

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA

forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 2, 1995.

Patrick M. Tobin,  
*Acting Regional Administrator.*

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

**Subpart RR—Tennessee**

2. Section 52.2220, is amended by adding paragraph (c)(132) to read as follows:

**§ 52.2220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
(132) Revisions to the Knox County Air Pollution Control Regulations

submitted by the Tennessee Department of Environment and Conservation on June 28, 1994. These consist of revisions to appeals, judicial review, and violations of the air pollution regulations in Knox County.

(i) Incorporation by reference.  
Knox County Air Pollution Control Regulations, Sections 29.1.B, 29.3, 30.1.A, and 30.1.D adopted May 25, 1994.

[FR Doc. 95-31036 Filed 12-22-95; 8:45 am]  
BILLING CODE 6560-50-P

**40 CFR Part 52**

[ME26-1-7263a; FRL-5345-9]

**Approval and Promulgation of Implementation Plans; Maine; NO<sub>x</sub> Exemption Request for Northern Maine and NO<sub>x</sub> Control Approval**

**AGENCY:** United States Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving, in final, a limited exemption request from the requirements contained in section 182(f) of the Clean Air Act (Act) for the Northern Maine area (specifically, Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties). These 9 counties, as with the rest of the State of Maine, are part of the Ozone Transport Region (OTR) as provided for in section 184(a) of the Clean Air Act. Section 182(f) in combination with section 184 (relating to ozone transport regions) of the Act requires States in the OTR, such as Maine, to adopt reasonably available control technology (RACT) rules for major stationary sources of nitrogen oxides (NO<sub>x</sub>) and to provide for nonattainment area new source review (NSR) for new sources and modifications that are major for NO<sub>x</sub>. This exemption request, submitted by the State of Maine on September 7, 1995, is based on a demonstration that NO<sub>x</sub> emissions in this 9 county area are not impacting Maine's moderate nonattainment areas or other nonattainment areas in the Ozone Transport Region (OTR) during times when elevated ozone levels are monitored in those areas. As such, additional reductions in NO<sub>x</sub> emissions from these 9 counties beyond what the state regulation would provide for are not necessary for attainment in these areas currently in nonattainment, and, because they do not contribute to the ozone problem anywhere in the OTR are also not necessary for purposes of showing future attainment for any other

area in the OTR. Thus, as provided for in section 182(f)(2), additional NO<sub>x</sub> reductions in these areas would constitute excess reductions that can be waived under the Clean Air Act. EPA believes the State's demonstration is appropriate and meets the requirements of section 182(f)(2). Maine has requested that EPA combine its approval of this NO<sub>x</sub> exemption with its approval of NO<sub>x</sub> controls for existing sources in Northern Maine that were submitted to EPA on August 5, 1994 for purposes of meeting the Act's NO<sub>x</sub> RACT requirements. Consequently, this action approves a full exemption from nonattainment NSR requirements for NO<sub>x</sub>, but only a limited exemption from NO<sub>x</sub> control measures for existing sources that would go beyond what the State regulations provide for.

**DATES:** This action will become effective February 26, 1996, unless notice is received by January 25, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments may be mailed to Susan Studien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Judge, Environmental Engineer, Air Quality Planning (ATS), United States Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203. (617) 565-4874.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The air quality planning requirements for the reduction of NO<sub>x</sub> emissions are set out in section 182(f) of the Act. Section 182(f) of the Act requires States with areas designated and classified as moderate nonattainment and above for ozone, or in ozone transport regions, to impose the same control requirements for major stationary sources of NO<sub>x</sub> as apply to major stationary sources of volatile organic compounds (VOC). These requirements include the adoption of RACT rules for major stationary sources and nonattainment area NSR for major new sources and

major modifications. Section 182(f) provides further that these requirements do not apply for areas inside an ozone transport region if EPA determines that reductions of NO<sub>x</sub> from such areas would not contribute to net ozone benefits in the OTR. In addition, implementation of NO<sub>x</sub> controls may be limited if EPA determines it is necessary to avoid achieving excess reductions. Also, NO<sub>x</sub>-related general conformity provisions (see 58 FR 63214) would not apply in an area that is granted a section 182(f) exemption. For marginal and below ozone nonattainment areas such as those addressed by today's action, a section 182(f) exemption relieves the transportation conformity requirements of 40 CFR 51.436-51.440 and 40 CFR 93.122-93.124 for NO<sub>x</sub> (see 60 FR 44795).

The counties that are the subject of this action, Piscataquis, Penobscot, Washington, and Aroostook counties and the northern portions of Oxford, Franklin, and Somerset counties, are designated attainment for the National Ambient Air Quality Standard (NAAQS) for ozone. The southern portions of Oxford, Franklin, and Somerset counties are presently designated nonattainment but have never recorded exceedances of the ozone NAAQS and are not classified under the Clean Air Act. The Hancock and Waldo County Area is classified as marginal nonattainment under the Clean Air Act but presently has air quality better than the NAAQS for ozone. However, each of the counties for which Maine is seeking an exemption is within the OTR. For areas within the OTR, the application of NO<sub>x</sub> requirements under the Clean Air Act may be limited if it is shown that additional NO<sub>x</sub> reductions are excess to attainment needs throughout the region. EPA believes, in the case of these counties at the northern extremity of the OTR, that NO<sub>x</sub> requirements can be waived because the State has submitted an acceptable demonstration that additional reductions beyond what the State regulations provide for are not necessary for nonattainment areas in the State to attain, and because emissions from these areas are not contributing to the ozone nonattainment problem for any other area in the OTR, are also not necessary for purposes of showing future attainment anywhere in the OTR. Maine has made this showing through extensive air modeling trajectory analyses.

**Scope of Exemptions**

If the EPA Administrator determines, under Section 182(f) of the Act, that additional reductions of NO<sub>x</sub> are excess, the area at issue shall automatically (i.e.,

a State would not need to submit an exemption request for each requirement) be exempt from the following requirements (as applicable): the NO<sub>x</sub>-related general conformity provisions, the NO<sub>x</sub>-related transportation conformity provisions in 40 CFR 51.436-51.440 and 40 CFR 93.122-93.124 ("build/ no-build test"), NO<sub>x</sub> RACT, and nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>. Additionally, NO<sub>x</sub> emission reductions would not be required of an enhanced automobile inspection and maintenance (I/M) program. Because I/M is not required by the Act in Northern Maine, EPA's action on this request has no impact on I/M requirements.

**Transportation Conformity**

The transportation conformity rule, entitled "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. or the Federal Transit Act," was published in the November 24, 1993 Federal Register (58 FR 62188). The rule was promulgated under section 176(c)(4) of the Act.

The transportation conformity rule requires emissions analysis of motor vehicle NO<sub>x</sub> emissions for ozone nonattainment and maintenance areas in order to determine the conformity of transportation plans and programs to state implementation plan requirements. This analysis must demonstrate that the NO<sub>x</sub> emissions which would result from the transportation system if the proposed transportation plan and program were implemented are within the total allowable level of NO<sub>x</sub> emissions from highway and transit motor vehicles as identified in a submitted or approved attainment demonstration or maintenance plan.

Until an attainment demonstration, fifteen-percent rate-of-progress plan (if applicable), or maintenance plan is approved by EPA, the emissions analysis of the transportation system must also satisfy the "build/no-build" test. That is, the analysis must demonstrate that emissions from the transportation system, if the proposed transportation plan and program were implemented, would be less than the emissions from the transportation system if only the previous applicable transportation plan and program were implemented. Furthermore, the regional emissions analysis must show that emissions from the transportation system, if the transportation plan or program were implemented, would be lower than 1990 levels.

The transportation conformity rules provide for an exemption from these so called "build/no build" requirements with respect to NO<sub>x</sub> if the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment of the ozone NAAQS. However, all other NO<sub>x</sub> provisions in the transportation conformity rule would apply, including the requirement for consistency with the NO<sub>x</sub> motor vehicle emissions budget in a submitted control strategy state implementation plan, or an approved maintenance plan.

The areas addressed in today's action are not required to submit a control strategy implementation plan revision (i.e., an attainment demonstration or 15% RFP plan). Further, only a portion of these areas are required to satisfy the "build/ no-build test." A section 182(f) exemption would relieve this requirement for NO<sub>x</sub> for these areas, but once any maintenance plan is approved by EPA, consistency with the NO<sub>x</sub> budget would be required.

#### General Conformity

The general conformity rule, entitled "Determining Conformity of General Federal Actions to State or Federal Implementation Plans," was published in the Federal Register on November 30, 1993 (58 FR 63214). The rule was promulgated under section 176(c)(4) of the Act. The general conformity rule provides for an exemption from NO<sub>x</sub> requirements if the area has been exempted under section 182(f) of the Act.

#### II. Criteria for Evaluation of Section 182(f) Exemption Requests

The criteria established for the evaluation of an exemption request from the Section 182(f) requirements are set forth in 2 memoranda from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994 and February 8, 1995, both entitled "Section 182(f) Nitrogen Oxides (NO<sub>x</sub>) Exemptions—Revised Process and Criteria." Additional guidance is provided in a document entitled "Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," dated December 1993, from EPA, Office of Air Quality Planning and Standards, Air Quality Management Division.

#### III. State Submittal

On September 7, 1995, the State of Maine submitted an exemption request from the requirements contained in Section 182(f) of the Clean Air Act (Act) for the Northern Maine area (specifically, Oxford, Franklin, Somerset, Piscataquis, Penobscot,

Washington, Aroostook, Hancock and Waldo Counties). This exemption request is based on a demonstration that nitrogen oxides (NO<sub>x</sub>) emissions in this area are not impacting Maine's moderate nonattainment areas or other nonattainment areas in the Ozone Transport Region (OTR) during times when elevated ozone levels are monitored in those areas. As such, additional reductions in NO<sub>x</sub> emissions from these 9 counties, that is, NO<sub>x</sub> reductions beyond what the state regulations contemplate providing for, as explained further below, are not necessary for nonattainment areas in the State to attain, and, are also not necessary for attainment purposes anywhere in the OTR. Under these circumstances, as section 182(f)(2) provides, such additional reductions may be waived as excess reductions. While Maine generally is requesting an exemption from applicable NO<sub>x</sub> requirements for this 9 county area, it has requested a limited exemption from NO<sub>x</sub> control measure requirements that apply for existing stationary sources in these areas. Maine has requested that EPA combine its approval of the exemption request with its approval of NO<sub>x</sub> controls for existing stationary sources in the Northern Maine area previously submitted to EPA on August 5, 1994. In approving this NO<sub>x</sub> exemption request, EPA considered the impact of the limited exemption from NO<sub>x</sub> requirements for existing sources. EPA is approving this action because, under section 182(f)(2), EPA has determined that additional NO<sub>x</sub> reductions from these areas would be excess.

#### IV. Analysis of State Submittal and Supporting Material

EPA has reviewed the material submitted by the State of Maine in support of this request. As mentioned above, these areas are presently monitoring attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. For ozone, an area is considered to be monitoring attainment of the NAAQS if there are no violations, as determined in accordance with 40 CFR Part 50.9, based on quality assured monitoring data from three complete consecutive calendar years. A violation of the ozone NAAQS occurs when the expected number exceedances per year (over a three year period) is greater than 1.0. An exceedance occurs when the daily maximum hourly ozone concentration equals or exceeds 0.125 parts per million (ppm). Only Hancock and Waldo Counties, which is a marginal nonattainment area, were classified under the Clean Air Act, as

amended in 1990. This area has only measured a single exceedance of the standard since 1992.

Thus, the annual average expected exceedances in the latest three year period is less than 1.0 and the entire area is meeting the air quality standard for ozone. In order for the Hancock and Waldo Counties area to be redesignated to attainment, EPA will need to take action on a redesignation request, including a maintenance plan.

A more detailed summary of the ozone monitoring data for both areas is provided in the EPA technical support document prepared for this action.

#### V. Air Trajectory Analyses

Maine prepared trajectory analyses for each day when the ozone standard was exceeded in either New Hampshire or Maine. Additionally, Maine prepared detailed statistical trajectory analyses for many days based on ozone monitors just southwest of this 9 county area. Hundreds of data points were analyzed, and this effort will be described in more detail below.

#### Modeling

EPA has performed extensive air quality modeling throughout the Northeast for the past several years utilizing the regional oxidant model (ROM). This modeling domain covers virtually all of northern Maine. Essentially, all ROM analyses have shown no actual or predicted exceedances in this 9 county area, which is northeast of the remainder of the OTR. (It should be noted that exceedances were predicted in the coastal portions of Waldo, Hancock, and Washington Counties in 1987 and 1988, and, during this timeframe, exceedances were actually measured in Hancock and Waldo Counties forming the basis for their designation as marginal ozone nonattainment areas. No exceedances were measured in Washington County. However, since 1992, only Hancock County has measured a single exceedance of the standard. Given these analyses, and the direction of the ozone "plume," it is reasonable to expect negligible contribution from these areas to the overall ozone nonattainment situation in the OTR.)

However, ROM modeling analyses are not intended to actually predict attainment or nonattainment. EPA guidance requires more extensive modeling using photochemical grid modeling in most areas. While this more sophisticated modeling is technically not required anywhere in Maine, in concert with Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont, extensive analyses

are being performed utilizing the urban airshed model (UAM). The EPA UAM modeling guideline requires that modeling domains be sufficiently large to analyze the effects of ozone and ozone precursors throughout the entire area of concern. Based on extensive analyses, including ROM results, EPA agreed that the UAM modeling domain would not even cover the vast majority of this 9 county area (it does include a portion of Oxford county based simply on the geographical shape of the county and the size of the domain).

Consequently, the UAM modeling does not reflect the effects of ozone and ozone precursors from the northern Maine area. On the other hand, the determination that the northern Maine area could be excluded from the modeling domain reflects the degree of certitude that ozone precursor reductions from this area would not play a significant role in the process of attaining the ozone standard in the OTR.

The "Back Trajectory Analyses" and the "Receptor Oriented Analyses" include the most substantive technical portion of the September 7, 1995 NO<sub>x</sub> exemption request and are described below.

#### *Back Trajectory Analyses*

Trajectories are the path of an air mass over time; back trajectories trace the path of an air mass back in time to determine the origin of that air mass. The trajectory analyses, which use the HY-SPLIT trajectory model, show that for the ozone monitoring sites chosen, (Port Clyde, ME; Rye, NH; Bennington, VT; and Bridgeport, CT) the back trajectories do not pass over northern Maine and demonstrate that northern Maine cannot be a source region for ozone on days with elevated ozone levels. (Sites were chosen to represent a variety of locations throughout New England.) Trajectories were performed for every day that the monitor of interest exceeded 0.10 ppm (at 3:00 pm) between 1989 and 1993. Occasionally, some of these back trajectories (i.e., those based on Port Clyde monitored readings) pass over extreme western Maine, specifically Oxford County. Based on the small amount of emissions emitted from Oxford County, it is unlikely that Oxford County plays any measurable role in the ozone found in Port Clyde on days that Port Clyde exceeded 0.12 ppm.

Furthermore, EPA feels that the HY-SPLIT model, in this application in Maine, has a slight westerly bias in its back trajectory approach over what the true low-level/surface back trajectory is on days with high ozone potential. Given this, it is probable that Oxford

County emissions do not even pass over Port Clyde on the days in question. This westerly bias is caused by HY-SPLIT's reliance on the Nested Grid Model (NGM) winds which are almost exclusively upper-air winds, not surface winds. The technical support for this effort describes this phenomenon in more detail, and can be found in the docket for this action. Nevertheless, the back trajectory work Maine has performed does show that a NO<sub>x</sub> exemption for the 9 counties is justified.

#### *Receptor Oriented Analyses*

The receptor analyses, also part of Maine's technical support, is just a different way of looking at back trajectories from the HY-SPLIT model. The NO<sub>x</sub> exemption request states: "Residence time analysis performed for these ozone monitoring sites involves taking a large number of individual back-trajectories from a site and examining the statistical relationship between the ozone monitored at the site and the location along each back-trajectory." The analysis goes on to state that although the technique has been shown to work with non-chemically reactive air pollutants, it may not perform as well with ozone. Nevertheless, the exemption request provides that: "the technique does indicate the primary directional biases from which regional scale air mass transport may be suspected."

The receptor oriented analysis also shows that the 9 county NO<sub>x</sub> exemption area contributes much less "ozone" to southern and coastal Maine (Gardiner and Port Clyde) than do other areas to the west and south. First, Maine performed analyses which show the upwind locations of air masses 3-7 hours prior to ozone concentrations exceeding 0.040 ppm at either Gardiner or Port Clyde, Maine from 1989 to 1993. Next, they ran 25 hour back trajectories for every day in which an air mass passed over different portions of New England from 1989 to 1993. Analysis of these graphical depictions supports Maine's contention that these northern counties do not contribute to elevated ozone levels in Maine, or elsewhere in the OTR. These two types of meteorological analyses support Maine's exemption request essentially by demonstrating that emissions from these areas do not generally pass over any other part of the OTR on days when even moderate levels of ozone are measured.

#### VI. Maine's NO<sub>x</sub> Rules

On August 5, 1994, the Maine Department of Environmental Protection (DEP) submitted to EPA, Chapter 138 of

the Maine DEP's regulations, "Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides," for inclusion into the State Implementation Plan (SIP). On September 7, 1995, the Maine DEP submitted a request to the EPA to grant a limited exemption from the requirements of NO<sub>x</sub> RACT for facilities located in the non-moderate areas of the State (these 9 counties). In its NO<sub>x</sub> exemption request, Maine requested that EPA approve the appropriate portions of Chapter 138 in combination with approving the exemption. At this time, EPA's action on the NO<sub>x</sub> control rule submittal is solely for the 9 county area. Thus, EPA is approving Chapter 138 only as it applies to the 9 county area in Maine.

Although EPA agrees that Chapter 138 sets enforceable conditions which will achieve a level of NO<sub>x</sub> control, EPA is not evaluating these standards set in Chapter 138 as to whether or not they represent RACT for all of the emission units located in these 9 counties. EPA is also not evaluating this rule in regard to the requirements for the remaining 7 counties in Maine. While EPA's preliminary analysis suggests that this level of control does not represent RACT for these 9 counties, EPA will be taking formal action on the rule as it pertains to the remaining 7 counties at a later date. Based on the analysis prepared as part of the limited exemption request, EPA has determined that NO<sub>x</sub> reductions, beyond what is required by Chapter 138 for facilities in the non-moderate areas, are not necessary for purposes of showing future attainment in the Maine moderate nonattainment areas or any areas in the OTR. In EPA's NO<sub>x</sub> Supplement to the General Preamble for implementing nonattainment requirements, EPA noted that states remain free to reduce NO<sub>x</sub> emissions for a variety of reasons. 57 Fed. Reg. 55621, 55627 (Nov. 25, 1992). As long as EPA determines that these NO<sub>x</sub> reductions are not counterproductive or will not delay ozone attainment, EPA will approve them into the SIP. There is no evidence that the NO<sub>x</sub> reductions from Chapter 138 are counterproductive, and the conclusion of the demonstration supporting the exemption request is that additional NO<sub>x</sub> reductions from this area are not necessary for purposes of attainment anywhere in the OTR. Therefore, although EPA is making no formal judgement as to whether this level of control is RACT, EPA believes that the controls required by Chapter 138 in the 9 non-moderate counties will strengthen the SIP.

As stated above, the analysis contained in the State's limited exemption request assumes that reductions beyond those required by Chapter 138 in the non-moderate areas are not necessary for purposes of attainment for either the moderate nonattainment areas or other states in the OTR. Therefore, emission reductions achieved from units operating at rates below the limitations of Chapter 138 in this 9 county area cannot be considered creditable for the purpose of facilities complying with either New Source Review offsetting or NO<sub>x</sub> RACT requirements at facilities located in the moderate nonattainment areas (see the TSD prepared for this action for additional details).

#### VII. New Source Review

EPA is not taking action on Maine's New Source Review rule in this rulemaking. However, in a separate action, EPA is proposing to approve revisions to Maine's New Source Review rules. These revisions include an exemption provision for major new sources or major modifications of NO<sub>x</sub>. This provision states that lowest achievable emission rate (LAER) and offsets for NO<sub>x</sub> shall not apply in those areas that have received an exemption from the EPA under Section 182(f) of the CAA.

#### VIII. Withdrawal of the Exemptions

Continuation of the Section 182(f) exemptions granted herein is based on the demonstration that NO<sub>x</sub> emissions in this area are not impacting Maine's moderate nonattainment areas or other nonattainment areas in the Ozone Transport Region (OTR) during times when elevated ozone levels are monitored in those areas. If future air quality analyses demonstrate that additional NO<sub>x</sub> controls are necessary and the exemption should no longer apply, EPA will provide notice to the public in the Federal Register. A determination that the NO<sub>x</sub> exemption no longer applies would mean that the NO<sub>x</sub> NSR and the NO<sub>x</sub>-related general conformity provisions (see 58 FR 63214) would immediately be applicable. For the marginal and below ozone nonattainment areas addressed by today's action, rescinding this section 182(f) exemption would no longer relieve the transportation conformity requirements of 40 CFR 51.436-51.440 and 40 CFR 93.122-93.124 for NO<sub>x</sub> (see 60 FR 44795). The requirement for NO<sub>x</sub> RACT would also be applicable, with a reasonable time provided as necessary to allow major stationary sources subject to the RACT requirements to purchase, install and operate the required

controls. The EPA believes that the State may provide sources a reasonable time period after the EPA determination to actually meet the RACT emission limits. The EPA expects such time period to be as expeditious as practicable, but in no case longer than 24 months.

#### IX. Miscellaneous Topics

##### *Comments From Parties Interested in Previous NO<sub>x</sub> Exemptions*

An adverse comment letter has been previously submitted by three environmental groups and contained generic comments objecting to the EPA's general policy on NO<sub>x</sub> exemptions. The three environmental groups who submitted the generic comments requested that these comments be included in each EPA rulemaking action on NO<sub>x</sub> exemption requests. While some of the comments are not entirely relevant to this action, we have responded to them in an effort to be complete. EPA is treating these comments as part of the administrative record for this action, and they may serve as the basis for a challenge to this final action without being resubmitted to the Agency in response to the proposed rule.

##### *Comment*

In the past, commenters argued that NO<sub>x</sub> exemptions are provided for in two separate parts of the Act, in sections 182(b)(1) and 182(f). Because the NO<sub>x</sub> exemption tests in sections 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<sub>x</sub> exemption determinations by the EPA, including exemption actions taken under the petition process established by section 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. The commenters also argue that even if the petition procedures of section 182(f)(3) may be used to relieve areas of certain NO<sub>x</sub> requirements, exemptions from the NO<sub>x</sub> conformity requirements must follow the process provided in section 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the Act's conformity provisions.

##### *Response*

Section 182(f) contains very few details regarding the administrative procedures for acting on NO<sub>x</sub> 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 NO<sub>x</sub> exemption requests under section 182(f), and instead believes that sections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO<sub>x</sub> exemption requests. The language in section 182(f)(1), which indicates that the EPA should act on NO<sub>x</sub> exemptions in conjunction with action on a plan or a plan revision, does not appear in section 182(f)(3). While section 182(f)(3) references section 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 State Implementation Plans (SIPs). Additionally, section 182(f)(3) provides that "person[s]" [which section 302(e) of the Act defines to include States] may petition for NO<sub>x</sub> 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<sub>x</sub> RACT and NSR 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<sub>x</sub> exemption would have needed to submit this exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations were not due until November 1993 or 1994 (and EPA may take 12 to 18 months to approve or disapprove the demonstrations). For marginal ozone nonattainment areas (subject to NO<sub>x</sub> NSR), no attainment demonstrations are called for in the CAA. For areas seeking redesignation to attainment of the ozone NAAQS, the CAA does not specify a deadline for submittal of maintenance demonstrations (in reality, EPA would generally consider redesignation requests without accompanying maintenance plans to be unacceptable). Clearly, the CAA envisions the submittal of and EPA action on NO<sub>x</sub> exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations. It is

important to note that none of these areas in Maine even needed to submit attainment demonstrations.

With respect to the comment that section 182(b)(1) is the appropriate authority for granting interim-period transportation conformity NO<sub>x</sub> exemptions, EPA agrees with the commenters and has published an interim final rule that changes the transportation conformity rule's reference from section 182(f) to section 182(b)(1) as the correct authority under the Act for waiving the NO<sub>x</sub> build/no-build and less-than-1990 emissions tests for certain areas. (see 60 FR 44795) However, EPA also notes that section 182(b)(1), by its terms, only applies to moderate and above ozone nonattainment areas. Consequently, EPA believes that the interim-reductions requirements of section 176(c)(3)(A)(iii), and hence the authority provided in section 182(b)(1) to grant relief from those interim-reduction requirements, apply only with respect to those areas that are subject to section 182(b)(1). EPA intends to continue to apply the transportation conformity rule's build/no-build and less-than-1990 emissions tests for purposes of implementing the requirements of section 176(c)(1), and EPA intends to continue to provide relief from those requirements under section 182(f). In addition, because general federal actions are not subject to section 176(c)(3)(A)(iii), which explicitly references section 182(b)(1), EPA will also continue to offer relief under section 182(f)(3) from the applicable NO<sub>x</sub> requirements of the general conformity rule.

In order to demonstrate conformity, transportation-related federal actions that are taken in ozone nonattainment areas not subject to section 182(b)(1) and, hence, not subject to section 176(c)(3)(A)(iii) must still be consistent with the criteria specified under section 176(c)(1). Specifically, these actions must not, with respect to any standard, cause or contribute to new violations, increase the frequency or severity of existing violations, or delay attainment. In addition, such actions must comply with the relevant requirements and milestones contained in the applicable state implementation plan, such as reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstrations, numerical emission limits, or prohibitions. EPA believes that the build/no-build and less-than-1990 emissions tests provide an appropriate basis for such areas to demonstrate compliance with the above criteria.

As noted earlier, EPA intends to continue to offer relief under section

182(f) from the interim NO<sub>x</sub> requirements of the conformity rules that would apply under section 176(c)(1) for the areas not subject to section 182(b)(1) in the manner described above. EPA believes this approach is consistent both with the way NO<sub>x</sub> requirements in ozone nonattainment areas are treated under the Act generally, and under section 182(f) in particular. The basic approach of the Act is that NO<sub>x</sub> reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach but also includes specific substantive tests which provide a basis for EPA to determine when NO<sub>x</sub> requirements should not apply. There is no substantive difference between the technical analysis required to make an assessment of NO<sub>x</sub> impacts on attainment in a particular area whether undertaken with respect to mobile source or stationary source NO<sub>x</sub> emissions. Moreover, where EPA has determined that NO<sub>x</sub> reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO<sub>x</sub> reductions for purposes of meeting reasonable further progress or other milestone requirements. Thus, even as to the conformity requirements of section 176(c)(1), EPA believes it is reasonable and appropriate, first, to offer relief from the applicable NO<sub>x</sub> requirements of the general and transportation conformity rules in areas where such reductions would not be beneficial and, second, to rely in doing so based on the exemption tests provided in section 182(f).

#### *Comment*

Commenters argue that waiver of NO<sub>x</sub> control requirements is unlawful if such a waiver would impede attainment and maintenance of the ozone standard in downwind areas.

#### *Response*

These areas in Maine are generally considered downwind of the remainder of the United States. Maine's technical demonstration showed clearly that the waiver of these controls will not impede attainment or maintenance of the NAAQS for ozone standard anywhere.

#### *Comment*

Comments were received regarding the scope of exemption of areas from the NO<sub>x</sub> requirements of the conformity rules. The commenters 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<sub>x</sub> emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO<sub>x</sub> 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<sub>x</sub>, but want EPA, in actions on NO<sub>x</sub> exemptions, to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO<sub>x</sub> increases is in place.

#### *Response*

EPA has recently addressed this issue through rulemaking and this rulemaking appropriately reflects EPA's position on this issue. (see 60 FR 57179)

#### *Comment*

Commenters argue that the Act does not authorize any waiver of the NO<sub>x</sub> reduction requirements until conclusive evidence exists that such reductions are counterproductive.

#### *Response*

EPA does not agree with this comment since it ignores the 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<sub>x</sub> exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO<sub>x</sub> similar to those that apply for 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<sub>x</sub> reductions would generally not be beneficial towards attainment of the ozone standard. In section 182(f)(1), Congress explicitly conditioned action on NO<sub>x</sub> exemptions on the results of an ozone precursor study required under section 185B of the Act. Because of the possibility that reducing NO<sub>x</sub> in an 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 Title I of the Act, to avoid requiring NO<sub>x</sub> reductions where such would not be beneficial or would be counterproductive. In describing these various ozone

provisions, including section 182(f), the House Conference Committee Report states in the pertinent part: “[T]he Committee included a separate NO<sub>x</sub>/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO<sub>x</sub> provisions. The Committee does not intend NO<sub>x</sub> reduction for reduction’s sake, but rather as a measure scaled to the value of NO<sub>x</sub> 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, the command in section 182(f)(1) that EPA “shall consider” the 185B report taken together with the timeframe the Act provides for completion of the report and for acting on NO<sub>x</sub> 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<sub>x</sub> exemption requests, even absent the additional information that would be included in affected areas’ attainment or maintenance demonstrations. While there is no specific requirement in the Act that EPA actions granting NO<sub>x</sub> 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<sub>x</sub> exemption if warranted by additional, current information.

In addition, the EPA believes, as described in EPA’s December 1993 guidance, that section 182(f)(1) of the Act provides that the new NO<sub>x</sub> 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<sub>x</sub> reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO<sub>x</sub> reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO<sub>x</sub> 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 a full or limited NO<sub>x</sub> exemption.

Only the first test listed above is based on a showing that NO<sub>x</sub> reductions are “counter productive.” If one of the tests is met (even if another test is failed

or not applied), the section 182(f) NO<sub>x</sub> requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

#### *Processing NO<sub>x</sub> Exemptions*

As stated above, section 182(f) contains very few details regarding the administrative procedure for EPA action on NO<sub>x</sub> exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

Although a section 182(f) petition may determine the applicability of SIP requirements pertaining to NO<sub>x</sub> emission reductions and controls, this petition itself is not a SIP, nor must it be a revision to a SIP. Therefore, a petition is not required to undergo a public hearing, nor must a petition be submitted by a Governor of a State or his designee. This submission was made by the Maine Commissioner of the Department of Environmental Protection. A public hearing was not held on the September 7, 1995 NO<sub>x</sub> exemption request.

#### X. Final Action

The EPA is approving the exemption request for the Northern Maine area from the Section 182(f) NO<sub>x</sub> requirements based upon the evidence provided by the State and the State’s compliance with the requirements outlined in the applicable EPA guidance. This action exempts the Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo counties from the requirements to implement NO<sub>x</sub> control measures for existing stationary sources (other than those controls specified herein), nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>, the NO<sub>x</sub>-related general conformity provisions, and the NO<sub>x</sub>-related transportation conformity provisions in 40 CFR 51.436–51.440 and 40 CFR 93.122–93.124 (“build/no-build test”). If EPA determines based on future air quality analyses that NO<sub>x</sub> controls in these areas are necessary, rulemaking may be initiated which may mean that this NO<sub>x</sub> exemption no longer applies. As stated before, the State of Maine requested only a limited exemption from NO<sub>x</sub> control requirements for existing stationary sources. EPA is approving this level of control as strengthening the existing SIP.

#### XI. Procedural Background

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

#### XII. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today’s exemption does not create any new requirements, but allows suspension of the indicated requirements for the life of the exemption. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. This action also approves certain controls already in effect at the State level, and, as such, imposes no additional regulatory burden on these facilities.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 1996. 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)).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this NO<sub>x</sub> waiver request and NO<sub>x</sub> control revisions to its state implementation plan, the State has elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose new requirements, such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 4201-7671q.  
 Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.  
 Dated: December 1, 1995.  
 Carol M. Browner,  
*Administrator.*  
 Part 52 of 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 U—Maine**

2. Section 52.1020 is amended by adding paragraph (c)(41) to read as follows:

**§ 52.1020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(41) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on August 5, 1994 related to

NO<sub>x</sub> controls in Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties.

(i) Incorporation by reference.

(A) A Letter from the Maine Department of Environmental Protection dated August 5, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 138 of the Maine DEP's regulations, "Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides" for sources only in Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties (excepted portions include Sections 1.A.1. and 3.B.). This rule was effective August 3, 1994.

3. In § 52.1031, Table 52.1031 is amended by adding state citation 138 in numerical order to read as follows:

**§ 52.1031 EPA-approved Maine regulations.**

\* \* \* \* \*

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FEDERAL REGISTER citation	52.1020	
138 ...	* Reasonably Available Control Technology For Facilities That Emit Nitrogen Oxides.	* 8/3/94	* December 26, 1995	* 60 FR	* (c)(41)	* Affects sources only in Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties (excepted portions of rule include Sections 1.A.1. and 3.B.).

4. Section 52.1023 is amended by adding paragraph (c) to read as follows:

**§ 52.1023 Control strategy: Ozone.**

\* \* \* \* \*

(c) *Approval.* EPA is approving an exemption request submitted by the Maine Department of Environmental Protection on September 7, 1995, for the Northern Maine area from the NO<sub>x</sub> requirements contained in Section 182(f) of the Clean Air Act. This approval exempts Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo Counties from the requirements to implement controls beyond those approved in § 52.1020(c)(41) for major sources of nitrogen oxides (NO<sub>x</sub>), nonattainment area new source review (NSR) for new sources and modifications that are major for NO<sub>x</sub>, and the applicable NO<sub>x</sub>-related

requirements of the general and transportation conformity provisions.

[FR Doc. 95-31034 Filed 12-22-95; 8:45 am]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 677**

[Docket No. 950822211-5291-02; I.D. 080395A]

RIN 0648-AD80

**North Pacific Fisheries Research Plan; Amendment 1**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** NMFS issues a final rule to implement Amendment 1 to the North Pacific Fisheries Research Plan (Research Plan). Regulations implementing Amendment 1 delay full implementation of the Research Plan until 1997 and establish 1996 observer coverage requirements for the Research Plan fisheries. This delay is necessary to provide the North Pacific Fishery Management Council (Council) additional time to address certain issues presented by implementation of the Research Plan. Two technical amendments also are implemented to clarify provisions for refunding excess payments of 1995 Research Plan fee assessments and to clarify 1996 observer coverage requirements for groundfish vessels.

**EFFECTIVE DATE:** January 1, 1996.