100 above-threshold export transactions destined for designated countries. This rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by adding a new paragraph (b)(10) to read as follows:

§ 1310.02 Substances Covered.

* * * * *

(b) * * *

(10) Methyl Isobutyl Ketone (MIBK)

* * * * *

3. Section 1310.04 is amended by adding new paragraph (f)(2)(v) to read as follows:

§ 1310.04 Maintenance of Records.

* * * * *

(f) * * *

(2) * * *

(v) Export and International Transactions to Designated Countries, and Importations for Transshipment or Transfer to Designated Countries

Chemical	Threshold by volume	Threshold by weight
(A) Methyl Isobutyl Ketone (MIBK).	500 gallons	1523 kilograms.
(B) Reserved.		

4. Section 1310.08 is amended by adding new paragraphs (c), (d) and (e) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(c) Domestic transactions of Methyl Isobutyl Ketone (MIBK).

(d) Import transactions of Methyl Isobutyl Ketone (MIBK) destined for the United States.

(e) Export transactions, international transactions, and import transactions for transshipment or transfer of Methyl Isobutyl Ketone (MIBK) destined for Canada or any country outside of the Western Hemisphere.

Dated: April 12, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–9589 Filed 4–18–95; 8:45 am]

BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–34–1–6823; FRL–5193–4]

Clean Air Act Section 182(f) NO_X Exemption Petition; Phoenix Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the approval of a petition submitted by the Arizona Department of Environmental Quality (ADEQ) requesting that EPA grant an exemption for the Phoenix ozone nonattainment area (Phoenix area) from the requirement to implement oxides of nitrogen (NO_X) reasonably available control technology (RACT). EPA published a proposed action to approve the Phoenix area NO_X exemption in the **Federal Register** on November 1, 1994. In accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act or CAA), the EPA has determined that additional NO_X reductions from major stationary sources in the Phoenix area would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. The approval of this action 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 EPA is finalizing approval of this action under provisions of the CAA regarding plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on April 11, 1995.

ADDRESSES: Copies of the petition and EPA's evaluation report is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted petition is available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012

Maricopa County Air Pollution Control District, 2406 South 24th Street, Suite E214, Phoenix, Arizona 85034

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1994, EPA proposed to approve the Phoenix area NO_X exemption petition, submitted by the ADEQ on April 13, 1994. 59 FR 54540. The exemption petition is based on urban airshed modeling (UAM) and makes a demonstration that additional NO_X reductions in the Phoenix area would not contribute to attainment of the NAAQS for ozone. A detailed discussion of the background concerning the NO_X requirements and the submitted petition is provided in the notice of proposed rulemaking (NPRM) cited above.

EPA has evaluated the exemption petition for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the petition satisfies the applicable EPA requirements and is exempting the Phoenix area from implementing the NO_X requirements for RACT, NSR[1], and the applicable general and transportation conformity and I/M requirements[2] of the CAA. A detailed discussion of the petition and EPA's evaluation have been provided in the NPRM and in the technical support document (TSD), dated October 1994. A detailed discussion of the scope of the

[1] The section 182(f) exemption provisions center on the effect on ozone concentrations due to NO_X emission reductions. In the case of new or modified sources, even after the application of on-site controls from NSR programs, the source will result in increases of NO_X emissions. Therefore, the ''substantial NO_X reductions'' analysis used to demonstrate that NO_X reductions do not contribute to attainment should reflect a zero emissions increase from new or modified stationary sources.

[2] ''Scope of Nitrogen Oxides (NO_X) Exemptions,'' from G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch (MD–15), to the Air Branch Chiefs, January 12, 1995. ''I/M Requirements in NO_X RACT Exempt Areas'', from Mary T. Smith, Acting Director, Office of Mobile Sources, to the Air Division Directors, October 14, 1994.

NO_X exemption as applicable to the Phoenix area is discussed in the TSD dated January 1995 which accompanies this final action. These documents are available at EPA's Region IX office.

Response to Public Comments

A 30-day public comment period was provided in 59 FR 54540. EPA received comment letters of support from two utility companies, the Arizona transportation authority, and two local governments in the Phoenix area. Two adverse comment letters were received from environmental groups and a local public interest law office

In August 1994, three environmental groups submitted joint comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas. The comments address EPA's policy regarding NO_X exemptions in general and apply to all actions EPA takes regarding section 182(f) NO_X exemptions. These comments as well as those received from the local public interest law office are addressed below.

Comment: 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.

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 Procedures 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).

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 have needed 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 to the applicable SIP 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 Procedures 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.

Comment: One commenter contends that because the Arizona SIP is inadequate to produce attainment, EPA cannot approve the waiver under section 182(f).

Response: The basis for granting the NO_X exemption is that additional NO_X reductions would not contribute to attainment. How an area demonstrates that NO_X reductions do not contribute to attainment is outlined in EPA's December 1993 exemption guidance.[3] The contribute to attainment test is met by demonstrating through UAM that substantial reductions of VOC emissions result in lower ozone levels than would result from both substantial reductions of NO_X emissions and combined reductions of VOC and NO_X emissions. The Phoenix petition adequately demonstrates this through UAM modeling consistent with EPA's guidance. For reasons stated above, EPA does not agree that the decision to grant or deny the Phoenix petition under section 182(f) should depend on the approvability of the attainment demonstration under section 182 (b) or (c).

Comment: Some commenters stated that the modeling required by EPA guidance 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. The comments also contend that the NO_X reductions modeled specifically for the Phoenix

[3] ''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.

petition are not sufficient to meet the requirements of section 182(f), and that if any level of additional NO_X reductions would contribute to attainment (as opposed to one test showing substantial reductions do not contribute to attainment), then the waiver must be denied. In addition, the commenters claim that Arizona did not model scenarios actually presented in the SIP.

Response: As described in EPA's December 1993 NO_X exemption guidance, 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.

EPA's guidance also states that application of UAM should be consistent with techniques specified in the EPA document, entitled, *Guideline on Air Quality Models, Revised*. Further, application of UAM should also be consistent with procedures contained in the EPA document, *Guideline for Regulatory Application of the Urban Airshed Model*, issued 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 unspecified ''additional reductions'' of NO_X. EPA's December 1993 exemption guidance specifies that the analysis should reflect 3 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% VOC reduction is chosen in scenario (1), then the model for scenario (3) would simulate a 40% VOC reduction and approximately a 40% 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 EPA's December 1993 guidance may be less precise than an attainment demonstration required under section 182(c). By contrast, with respect to the excess reductions provision in section 182(f)(2), 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.

The EPA does not agree that the waiver analysis must consider ''any level'' of NO_X reductions. The EPA guidance requires analysis of ''substantial'' reductions because reductions which are extremely small or extremely large would bias the model so that the results could be predetermined. Analyzing very small changes in NO_X and/or VOC emissions would yield a result of no change in the ozone concentrations since the model cannot assess very small changes. Analysis of very large NO_X emission reductions might be unrealistic (especially compared to the adopted attainment demonstration) and would result in concluding that NO_X reductions reduce ozone concentrations in all cases. Also, in developing an attainment demonstration, an area typically tries to attain the ozone standard in the least costly way by starting from current conditions and reducing emissions from there. While 100% VOC reduction alternatives exist, they are not the least expensive ways to meet the NAAQS, and may not be feasible. Instead, alternative combinations of VOC and NO_X reductions are examined. If two different strategies show the same ambient ozone concentration, but one requires greater reductions and cost, the latter is not considered a preferable strategy.

EPA believes that the main reason for the NO_X RACT waiver provisions in the CAA is the recognition by Congress that under certain conditions NO_X emission reductions can be counterproductive to ozone attainment, because they could increase ozone levels and necessitate additional VOC reductions to compensate. Although required as beneficial to ozone attainment unless demonstrated otherwise, NO_X reductions which achieve the same ozone levels at a greater cost based on a strategy using extra counterbalancing VOC reductions does not make sense from an ozone regulatory standpoint. Therefore, EPA's exemption guidance reflects this rationale in allowing petitioners the opportunity to demonstrate scenarios where substantial reductions of NO_X are counterproductive to ozone attainment. In the Arizona petition, both across-the-board NO_X reductions and NO_X RACT specific reductions were simulated which consistently demonstrate that NO_X reductions do not contribute to attainment of the ozone standard.

The EPA believes that the scenarios utilized in the Phoenix analysis are adequate to determine that NO_X reductions that might reasonably be considered in an attainment strategy would not contribute to attainment in the Phoenix area.

Comment: Some commenters provided a comment 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 Phoenix area action because the area's section 182(f) petition is based on modeling rather than ''clean'' monitoring data.

Comment: Some commenters provided a comment on all section 182(f) actions that a waiver of NO_X controls is unlawful if such a waiver will impede attainment and maintenance of the ozone standard in separate downwind areas.

Response: The EPA believes that while this comment may be applicable to proposed NO_X exemption actions in other areas, it is not applicable to the Phoenix exemption action because the EPA is unaware of, and the comment itself does not specify, any downwind area for which NO_X transport is of concern.

Comment: 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, and do not waive 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, 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 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: With respect to conformity, EPA's conformity rules [4], [5] 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), 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, EPA states in the June 17th 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, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemption for the Phoenix area was submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on this petition 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: Some commenters argue 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: 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 Congress' 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 timeframe 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.

Comment: One commenter objected to the adequacy of the modeling demonstration in meeting the fundamental requirements of EPA's guidance for applying the UAM, because the record reflects that the Phoenix area is not an area with a single meteorological regime and no intensive data from a field study was obtained for modeling purposes. In addition to these reasons, the commenter claims that because there was not a field study conducted with respect to the emissions inventory and that modeling performance was not very good at several sites, the petition should be denied.

Response: EPA's Guideline on Regulatory Application of the Urban

[4] ''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).

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

Airshed Model (UAM guidance), EPA–450/91–013, July 1991, describes procedures for the appropriate use of UAM, such as for attainment demonstrations required of all ozone nonattainment areas. This guidance generally requires that for attainment demonstrations, an area with a single meteorological regime, must model three episodes of that type of regime. However, EPA believes that the results of simulating two episodes with intensive data from a field study would be more reliable than simulating three episodes with merely routine data.

In terms of the meteorological regime issue, every day has different meteorology and will yield different ozone predictions. This does not necessarily mean that each varying meteorological day belongs to a different meteorological regime. Regime refers to a general pattern responsible for ozone formation. In the case of Phoenix, as documented in the Systems Applications International (SA) memorandum dated September 17, 1992,[6] a single meteorological regime exists in the Phoenix area which consists of a low pressure system over southwestern Arizona, with light southwesterly flow during the afternoon, and high temperatures. There is nothing in the record that is inconsistent with this description or conclusion.

EPA guidance for UAM states that three episodes should be modeled for each observed meteorological regime. However, in this case two episodes were considered sufficient because it was determined that data beyond that routinely available would be gathered and used to simulate ozone episodes. A field study, documented in ''Summer 1992 Phoenix Ozone Field Study'' (ADEQ, 1/93), involved the collection of data beyond that recorded on a routine basis, such as meteorological and air quality data aloft, VOC data, and extra background air quality data. In addition, because of the desire to use a fuller database, episodes were selected from among those that occurred during the study.

There was not a ''field study'' conducted in regards to the emissions inventory as field studies usually do not refer to emissions inventories. The emissions inventory in the Phoenix area was developed using standard EPA-approved methods.

Because modeling performance is never exact, EPA must evaluate whether its performance is adequate for regulatory decision-making. Although modeling performance was not good at several sites, and some under-prediction occurred, the modeling exercise meets EPA's performance goals, and appears overall to perform reasonably. Spatial plots of the whole modeling domain and time-series plots of individual stations show reasonable performance. This is illustrated by the model's correct responses to diagnostic and sensitivity tests, in which various inputs are changed in determining if the model responds consistently with our scientific understanding of ozone formation. Therefore, EPA believes that the overall modeling performance is reasonable and acceptable.

Comment: One commenter contends that the Phoenix modeling tests failed the alternative ''net air quality benefits'' test because there were no ozone decreases in some model grid cells on the initial modeling day.

Response: While there was some discussion, the ''net air quality benefits'' test was not relied on by Arizona in support of the petition. Instead, two sets of modeling runs were performed for each modeling episode to meet the ''contribute to attainment'' test. The two sets were substantial levels of pollutant reductions and source-specific NO_X reductions. Together, these runs showed that the specific reductions that would occur under NO_X RACT, and also levels of NO_X reductions likely to be examined in an attainment demonstration, would overall be counterproductive to ozone attainment.

The effect of decreases in NO_X will always depend on location because a decrease can increase ozone nearby in time or space, and decrease it later and farther away. The fact that various modeling cells go up and down is far less significant for regulatory purposes than the effect on the overall peak.

The initial day of a modeling simulation is typically not used, per EPA guidance, because it is deemed too dependent on uncertain initial conditions for air quality, which must be extrapolated in time and space from relatively few measurements. Thus, the decreases in ozone for the initial days of the episodes modeled are not considered meaningful. Results for the second and later days of a simulation are used, since these more closely reflect the area's actual emissions.

EPA Action

EPA is finalizing this action to exempt the Phoenix ozone nonattainment area from implementing the NO_X requirements for RACT, NSR, and the applicable general and transportation conformity and I/M requirements.

The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO_X Supplement to the General Preamble (57 FR 55628, November 25, 1992), the EPA would rescind a NO_X exemption in cases where NO_X reductions were later found to be beneficial in the area's attainment plan. That is, a modeling based exemption would last for only as long as the area's modeling continued to demonstrate attainment without the additional NO_X reductions required by section 182(f). Arizona submitted its ozone attainment demonstration on November 15, 1994, and EPA is currently in the process of evaluating it in regards to meeting the CAA requirements.

If the EPA later determines that NO_X reductions are beneficial based on new photochemical grid modeling in an area initially exempted, the area would be removed from exempt status and would be required to adopt and implement the NO_X requirements, except to the extent that modeling shows NO_X reductions to be ''excess reductions''. A determination that the NO_X exemption no longer applies would mean that the NO_X general and transportation conformity provisions would again be applicable (see 58 FR 63214, 58 FR 62188; 59 FR 31238) to the affected area. In the rulemaking action which removes the exempt status, the EPA would specify a schedule for Arizona to adopt the NO_X requirements and for sources to comply with the applicable requirements.

The subsequent modeling analyses mentioned above need not be limited to those whose main purpose is to demonstrate attainment in the 1994 SIP revisions without the need for NO_X controls required under section 182(f). State or local officials might want to consider a strategy that phases in NO_X reductions only after certain VOC reductions are implemented. As improved emission inventories and ambient data become available, planning officials may choose to remodel. In addition, alternative control strategy scenarios might be considered in subsequent modeling analyses in order to improve the cost-effectiveness of the attainment plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

[6] ''Review of Ozone Episodes (1987–1991) in the Phoenix Area'', from the Arizona Department of Environmental Quality to Systems Applications International, September 17, 1992. This memorandum is a summary of the characteristics of the ozone episodes in the Phoenix area, including annual, seasonal, and spatial distributions of the exceedances.

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