nature of the table, further notice and comment would be unnecessary.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 80

Fuel additives, Motor vehicle pollution.

Dated: April 13, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter 1 is amended as follows:

PART 9—[AMENDED]

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345, (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. The table in § 9.1 is amended by adding under the indicated heading the new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

REGULATION OF FUELS AND FUEL ADDITIVES

40 CFR citation	OMB control No.
* * *	*
80.141(c)–(f)	2060–0275
80.157	2060–0275
80.158	2060–0275
80.160	2060–0275
* * *	*

[FR Doc. 95–10063 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA–82–1–6926; FRL–5195–9]

Clean Air Act Section 182(f) NO_X Exemption Petition; Monterey Bay Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the approval of a petition submitted by the Monterey Bay Unified Air Pollution Control District (MBUAPCD) requesting that EPA grant an exemption for the Monterey Bay ozone nonattainment area (Monterey Bay) from the section 182(f) requirement to control major stationary sources of oxides of nitrogen (NO_X) emissions. EPA published a proposed action to approve the Monterey Bay NO_X exemption in the **Federal Register** on December 20, 1994. In accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act or CAA), the EPA has determined that additional NO_X reductions from major stationary sources in Monterey Bay would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. The approval of this action exempts Monterey Bay from implementing the NO_X requirements for reasonably available control technology (RACT), new source review (NSR), and the applicable general and transportation conformity and inspection and maintenance (I/M) requirements of the CAA. The EPA is finalizing approval of this action under provisions of the Act regarding plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective as of April 12, 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) exemption for the Monterey Bay area is a substantive action 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 EPA Administrator.

ADDRESSES: Copies of the petition and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted petition are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street SW., Washington, DC 20460.

Monterey Bay Unified Air Pollution Control District, Rule Development Section, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1994, EPA proposed to approve the Monterey Bay NO_X exemption petition, submitted by the MBUAPCD on April 26, 1994. 59 FR 65523. The exemption petition is based on ambient monitoring data and demonstrates that additional NO_X reductions in Monterey Bay would not contribute to attainment of the NAAQS for ozone. A detailed discussion of the background concerning the NO_X requirements and the submitted petition is provided in the notice of proposed rulemaking (NPRM) cited above.

EPA has evaluated the exemption petition for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA believes that the petition satisfies the applicable EPA requirements and is, therefore, exempting the Monterey Bay area from implementing the NO_X requirements for RACT, NSR, and the applicable general and transportation conformity and I/M requirements [1] of the CAA.

The proposal identifies two NO_X RACT source categories MBUAPCD has identified which encompass the major stationary sources of NO_X in the Monterey Bay nonattainment area.

Rules have been developed and submitted for these two categories, entitled, Rule 431, Emissions From Utility Power Boilers, and Rule 435, Control of Nitrogen Oxides From Kilns. EPA indicated in the NPRM that once the final approval of the NO_X waiver is granted, MBUAPCD would then rescind the two NO_X rules submitted for inclusion into the California SIP. This is not the intention of MBUAPCD with respect to one of these rules. MBUAPCD, in subsequently applying to EPA for redesignation to attainment of the NAAQS for ozone, has indicated that the emissions reductions achieved by rule 431 will form part of its ozone

[1] See ''Scope of Nitrogen Oxides (NO_X) Exemptions,'' from G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch (MD–15), to the Air Branch Chiefs, January 12, 1995. ''I/M Requirements in NO_X RACT Exempt Areas'', from Mary T. Smith, Acting Director, Office of Mobile Sources, to the Air Division Directors, October 14, 1994.

maintenance plan. Although NO_X waivers may be granted for areas demonstrating that NO_X reductions do not contribute to attainment of the ozone standard, areas may choose to impose NO_X restrictions on other bases, such as ozone maintenance, visibility protection, PM–10 control, acid deposition, or other environmental protection purposes. MBUAPCD has indicated in its attainment plan its belief that the reductions achieved from rule 431 are needed for maintenance of the ozone standard. Therefore, rule 431 will not be rescinded, but instead will be evaluated for incorporation into the California SIP. However, rule 435 contains language within the rule which will make its applicability void upon final approval of the NO_X waiver.

Response to Public Comments

A 30-day public comment period was provided in 59 FR 65523. EPA received no comments specifically regarding the Monterey Bay exemption petition. However, in August 1994, three environmental groups submitted joint comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas. The comments address EPA's policy regarding NO_X exemptions in general and apply to all actions EPA takes regarding section 182(f) NO_X exemptions. Therefore, these comments are addressed below.

Comment: The 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), the CAA's conformity provisions.

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 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).

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO_X exemption would have needed to submit their exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the CAA. For maintenance plans, the CAA does not specify a deadline for submittal of maintenance demonstrations. Clearly, the CAA envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The CAA requires conformity to the applicable SIP with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the APA. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

Comment: The commenters stated that the modeling required by EPA guidance is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., ''substantial'' reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

Response: The EPA does not believe that this comment is applicable to the Monterey Bay exemption because the demonstration is based on three years of ambient monitoring data and not modeling.

Comment: The commenters provided a comment that three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment, and that EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment.''

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: Some commenters provided a comment on all section 182(f) actions that a waiver of NO_X controls is unlawful if such a waiver will impede attainment and maintenance of the ozone standard in separate downwind areas.

Response: The EPA believes that while this comment may be applicable to proposed NO_X exemption actions in other areas, it is not applicable to the Monterey Bay exemption action because the EPA is unaware of, and the comment itself does not specify, any downwind areas for which NO_X transport is of concern.

However, as a result of these comments and comments received regarding transport in NO_X exemption requests for other areas in the United States, EPA reevaluated its position on this issue and decided to revise the previously issued guidance.[2] As described below, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by EPA on a NO_X exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_X emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas in the modeling domain have requested exemptions from NO_X requirements under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, 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 national ambient air quality standard for ozone in the area.''[3] As described in section 4.3 of the December 16, 1993 guidance document, EPA believes that the term ''area'' means the ''nonattainment area'' and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_X emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to ''consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State [see section 110(a)(2)(D)(i)(I)].''

In contrast, section 4.4 of the guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) [not section 182(f)] prohibits such impacts.

Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence, is withdrawing the guidance presently contained in section 4.4. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

Comment: Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. The 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,

[2] See ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'', issued February 8, 1995 by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards.

[3] There are 3 NO_X exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. 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. Consequently, as stated in section 1.4 of the December 16, 1993 EPA guidance, ''[w]here any 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.''

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.

Response: With respect to conformity, EPA's conformity rules[4 5] provide a NO_X waiver if an area receives a section 182(f) exemption. In its ''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 transportation improvement program (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. 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. However, the exemption for Monterey Bay was submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on this petition until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

Comment: The commenters argue that the CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

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 Congress' 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.

EPA Action

EPA is finalizing this action to exempt Monterey Bay from implementing the NO_X requirements for RACT, NSR, the applicable general and transportation conformity requirements, and I/M.

The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO_X Supplement to the General Preamble (57 FR 55628, November 25, 1992) and further guidance issued by

[4] See ''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).

[5] See ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule,'' November 30, 1993 (58 FR 63214).

EPA,[6] section 182(f) exemptions are granted on a contingent basis and last for only as long as the area's monitoring data continue to demonstrate attainment. Monterey Bay is required to continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

If, prior to redesignation of the area to attainment, a violation of the ozone NAAQS is monitored in Monterey Bay (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), the section 182(f) exemption would no longer apply, as of the date EPA makes a determination that a violation has occurred. EPA would notify the area that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**. If the exemption is revoked, the area must comply with any applicable NO_X requirements set forth in the CAA. Thus, a determination that the NO_X exemption no longer applies would mean that the applicable NO_X NSR, general and transportation conformity, and I/M provisions would immediately be applicable (see 58 FR 63214 and 58 FR 62188) in Monterey Bay.

If Monterey Bay is redesignated to attainment of the ozone NAAQS, NO_X RACT is to be implemented as provided for as contingency measures in the maintenance plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'', and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

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 and 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.

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 May 25, 1995. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 12, 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 D—California

2. Subpart F is amended by adding § 52.235 to read as follows:

§ 52.235 Control strategy for ozone: Oxides of nitrogen.

EPA is approving an exemption request submitted by the Monterey Bay Unified Air Pollution Control District on April 26, 1994 for the Monterey Bay ozone nonattainment area from the NO_X RACT requirements contained in section 182(f) of the Clean Air Act. This approval exempts the area from implementing the oxides of nitrogen (NO_X) requirements for reasonably available control technology (RACT), new source review (NSR), the related requirements of general and transportation conformity regulations, and applicable inspection and maintenance (I/M). The exemption is based on ambient air monitoring data and lasts for only as long as the area's monitoring efforts continue to demonstrate attainment without NO_X reductions from major stationary sources.

[FR Doc. 95–10104 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–W

[6] See ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'', issued by John S. Seitz, Director, Office of Air Quality Planning and Standards (MD–10), May 27, 1994.

40 CFR Part 81

[CA132–1–6898; 5159–6]

California, Sacramento Ozone Nonattainment Area, Reclassification to Severe

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 6, 1991, the Sacramento Metro ozone nonattainment area was classified under the Clean Air Act (CAA) as ''Serious'' with an attainment date of no later than 1999. On November 15, 1994, California submitted the State implementation plan (SIP) for ozone attainment. For the Sacramento Metro ozone nonattainment area, the SIP relied on an attainment date of 2005. On December 29, 1994, the State submitted a revision to the SIP which reaffirmed the 2005 attainment date. EPA construes these submittals to be a voluntary request for a reclassification of the Sacramento Metro area from a ''Serious'' to a ''Severe'' ozone nonattainment area pursuant to section 181(b)(3) of the CAA. EPA is granting California's request for reclassification of the Sacramento Metro area to ''Severe'' in today's document.

EFFECTIVE DATE: June 1, 1995.

ADDRESSES: Materials relevant to this document can be found in the following locations: EPA Air Docket Section, Attn: Docket No. A–94–09, Environmental Protection Agency (Mail Code—6102), Waterside Mall, Room M–1500, 401 M Street, S.W., Washington, DC 20460, (phone 202–260–7549).

The docket is available for public inspection between 8:30 a.m. and 12 noon, and between 1:30 p.m. and 3:30 p.m. EPA may charge a reasonable fee for copying.