

federally enforceable prior to permit issuance". Accordingly, MBUAPCD modified this section of its rules such that the May 10, 1996 submittal contains the following language: "All emission reductions must be identified and enforceable prior to issuance of the Authority to Construct." This language satisfies EPA's requirement.

Rule 207, Section 4.3.3.2: EPA specified that this section must be revised to require "that emission reductions obtained from another nonattainment area may be used only if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located, and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located." Accordingly, MBUAPCD's May 10, 1996 submittal contains a new section 4.3.3.2.2 with the following language: "The offsets may only be obtained from an upwind area that has been designated by EPA to have a nonattainment status equal to or more serious than the North Central Coast air basin." and a new section 4.3.3.2.3 with the following language: "The offsets may only be obtained from an upwind area that could contribute to violations of the national ambient air quality standards in the North Central air basin." This language satisfies EPA's requirement.

Final Action and Implications

EPA is promulgating final approval of MBUAPCD's NSR program as submitted on May 10, 1996. This submittal consists of MBUAPCD's Rules 207 (Review of New and Modified Sources) and 215 (Banking of Emission Reductions)

EPA did not receive any comments on the changes detailed above that were necessary to make MBUAPCD's program fully approvable. The scope of this approval applies to all new or modified sources (as defined in the program) within the Monterey Bay Unified Air Pollution Control District.

Administrative Review

Copies of MBUAPCD's submittal and other information relied upon for this final approval are contained in docket number NSRR 2-96 MBUAPCD, at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in development of this final approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

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

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.

SIP approvals under section 110 and subchapter I, parts C and 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 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 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. EPA has determined that the approval proposed in this notice does not include such a federal mandate, as this proposed federal action would approve pre-existing requirements under state or local law, and would impose no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Prevention of significant deterioration, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 31, 1996.

Felicia Marcus,
Regional Administrator.

Subpart F of 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 paragraph (c)(231) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) New and amended regulations for the following APCDs were submitted on May 10, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified APCD.

(I) Rules 207 and 215, adopted on March 20, 1996.

* * * * *

[FR Doc. 96-17643 Filed 7-10-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[TN-167-9627a; FRL-5529-3]

Control Strategy: Ozone (O₃); Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an exemption request from the oxides of nitrogen (NO_x) reasonably available control technology (RACT) and conformity requirements of the Clean Air Act as amended in 1990 (CAA) for the five county Middle Tennessee (Nashville) moderate ozone (O₃) nonattainment area. The request for a NO_x RACT and conformity exemption was submitted on March 21, 1995, by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC). The exemption request is based upon the

most recent three years of monitoring data, which demonstrate that additional reductions of NO_x would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS).

DATES: This final rule is effective September 9, 1996 unless adverse or critical comments are received by August 12, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: William Denman; Stationary Source Planning Unit; Regulatory Planning and Development Section; Air Programs Branch; Air, Pesticides, and Toxics Management Division; U.S. Environmental Protection Agency, Region 4; 345 Courtland Street NE, Atlanta, Georgia 30365.

A copy of the exemption request is available for inspection at the following locations (it is recommended that you contact William Denman at (404) 347-3555 extension 4208 before visiting the Region 4 office).

United States Environmental Protection Agency; Air, Pesticides, and Toxics Management Division; Air Programs Branch; Regulatory Planning and Development Section; Stationary Source Planning Unit; 345 Courtland Street NE; Atlanta, Georgia 30365.
Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243-1531, 615/532-0554.

FOR FURTHER INFORMATION CONTACT: William Denman; Stationary Source Planning Unit; Regulatory Planning and Development Section; Air Programs Branch; Air Pesticides and Toxics Management Division; U.S. Environmental Protection Agency; 345 Courtland Street NE, Atlanta, Georgia 30365. Reference file TN-167-9627a.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for the reduction of NO_x emissions are set out in section 182(f) of the CAA, which requires states with nonattainment areas of moderate and above to require the same provisions for major stationary sources of NO_x as apply to major stationary sources of volatile organic compounds (VOCs). One of the requirements of major sources of VOCs is RACT. Therefore, per section 182 of the CAA, RACT is also a requirement for major sources of NO_x. However, under section 182(f)(1)(A) of the CAA, an exemption from the NO_x requirement may be granted for nonattainment areas outside an ozone transport region if additional reductions of NO_x would not contribute to attainment. The NO_x

RACT exemption request is based upon the most recent three years of monitoring data, which demonstrate that additional reductions of NO_x would not contribute to attainment of the NAAQS.

The criteria established for the evaluation of a NO_x RACT exemption request from the section 182(f) requirements are set forth in an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994, entitled, "Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria;" an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated December 16, 1993, entitled, "Guideline for Determining the Applicability of Nitrogen Oxide Requirements Under Section 182(f)," dated December 16, 1993; and an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated February 8, 1995, entitled, "Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria." The February 8, 1995, memorandum referenced above decouples the section 182(f) exemptions from NO_x transport issues. In an area that did not implement the section 182(f) NO_x requirements, but did attain the O₃ standard as demonstrated by ambient air monitoring data (consistent with 40 CFR Part 58 and recorded in the EPA's Aerometric Information Retrieval system (AIRS)), it is clear that the additional NO_x reductions required by section 182(f) would not contribute to attainment of the NAAQS in that area.

On November 14, 1994, the State of Tennessee submitted to EPA Region 4 a request to redesignate the Middle Tennessee (Nashville) moderate O₃ nonattainment area to attainment. The redesignation request is currently under review and will be addressed in a separate rulemaking. On March 21, 1995, the State of Tennessee requested an exemption from the NO_x RACT and NO_x conformity requirements in section 182(f) of the CAA for the Middle Tennessee ozone nonattainment area. The exemption request is based upon ambient air monitoring data from 1992, 1993, and 1994. The five county Middle Tennessee nonattainment area was determined to have attained the National Ambient Air Quality Standard (NAAQS) for ozone in the Federal Register on August 8, 1995, (60 FR 40291) in accordance with EPA guidance issued on May 10, 1995, and has continued to monitor attainment to date. This guidance relieved certain nonattainment areas with "clean air

data" from some CAA requirements. Therefore, this area is meeting the O₃ NAAQS standard in the entire five county Middle Tennessee area for the relevant three year period. Because the Middle Tennessee area is meeting the O₃ NAAQS, this exemption request for the area meets the applicable requirements contained in the EPA policy and guidance documents referenced above.

However, some NO_x reductions were either obtained prior to the area attaining the ozone standard or have been determined to be necessary for maintenance. Specifically, those reductions obtained prior to attaining the standard were from major source tangentially-fired coal burning boilers subject to Tennessee's rule for the regulation of nitrogen oxides (1200-3-27-.03(1)(b)). The NO_x reductions necessary for maintenance are from two natural gas pumping stations located in the nonattainment area.

Tennessee submitted its chapter for regulating nitrogen oxides (1200-3-27) in submittals to EPA dated June 14, 1993, and May 26, 1994, and revised the submittals on July 29, 1994, and February 23, 1996. Tennessee held a public hearing for the operating permits issued for the two natural gas pumping stations on April 29, 1996. These two sources must be controlled to demonstrate maintenance. The Tennessee Air Pollution Control Board (TAPCB) met to take action on these permits on May 9-10, 1996. After approval by the TAPCB, the permits will be officially submitted to EPA. EPA will act on the NO_x controls which obtained emission reductions prior to the area attaining the standard and those necessary for maintaining the ozone standard either prior to or concurrently with the ozone redesignation request. The approval of this exemption does not exempt sources from any State Implementation Plan (SIP) approved NO_x control requirements.

Until this area is designated attainment, the continuation of the section 182(f) exemption granted herein is contingent upon continued monitoring and continued maintenance of the O₃ NAAQS in the entire Middle Tennessee nonattainment area. If there is a violation of the O₃ NAAQS in any portion of the Middle Tennessee nonattainment area, the exemption will no longer be applicable as of the date of any such determination. Should this occur, EPA will provide notice in the Federal Register. A determination that the NO_x exemption no longer applies would mean that the NO_x RACT requirement is immediately applicable to the affected area and the exemption

from NO_x conformity is no longer valid. EPA believes some reasonable period of notice is necessary to provide major stationary sources subject to the RACT requirement time to purchase, install, and operate any required controls. Accordingly, the State may provide sources a reasonable time period to meet the RACT emission limits after the EPA determination that NO_x RACT requirement is necessary. EPA expects the time period to be as expeditious as practicable, but in no case longer than 24 months. The approval of this exemption from federal NO_x requirements in no way exempts sources from any NO_x controls required by the State.

This approval of the State of Tennessee's request for an exemption from the NO_x RACT requirement of the CAA as amended in 1990 is being acted on as a direct final rule making without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The National Resources Defense Council (NRDC), Sierra Defense Club, and Environmental Defense Fund (EDF) submitted adverse comments to Mary Nichols on August 24, 1994, regarding all Federal Register notices proposing to approve section 182(f) NO_x exemption requests. The EPA responded to the adverse comments as set forth below.

NRDC 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), 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]" may petition for a NO_x determination "at any time" after the ozone precursor study required under section 185B of the Act is finalized, 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. The specific time frame for EPA action established in paragraph (3) is substantially shorter than the time frame usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct—and more expeditious—from the plan-revision process intended under paragraph (1). Thus, EPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the

substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the requirement in paragraph (1) for EPA to grant exemptions only when acting on plan revisions.

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 need 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 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 Administrative Procedure Act. 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.

NRDC 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).

NRDC Comment 3: 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 time frame 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.

Pollution Probe (Ontario 9-27-94)

Air Quality Comment: Several commenters stated that the air quality monitoring data alone does not support this exemption proposal. The air quality levels are below EPA's definition of an exceedance of the ozone NAAQS at 0.125 ppm, but are greater than the ozone NAAQS of 0.120 ppm.

EPA Response: For the reasons provided below, EPA does not agree with the commenter's conclusion. As stated in 40 CFR 50.9, the ozone "standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 ug/m³) is equal to or less than 1, as determined by Appendix H." Appendix H references EPA's "Guideline for Interpretation of Ozone Air Quality Standards" (EPA-450/4-79-003, January 1979), which notes that the stated level of the standard is taken as defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up to 0.01). Thus, 0.125 ppm is the smallest concentration value in excess of the level of the ozone standard.

The transportation conformity rule states that its NO_x provisions do not apply when the Administrator has determined under section 182(f) of the Clean Air Act that "additional reductions of NO_x would not contribute to attainment." On June 17, 1994, EPA published in the Federal Register the general preamble for exemption from nitrogen oxide provisions (59 FR 31238). It was clarified in this notice that guidance for transportation conformity is intended to also apply with respect to general conformity. In accordance with this guidance, once EPA grants the NO_x transportation conformity exemption, the area is

relieved of the transportation conformity rule's requirements for regional analysis of NO_x emissions. However, once the maintenance plan for the middle Tennessee ozone nonattainment area is approved, any previously approved NO_x conformity exemption no longer applies. The area must then demonstrate as part of its conformity determinations that the transportation plan and Transportation Improvement Plan (TIP) are consistent with the motor vehicle emissions budget for NO_x where such a budget is established by the maintenance plan.

Final Action

The EPA is approving Tennessee's request to exempt the Middle Tennessee moderate O₃ nonattainment area from the section 182(f) NO_x RACT and NO_x conformity requirements without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This approval is based upon the evidence provided by Tennessee showing compliance with the requirements outlined in the CAA and in applicable EPA guidance. If a violation of the O₃ NAAQS occurs in any portion of the Middle Tennessee area while the area is designated nonattainment, the exemption from the NO_x RACT and NO_x conformity requirements of section 182(f) of the CAA in the applicable area shall no longer apply.

This action is not a SIP revision and is not subject to the requirements of section 110 of the CAA. The authority to approve or disapprove exemptions from NO_x requirements under section 182 of the CAA was delegated to the Regional Administrator from the Administrator in a memo dated July 6, 1994, from Jonathan Cannon, Assistant Administrator, to the Administrator, titled, "Proposed Delegation of Authority: 'Exemptions from Nitrogen Oxide Requirements Under Clean Air Act section 182(f) and Related Provisions of the Transportation and General Conformity Rules' Decision Memorandum." In a separate document in this Federal Register publication, the EPA is proposing to approve the request should adverse or critical comments be filed. This action will be effective September 9, 1996 unless, by August 12, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule

based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 9, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 1996. Filing a petition for reconsideration by the Administrator of this final rule 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) of the CAA, 42 U.S.C. 7607(b)(2).)

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *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. This rule approves an exemption from a CAA requirement. Therefore, I certify that it does not have a significant impact on any small entities affected.

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 182 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these

regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 18, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 RR—Tennessee

2. Section 52.2237 is added to read as follows:

§ 52.2237 NO_x RACT and NO_x conformity exemption.

Approval—EPA is approving the section 182(f) oxides of nitrogen (NO_x) reasonably available control technology (RACT) and NO_x conformity exemption request submitted by the Tennessee Department of Environment and Conservation on March 21, 1995, for the five county middle Tennessee (Nashville) ozone moderate nonattainment area. This approval exempts the area from implementing federal NO_x RACT on major sources of NO_x and exempts Tennessee from NO_x conformity. This approval does not exempt sources from any State required or State Implementation Plan (SIP) approved NO_x controls. If a violation of the ozone NAAQS occurs in the area, the exemption from the requirement of section 182(f) of the CAA in the applicable area shall not apply.

[FR Doc. 96–17644 Filed 7–10–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 79

[FRL–5532–4]

Registration of Fuels and Fuel Additives: Minor Changes to the Testing Requirements for Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.