

State, local, or tribal governments or to the private sector result from this action.

EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 14, 1995.

Felicia Marcus,
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (214)(i)(B) and (215)(i)(A)(2) and (215)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(214) * * *

(i) * * *

(B) San Diego County Air Pollution Control District.

(1) Rule 61.1 adopted on January 10, 1995.

* * * * *

(215) * * *

(i) * * *

(A) * * *

(2) Rule 1153 adopted on January 13, 1995.

(B) Ventura County Air Pollution Control District.

(1) Rule 74.12 adopted on January 10, 1995.

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[FR Doc. 95–19504 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FRL–5274–1]

Transportation Conformity; Approval of Petition for Exemption From Nitrogen Oxides Provisions, Transitional Ozone Nonattainment Area, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a petition from the Denver Regional Council of Governments (DRCOG) requesting that the Denver metropolitan area, an ozone nonattainment area classified as transitional, be exempted from the requirements regarding the control of oxides of nitrogen (NO_x) imposed by the Federal conformity rules. The initial petition for exemption was submitted by DRCOG on May 25, 1994. Supporting documentation for the initial petition was submitted August 1, 1994.

EFFECTIVE DATE: This action is effective as of July 28, 1995.

ADDRESSES: Copies of the documents relevant to these actions are available for public inspection during normal business hours at the following location. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. U.S. Environmental Protection Agency, Region 8, Air Quality Branch (8ART–AP), 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Aundrey C. Wilkins, SIP Section (8ART–AP), Air Programs Branch, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, telephone (303) 294–1379. Fax: 303–293–1229.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_x as are applied to major stationary sources of VOC. The new NO_x requirements are reasonably available control technology (RACT) and new source review (NSR). Section 182(f) also specifies circumstances under which the NO_x requirements would be limited or would not apply.

EPA's general and transportation conformity rules, as well as the Inspection and Maintenance (I/M) regulations, reference the section 182(f)

exemption process as a means for exempting affected areas from certain NO_x conformity requirements. See 58 FR 62197, November 24, 1993, Transportation Conformity; and 58 FR 63240, November 30, 1993, General Conformity; and 57 FR 52989, I/M.

Under section 182(f)(1)(A), an exemption from the NO_x requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that “additional reductions of NO_x would not contribute to attainment” of the ozone NAAQS in those areas. EPA has indicated that in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data, without having implemented the section 182(f) NO_x provisions, it is clear that this test is met since “additional reductions of NO_x would not contribute to attainment” of the NAAQS in that area.

This interpretation is discussed in a May 27, 1994 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), entitled “Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria.” This memorandum revised relevant portions of previously-issued OAQPS guidance dated December, 1993, entitled “Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f).” Both documents address EPA's policy regarding NO_x exemptions for areas outside an ozone transport region that have air quality monitoring data showing attainment. The Enhanced I/M regulations, the section 182(f) NO_x RACT and NSR requirements and the guidance cited above apply only to marginal and above ozone nonattainment areas, but not nonclassifiable ozone nonattainment areas (i.e., submarginal, transitional, and incomplete/no data). However, a June 17, 1994, EPA document entitled “Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions” (59 FR 31238) (“General Preamble”), among other things, provides guidance on the exemption of nonclassifiable ozone nonattainment areas, outside an ozone transport region, from the conformity rule's NO_x requirements based on air quality monitoring data showing attainment. As a transitional ozone nonattainment area, the Denver metropolitan area falls within the “nonclassifiable” category.

Under the general conformity rule, NO_x emissions that are caused by federal actions that exceed applicable threshold levels are required to demonstrate conformity to the applicable SIP. The transportation

conformity rule requires regional emissions analysis of motor vehicle NO_x emissions for ozone nonattainment and maintenance areas in order to determine the conformity of transportation plans and programs to implementation plan requirements. This analysis must demonstrate that the NO_x emissions which would result from the transportation system if the proposed transportation plan were implemented are within the total allowable level of NO_x emissions from highway and transit motor vehicles ("the emission budget") as identified in a submitted (or approved) attainment demonstration or maintenance plan. Until an attainment demonstration (or for nonclassifiable areas a maintenance plan) is approved by the EPA, the regional emissions analysis of the transportation system must also satisfy the "build/no-build" test. That is, the analysis must demonstrate that emissions from the transportation system, if the proposed transportation plan and program were implemented, would be less than the emissions from the transportation system if only the previous applicable transportation plan and program were implemented. Furthermore, the regional emissions analysis must show that emissions from the transportation system, if the transportation plan or program were implemented, would be lower than 1990 levels.

With respect to the NO_x requirements of the conformity rules, DRCOG submitted a NO_x exemption petition on May 25, 1994 and submitted supporting documentation via a letter dated August 1, 1994. Ambient air quality data provided with the DRCOG petition showed no violations of the ozone NAAQS during the three-year period from 1991 through 1993. Further, the Colorado Air Pollution Control Division (APCD) provided additional air quality data for the same time period supporting DRCOG's position that there were no violations.

On March 23, 1995, EPA announced its proposed approval of the NO_x exemption request for the nonclassifiable ozone nonattainment area of the Denver metropolitan area (56 FR 15269). In that proposed rulemaking action, EPA described in detail its rationale for approving this NO_x exemption request, considering the specific factual issues presented. Rather than repeating that entire discussion in this document, it is incorporated by reference here. Thus, the public should review the notice of proposed rulemaking for relevant background on this final rulemaking action.

II. Response to Comments

The EPA requested public comments on all aspects of the proposed action to approve the section 182(f) petition for the Denver metropolitan area. The EPA received six letters of support.

The EPA received four adverse comment letters and one letter requesting a clarification. One of the adverse letters was signed by three environmental groups and contained comments objecting to the EPA's general policy on section 182(f) exemptions. This group of three requested that their letter be included in each EPA rulemaking action for section 182(f) petitions. One of the four adverse comment letters was received on August 5, 1994, prior to publication of the EPA proposed approval rulemaking. EPA also received one letter that was not adverse but asked that the impact of granting an ozone NO_x exemption be made clearer. EPA is responding to all of these comments in the final rulemaking.

Comment 1

Certain commenters argued that NO_x exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_x exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO_x exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_x requirements, exemptions from the NO_x conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c)(3)(A)(iii), the CAA's conformity provisions.

EPA Response

Section 182(f) contains very few details regarding the administrative procedure for acting on NO_x exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for

considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_x exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_x exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the CAA defines to include States) may petition for NO_x exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that "person[s]"¹ may petition for a NO_x determination "at any time" after the ozone precursor study required under section 185B of the Act is finalized,² and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) "at any time", this must include times when there is no plan revision from the State pending at EPA.

In regard to the comment concerning the appropriate Act authority for granting transportation-related NO_x waivers, the EPA agrees, with certain exceptions, that section 182(b)(1) is the appropriate authority under the Act for waiving the transportation conformity rule's NO_x "build/no build" and "less-than-1990" tests, and is in the process of amending the rule to be consistent with the statute. However, the EPA believes that this authority is only applicable with respect to those areas that are subject to section 182(b)(1).

¹ Section 302(e) of the Act defines the term "person" to include States.

² The final section 185B report was issued July 30, 1993.

Marginal and below ozone nonattainment areas (which includes nonclassifiable areas like Denver) are not subject to section 176(c)(3)(A)(iii) because they are not subject to section 182(b)(1). These areas, however, are still subject to the requirements of section 176(c)(1), which sets out criteria that, if met, will assure consistency with the SIP. The EPA believes it is reasonable and consistent with the Act to provide relief under section 176(c)(1) from the interim-period NO_x transportation conformity requirements where the Agency has determined that NO_x reductions would not be beneficial, and to rely, in doing so, on the NO_x exemption tests provided in section 182(f).

The basic approach of the Act is that NO_x reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach, but also includes specific substantive tests which provide a basis for EPA to determine when NO_x requirements should not apply. Whether under section 182(b)(1) or section 182(f), where EPA has determined that NO_x reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO_x reductions for purposes of meeting RFP or other milestone requirements. Moreover, there is no substantive difference between the technical analysis required to make an assessment of NO_x impacts on attainment in a particular area, whether undertaken with respect to mobile source or stationary source NO_x emissions. Consequently, the EPA believes that granting relief from the NO_x conformity requirements of section 176(c)(1) under section 182(f) in these cases is appropriate.

Comment 2

Three years of "clean" data fail to demonstrate that NO_x reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with "attainment."

EPA Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_x exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_x requirements may be granted for nonattainment areas outside an ozone transport region if EPA

determines that "additional reductions of [NO_x] would not contribute to attainment" of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_x provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_x provisions, it is clear that the section 182(f) test is met since "additional reductions of [NO_x] would not contribute to attainment" of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Comment 3

Some commenters argued that in Denver's case, the EPA has previously determined that the ozone monitoring network was insufficient and an ambient air station for the measurement of ozone in the southwest metropolitan area has not yet been established. Thus, approval of the NO_x exemption is based on an inadequate monitoring network and the health of Colorado residents will not be protected if a NO_x exemption is granted.

EPA Response

EPA disagrees with the commenter that approval of this NO_x exemption is based upon an inadequate monitoring network and that the health of Colorado residents will not be protected if an exemption is granted. Also, as explained below, an ambient air station has been established in the southwest metropolitan area. No exceedances have been recorded in 1994 at either the old or newer ozone ambient air monitoring stations. Although the commenter is correct in saying that there have been concerns expressed in the past about the monitoring network by EPA, as the proposal made clear, EPA believes that the major concerns have been corrected and any remaining concerns do not provide a significant enough basis to deny the NO_x exemption request. EPA's concerns about the network—conveyed initially to the APCD in 1989—primarily involved the adequacy of the system to monitor the maximum concentration areas, as required by 40 CFR part 58. Various actions have since been undertaken by the APCD to address EPA's primary concerns, and efforts are

ongoing to address other, more general concerns. There are ten sites currently on the Denver ozone ambient monitoring network. These include two sites added in 1993 in the northwest portion of the nonattainment area at NREL (National Renewable Energy Lab site) and South Boulder Creek. One new site was recently added this year at the Chatfield Reservoir by Campground in the southwest. There have been no violations recorded by the Denver ozone ambient air monitoring network during the three years in review (1991, 1992, 1993) nor during 1994. Data in AIRS show only one exceedance (of 127 ppb) during this time, which occurred in 1993 at the South Boulder Creek site. Despite the lack of violations, additional analyses of the ozone ambient air monitoring network were undertaken, in part at EPA's urging, to ensure that future ozone pollution would continue to be adequately monitored. The commenter expressed concern about the adequacy of monitoring in the southwest, but the 1993 Denver Summer Ozone Study determined that higher ozone values—and perhaps the true maximum concentration sites—were appearing in the northwest, rather than the southwest, portion of the nonattainment area. And, thus, priority was given to placing new sites in the northwest. EPA believes the continued relatively higher values at the NREL and South Boulder Creek sites, as well as the exceedance at the latter site in 1993, tend to support that determination. The APCD has committed to continue reviewing the network and making necessary adjustments as promptly as feasible. In accord with these commitments, the APCD submitted to EPA in June, 1994 a summary of an ozone monitoring plan, showing a phased set of modifications to the network to be accomplished over the next five years. EPA believes, based on its evaluation of all the available information and analyses presented in support of this exemption request, that the data satisfactorily demonstrates that the Denver area's air quality has been "clean" for the requisite three years. Finally, an added precaution is built into EPA's policy in that approval of NO_x exemptions are granted on a contingent basis (i.e., the exemption lasts for only as long as the area's monitoring data continue to demonstrate attainment); if a violation occurs, the exemption would no longer be applicable.

Comment 4

Comments were received regarding the scope of exemption of areas from the NO_x requirements of the conformity

rules. Commenters argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_x emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_x emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_x, but want EPA in actions on NO_x exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_x increases is in place.

EPA Response

With respect to conformity, EPA's conformity rules^{3,4} provide a NO_x waiver if an area receives a section 182(f) exemption. In its **Federal Register** Notice entitled "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that, in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_x, even where a conformity NO_x waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. EPA has begun the process to do so. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_x motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_x motor vehicle emissions budget. The commenter suggests that EPA should delay action on the NO_x exemption request until the rulemaking that amends this portion of the transportation conformity rule has been finalized. However, EPA believes that, despite the error in the rule, it has consistently made it clear that the intent of the statute and of the rule requires the transportation plan and TIP to

demonstrate consistency with the NO_x motor vehicle emissions budget, even where a waiver has been granted. Moreover, this exemption is being processed under section 182(f)(3), which requires EPA to act within 6 months on the petition. EPA does not believe it is appropriate to delay acting on petitions to wait for the rule to be amended, especially given the short timeframe within which that action is expected to occur.

Comment 5

Comments were received saying the CAA does not authorize any waiver of the NO_x reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response

EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_x exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_x similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_x reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_x exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_x in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_x reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO_x/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_x provisions. The Committee does not intend NO_x reduction for reduction's sake, but rather as a measure scaled to the value of NO_x reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess.

257-258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA "shall consider" the 185B report, taken together with the timeframe the Act provides both for completion of the report and for acting on NO_x exemption petitions, clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_x exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_x exemption requests must await "conclusive evidence", as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_x exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO_x requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that *any one* of the following tests is met:

- (1) in any area, the net air quality benefits are greater in the absence of NO_x reductions from the sources concerned;
- (2) in nonattainment areas not within an ozone transport region, additional NO_x reductions would not contribute to ozone attainment in the area; or
- (3) in nonattainment areas within an ozone transport region, additional NO_x reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_x exemption.

Only the first test listed above is based on a showing that NO_x reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section 182(f) NO_x requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Comment 6

Commenters raised specific issues about the adequacy of the DRCOG 2015 Interim Regional Transportation Plan to ensure health standards when considered in relation to approval of the NO_x waiver. They further stated that

³ "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

granting an exemption would apparently last for the length of the transportation plan.

EPA Response

EPA disagrees with the commenters that the NO_x exemption would automatically last for the length of the transportation plan. EPA has already stated that it is amending the conformity rule to require that transportation plans and TIPs are consistent with the approved maintenance plan's and attainment demonstration's NO_x motor vehicle emissions budget, even where a conformity NO_x exemption has been granted. In addition, the exemption is being granted on a contingent basis (i.e. the exemption will last for only as long as the area's monitoring data continue to demonstrate attainment).

The specific arguments about what the 2015 Interim Regional Transportation Plan as a whole will or will not do in relation to the various air pollutants are beyond the scope of the EPA guidance for granting ozone NO_x exemptions. The effect of a NO_x exemption for Denver is limited solely to the issue of whether it may be exempted from meeting the applicable ozone NO_x requirements of the transportation and general conformity rules.

Comment 7

One commenter asked that EPA make clear the impact of granting a NO_x exemption from the conformity requirements. The commenter noted that the proposed rulemaking for this NO_x exemption request stated in Section V: "As currently written, none of the transportation conformity rule's NO_x requirements would ever apply to an area once such an area had received a NO_x transportation conformity exemption". The commenter believes that the rule should make it clear that transportation conformity NO_x requirements will continue to apply in Denver for wintertime NO_x emissions because the Denver metropolitan Nonattainment Area Element of the Colorado State Implementation Plan for Particulate Matter (PM-10) establishes emissions budgets for NO_x.

EPA Response

EPA agrees with the commenter that the impact of the ozone NO_x exemption is only whether the Denver area may be exempted from meeting the applicable ozone NO_x requirements. Applicable PM-10 NO_x requirements will still have to be met. Specifically, the transportation conformity rule's NO_x requirements will continue to apply in Denver for wintertime NO_x emissions

for PM-10. In addition, EPA has already noted that it intends to amend the transportation conformity rule to ensure that areas are consistent with motor vehicle emissions budgets for ozone and PM-10 NO_x, even if an ozone NO_x exemption has been granted.

III. Effective Date

This rulemaking is effective as of July 28, 1995. The Administrative Procedure Act (APA) 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication of the rule if the rule "relieves a restriction." Since the approval of the section 182(f) exemptions for the Denver metropolitan area is a substantive rule that relieves the restrictions associated with the CAA title I requirements to control NO_x emissions, the NO_x exemption approval may be made effective upon signature by the Regional Administrator.

IV. Final Action

The EPA has evaluated the DRCOG's exemption request for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that the exemption request and monitoring data qualifies the Denver metropolitan area as a "clean data area". Therefore, the EPA is granting Denver's section 182(f) exemption petition. The EPA has determined that the exemption petition, monitoring data, and other supporting data, meet the requirements and policy set forth in the General Preamble for Exemptions from the Transportation and General Conformity Nitrogen Oxides Provisions. The effect of this NO_x transportation and general conformity exemption is that Denver is relieved of the conformity rule's requirements for regional analysis for ozone NO_x emissions, as described earlier in section II, comment 7, of this notice. However, it should be noted that EPA's approval of the exemption is granted on a contingent basis, i.e., the exemption will last for only as long as the area's monitoring data continues to show no violations. If subsequently it is determined that the area has violated the standard, the exemption, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**. Existing transportation plans and TIPs and past conformity determinations will not be affected by the determination that the NO_x exemption no longer applies, but new conformity determinations would have to observe the NO_x requirements of the conformity rule. The State must continue to operate an

appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This proposal does not create any new requirements. Therefore, I certify that it does not have a significant impact on any small entities affected.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1995. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action relieves requirements otherwise imposed under the CAA and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of \$100 million

or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 28, 1995.

Kerrigan Clough,

Acting Regional Administrator.

PART 52—[AMENDED]

40 CFR part 52 is amended as follows:

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.326 is added to read as follows:

§ 52.326 Area-wide nitrogen oxides (NO_x) exemptions.

The Denver Regional Council of Governments (DRCOG) submitted a NO_x exemption petition to the EPA on May 25, 1994 and submitted supporting documentation via a letter dated August 1, 1994. This petition requested that the Denver metropolitan area, a transitional ozone nonattainment area, be exempted from the requirement to meet the NO_x provisions of the Federal transportation and general conformity rule with respect to ozone. The exemption request was based on monitoring data which demonstrated that the National Ambient Air Quality Standard for ozone had been attained in this area for the 3 years prior to the petition. The EPA approved this exemption request on July 28, 1995.

[FR Doc. 95–19480 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FRL–5274–4]

Determination of Attainment of Ozone Standard by Nashville, Tennessee, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 22, 1995, the EPA published a proposed rule (60 FR

32477) and a direct final rule (60 FR 32466) determining that the Ashland, Kentucky, Northern Kentucky (Cincinnati Area), Charlotte, North Carolina, and Nashville, Tennessee, ozone nonattainment areas were attaining the National Ambient Air Quality Standard (NAAQS) for ozone. Based on this determination, the EPA also determined that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act (Act) are not applicable to the areas so long as the areas continue to attain the ozone NAAQS. The 30-day comment period concluded on July 24, 1995. During this comment period, the EPA received one comment letter in response to the June 22, 1995, rulemaking. That comment addressed only the Northern Kentucky (Cincinnati) area. Response to that comment and final action on the Northern Kentucky area will be addressed in a subsequent notice if warranted. Additionally, since publication of the original determination on June 22, 1995, the Ashland, Kentucky, and Charlotte, North Carolina, areas were redesignated to attainment on June 29, 1995 (60 FR 33748), and July 5, 1995 (60 FR 34859), respectively, making this finding for those areas no longer necessary. This rule finalizes the EPA's determination that the Nashville, Tennessee, area has attained the ozone standard and that certain reasonable further progress and attainment demonstration requirements as well as other related requirements of part D of the Act are not applicable to this area as long as the area continues to attain the ozone NAAQS.

EFFECTIVE DATE: This action will be effective August 8, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Regulatory Planning & Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is (404) 347–3555, extension 4221.

SUPPLEMENTARY INFORMATION:

I. Background Information

On June 22, 1995, the EPA published a direct final rulemaking (60 FR 32466)

determining that the Ashland, Kentucky, Charlotte, North Carolina, and Nashville, Tennessee, moderate ozone nonattainment areas have attained the NAAQS for ozone. In that rulemaking, the EPA also determined that the requirements of section 182(b)(1) concerning the submission of a 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to these areas so long as the areas do not violate the ozone standard. In addition, the EPA determined that the sanctions clocks started on January 28, 1994, for the Ashland, Kentucky, and Charlotte, North Carolina, areas for failure to submit the section 182(b)(1) 15 percent plan and attainment demonstration, and on April 1, 1994, for the Nashville, Tennessee, area for submittal of an incomplete 15 percent plan would be stopped since the deficiencies on which they are based no longer exist. The clocks started on January 28, 1994, for the Ashland, Kentucky, and Charlotte, North Carolina areas were subsequently stopped by the aforementioned redesignation actions.

At the same time that the EPA published the direct final rule, a separate notice of proposed rulemaking was published in the **Federal Register** (60 FR 32477). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking. The EPA received one letter containing adverse comments regarding the direct final rule for Northern Kentucky within 30 days of publication of the proposed rule and withdrew the direct final rule on [insert date of withdrawal notice]. Any further action deemed necessary for the Northern Kentucky area will be taken in a separate notice.

The specific rationale and air quality analysis the EPA used to determine that the Nashville, Tennessee, moderate ozone nonattainment area has attained the ozone NAAQS and is not required to submit SIP revisions for reasonable further progress, attainment demonstration and related requirements are explained in the direct final rule and will not be restated here.

II. Final Rulemaking Action

The EPA is making a final determination that the Nashville, Tennessee, moderate ozone nonattainment area has attained the ozone standard and continues to attain the standard at this time. No comments were received regarding the proposal as it concerned Nashville. As a