

any monitor in the area during 1994. All monitors in the Nashville area have less than 1.1 expected exceedance rate. One of the two monitors located in Sumner County recorded 3 exceedances during the 1992-94 period. None of the other monitors in the Nashville ozone nonattainment area have recorded a violation since 1988. Thus, these areas are no longer recording violations of the air quality standard for ozone. A more detailed summary of the ozone monitoring data for the area is provided in the EPA technical support document dated May 19, 1995.

Final Action

EPA determines that the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, and Nashville, Tennessee, ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time. As a consequence of EPA's determination that the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, and Nashville, Tennessee, areas have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the areas so long as the areas do not violate the ozone standard.

The issuance of this determination will have no immediate impact on the way transportation conformity is demonstrated. These areas will continue to demonstrate conformity using the build/no-build test and less-than-1990 test (section 51.436-51.446 of the transportation conformity rule), and the 15 percent SIP if one has been submitted (and attainment/RFP SIP, if one with a budget has been submitted). Since these areas are the subject of conformity determinations pursuant to this action and will not be required to submit RFP or attainment demonstration SIPs, these areas will not generally be in the control strategy period for conformity purposes (i.e., have a control strategy SIP approved and build/no-build test no longer required) for so long as the area does not violate the standard. These areas will not have approved budgets until a maintenance plan is approved as part of the approval of a redesignation request, therefore the build/no-build test and less-than-1990 test, in addition to consistency with any applicable submitted budgets, will be required until maintenance plan approval. (A maintenance plan budget does not apply for conformity purposes until the

maintenance plan has been approved, except as provided by section 51.448(i) of the conformity rule (which applies to the Ashland, Kentucky, and Charlotte-Gastonia, North Carolina, areas which were required to submit a 15 percent SIP but submitted a maintenance plan instead.)

The Northern Kentucky area which had previously submitted a 15 percent SIP, and the Nashville, Tennessee, area which had previously submitted 15 percent and attainment SIPs, may choose to withdraw their submitted SIPs through the submission of a letter from the Governors or their designees in order to eliminate the applicability of their motor vehicle emission budgets for conformity purposes. This is because these areas will not be subject to the 15 percent and attainment demonstration requirements of section 182(b)(1) for so long as the area continues to attain the standard. If the respective submitted SIP is not withdrawn, the budget in that submittal will continue to apply for conformity purposes. If the submitted 15 percent or attainment SIP is withdrawn, only the build/no-build and less-than-1990 tests would apply until a maintenance plan is approved.

The Ashland, Kentucky, and Charlotte-Gastonia, North Carolina, areas which are already demonstrating conformity to a submitted maintenance plan pursuant to § 51.448(i) may continue to do so, or may elect to withdraw the applicability of the submitted maintenance plan budget for conformity purposes until the maintenance plan is approved. The applicability may be withdrawn through the submission of a letter from the respective Governor or his or her designee. If the applicability of the submitted maintenance plan budget is withdrawn for conformity purposes, the build/no-build test and less-than-1990 tests will apply until the maintenance plan is approved.

EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected areas. If a violation of the ozone NAAQS is monitored in the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, or Nashville, Tennessee, areas (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determinations that these areas have attained and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) do not presently apply, the sanctions clocks started by EPA on January 28, 1994, for the Ashland and Charlotte-Gastonia areas for the failure to submit a section 181(b)(1) 15 percent plan and attainment demonstration and on April 1, 1994, for the Nashville area for submittal of an incomplete 15 percent plan are hereby stopped as the deficiency for which the clocks were started no longer exists.

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

This action will become effective on August 7, 1995. However, if the EPA receives adverse comments by July 24, 1995, then the EPA will publish a document that withdraws the action, and will address those comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

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.