EPA last approved into the Nevada SIP in 1981 and 1982.

After the Ninth Circuit's decision in *Hall v. EPA*, which vacated our approval of the NSR program, we undertook a comprehensive review of the current NSR program relative to the pre-existing SIP-approved NSR program to determine whether we can approve the current program consistent with sections 110(l) and 193 of the Act. Until we finalize a new action on the revised NSR program, we have advised DAQM to implement the SIP-approved NSR program, and DAQM has responded by implementing both the SIP-approved NSR rules as well as the local unapproved NSR rules. However, even a cursory review of the emissions inventories and control measures in the 2000 CO attainment plan reveals the small role that stationary sources play in the overall strategy to attain the CO NAAQS, and thus, the transition from the older SIP-approved NSR program to the revised NSR program would not be expected to interfere with attainment of the CO NAAQS. We also note that we intend to publish a proposed finding of attainment in the *Federal Register* in the near future for the CO NAAQS in Las Vegas Valley.

Comment 46: NEC states that the proposed rule is deficient in not mentioning CAA and NEPA required conformity and cumulative determinations and certifications by commercial, local, state and federal agencies. By that omission, NEC asserts that SIP approvals may not move forward and notes that there is an obligation for all sources of air pollution to comply with the 1990 Amendments to the CAA. NEC further asserts that, without that compliance, the EPA is sanctioning an unlawful disregard to both Acts without statutory authority with the result that CO levels in Las Vegas Valley have not improved since 1970.

Response 46: It is the responsibility of each individual Federal agency to comply with NEPA in connection with its own actions. Under title 15 of United States Code, section 793(c)(1), no action taken under the CAA shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. Because EPA's action related to the CO SIP revision for Las Vegas Valley is an action taken under the CAA, the Agency need not comply with NEPA for that specific action. Also, a SIP action by EPA is not itself subject to a conformity determination. Rather, such an action by EPA defines the SIP to which federal agencies (and local transportation agencies) must determine conformity. Lastly, we note that CO levels have declined substantially in Las Vegas Valley between the 1970's and the present. For instance, the 1978 *Las Vegas Valley Air Quality Implementation Plan* (1978 AQIP) indicates that, in 1977, the East Charleston CO monitoring station recorded 78 days during which the CO (eight-hour) NAAQS was exceeded. In contrast, the last year during which *any* CO NAAQS was recorded in Las Vegas Valley was in 1998. There were no CO exceedances in either 1999 or 2000.

Comment 47: NEC finds implicit meaning in the amount of time taken by EPA to act on the 2000 CO plan.

Response 47: We acknowledge that our proposed action represents a complex rulemaking that covers two significant planing efforts (the 1996 vehicle I/M program for Las Vegas Valley and Boulder City, and the 2000 CO attainment plan) and a number of related SIP submittals that include updated statutes and regulations, and we also note that undertaking such a complex rulemaking takes a significant amount of time. EPA has worked closely with NDEP and DAQM to ensure that EPA will be taking action on the most current applicable statutes and regulations in support of the 1996 vehicle I/M program and the 2000 CO attainment plan, including the State regulations providing for on-board diagnostics systems testing procedures, the State's low RVP wintertime gasoline regulation, and DAQM's cleaner burning gasoline regulation (DAQM section 54).

Comment 48 ("Hall v. EPA"): NEC asserts that the proposed rule is misleading in that it fails to discuss the ramifications of the Ninth Circuit decision in the *Hall v. EPA* case on the PM-10 SIP submittal.

Response 48 ("Hall v. EPA"): This comment relates to EPA's proposed approval of the Las Vegas Valley PM-10 plan, at 68 FR 2954 (January 22, 2003), and thus, the comment is not relevant to our proposed action on the CO SIP revision for Las Vegas Valley at 68 FR 4141 (January 28, 2003). Nonetheless, we note that our proposed rule does discuss the decision in *Hall v. EPA,* 273 F.3d 1146 (9th Cir. 2001) at 68 FR 4154, column 1. As stated in our proposed rule, EPA intends to propose action on the revised Clark County new source review rules in a separate rulemaking in the near future.

Comment 49 ("As Expeditiously as Practicable"): NEC attributes the failure of Las Vegas Valley to attain the CO standard since the original nonattainment designation in 1978 in part to EPA's regulatory activities.

Response 49 ("As Expeditiously as Practicable"): EPA recognizes that Las Vegas Valley has missed several attainment dates since the original nonattainment designation for CO in 1978. However, substantial progress has been made since 1978, and as a reclassified "serious" CO nonattainment area under the Act, as amended in 1990, the applicable attainment for the Las Vegas Valley is December 31, 2000, and in that regard, we expect to propose an attainment finding for the CO NAAQS in Las Vegas Valley in a separate notice in the *Federal Register* in the near future.

Comment 50 ("What about Public Health and Safety?"): NEC states that the proposed rule fails to address the impact of the submitted SIP on the quality of life or the economic impact of the resulting health care costs on the citizens of Clark County.

Response 50 ("What about Public Health and Safety?"): The 2000 CO plan was prepared by Clark County to provide for attainment by the applicable attainment date, i.e., December 31, 2000. EPA expects to publish a notice in the *Federal Register* in the near future that proposes to find that Las Vegas Valley in fact attained the CO NAAQS by the applicable attainment date. EPA established the NAAQS to protect public health allowing for an adequate margin of safety, and thus, a finding of attainment of the CO NAAQS for a given area implies that public health (with respect to that pollutant) is protected.

Comment 51 ("Federal Standard"): Citing section 116 of the Act, NEC states that EPA must compare SIP revisions with the existing SIP provisions that, if approved, the SIP revisions would supercede, not just against minimum Federal requirements.

Response 51 ("Federal Standard"): NEC argues that CAA section 116 requires that SIP revisions that would supercede pre-existing EPA-approved SIP rules be no less stringent than those EPA-approved SIP rules individually or collectively. NEC argues that EPA has ignored the requirements of CAA section 116, and approval of the CO SIP revision for Las Vegas Valley may not move forward without a side-by-side comparison of the SIP-approved rules with the rules proposed for approval into the

SIP.

NEC misreads CAA section 116. Section 116 provides:

> Except as otherwise provided in sections 119 (c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977), 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude the right of any State or political division thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan...such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan ... .

CAA section 116 does not impose requirements on EPA for evaluating SIP revisions. Nor preclude States from revising SIPs to include less stringent standards or limitations. The purpose of this section is to clarify the relationship between the federally enforceable requirements in the SIP and other State requirements that may be adopted and enforced without SIP approval. CAA section 116 makes clear that while a State may choose to apply standards that are more stringent than those in the SIP, they cannot apply standards that are less stringent without revising the SIP (i.e., until revised, the SIP requirements will continue to apply even if the State has adopted a less stringent version of the standard or limit).[4]

NEC's reading of section 116 as imposing requirements for SIP revisions or a blanket prohibition on relaxation of SIPs would be inconsistent with CAA sections 110(l) and 193, which specify the criteria to be applied in evaluating SIP revisions. CAA section 110(l) provides:

> "The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act."

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[4] State adoption of a relaxed measure does not itself modify the EPA-approved SIP -- the EPA-approved SIP measure remains in effect and subject to federal and citizen enforcement. Relaxation of an EPA-approved SIP measure without a request for a SIP revision, however, could trigger a SIP call under CAA section 110(k)(5) or a noncompliance finding under CAA section 179(a)(4).

CAA section 110(l) does not preclude SIP relaxations but requires that relaxations not interfere with specified requirements of the Act including requirements for attainment and reasonable further progress. Thus, if an area can demonstrate that it will continue to attain or maintain the NAAQS and meet any applicable reasonable further progress goals or other specific requirements, it may revise SIP provisions, even if the revision amounts to a relaxation. See *Hall v. EPA*, 273 F.3d 1146, 1160 (9th Cir. 2001) (explaining that to make a finding under CAA section 110(l), "EPA must be able to conclude that the particular plan revision before it is consistent with the development of an overall plan capable of meeting the Act's attainment requirements."). Because the SIP revisions being approved in today's action have been submitted with the area's attainment demonstration, the review under CAA section 110(l) is simplified – the attainment demonstration shows the SIP revisions will support attainment of the NAAQS and reasonable further progress.

Even if the SIP revisions are consistent with the area's plan for attainment, CAA section 193 imposes additional restrictions on modifications to certain SIP control requirements in nonattainment areas that were in effect prior to the 1990 Clean Air Act Amendments ("pre-1990 control requirements"). CAA section 193 provides:

> "No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

Thus, while NEC's interpretation of CAA section 116 as providing a broad prohibition against SIP relaxations is erroneous, CAA section 193 does limit nonattainment areas from backsliding from the emissions reductions achieved by pre-1990 control requirements. Therefore, in the following paragraphs, we provide background information on how the existing SIP for CO in Las Vegas Valley evolved and what specific measures it contains in order to provide the basis for comparison with the measures that we have proposed to approve into the SIP to ensure that, where pre-1990 SIP measures would be superceded, equivalent or greater emissions reductions of CO will be provided by the superceding (or replacement) measures.

On April 30, 1971 (36 FR 8186), pursuant to section 109 of the Clean Air Act, as amended in 1970, EPA promulgated NAAQS for CO, sulfur oxides, particulate matter, photochemical oxidants, hydrocarbons, and nitrogen dioxide. Within 9 months thereafter, each State was required by section 110 of the Act to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of the NAAQS within each State. Nevada's plan ("SIP") was submitted on January 28, 1972. This original plan included, among various other

provisions, the complete set of Clark County Board of Health Air Pollution Control Regulations (as revised and adopted locally on August 25, 1971). EPA approved this original plan submittal later that year. See 37 FR 10842 (May 31, 1972). On January 19, 1973, the Governor of Nevada submitted amended Clark County regulations ("1973 SIP revision") to EPA for approval into the Nevada SIP. This 1973 SIP revision represented another complete, but amended, set of Clark County air pollution regulations. EPA approved the 1973 SIP revision on May 14, 1973 (see 38 FR 12702) thereby superceding the original set of Clark County regulations. The 1973 SIP revision included local rules regulating, among other pollutants and other sources, CO emissions from new or modified stationary sources. The local rules regulating new or modified stationary sources ("new source review") were modified at various times and last approved by EPA into the Clark County portion of the Nevada SIP in 1981 and 1982.

Generally, SIPs were to provide for attainment of the NAAQS within 3 years after EPA approval of the plan. However, many areas of the country did not attain the NAAQS within the statutory period. In response, Congress amended the Act in 1977 to establish a new approach, based on area designations, for attaining the NAAQS, and on March 3, 1978 (43 FR 8962), under section 107(d)(2) of the Act, EPA promulgated attainment status designations for all States. EPA designated Las Vegas Valley (i.e., hydrographic area 212) nonattainment for CO (as well as nonattainment for photochemical oxidants and particulate matter). The rest of Clark County was designated as unclassifiable or attainment for CO. The Act, as amended in 1977, required States to revise their SIPs by January 1979 for all designated nonattainment areas. In response, on December 29, 1978, Nevada submitted the *Las Vegas Valley Air Quality Implementation Plan* ("1978 AQIP") to EPA. The 1978 AQIP addressed all three criteria pollutants for which Las Vegas Valley had been designated nonattainment. For the CO portion of the 1978 AQIP, the State requested an extension of the attainment date beyond 1982 and committed to submitting a revised plan that provides for expeditious attainment. On that same date in 1978, Nevada also submitted a vehicle inspection and maintenance ("I/M") program, including enabling statutes and implementing regulations, as part of the overall control strategy for CO in Las Vegas Valley.

The 1978 AQIP was supplemented by Nevada with SIP submittals dated July 24 and September 18, 1979, and in 1980, EPA proposed to fully approve some elements of the 1978 AQIP, as supplemented in 1979, but to conditionally approve other elements of the plan, such as the request for an extension of the attainment date. See 45 FR 59334 (September 9, 1980). In that 1980 proposal, EPA also proposed to approve all of the elements of the vehicle I/M program that had been submitted to date (the public awareness element had not yet been submitted). In 1981, EPA took final action consistent with the 1980 proposal. See 46 FR 21758 (April 14, 1981).

With respect to the CO portion of the plan, EPA's 1981 final approval for certain elements was conditioned upon Nevada's submittal later that year of various commitments and schedules related to evaluation and implementation of transportation control measures. On March 4, 1981, Nevada submitted an update to the 1978 AQIP that had been adopted by Clark County in November 1980 ("1980 AQIP") and that contained materials such as updated emissions inventories, air quality data, and updated modeling analyses and strategy evaluations as well as materials directly responsive to the conditional approval. The 1980 AQIP estimated that on-road motor vehicles emitted approximately 85% of all of the CO emitted in the valley. Although not technically a part of the control strategy, the 1980 AQIP relied upon the Federal motor vehicle control program to show a downward trend in CO emissions. With respect to State and local measures, the CO plan recommended adoption of an expanded I/M program (i.e., increase the applicability of the submitted program to include more vehicles), and various transportation-related measures, including implementation of an area-wide coordinated effort to increase carpooling and ridesharing activity, traffic flow improvements, area-specific studies in hot spot areas and development of localized remedial measures, the short-range transit development plan, and the bicycle element of the local transportation plan. Based on that submittal, EPA revoked the earlier condition placed on the approval of the CO portion of the Las Vegas Valley plan. See 47 FR 15790 (April 13, 1982).

To fulfill the original commitment from the 1978 AQIP to prepare a revised CO plan that provides for expeditious attainment, the State submitted an update to the 1980 AQIP to EPA on June 23, 1982 ("1982 AQIP CO update"). The 1982 AQIP CO update included updated emissions and air quality data, a subregional modeling analysis, an updated attainment demonstration and revised control strategy. We proposed approval of most elements of this submittal, but proposed disapproval for the plan overall because of the State Legislature's decision to delay the implementation of the I/M program from 1981 to 1983. See 48 FR 5071 (February 3, 1983). The following year, after receipt of supplemental SIP materials on September 14, 1983, including revised statutes and regulations for the I/M program and an I/M public awareness plan, we proposed to approve the 1982 AQIP CO update. Relative to the I/M program we approved in April 1981, the revised I/M program provided for a different start-up date, for increased vehicle coverage (as recommended in the 1980 AQIP), for emissions testing for CO only (the HC test was deleted), for mandatory adjustments for certain types of vehicles, and for more stringent waiver requirements. See 49 FR 6386 (February 21, 1984). Later that year, we finalized the approval consistent with the proposal. See 49 FR 44208 (November 5, 1984).

Notwithstanding our approval of the 1982 AQIP CO update that demonstrated attainment of the CO NAAQS by the end of 1987, the CO NAAQS was not actually attained by the end of 1987 in Las Vegas Valley, nor was it attained in

many other areas of the country. In 1988, EPA notified the Governors of the various States in which areas had failed to attain the CO NAAQS that their SIPs were inadequate and that their SIPs must be revised ("SIP call"). See 53 FR 34500 (September 7, 1988). The SIP call involved a two-phase approach. The first phase called for the States to fix deficiencies in their existing plans and to implement any measures already adopted but not yet implemented. The second phase, which called for development of a new attainment plan, awaited Congressional amendments to the Clean Air Act that were anticipated to occur in 1990. See 55 FR 30973 (July 30, 1990).

Under the Act, as amended in 1990, Las Vegas Valley was designated as a nonattainment area for the CO NAAQS and was therefore subject to various new SIP planning requirements. Our proposed rule at 68 FR 4141-4143 provides a detailed discussion of the deadlines and SIP planning requirements for the Las Vegas Valley CO nonattainment area under the Act, as amended in 1990. The various updated CO emissions inventories continue to show that on-road motor vehicles are the principal source for CO emissions in the valley (approximately 83% in 2000) and thus changes in the control strategy continue to focus on that source category. Among the various CO SIP revisions developed for Las Vegas Valley and submitted to EPA under the Act, as amended in 1990, the oxygenated gasoline program, listed below, has been approved by EPA into the Clark County portion of the Nevada SIP and has provided a significant reduction in CO emissions during the winter from on-road motor vehicles:

SIP Rule	Submittal Date	Approval Date	NFRM
Section 53 (Oxygenated Gasoline Program)	08/07/98	06/02/99	64 FR 29573

In addition to the above oxygenated gasoline program (SIP section 53), the revised CO control strategy relies primarily upon the Federal motor vehicle control program and the following State and local measures to demonstrate attainment in Las Vegas Valley:

- Nevada's "alternate low" enhanced vehicle I/M program,
- DAQM section 54 (Cleaner Burning Gasoline), and
- Nevada's wintertime gasoline specification for Clark County related to Reid Vapor Pressure (RVP).

We proposed to approve the vehicle I/M program and two fuels measures into the SIP in our January 28, 2003 notice. The CO strategy also includes an alternative fuel program for government vehicles and voluntary transportation control measures, which we also proposed to approve into the SIP in our January 28, 2003 notice.

As described above, to implement, maintain, and enforce the CO NAAQS, the Clark County portion of the Nevada SIP contains the State's 1980's-era vehicle I/M program, a wintertime oxygenated gasoline program (SIP section 53), the 1980's-era "new source review" program for regulating new or modified stationary sources (county air pollution regulations: sections 1, 11 and 15), various transportation-related measures, including implementation of an area-wide coordinated effort to increase carpooling and ridesharing activity, traffic flow improvements, area-specific studies in hot spot areas and development of localized remedial measures, the short-range transit development plan, and the bicycle element of the local transportation plan. But, with our final action on the January 28, 2003 proposal, a revised vehicle I/M program and additional on-road motor vehicle measures, as described above, will also be incorporated into the SIP. In addition to SIP programs and rules, as previously noted, attainment of the CO NAAQS in Las Vegas Valley relies upon the Federal motor vehicle control program, which is unaffected by SIP revisions.

Thus, with the exception of the vehicle I/M program, all of the measures to be approved into the SIP as a consequence of our final action will be newly added to the Clark County portion of the Nevada SIP and will not replace or supercede any pre-existing SIP measures. For newly-added measures, section 193 of the Act does not apply. With respect to the vehicle I/M program, the 1980's-era vehicle I/M program will be replaced or superceded with a more stringent, "enhanced" vehicle I/M program. Specific vehicle I/M elements that are more stringent under the "enhanced" program relative to the existing SIP vehicle I/M program include establishment of on-board diagnostics systems testing requirements (for model-year 1996 and newer vehicles), establishment of a computerized emissions testing system (such as NV2000), establishment of an on-road testing program, improvements in vehicle repair effectiveness through training and licensing of "class 2" inspectors, and through establishment of a higher waiver limit (from $100 to $450). Thus, our action in approving the updated program complies with section 193 of the Act because it will provide equivalent or greater emissions reductions of CO in the nonattainment area as compared to the existing SIP vehicle I/M program.

Comment 52 ("Specific EPA Approved SIP Less Stringent Examples"): In support of its contention that the SIP submittals that we have proposed to approve are less stringent than the corresponding provisions in the EPA-approved SIP, NEC lists the following definitions in SIP-approved section 1 (Definitions): 1.84 ("Source of Air Contaminant"), 1.3 ("Air Contaminant"), 1.61 ("Non-Attainment Area"), 1.90 ("Stationary Source"), and 1.48 ("Lowest Achievable Emission Rate"). NEC also points to various provisions in SIP-approved section 15 (Source Registration).

Response 52 ("Specific EPA Approved SIP Less Stringent Examples"): NEC cites these definitions and provisions from existing SIP sections 1 and 15 as supporting its

claim that the proposed SIP approval amounts to a relaxation, but does not clearly tie these definitions and provisions to changes proposed for approval. These definitions and provisions relate to the applicability of the new source review requirements in Clark County, and our proposed action on the CO SIP revision for Las Vegas Valley would not supercede any existing SIP provisions related to new source review. As explained above in response to NEC comment #51, the only existing SIP provision that would be superceded by our proposed action would be the existing SIP-approved vehicle I/M program, which would be replaced in the SIP by a more stringent "enhanced" vehicle I/M program.

Comment 53 ("How has enforcement proceeded during this time?"): NEC contrasts EPA's purported dismissal of the existing EPA-approved SIP in evaluating the CO SIP revision for Las Vegas Valley with EPA's citation of those same provisions in enforcement actions taken against sources in Clark County and implies that EPA only acknowledges the existing SIP when it is convenient to do so. NEC cites a specific enforcement action as support for its contention.

Response 53 ("How has enforcement proceeded during this time?"): As explained in response to NEC comment #51, EPA has not ignored the existing SIP in evaluating the various CO SIP submittals on which we have proposed action. With the exception of the vehicle I/M program, all of the various approvals that EPA has proposed relate to items that will be newly added to the SIP; that is, they will not replace or supersede any existing SIP provisions. With respect to the vehicle I/M program, EPA's action will have the effect of replacing the existing I/M program with the more stringent "low enhanced" I/M program. Thus, our proposed action only makes the SIP stronger and will in no way relax any aspect of the existing SIP.

Comment 54 ("Re: Comment and Administrative Protest re: Draft Carbon Monoxide Air Quality Implementation Plan, Las Vegas Valley Non-attainment Area, Clark County, Nevada, June 2000, Exhibits A & B, Certificate of Service dated July 21, 2000"): NEC asserts that it is unlawful to take SIP actions related to one pollutant in isolation from the other pollutants that affect a given area and objects to our adequacy determination with respect to the CO motor vehicle budgets in the 2000 CO attainment plan.

Response 54 ("Re: Comment and Administrative Protest re: Draft Carbon Monoxide Air Quality Implementation Plan, Las Vegas Valley Non-attainment Area, Clark County, Nevada, June 2000, Exhibits A & B, Certificate of Service dated July 21, 2000"): EPA recognizes that Agency action on SIP revisions submitted for the purpose of attaining or maintaining one pollutant could potentially have inadvertent effects on other pollutants. Under section 110(l) of the Act, EPA is prohibited from approving SIP revisions that would interfere with attainment, reasonable further progress, *or any other applicable requirement of the Act*, which can include requirements related to other regulated pollutants. However, in this instance, we

have found no basis for concluding that our action on the CO SIP revision for Las Vegas Valley would interfere with any other applicable requirement of the Act, including requirements related to the other regulated pollutants.

With respect to EPA's November 2000 adequacy determination for the motor vehicle emissions budgets, NEC challenged that decision in the Ninth Circuit Court of Appeals, but the court ruled in EPA's favor in an unpublished memorandum filed March 28, 2002 *(Hall v. EPA* (No. 00-71676)). Thus, we acknowledge NEC's continued objection to our adequacy determination notwithstanding the resolution of the related legal challenge but find no new basis to second-guess our adequacy determination nor to modify our proposed approval of those budgets as set forth in our January 28, 2003 notice at 68 FR 4155-4156.

Comment 55 ("The EPA has failed and/or refused to provide Hall and the NEC with additional information regarding the source and the suitability of some of the data presented."): In citing "objection #6" from NEC's July 21, 2000 comment letter to Clark County on the draft 2000 CO attainment plan, NEC requests additional justification for the area source emissions estimates that are shown in table 3-2, page 3-3 of the 2000 CO attainment plan.

Response 55 ("The EPA has failed and/or refused to provide Hall and the NEC with additional information regarding the source and the suitability of some of the data presented."): Documentation for the area source emissions estimates is provided in appendix A, section 3 of the 2000 CO attainment plan. As described in our proposed rule at 68 FR 4144-4146 and section 4 of our TSD for the proposed rule, we reviewed the methods used by Clark County in developing base year and future year emissions inventories and found the methodologies to be acceptable.

Comment 56 ("The EPA refuses to provide Hall and the NEC with additional information regarding the fact that the emissions database does not list known sources of CO air pollution."): In citing "objection #8" from NEC's July 21, 2000 comment letter to Clark County on the draft 2000 attainment CO plan, NEC asserts that the stationary source inventory in the 2000 CO plan must be significantly flawed because there are a substantially fewer number of Las Vegas Valley stationary sources listed in the 2000 CO plan as emitting more than 70 tons per year of CO than have been required to secure "part 70" operating permits (70 tons per year is the CO applicability threshold for the purposes of the part 70 permit program in Las Vegas Valley).

Response 56 ("The EPA refuses to provide Hall and the NEC with additional information regarding the fact that the emissions database does not list known sources of CO air pollution."): The apparent discrepancy that NEC identifies in the stationary source portion of the emissions inventory in the 2000 CO attainment plan is a product of the different approaches to preparing emissions inventories for

attainment planning purposes and for part 70 permit purposes. The applicable attainment plan, the 2000 CO plan, is based on estimates of *actual* emissions, both in the base year (1996) as well as future years, for all types of sources, including large stationary sources. This is an appropriate approach for the purposes of attainment planning. In contrast, part 70 applicability is based on a source's *potential* emissions, or "potential to emit" (PTE). Under 40 CFR 51.165(a)(iii), PTE is defined as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. The difference between a source's actual emissions and the PTE can be significant, particularly for power plants, depending upon service maintenance requirements and demand for electricity in a given year, among other factors. Thus, the difference between the number of part 70 sources and the number of sources listed in the 2000 CO plan as emitting more than 70 tons per year is not an indication of a significant flaw in the 2000 CO plan inventory.

Comment 57 ("The EPA refuses to provide Hall and the NEC with missing data and a later inventory than a 1990 inventory."): In citing "objection #9" from NEC's July 21, 2000 comment letter to Clark County on the draft 2000 CO attainment plan, NEC objects to the use of any year 1990 inventory data as the basis for inventory updates and notes that the 1990 inventory does not include major new sources and modifications that have been constructed since 1990.

Response 57 ("The EPA refuses to provide Hall and the NEC with missing data and a later inventory than a 1990 inventory."): As a general matter, there is no reason not to start with the emissions information from a given year, e.g., 1990, and then to adjust those values to account for growth or new sources to provide the basis for an emission inventory for a more recent year, e.g., 1996. The documentation in the 2000 CO attainment plan indicates that the stationary source inventory was based on year 1990 emissions from which projections (for years such as 2000) were made. See appendix A, section 2, appendix C, sections 1 (page 2-12), and appendix C, section 3 (page 2-13) of the 2000 CO plan. This is an acceptable approach. We are unaware of any new major stationary sources of CO that should have been, but were not, included in the CO emissions inventories for years 1996 and 2000 as prepared for the 2000 CO plan. We also note that, similar to most other CO nonattainment areas in the country, stationary sources in Las Vegas Valley comprise a relatively small share of the overall CO emissions inventory, which is primarily the result of mobile source emissions.

Comment 58 ("The EPA has refused to consider the Nevada Legislature's S.B. 432 subcommittee ENVIRON report in its deliberations."): In citing "objection #10" from NEC's July 21, 2000 comment letter to Clark County on the draft 2000 CO attainment plan, NEC asserts that the EPA should have considered the findings and recommendations of the Nevada Legislature's S.B. 432 subcommittee report on the regulatory structure for air pollution control in Clark County. This report is

purportedly critical of the effectiveness of the air pollution control program as administered by the Air Quality Division of the Clark County Health District.

Response 58 ("The EPA has refused to consider the Nevada Legislature's S.B. 432 subcommittee ENVIRON report in its deliberations."): EPA understands that one of the principal recommendations in the report cited by NEC is for the concentration of air pollution control activities in Clark County into a single regulatory agency. Until mid-2001, the Clark County District Board of Health, acting through the Air Quality Division of the Clark County Health District, was responsible for air pollution regulatory activities including ambient monitoring and stationary source permitting and enforcement, while the Clark County Board of County Commissioners, acting through the Clark County Department of Comprehensive Planning, was responsible for preparing SIP attainment plans, such as the 2000 CO attainment plan. Beginning in mid-2001, the split authority for air pollution control in Clark County was concentrated into the Clark County Board of County Commissioners, which acts through a new department, the Clark County Department of Air Quality Management (DAQM). In our proposed rule at 68 FR 4143, columns 2 and 3, we describe the transfer of authority from the Clark County District Board of Health to the Clark County Board of County Commissioners and note here that this transfer fulfills the corresponding recommendation of the S.B. 432 report cited by NEC.

Comment 59 ("The EPA refused to consider Hall's lack of conformity determination objection."): In citing "objection #11" from NEC's July 21, 2000 comment letter to Clark County on the draft 2000 CO attainment plan, NEC objects to EPA's attempt to approve the 2000 CO plan without credible emissions budgets and without first acquiring conformity determinations from Federal agencies that operate in Las Vegas Valley. NEC believes that conformity determinations refer to the total of ongoing, non-exempt, non-de minimis, activities that cause air pollution initially, and as amended from time to time on a project by project basis.

Response 59 ("The EPA refused to consider Hall's lack of conformity determination objection."): Our rationale for proposing approval of the CO motor vehicle emissions budgets in the 2000 CO attainment plan is set forth in the proposed rule at 68 FR 4155-4156, and none of the comments submitted to EPA have led us to modify our proposed approval of them. We disagree with NEC's contention that EPA must wait for conformity determinations from the various Federal agencies that operate in Las Vegas Valley prior to taking action on the CO SIP revision for Las Vegas Valley. There is no statutory or regulatory basis for that contention. However, we do agree that Federal agency activities should be reasonably accounted for in the emissions inventories and attainment demonstration prepared for a given attainment plan. In that regard, we note that emissions associated with operations at Nellis Air Force Base, McCarran International Airport, North Las Vegas Airport, and Henderson Executive Airport, and reflecting on-going activities of two Federal agencies, the

Department of Defense and the Federal Aviation Administration, were quantified and included in the emissions inventories of the 2000 CO plan. See appendix A, section 5 of the 2000 CO plan. Also, we note that the 2000 CO plan includes documentation of a detailed dispersion modeling study of the commercial airports including McCarran International, North Las Vegas, and Henderson Executive Airports. See appendix C, section 6, of the 2000 CO plan. Lastly, we acknowledge that the Department of Interior's Bureau of Land Management is involved in land sales and land exchanges in Las Vegas Valley, but we also find that the associated residential and commercial development that is accommodated thereby is generally included in the valley-wide growth assumptions in such parameters as vehicle miles traveled (VMT) and natural gas combustion, which flow from increases in population. Consistent with our proposed rule, we continue to believe that the 2000 CO plan provides reasonably accurate emissions estimates and CO concentration levels that reflect the significant CO-generating activities in Las Vegas Valley and that reflect growth trends in those activities.

Comment 60 ("The EPA refused to consider the alternative of a Federal Implementation Plan (FIP)."): In citing "objection #12" from NEC's July 21, 2000 comment letter to Clark County on the draft 2000 CO attainment plan, NEC objects to the failure by EPA to implement a Federal implementation plan (FIP) given the purported deficiencies in the Clark County plan.

Response 60 ("The EPA refused to consider the alternative of a Federal Implementation Plan (FIP)."): EPA's duty to promulgate a CO FIP for Las Vegas Valley, which was triggered by our finding of failure by the State to submit (a SIP revision addressing "serious" CO nonattainment requirements) on September 10, 1999 (see 64 FR 49084), will be terminated upon the effective date of this final action for all plan elements covered by this action, which does not include the contingency provisions. As noted in response to NEC comment #37, we are not taking final action on the contingency provisions in this notice but will address the remaining obligations of the Las Vegas Valley serious CO nonattainment area under section 187(a)(3) of the Act in a separate rulemaking.

Comment 61 ("The EPA refused to consider any of the referenced documents."): In citing the subsection titled "Documentation" from NEC's July 21, 2000 comment letter to Clark County on the draft 2000 CO attainment plan, NEC objects to the failure by EPA to consider 22 individual documents in connection with EPA's action on the various SIP submittals constituting the Las Vegas Valley CO SIP.

Response 61 ("The EPA refused to consider any of the referenced documents."): The documents to which NEC refers includes enforcement cases brought against individual stationary sources in Clark County, an NEC-prepared report on the Clark County District Board of Health, an EPA SIP action log, an EPA enforcement memorandum, NEC comment letters on draft part 70 operating permits for certain

individual sources in Clark County, a Federal court decision overturning certain aspects of an EPA final rule revising the transportation conformity rule, NEC comments on actions proposed by Clark County on the local new source review rules, NEC's brief filed in the Ninth Circuit as part of NEC's legal challenge to EPA's approval of Clark County's revised new source review rules, NEC comments on authorities to construct for individual sources in Clark County, a notice of intent (to sue EPA), an EPA finding of failure to submit (a "serious" CO plan for Las Vegas Valley), an EPA final rule revising the transportation conformity rule, NEC's brief challenging a Department of Interior resource management plan, and a report evaluating air quality programs in Clark County, Nevada. NEC does not indicate how the contents of these documents relate specifically to EPA's proposed action published on January 28, 2003 on the various CO SIP submittals that constitute the CO SIP revision for Las Vegas Valley, so it is not possible to provide a specific response.

Comment 62 ("The EPA refused to consider Hall's specific allegations including citations to statutes."): NEC refers generally to all of the issues raised beginning on page 17 and continuing to the end (page 61) of NEC's July 21, 2000 comment letter on the draft 2000 CO attainment plan.

Response 62 ("The EPA refused to consider Hall's specific allegations including citations to statutes."): By simply referring to all of the issues raised in NEC's July 21, 2000 comment letter, we can only speculate as to how those issues were not sufficiently addressed by Clark County in their responses to comments on the draft 2000 CO plan (see appendix D of the 2000 CO plan) or how those issues were insufficiently addressed in our January 28, 2003 proposed rule and related TSD. We note that our proposed rule and associated TSD provide our rationale for approving the various elements of the plan to which NEC raises objections in its July 21, 2000 comment letter, including monitoring (see section 3 of the TSD), emissions inventories (see 68 FR 4144-4146, and section 4 of the TSD), attainment demonstration modeling (see 68 FR 4146-4147 and section 6 of the TSD), regulation of stationary sources (see 68 FR 4153-4154), new source review permitting (see 68 FR 4153-4154 and section 7.F of the TSD), and an Executive Order related to protection of children from environmental and safety health risks (see 68 FR 4157).

We recognize that our proposed rule did not discuss Executive Order 12898 (56 FR 7629, February 16, 1994), *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, but note that our proposed rule does not involve special considerations of environmental justice related issues as required by this Executive Order and that the 2000 CO attainment plan, which we have proposed to approve, provides for attainment of the CO NAAQS throughout the nonattainment area. Responses to comments herein provide additional discussion on such issues as resources to implement plan measures (see

response to NEC comment #7) and stationary source emissions estimates (see response to NEC comment #56). Finally, NEC's supporting documentation itself provides strong evidence of a robust history of EPA enforcement of stationary source requirements in Clark County (see volumes I and II of NEC's supporting documentation). In those volumes are found various enforcement-related documents issued by EPA since 1995 against 15 stationary source operators in Clark County.

Comment 63 ("Legal Discussion"): NEC notes that judicial review is available to challenge any final approval by EPA of the CO plan or to compel agency action unlawfully withheld or unreasonably delayed and further asserts that the only lawful actions available to EPA, the State of Nevada, and Clark County are rescinding the proposed approval of the CO plan, and imposing sanctions, and promulgating a Federal implementation plan (FIP).

Response 63 ("Legal Discussion"): We agree that our final rulemaking on the CO SIP revision for Las Vegas Valley constitutes a final agency action subject to review in the U.S. Courts of Appeals under section 307(b) of the Clean Air Act and that a citizen can bring suit in the U.S. District Courts under section 553(e) of the APA and section 304 of the CAA against EPA alleging action unlawfully withheld or unreasonably delayed. Under the circumstances of this particular action, except for the contingency provisions, EPA's final approval of the CO plan will relieve EPA of the statutory obligation to promulgate a FIP that arose 24 months after EPA's finding of failure (by the State of Nevada) to submit a "serious area" CO plan for Las Vegas Valley by the due date. See 64 FR 49084 (September 10, 1999). Furthermore, EPA has no basis at the present time to impose sanctions under section 179 of the Act on the State of Nevada or Clark County for any failure to comply with statutory requirements for CO nonattainment areas.

Comment 64 ("Regional Transportation Commission of Southern Nevada, Meeting Agenda Item #7, May 14, 2002"): NEC cites this RTC meeting agenda item as additional evidence that the data submitted by Clark County is not credible.

Response 64 ("Regional Transportation Commission of Southern Nevada, Meeting Agenda Item #7, May 14, 2002"): In the background section of this agenda item, RTC staff describe the foreseeable consequences to transportation planning under the transportation conformity regulations of the widening gap between the vehicle miles traveled (VMT) forecasts used for the purposes of developing motor vehicle emissions budgets in the 2000 CO attainment plan and the updated VMT forecasts available to RTC in 2002. RTC staff also describe one possible approach to address this issue that would involve funding a modeling study that might be used in connection with development of a future Las Vegas Valley CO maintenance plan.

In our proposed rule, we proposed to approve the VMT forecasts contained in the 2000 CO attainment plan as meeting section 187(a)(2)(A) of the Act. See 68 FR 4141, at 4154 (January 28, 2003). In the final rule, we are finalizing our approval of the VMT forecasts in the 2000 CO plan as being reasonably accurate at the time they were prepared and submitted to EPA. VMT forecasts are revised periodically and the fact that such revised forecasts show that VMT growth is increasing at a rate faster than anticipated by the plan does not impeach the credibility of the prior forecasts, which were reasonably accurate at the time they were made and used in developing emissions estimates for motor vehicles in the plan. We do, however, recognize the problems for both air quality planning and transportation planning that are associated with the widening gap between the VMT forecasts in the 2000 CO plan and the updated VMT forecasts but believe that RTC staff have identified an appropriate mechanism for reconciling these updated VMT forecasts with the goals of CO air quality planning, namely, by ensuring that the future CO maintenance plan for Las Vegas Valley reflects the revised VMT estimates and contains the appropriate measures to demonstrate how the area will maintain the CO NAAQS despite the higher-than-expected growth in VMT.

Comment 65 ("Additional Comments Re: Las Vegas (Clark County), Nevada, carbon monoxide attainment demonstration posted August 29, 1999" (sic)): NEC refers to this document on the first page of the February 27, 2003 comment letter as a "CO SIP prior comment document" and incorporates it by reference. In this comment letter, NEC objects to several aspects of the 2000 CO attainment plan, including coordination and interaction between Clark County and EPA, monitoring, and County resources, and requests a Federal implementation plan in response to EPA's posting of receipt of the 2000 CO attainment plan on August 29, 2000.

Response 65 ("Additional Comments Re: Las Vegas (Clark County), Nevada, carbon monoxide attainment demonstration posted August 29, 1999" (sic)): EPA attached responses to these comments to our finding of adequacy with respect to the CO motor vehicle emissions budgets contained in the 2000 CO attainment plan for the purposes of transportation conformity. We set forth our finding in a letter from Amy Zimpfer, Acting Director, Air Division, U.S. EPA-Region IX, to Allen Biaggi, Administrator, Nevada Division of Environmental Protection, dated November 20, 2000 and published notice of this finding at 65 FR 71313 (November 30, 2000). We incorporate by reference our responses to the August 20, 2000 comments for purposes of this final action.

We also note that NEC challenged our adequacy determination in the Ninth Circuit Court of Appeals in Case No. 00-71676. One of the claims that NEC made in this petition for review in the Ninth Circuit was that EPA had failed to appropriately address NEC's comments, but the court ruled in EPA's favor stating that the court had examined EPA's responses to NEC's comments and could not conclude that the responses were arbitrary or capricious.

Comment 66 ("Comment and Administrative Protest Re: Draft Carbon Monoxide Implementation Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada, June 2000; Exhibits A & B; Certificate of Service, July 21, 2000"): NEC refers to this document on the first page of the February 27, 2003 comment letter as a "CO SIP prior comment document" and incorporates it by reference. This document contains NEC's comments on the draft 2000 CO attainment plan.

Response 66 ("Comment and Administrative Protest Re: Draft Carbon Monoxide Implementation Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada, June 2000; Exhibits A & B; Certificate of Service, July 21, 2000"): Please see responses to NEC comments #54 through #62, above.

Comment 67 ("Comment and Administrative Protest Re: Draft Carbon Monoxide Air Quality Implementation Plan; Exhibit A; Certificate of Service, August 31, 1999"): NEC refers to this document on the second page of the February 27, 2003 comment letter as a "CO SIP prior comment document" and incorporates it by reference. This document contains NEC's comments to Clark County on the *Draft Carbon Monoxide Air Quality Implementation Plan, Las Vegas Valley, Clark County, Nevada, August 1999* ("1999 CO attainment plan") and also contains NEC's requests to EPA for a finding under section 113(a)(2), which relates to failure of the State to enforce the SIP or SIP-approved permit program effectively, and for promulgation of a Federal implementation plan under section 110(c) and imposition of sanctions under section 110(m) of the Act.

Response 67 ("Comment and Administrative Protest Re: Draft Carbon Monoxide Air Quality Implementation Plan; Exhibit A; Certificate of Service, August 31, 1999"): The 1999 CO attainment plan to which these comments apply was superceded by the 2000 CO attainment plan, adopted by the Clark County Board of County Commissioners on August 1, 2000 and submitted to EPA on August 9, 2000. As stated in the proposed rule at 68 FR 4143, column 2, since the 1999 CO attainment plan was superceded by the 2000 CO attainment plan, we will be taking no action on that plan.

Comment: Supporting Documentation: The email containing NEC's February 27, 2003 comment letter also included a list of supporting materials. The actual documents referred to in that list, organized into nine volumes, were subsequently received by EPA. Per NEC's letter, this supporting material consists of EPA notices of violation and requests made by NEC to EPA for administrative action, along with other supporting documents that pertain to the 1995-2003 period. NEC requests that EPA take administrative notice of each document submitted and address the issues therein. NEC states that these documents describe acts and omissions on the part of air pollution sources, Clark County, the State of Nevada and EPA that individually and collectively resulted in failure of the area to attain the CO NAAQS. NEC alleges that EPA abdicated its statutory obligations, including

failure to levy sanctions and to implement a Federal implementation plan, and did not timely respond to the notices NEC has provided.

Response: Supporting Documentation: We have included these supporting documents in the administrative record for this action. With the exception of three previous comment letters on the 1999 or 2000 CO plans, for which we provide specific responses above (see responses to NEC comments #65, #66, and #67), these documents do not include specific comments on the proposed approval of the CO SIP revision for Las Vegas Valley, so it is not possible to identify and address the "issues" generally noted by NEC. To the extent these materials, as explained by NEC, provide support for NEC's claims that Clark County should have attained the CO NAAQS or that EPA should impose sanctions and/or promulgate a FIP for the area, they are addressed in the responses to NEC's comments #4/5, #60, and #63, above.

LIST OF COMMENTS

Peter Krueger, Executive Director, Nevada Emission Testers Council, comment letter dated February 19, 2003.

Edward C. Barry, Western Environmental Manager, Chemical Lime Company, comment letter dated February 24, 2003.

Fredrick R. Stater, Plant Manager, Kerr-McGee Chemical, LLC, comment letter dated February 26, 2003.

Robert W. Hall, Nevada Environmental Coalition, Inc., comment letter dated February 27, 2003, including the comment letter itself, a list of supporting documents, and an agenda item from the May 14, 2002 meeting of the Clark County Regional Transportation Commission.