Marginal and below ozone nonattainment areas (which includes nonclassifiable areas like Denver) are not subject to section 176(c)(3)(A)(iii) because they are not subject to section 182(b)(1). These areas, however, are still subject to the requirements of section 176(c)(1), which sets out criteria that, if met, will assure consistency with the SIP. The EPA believes it is reasonable and consistent with the Act to provide relief under section 176(c)(1) from the interim-period NO<sub>X</sub> transportation conformity requirements where the Agency has determined that NO<sub>X</sub> reductions would not be beneficial, and to rely, in doing so, on the  $NO_X$ exemption tests provided in section 182(f)

The basic approach of the Act is that NO<sub>X</sub> reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach, but also includes specific substantive tests which provide a basis for EPA to determine when NO<sub>X</sub> requirements should not apply. Whether under section 182(b)(1) or section 182(f), where EPA has determined that NO<sub>X</sub> reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO<sub>X</sub> reductions for purposes of meeting RFP or other milestone requirements. Moreover, there is no substantive difference between the technical analysis required to make an assessment of NO<sub>X</sub> impacts on attainment in a particular area, whether undertaken with respect to mobile source or stationary source NO<sub>X</sub> emissions. Consequently, the EPA believes that granting relief from the NO<sub>X</sub> conformity requirements of section 176(c)(1) under section 182(f) in these cases is appropriate.

### 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<sub>X</sub> exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO<sub>X</sub> requirements may be granted for nonattainment areas outside an ozone transport region if EPA

determines that "additional reductions of [NO<sub>x</sub>] 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<sub>X</sub> 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<sub>X</sub>] 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 3

Some commenters argued that in Denver's case, the EPA has previously determined that the ozone monitoring network was insufficient and an ambient air station for the measurement of ozone in the southwest metropolitan area has not yet been established. Thus, approval of the  $NO_X$  exemption is based on an inadequate monitoring network and the health of Colorado residents will not be protected if a  $NO_X$ exemption is granted.

## EPA Response

EPA disagrees with the commenter that approval of this NO<sub>X</sub> exemption is based upon an inadequate monitoring network and that the health of Colorado residents will not be protected if an exemption is granted. Also, as explained below, an ambient air station has been established in the southwest metropolitan area. No exceedances have been recorded in 1994 at either the old or newer ozone ambient air monitoring stations. Although the commenter is correct in saying that there have been concerns expressed in the past about the monitoring network by EPA, as the proposal made clear, EPA believes that the major concerns have been corrected and any remaining concerns do not provide a significant enough basis to deny the NO<sub>X</sub> exemption request. EPA's concerns about the network-conveyed initially to the APCD in 1989—primarily involved the adequacy of the system to monitor the maximum concentration areas, as required by 40 CFR part 58. Various actions have since been undertaken by the APCD to address EPA's primary concerns, and efforts are

ongoing to address other, more general concerns. There are ten sites currently on the Denver ozone ambient monitoring network. These include two sites added in 1993 in the northwest portion of the nonattainment area at NREL (National Renewable Energy Lab site) and South Boulder Creek. One new site was recently added this year at the Chatfield Reservoir by Campground in the southwest. There have been no violations recorded by the Denver ozone ambient air monitoring network during the three years in review (1991, 1992, 1993) nor during 1994. Data in AIRS show only one exceedance (of 127 ppb) during this time, which occurred in 1993 at the South Boulder Creek site. Despite the lack of violations, additional analyses of the ozone ambient air monitoring network were undertaken, in part at EPA's urging, to ensure that future ozone pollution would continue to be adequately monitored. The commenter expressed concern about the adequacy of monitoring in the southwest, but the 1993 Denver Summer Ozone Study determined that higher ozone values-and perhaps the true maximum concentration sites-were appearing in the northwest, rather than the southwest, portion of the nonattainment area. And, thus, priority was given to placing new sites in the northwest. EPA believes the continued relatively higher values at the NREL and South Boulder Creek sites, as well as the exceedance at the latter site in 1993, tend to support that determination. The APCD has committed to continue reviewing the network and making necessary adjustments as promptly as feasible. In accord with these commitments, the APCD submitted to EPA in June, 1994 a summary of an ozone monitoring plan, showing a phased set of modifications to the network to be accomplished over the next five years. EPA believes, based on its evaluation of all the available information and analyses presented in support of this exemption request, that the data satisfactorily demonstrates that the Denver area's air quality has been "clean" for the requisite three years. Finally, an added precaution is built into EPA's policy in that approval of NO<sub>X</sub> exemptions are granted on a contingent basis (i.e., the exemption lasts for only as long as the area's monitoring data continue to demonstrate attainment); if a violation occurs, the exemption would no longer be applicable.

## Comment 4

Comments were received regarding the scope of exemption of areas from the NO<sub>X</sub> requirements of the conformity