prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

This final rule only approves the incorporation of existing state rules into the SIP and imposes no additional requirements. This rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year. EPA, therefore, has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Furthermore, because small governments will not be significantly or uniquely affected by this rule, the EPA is not required to develop a plan with regard to small governments.

E. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 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. sections 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements a State has already imposed. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: May 13, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, 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.

2. Section 52.770 is amended by adding paragraph (c)(106) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(106) On September 19, 1995, and November 8, 1995, Indiana submitted automobile and mobile equipment refinishing rules for Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan. This rule requires suppliers and refinishers to meet volatile organic compound content limits or equivalent control measures for coatings used in automobile and mobile equipment refinishing operations in the four counties, as well as establishing certain coating applicator and equipment cleaning requirements.

(i) Incorporation by reference. 326 Indiana Administrative Code 8–10: Automobile refinishing, Section 1: Applicability, Section 2: Definitions, Section 3: Requirements, Section 4: Means to limit volatile organic compound emissions, Section 5: Work practice standards, Section 6: Compliance procedures, Section 7: Test procedures, Section 8: Control system operation, maintenance, and monitoring, and Section 9: Record keeping and reporting. Adopted by the Indiana Air Pollution Control Board June 7, 1995. Filed with the Secretary of State October 3, 1995. Published at Indiana Register, Volume 19, Number 2, November 1, 1995. Effective November 2, 1995.

* * * * *

[FR Doc. 96–14965 Filed 6–12–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[NM 28–1–7312; FRL–5514–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Mexico; Approval of the Vehicle Inspection and Maintenance Program, Emissions Inventory, and Maintenance Plan; Redesignation to Attainment; Albuquerque/Bernalillo County, New Mexico; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is redesignating to attainment the Albuquerque/Bernalillo County carbon monoxide (CO) nonattainment area. This action is in response to a request from the Governor of New Mexico on behalf of the Albuquerque and Bernalillo County carbon monoxide nonattainment area. The Governor's request included a revision to the State Implementation Plan (SIP) for the administration of a vehicle inspection and maintenance (I/M) program, a 1993 emissions inventory for Albuquerque/Bernalillo County, and an attainment maintenance plan. On February 16, 1996, the EPA proposed approval of the Albuquerque/ Bernalillo County I/M program, 1993 periodic emissions inventory, the maintenance plan, and the request for redesignation, because all met the requirements set forth in the Clean Air Act (Act). This final action promulgates the rule, redesignating the area to attainment, and incorporating the request into the SIP.

EFFECTIVE DATE: July 15, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket Room M1500), Environmental Protection Agency, 401 M Street SW., Washington, D. C. 20460

Environmental Protection Agency, Region 6, Air Planning Section (6PD–

L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza Room 3023, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Witosky, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

Albuquerque/Bernalillo County, New Mexico, was designated nonattainment for CO and classified as moderate with a design value below 12.7 parts per million (ppm) (specifically 11.1 ppm), under sections 107(d)(4)(A) and 186(a) of the Act, upon enactment of the Clean Air Act Amendments (CAAA) of 1990 (the Act).[1] Please reference 56 FR 56694 (November 6, 1991) and 57 FR 13498 and 13529 (April 16, 1992). On November 5, 1992, the Governor of New Mexico submitted to the EPA a SIP revision for CO concerning Albuquerque/Bernalillo County that was intended to satisfy the Act's requirements due on November 15, 1992. The Act outlines certain required items to be included in CO SIPs. The required items for the Albuquerque/Bernalillo County CO SIP, due November 15, 1992, included: (1) a comprehensive, accurate, and current inventory of actual emissions from all sources of CO in the nonattainment area (sections 172(c)(3) and 187(a)(1) of the Act); (2) no later than September 30, 1995, and no later than the end of each three year period thereafter, until the area is redesignated to attainment, a revised inventory meeting the requirements of sections 187(a)(1) and 187(a)(5) of the Act; (3) a permit program to be submitted by November 15, 1993, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of CO (section 172(c)(5)); (4) contingency measures due November 15, 1993, that are to be implemented if the EPA determines that the area has failed to attain the primary standards by the applicable date (section 172(c)(9)); (5) a commitment to upgrade and submit a SIP revision for the I/M program by November 15, 1993, (section 187(a)(4)); and (6) an oxygenated fuels program (section 211(m)).

Several of these items required to be in the City/County CO SIP were approved at different times prior to this action. The 1990 base year inventory, the oxygenated fuels program, and the winter wood burning program were approved on November 29, 1993, at 58 FR 62535. The nonattainment New Source Review program was approved on December 21, 1994, at 58 FR 67326. Required contingency measures were approved on May 5, 1995, at 59 FR 23167. Transportation conformity rules were approved on November 8, 1995, at 60 FR 56238. This action provides final approval for the 1993 emissions inventory, the vehicle inspection and maintenance program, the attainment maintenance plan, and the maintenance contingency provisions.[2] Hence, the City/County has a completely approved SIP for the purposes of redesignation.

The Albuquerque/Bernalillo County Air Quality Control Board has ambient monitoring data showing attainment of the CO National Ambient Air Quality Standards (NAAQS) during the period from 1992 through all of 1995. Therefore, in an effort to comply with the Act and to ensure continued attainment of the CO NAAQS, on April 14, 1995, the Governor of New Mexico submitted a CO redesignation request and a maintenance plan for the Albuquerque/Bernalillo County area. The redesignation request and maintenance plan were both approved by the Albuquerque/Bernalillo County Air Quality Control Board (hereafter referred to as City/County) after a public hearing held on April 13, 1995.

II. Evaluation of Petition

The Act revised section 107(d)(3)(E) to provide specific requirements that an area must meet in order to be redesignated from nonattainment to attainment. The EPA performed a detailed analysis of the City/County's petition and proposed approval on February 16, 1996 (see 61 FR 6179). The EPA concluded that the City/County had met all applicable requirements. No comments received during the public comment period have given the EPA cause to rescind the proposed approval. Please see the proposed rule and Technical Support Document (TSD) for the complete analysis.

III. Response to Comments

The EPA received one letter containing adverse comments to the proposed action.

Comment: The commenter questioned whether the City of Albuquerque and Bernalillo County would be in attainment if a previously operational special-purpose monitor were still in place. The commenter contended that the permanent monitoring network in place does not accurately reflect air quality in the ''Uptown'' area of the City.

Response: The EPA disagrees with this comment in two respects. The City/County operates an extensive CO monitoring network that sufficiently covers the nonattainment area, operating more monitors than required of cities of equal or greater population and area. All current monitoring sites meet the siting criteria the EPA uses to evaluate the location of individual monitors. The network as a whole also conforms to the current EPA policy and guidance that dictate coverage and resolution of monitoring data within a given domain to demonstrate attainment.

The EPA reviewed the comment with the City/County to determine if air quality analysis had been conducted in the ''Uptown'' area of the City. The City/County provided documentation and analysis of a monitoring exercise carried out in the high CO season of 1995. The City/County deployed two special purpose monitors for 11 days to discern if a CO ''hot spot'' exists at the intersection nearest the previous site of the special purpose monitor. Direct monitoring data showed little possibility that ambient CO concentrations currently present a problem for human health or the environment. The monitoring data generated by the special purpose monitor indicate CO levels in compliance with the national standards. It should be pointed out that the special purpose monitors were placed to measure the highest possible concentrations at the locations in question, and CO levels still remained below national standards. Statistical tests on the correlation between CO values at the permanent and special purpose monitors indicate that the monitoring data were representative of air quality, reasonable and accurate. Hence, the City/County has adequately ascertained that the existing monitoring network accurately reflects air quality in the ''Uptown'' area. To review the information provided by City/County, see the addendum to the Technical

[1] The Clean Air Act as amended (1990 Amendments) made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the CO NAAQS (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the CAAA, 42 U.S.C. sections 7401 *et seq.*

[2] The attainment contingency measure approved on May 5, 1995 at 59 FR 23167 would become one of two maintenance contingency measures through final action on this petition.

Support Document (TSD) in the docket file.

Comment: The commenter asserted that efforts of the City of Albuquerque and Bernalillo County to reduce vehicle-miles travelled (VMT) in the nonattainment area are inadequate for the City/County to achieve attainment.

Response: The EPA disagrees that the City/County should be required to implement additional reductions in VMT to attain the standard. The main components of the CO control program are the vehicle inspection and maintenance program, the oxygenated fuels program, the episode contingency plan, and the new source review permit program. The City/County has also adopted general and transportation conformity rules that are also currently being applied. Although the commenter specifically mentions high occupancy vehicle (HOV) lanes, the use of mass transit, public education campaigns, and pedestrian and bike trails, these programs do not constitute the mainstay of the CO control program, upon which the City/County achieved attainment and requested redesignation. The main parts of the control program, in conjunction with other federal programs, have enabled the area to achieve four years of continuous attainment with the CO standard. Should the main parts of the program not achieve maintenence of the standard, contingency measures will be applied without further action by the City/County to bring the area back into attainment. See the proposed rule for discussion of the applicable contingency measures.

Comment: The commenter asserted that implementation of the Intermodal Multimodal Transporation Plan and Transportation Improvement Program is deficient.

Response: The implementation of the Intermodal Multimodal Transporation Plan and Transportation Improvement Plans (TIP) are not under the purview of the EPA. The EPA takes this opportunity to point out that the U.S. Department of Transportation renders the determination that the TIP does or does not conform to the SIP, for transportation planning purposes.

IV. Final Action

The EPA is issuing final approval of the request of the State of New Mexico and Albuquerque/Bernalillo County to redesignate the Albuquerque CO nonattainment area to attainment status. The EPA is also issuing final approval of the vehicle inspection and maintenance program, the 1993 periodic emissions inventory, and the attainment maintenance plan. The EPA received and addressed comments on the proposed approval of all these elements of the complete CO SIP.

This action has been classified as a Table 3 action under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et seq., the 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, the 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.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. § 7410(a)(2)).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

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 undertake various actions in association with proposed or final rules that 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.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The EPA has also determined that this 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

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Dated: May 15, 1996.

Carol M. Browner,

Administator.

40 CFR Parts 52 and 81 are 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 GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(63) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(63) A revision to the New Mexico SIP approving a request for redesignation to attainment, a vehicle inspection and maintenance program, and the required maintenance plan for the Albuquerque/Bernalillo County CO nonattainment area, submitted by the Governor on May 11, 1995. The 1993 emissions inventory and projections were included in the maintenance plan.

(i) Incorporation by reference.

(A) A letter from the Governor of New Mexico to EPA dated April 14, 1995, in which the Governor requested redesignation to attainment based on the adopted Carbon Monoxide Redesignation Request and Maintenance Plan for Albuquerque/Bernalillo County New Mexico.

(B) Albuquerque/Bernalillo County Air Quality Control Board Regulation No. 28, Motor Vehicle Inspection, as amended April 12, 1995 and effective on July 1, 1995.

(ii) Additional material. Carbon Monoxide Redesignation Request and Maintenance Plan for Albuquerque/Bernalillo County New Mexico, approved and adopted by the Air Quality Control Board on April 13, 1995.

3. Section 52.1627 is revised to read as follows:

§ 52.1627 Control strategy and regulations: Carbon monoxide.

Part D Approval. The Albuquerque/Bernalillo County carbon monoxide maintenance plan as adopted on April 13, 1995, meets the requirements of Section 172 of the Clean Air Act, and is therefore approved.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.332 the table for ''New Mexico-Carbon Monoxide'' is amended by revising the entry for the Albuquerque Area Bernalillo County to read as follows:

§ 81.332 New Mexico.

* * * * *

NEW MEXICO-CARBON MONOXIDE

	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Albuquerque Area Bernalillo County	July 15, 1996	Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 96–14968 Filed 6–12–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1150

[Ex Parte No. 392 (Sub-Nos. 2 and 3)]

Class Exemption for the Construction of Connecting Track and Rail Construction Under 49 U.S.C. 10901

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) grants final approval to a class exemption for the construction and operation of connecting railroad track in Ex Parte No. 392 (Sub-No. 2) and terminates the Ex Parte No. 392 (Sub-No. 3) proceeding that proposed to adopt a different class exemption for all rail construction projects not covered by the connecting track exemption. Final regulations establishing the exemption for connecting track are set forth below.

EFFECTIVE DATE: July 13, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The exemption for the construction of connecting track was initially proposed in Ex Parte No. 392 (Sub-No. 2). By decision served on September 15, 1992, and notice of proposed rulemaking published in the Federal Register on September 16, 1992 (57 FR 42733), our predecessor agency, the Interstate Commerce Commission (ICC), sought public comments on proposed changes to 49 CFR Part 1150 that would establish a class exemption for all rail construction, or, alternatively, for construction of connecting railroad tracks. The Board is adopting (with minor changes) the proposed class exemption for the construction and operation of connecting tracks. We believe the changes will facilitate expanded rail service and reduce regulatory delay and also satisfy the requirements of the environmental laws, because the exemption has been structured so as to assure that there will be a full and timely environmental review in each case. We do not believe a class exemption for other rail constructions is warranted. Therefore, we will terminate the Ex Parte No. 392 (Sub-No. 3) proceeding and simply continue our practice of expeditiously handling individual construction exemption requests as an alternative to the class exemption the ICC had proposed. Additional information is contained in the Board's decision served on June 13, 1996. To purchase a copy of the decision, write to, call, or pick up in person from: DC News & Data, Inc., 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423. (Assistance for the hearing impaired is available through TDD service (202) 927–5721.)

List of Subjects in 49 CFR Part 1150

Administrative practice and procedure, Railroads.

Decided: May 29, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, part 1150 is amended as set forth below:

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

1. The authority citation for part 1150 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 701 note (sec. 204 of the ICC Termination Act of 1995), 721(a), 10502, and 10901.

2. A new § 1150.36 is added to read as follows: