

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

#### *EPA Response*

EPA disagrees with the commenters that the NO<sub>x</sub> 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<sub>x</sub> motor vehicle emissions budget, even where a conformity NO<sub>x</sub> 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<sub>x</sub> exemptions. The effect of a NO<sub>x</sub> exemption for Denver is limited solely to the issue of whether it may be exempted from meeting the applicable ozone NO<sub>x</sub> requirements of the transportation and general conformity rules.

#### *Comment 7*

One commenter asked that EPA make clear the impact of granting a NO<sub>x</sub> exemption from the conformity requirements. The commenter noted that the proposed rulemaking for this NO<sub>x</sub> exemption request stated in Section V: "As currently written, none of the transportation conformity rule's NO<sub>x</sub> requirements would ever apply to an area once such an area had received a NO<sub>x</sub> transportation conformity exemption". The commenter believes that the rule should make it clear that transportation conformity NO<sub>x</sub> requirements will continue to apply in Denver for wintertime NO<sub>x</sub> emissions because the Denver metropolitan Nonattainment Area Element of the Colorado State Implementation Plan for Particulate Matter (PM-10) establishes emissions budgets for NO<sub>x</sub>.

#### *EPA Response*

EPA agrees with the commenter that the impact of the ozone NO<sub>x</sub> exemption is only whether the Denver area may be exempted from meeting the applicable ozone NO<sub>x</sub> requirements. Applicable PM-10 NO<sub>x</sub> requirements will still have to be met. Specifically, the transportation conformity rule's NO<sub>x</sub> requirements will continue to apply in Denver for wintertime NO<sub>x</sub> 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<sub>x</sub>, even if an ozone NO<sub>x</sub> 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<sub>x</sub> emissions, the NO<sub>x</sub> 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<sub>x</sub> transportation and general conformity exemption is that Denver is relieved of the conformity rule's requirements for regional analysis for ozone NO<sub>x</sub> 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<sub>x</sub> exemption no longer applies, but new conformity determinations would have to observe the NO<sub>x</sub> 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