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 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 19, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

NOTE: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 11, 1995.

Carol M. Browner,

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—Arizona

2. Subpart D is amended by adding § 52.136 to read as follows:

§ 52.136 Control strategy for ozone: Oxides of nitrogen.

EPA is approving an exemption request submitted by the State of Arizona on April 13, 1994 for the Maricopa County ozone nonattainment area from the NO_X RACT requirements contained in section 182(f) of the Clean Air Act. This approval exempts the Phoenix area from implementing the NO_X requirements for RACT, new source review (NSR), and the applicable general and transportation conformity and inspection and maintenance (I/M) requirements of the CAA. The exemption is based on Urban Airshed Modeling as lasts for only as long as the area's modeling continues to demonstrate attainment without NO_X reductions from major stationary sources.

[FR Doc. 95–9568 Filed 4–18–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[TX–49–1–6831; FRL–5193–8]

Approval and Promulgation of Temporary Section 182(f) Exemption to the Nitrogen Oxides (NO_X) Control Requirements for the Houston and Beaumont Ozone Nonattainment Areas; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving a petition from the State of Texas requesting that the Houston and Beaumont ozone nonattainment areas be temporarily exempted from NO_X control requirements of section 182(f) of the Clean Air Act (CAA) as amended in 1990. The State of Texas bases its request upon preliminary photochemical grid modeling which shows that reductions in NO_X would be detrimental to attaining the National Ambient Air Quality Standards (NAAQS) for ozone in these areas. This temporary exemption is being requested under section 182(f) of the CAA.

EFFECTIVE DATE: This action is effective as of April 12, 1995.

ADDRESSES: Copies of the documents relevant to these actions are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Dallas, Texas 75202–2733

The Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087

FOR FURTHER INFORMATION CONTACT: Ms. Leila Yim Surratt or Mr. Quang Nguyen, Planning Section (6T–AP), Air Programs Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

On August 17, 1994, the Texas Natural Resource Conservation Commission (TNRCC) submitted to the EPA a petition pursuant to section 182(f) of the CAA which requests that the Houston and Beaumont ozone nonattainment areas be temporarily exempted by the EPA from the NO_X control requirements of section 182(f). The Houston nonattainment area includes the cities of Houston and Galveston, and consists of the following eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The Beaumont nonattainment area includes the cities of Beaumont and Port Arthur, and consists of the following three counties: Hardin, Jefferson, and Orange. The State bases its petition on an Urban Airshed Modeling (UAM) demonstration showing that NO_X reductions would not contribute to attainment in either area because the decrease in ozone concentrations resulting from volatile organic compound (VOC) reductions alone is equal to or greater than the decrease obtained from NO_X reductions or a combination of VOC and NO_X reductions.

As described in the State's petition, the TNRCC plans to complete additional UAM modeling between November 1995 and May 1996 using the results of an intensive 1993 field study, the Coastal Oxidant Assessment for Southeast Texas (COAST). The data collected through the COAST study consist of hourly point source emissions, gridded typical summer day on-road mobile source emissions, hourly air quality data, and detailed meteorological data for specific ozone exceedance episodes in the Houston-Beaumont domain. Because it is the most comprehensive data set available, it should result in greater accuracy in the modeling and therefore in the

attainment control strategy. Since the modeling is expected to be completed by May 1996, the TNRCC is requesting only a temporary NO_X exemption until May 31, 1997.

The TNRCC had previously adopted and submitted to the EPA complete NO_X Reasonably Available Control Technology (RACT) rules for the Houston and Beaumont areas. The TNRCC has also adopted and submitted to the EPA New Source Review (NSR), conformity, and vehicle inspection and maintenance (I/M) rules, each of which contain NO_X provisions. The EPA's approval of the temporary NO_X exemption petition affects the federal applicability and enforcement of the State's NO_X RACT rule and the NO_X provisions contained in the State's NSR, conformity, and I/M rules.

On December 15, 1994, the EPA proposed to approve the section 182(f) petition for a temporary NO_X exemption for the Houston and Beaumont areas (see 59 FR 64640). The proposed rulemaking notice, the EPA's Technical Support Document (November 1994) on the proposed action, and supplemental information are contained in the docket and provide a detailed discussion of the TNRCC's submittal, applicable guidance and the EPA's rationale for proposing approval of the State's petition. Rather than repeating that entire discussion in this document, that discussion is incorporated by reference herein. Thus, the public should review the notice of proposed rulemaking for relevant background on this final rulemaking action.

II. Response to Comments

The EPA requested public comments on all aspects of the proposed action to approve the section 182(f) petition for a temporary NO_X exemption for the Houston and Beaumont ozone nonattainment areas. The EPA received 51 letters of support from individuals, industry, local judges, the State transportation authority, State and Federal legislators, and local governments.

Six adverse comment letters were received from individuals, environmental groups, and an association of companies which supply stationary source air pollution control systems, equipment, and services. One of the letters was submitted by three environmental groups and contained generic comments objecting to the EPA's general policy on section 182(f) exemptions. The three environmental groups who submitted the generic letter requested that it be included in each EPA rulemaking action for each section 182(f) petition.

Comment: Two letters of support asked for clarification concerning when the NO_X requirements would take effect if the COAST modeling results indicate that some or all of the applicable NO_X control requirements would contribute to attainment of the ozone NAAQS.

Response: In the FR notice proposing to approve the temporary NO_X exemption for Houston and Beaumont (see 59 FR 64640, December 15, 1994), the EPA also proposed that upon the expiration of the temporary exemption on December 31, 1996, if the State had not received a permanent NO_X exemption from the EPA prior to that time, the NO_X RACT, NSR, conformity and I/M requirements would again become applicable except that the NO_X RACT compliance date shall be as expeditious as practicable but no later than May 31, 1997. The EPA continues to believe that the above stated requirement is appropriate. Therefore, through this rulemaking on the temporary NO_X exemption for the Houston and Beaumont areas, the following requirements would become applicable on January 1, 1997, if the Houston and Beaumont areas had not received a permanent NO_X exemption prior to that time: (1) The State must have adopted and submitted to the EPA RACT, NSR, conformity, and I/M regulations to control NO_X emissions (note that these provisions have already been met by the TNRCC), (2) the State's NO_X RACT regulation must require subject sources to comply with the NO_X control requirements as expeditiously as practicable but no later than May 31, 1997, (3) any NSR permits that had not been deemed complete prior to January 1, 1997, must comply with the NO_X NSR requirements, consistent with the policy set forth in the EPA's NSR Supplemental Guidance memo dated September 3, 1992, from John S. Seitz, Director, EPA's Office of Air Quality Planning and Standards, (4) any conformity determination (for either a new or revised transportation plan and transportation improvement program (TIP)) made on or after January 1, 1997, must comply with the NO_X conformity requirements, and (5) any I/M vehicle inspection made on or after January 1, 1997, must comply with the I/M NO_X requirements.

Comment: One commenter stated that the temporary NO_X waiver would expire on May 15, 1997, and asked for clarification on whether TIPs being developed this year would be exempted from the NO_X conformity requirements.

Response: The EPA would like to clarify that the NO_X waiver does not expire on May 15, 1997, as stated by the commenter, but rather will expire on December 31, 1996, as discussed in the EPA's proposed approval of the State's petition (see 59 FR 64643). Because the State's petition clearly indicates that the attainment modeling should be completed between November 1995 and May 1996 (which will determine whether a VOC, NO_X, or combination thereof, strategy is most beneficial for attainment), the EPA believes that the petition supports granting the State's request for a temporary exemption only until the end of 1996. Any conformity determination (for either a new or revised transportation plan and TIP) made after the effective date of the EPA's approval of this 182(f) petition for Houston and Beaumont, and before the expiration of the waiver on December 31, 1996, would be exempted from the NO_X conformity requirements. Any conformity determination (for either a new or revised transportation plan and TIP) made on or after January 1, 1997, must comply with the NO_X conformity requirements, unless the State had received a permanent section 182(f) NO_X exemption prior to that time.

Comment: Several adverse comments stated that an area must submit a complete, approvable attainment State Implementation Plan (SIP) before a NO_X waiver could be granted. Certain comments continued by stating 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: The TNRCC petitioned the EPA for an exemption under section 182(f), as evidenced by the letter from John Hall, Chairman of the TNRCC, transmitting the petition to the EPA (dated August 17, 1994) which states, ''The TNRCC is submitting for your review, pursuant to Section 182(f) of the

CAA, a petition requesting a temporary exemption from NO_X RACT * * *'' In addition, on page 3 of the petition, the State also referenced subsection 182(f)(3) concerning the procedure for petitioning the Administrator.

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 the 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 the 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 the 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 the 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 an 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, the EPA's conformity rules explicitly provide that these NO_X requirements would not apply if the 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, the EPA notes that this issue has previously been raised in a formal petition for reconsideration of the 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 the 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 the EPA's final conformity regulations, and the EPA remains bound by their existing terms.

Comment: Several commenters felt that the UAM computer model is not sufficiently accurate to allow good predictions of air quality. Some stated that the modeling performed by the TNRCC was inconclusive. One commenter argued that focusing on severe rather than more typical ozone episodes may significantly distort the findings. Another commenter stated that TNRCC only modeled three episodes, each with varying performance. Finally, several commenters felt that the emissions inventories were significantly inaccurate so as to discredit the modeling results.

Response: The EPA disagrees with the comment that the UAM demonstration conducted by the TNRCC was insufficient to allow good predictions of air quality. Due to the large number of factors that influence ozone formation, the EPA agrees that the UAM model cannot precisely predict the exact relationship between VOC, NO_X, and ozone. However, Congress clearly intended that photochemical grid modeling be used for air quality planning purposes. As noted in the EPA's December 1993 guidance, UAM results are acceptable for the purpose of the section 182(f) demonstrations and application of UAM should be consistent with techniques specified in the EPA's ''Guideline on Air Quality Models (Revised).''

The EPA disagrees with the comment that the episodes analyzed by the TNRCC may have distorted the findings. The TNRCC followed the EPA's ''Guideline for Regulatory Application of the Urban Airshed Model'' in selecting the episodes that were used in the 182(f) demonstration. In accordance with the EPA guidance, the State selected episodes that were likely to cover different sets of meteorological conditions corresponding with high ozone concentrations, not necessarily the most severe ozone exceedance. The EPA recommends that high ozone days be analyzed to ensure that the control strategy plan developed from the UAM analysis will result in ozone attainment under most meteorological conditions, not just the average meteorological condition. The selected multi-day episodes used in the Houston and Beaumont UAM analyses are representative of the primary meteorological conditions typically found on high ozone days.

The EPA's UAM guidance recommends that a minimum of three days from among all meteorological regimes should be modeled (e.g., three meteorological regimes each containing one primary episode day, or two meteorological regimes with at least two primary days from one of those regimes). The TNRCC's analyses are consistent with the EPA's guidance in that the two episodes that exhibited satisfactory performance cover more than three days of ozone exceedances and represent several of the predominant meteorological regimes for ozone exceedances in the Gulf Coast. (For further information, see the EPA's proposed approval notice for the temporary NO_X exemption for Houston and Beaumont (59 FR 64640), and the EPA's Technical Support Document for the proposed action.)

The EPA disagrees with the comment that the emissions inventories were too inaccurate to produce acceptable modeling results. In accordance with the EPA's UAM guidance the State used the 1990 emissions inventory for Houston and Beaumont to developing its modeling demonstration. The EPA evaluated the State's 1990 base year

emissions inventories and a final approval was published in the FR on November 8, 1994 (see 59 FR 55588).

Comment: Several commenters stated that the modeling required by the EPA 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 argued that larger NO_X reductions are realistically available, and that if Texas had considered large enough reductions in NO_X emissions, the modeling would have shown decreases in ozone. They further explained that an area must submit an approvable attainment plan before the EPA can know whether NO_X reductions will aid or undermine attainment.

Response: As described in the EPA's December 1993 NO_X exemption guidance,[1] photochemical grid modeling is generally needed to document cases where NO_X reductions are counterproductive to net air quality, do not contribute to attainment, do not show a net ozone benefit, or include excess reductions. The UAM or, in an ozone transport region, the Regional Oxidant Model (ROM) are acceptable models for these purposes.

The EPA guidance also states that application of UAM should be consistent with techniques specified in the EPA ''Guideline on Air Quality Models (Revised).'' Further, application of UAM should also be consistent with procedures contained in the EPA ''Guideline for Regulatory Application of the Urban Airshed Model'' (July 1991). Thus, episode selection for the section 182(f) demonstration should be consistent with the UAM guidance for SIP attainment demonstrations.

The section 182(f) contribute to attainment and net ozone benefit demonstrations concern an unspecified ''additional reductions'' of NO_X. The EPA's December 1993 guidance specifies that the analysis should reflect three scenarios of ''substantial'' NO_X and VOC emission reductions. The guidance states that, in the first scenario, the demonstration should use the VOC reductions needed to attain (demonstrated by EKMA or UAM analyses). Alternatively, if the attainment demonstration has not been completed, the demonstration may use some other substantial VOC reduction. In any case, the VOC reductions should be substantial and documented as reasonable to expect for the area due to the CAA requirements. In the second scenario, NO_X reductions should be modeled without any VOC reductions above the attainment year baseline. The level of NO_X reductions should reflect the same percent reduction of anthropogenic VOC emissions in scenario (1) above. In the third scenario, a similar level of NO_X reductions would be modeled along with the level of VOC reductions chosen. That is, if a 40 percent VOC reduction is chosen in scenario (1), then the model for scenario (3) would simulate a 40 percent VOC reduction and approximately a 40 percent NO_X reduction. It would be inappropriate to select a high level of VOC reductions and a low level of NO_X reductions since this could artificially favor a finding that NO_X reductions are not beneficial; thus, the scenarios are constrained to avoid an inappropriate analysis.

The EPA believes that these analyses are appropriate to determine in a directional manner whether or not NO_X reductions are expected to be beneficial with respect to the air quality in the area/region. These analyses described in the EPA's December 1993 guidance may be less precise than an attainment demonstration required under section 182(c). With respect to the excess reductions provision in section 182(f)(2), however, the EPA believes that more than a directional analysis is needed (for reasons described in the December 1993 guidance) and, therefore, requires an analysis based on the attainment demonstration.

Contrary to the statements of some of the commenters, the State modeled substantial NO_X emission reductions that are significantly greater than the 10–15 percent reductions cited by the commenters as projected to result from NO_X RACT. In the 1999 projected domain-wide (i.e., Houston and Beaumont) NO_X emissions inventory used in the State's section 182(f) demonstration, point source emissions comprise 66 percent of the total NO_X inventory. The State modeled a 50 percent total reduction of NO_X (which would represent a 76 percent reduction in the point source NO_X inventory) along with a 50 percent reduction of VOC and 50 percent reduction of both VOC and NO_X. Clearly, the TNRCC's section 182(f) modeling demonstration reflects substantial NO_X reductions in addition to substantial VOC reductions.

Comment: Three groups provided a generic comment on all section 182(f) actions that three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment.

Response: The EPA does not believe that this comment is applicable to the Houston and Beaumont actions because neither area has based its section 182(f) petition on ''clean'' air monitoring data.

Comment: Several commenters stated that the EPA's December 1993 guidance prohibits granting a section 182(f) waiver based on three years of clean data if evidence exists showing that the waiver would interfere with attainment or maintenance in downwind areas. They argued that the condition should also apply to waiver requests based on modeling. The commenters felt that a NO_X exemption in Houston and Beaumont would likely exacerbate ozone formation downwind in other nonattainment areas (e.g., Dallas) or near nonattainment areas (e.g., Austin, San Antonio, Corpus Christi, and Longview-Tyler-Marshall).

Response: As a result of the comments, the EPA reevaluated its position on this issue and has revised the previously issued guidance. As described below, the 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 the 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, the 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

[1] ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f),'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, December 16, 1993.

under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. The 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 CAA, an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if the 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.''[2] As described in section 4.3 of the December 1993 guidance document, the EPA believes that the term ''area'' means the ''nonattainment area'' and that the 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, the 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 the EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by the EPA. In some cases, then, the 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: Several comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. They 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, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, the 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 the 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: The EPA's conformity rules[3,4] 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), the EPA reiterated its view that in order to conform nonattainment and maintenance areas must demonstrate that the transportation plan and 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, the EPA states in the June 17 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, the EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemptions were submitted pursuant to section 182(f)(3), and the EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions 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: One group commented 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: The 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, the 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, the EPA determines that in certain

[2] 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.''

[3] ''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).

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

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 the 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 the 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 the EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in the 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), the 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.

Comment: Two commenters stated that the health and environmental benefits of decreasing NO_X as well as the likelihood of concomitant reduction in other criteria pollutants (e.g., CO, SO_2 and particulates), provide other reasons to control NO_X, independent of their impact on ozone formation. One commenter listed various negative health and environmental impacts of NO_X and stated that although Houston does not exceed the NAAQS for nitrogen dioxide (NO_2), current ambient levels are believed to be unsafe. In addition, the federal standard, 53 parts per billion (ppb) annual average, is meaningless without a short-term standard.

Response: The EPA agrees that high NO_X emissions can contribute to air pollution problems independent of their role in ozone formation; however, the EPA disagrees that the NO_X controls required under section 182(f) of the CAA should be implemented in the Houston or Beaumont area regardless of their impact on ozone. Ambient concentrations of NO_2 in Houston and Beaumont are significantly below the federal NAAQS for NO_2 (in 1993, the annual average NO_2 concentration was 24 ppb in Houston and 10 ppb in Beaumont, as compared with the federal standard of 53 ppb). Therefore, based on current federal standards, the EPA does not believe the NO_2 levels in Houston or Beaumont are unsafe.

The EPA is mandated to periodically re-evaluate the NAAQS for each criteria pollutant based on the best information available. The EPA is currently reviewing the NO_2 standard and will evaluate concerns over the standard through a separate rulemaking process. As part of that effort, in October 1994, the EPA issued a draft paper for public review and comment entitled, ''Review of National Ambient Air Quality Standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information, OAQPS Staff Paper,'' concerning the NO_2 standard, and expects to propose rulemaking action in late 1995. If the EPA finds, based on its review, that the NO_2 standard should be revised, then at that time the Agency will implement NO_X control requirements in areas that become nonattainment for NO_2 under the revised standard.

In addition, as discussed in an earlier response, section 182(f)(1)(A) specifically provides for an exemption in cases where NO_X emission reductions would not contribute to attainment of the NAAQS for ozone in the area. The TNRCC has demonstrated for the relevant time period in its petition and in the EPA's proposed action that the NO_X reductions required by section 182(f) would not contribute to attaining the ozone NAAQS in either area.

Finally, for the purposes of reducing acid rain deposition, certain NO_X sources will still be required to reduce NO_X emissions under Title IV of the CAA. For these reasons, the EPA does not believe that the NO_X controls required under section 182(f) of the CAA should be implemented in the Houston or Beaumont areas regardless of their impact on ozone.

Comment: One commenter stated that Houston is not at risk of over controlling emissions, and that it is important to front end load emission reductions now so that control strategies would have time to work.

Response: The TNRCC petition for a temporary NO_X exemption relies not on an excess emission reduction test, but on modeling which indicates that NO_X reductions would be detrimental to attaining the ozone standard. The EPA agrees that where NO_X reductions would be beneficial to attaining the ozone standard, they should be pursued expeditiously; however, for Houston and Beaumont, the State's modeling demonstration shows that NO_X reductions will not contribute to attainment of the ozone NAAQS. As discussed in a previous response, Congress clearly understood that in certain areas, NO_X reductions may not be beneficial, and for this reason, included a provision to exempt such areas from NO_X control requirements.

Comment: One commenter argued that regardless of the impact NO_X controls might have in the Houston area, NO_X controls should be required in the Beaumont nonattainment area, since point source emissions are a significant

source of NO_X in that area and large NO_X reductions would guarantee ozone reductions.

Response: The EPA disagrees with this comment. As discussed in the EPA's proposed approval notice for the temporary NO_X exemption for Houston and Beaumont (see 59 FR 64640), and the EPA's Technical Support Document for the proposed action, the TNRCC modeled substantial reductions of VOC, NO_X and both VOC and NO_X in Beaumont and showed that ozone levels were lowest under the VOC-only reduction scenario. The State's petition therefore demonstrates that NO_X reductions would not be beneficial to attainment of the ozone standard in the Beaumont area.

Comment: One commenter stated that there is no congestion management plan as required by federal transportation law and that the EPA has allowed the State to illegally wait two additional years before submitting a plan.

Response: The EPA disagrees with this comment for two reasons. First, it does not accurately reflect the current status of the transportation congestion management plan (which is a program implemented under the Intermodal Surface Transporation Efficiency Act (ISTEA) by the U.S. Department of Transportation (DOT)) in the Houston and Beaumont areas. Contrary to the commenter's statement, it is the EPA's understanding that a congestion management plan for Houston and Beaumont was submitted in accordance with the DOT regulatory requirements specified in title 23 of the Code of Federal Regulations in § 500.509 (see 58 FR 63442, December 1, 1993).

Second, the EPA's approval of the NO_X exemption petition does not adversely impact the requirements and implementation of the transportation congestion management plan required by the DOT. The EPA supports this program and believes that it will, at a minimum, identify the congestion problems in the area and will lead to development of a traffic management plan which would have positive air quality benefits for the area. This program is being implemented by the DOT (which is a separate Federal agency from the EPA) under authority of the ISTEA. Contrary to the commenter's statement, the EPA's action on the NO_X exemption petition will not result in a two year delay in the submission of the transportation congestion management plan.

Comment: Two commenters requested that the EPA consider extending the section 182(f) NO_X exemption and the NO_X RACT compliance deadlines past the EPA's proposed deadlines of December 31, 1996 and May 31, 1997, respectively. One commenter stated that the EPA's revised ozone attainment planning policy points to the possible extension of modeling completion deadlines into 1997.

Response: The EPA believes that it is appropriate to maintain the NO_X exemption period and the RACT compliance deadline as originally proposed by the EPA. The State of Texas has not requested that the exemption period or compliance dates be extended, nor did it make such a request during the public comment period for the EPA's proposed approval of the State's section 182(f) petition. In addition, the EPA has not received from the State any request that the COAST modeling schedule described in the State's petition has been delayed or would need to be modified. The EPA therefore believes that the rationale (as explained in the notice of proposed rulemaking (see 59 FR 64643)), for the December 31, 1996, and May 31, 1997, dates concerning the exemption period and the RACT compliance deadline, respectively, is still valid, and is independent of the EPA's revised ozone attainment planning policy. Should the EPA subsequently receive a revised section 182(f) petition for the Houston and Beaumont areas, we will evaluate it at that time for consistency with the CAA and the EPA's guidance on section 182(f) exemptions.

III. Effective Date

This rulemaking 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) exemptions for the Houston and Beaumont areas is a substantive rule 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.

IV. Final Action

The EPA is taking final action to approve the section 182(f) petition submitted by the State of Texas requesting a temporary NO_X exemption for the Houston and Beaumont ozone nonattainment areas. The temporary exemption automatically expires on December 31, 1996, without further notice from the EPA. Approval of the temporary exemption waives the federal requirements for NO_X RACT, NSR, conformity, and I/M for the period of the temporary exemption.

The State had previously adopted and submitted to the EPA complete NO_X RACT, NSR, conformity, and I/M rules. During the temporary exemption, the EPA will not act upon the State's NO_X RACT rules. The EPA plans to act upon the State's NO_X NSR and conformity provisions in separate rulemaking actions because those provisions are contained in broader rules that also control VOC emissions; however, during the period of the temporary exemption, the State's NO_X NSR and conformity requirements are not federally applicable. The EPA previously approved the State's I/M rules (see 59 FR 43046, August 22, 1994).

Upon the expiration of the temporary exemption, (1) the requirements pertaining to NO_X RACT, NSR, conformity, and I/M will again become applicable, except that the NO_X RACT implementation date applicable to the Houston and Beaumont nonattainment areas under section 182(f) shall be as expeditious as practicable but no later than May 31, 1997, unless (2) the State has received a permanent NO_X exemption from the EPA prior to that time. The EPA will begin rulemaking action on the State's NO_X RACT SIP upon the expiration of the temporary exemption if the State has not received a permanent NO_X exemption by that time.

Regulatory Process

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 economic 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.

Approvals of NO_X exemption petitions under section 182(f) of the CAA do not create any new requirements. Therefore, because the Federal approval of the petition does not impose any new requirements, the EPA certifies that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA 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 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by June 19, 1995. 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).)

Executive Order 12866

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

List of Subjects in 40 CFR Part 52

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

Dated: April 12, 1995.

Carol M. Browner,

Administrator.

40 CFR part 52 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 SS—Texas

2. Section 52.2308 is amended by adding paragraph (d) to read as follows:

§ 52.2308 Area-wide nitrogen oxides (NO_X) exemptions.

* * * * *

(d) The TNRCC submitted to the EPA on August 17, 1994, with supplemental information submitted on August 31, 1994, and September 9, 1994, a petition requesting that the Houston and Beaumont ozone nonattainment areas be temporarily exempted from the NO_X control requirements of section 182(f) of the CAA. The Houston nonattainment area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. The Beaumont nonattainment area consists of Hardin, Jefferson, and Orange counties. The exemption request was based on photochemical grid modeling which shows that reductions in NO_X would not contribute to attaining the ozone NAAQS. On April 12, 1995, the EPA approved the State's request for a temporary exemption. Approval of the temporary exemption waives the federal requirements for NO_X Reasonably Available Control Technology (RACT), New Source Review (NSR), conformity, and vehicle inspection and maintenance (I/M) for the period of the temporary exemption. The temporary exemption automatically expires on December 31, 1996, without further notice from the EPA. Based on the rationale provided in the notice of proposed rulemaking on this action, upon the expiration of the temporary exemption, the requirements pertaining to NO_X RACT, NSR, conformity, and I/M will again become applicable, except that the NO_X RACT implementation date applicable to the Houston and Beaumont nonattainment areas under section 182(f) shall be as expeditious as practicable but no later than May 31, 1997, unless the State has received a permanent NO_X exemption from the EPA prior to that time.

[FR Doc. 95–9567 Filed 4–18–95; 8:45 am]

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40 CFR Part 52

[CA 144–4–6973b; FRL–5194–6]

California State Implementation Plan Revision Interim Final Determination that State has Corrected Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a notice of proposed rulemaking fully approving revisions to the California State Implementation Plan. The revisions include a rule from the South Coast Air Quality Management District (SCAQMD): SCAQMD Rule 1153, Commercial Bakery Ovens. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiency for which sanctions clocks were activated on September 29, 1993. This action will defer the application of the offset sanctions and defer the application of the highway sanctions. Although the interim final action is effective upon publication, EPA will take comment. If no comments are received on EPA's proposed approval of the State's submittal, EPA will finalize its determination that the State has corrected the deficiency that started the sanctions clocks by publishing a final action in the **Federal Register**. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final action taking into consideration any comments received.

DATES: Effective Date: April 19, 1995.

Comments: Comments must be received by May 19, 1995.

ADDRESSES: Comments should be sent to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

The State submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

I. Background

On May 13, 1991, the State submitted SCAQMD Rule 1153, Commercial Bakery Ovens, which EPA disapproved in part on September 29, 1993. 58 FR 50850. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted a revised rule on February 24, 1995. The revised rule was adopted by the SCAQMD on January 13, 1995. In the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State of California's submittal of SCAQMD Rule 1153, Commercial Bakery Ovens.

Based on the proposed approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiency. Therefore, EPA is taking this interim final rulemaking action, effective on publication, finding that the State has corrected the deficiency. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable