of the final ozone attainment demonstration expected to be submitted in mid-1997. The approval will be modified if the final attainment demonstration demonstrates that NO_X emission controls are needed in the nonattainment area to attain the ozone standard in the Lake Michigan Ozone Study modeling domain.

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Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (l) to read as follows:

§ 52.1174 Control Strategy: Ozone

* * * * *

(l) Approval—EPA is approving the section 182(f) oxides of nitrogen (NO_X) reasonably available control technology (RACT), new source review (NSR), vehicle inspection/maintenance (I/M), and general conformity exemptions for the Grand Rapids (Kent and Ottawa Counties) and Muskegon (Muskegon County) moderate nonattainment areas as requested by the States of Illinois, Indiana, Michigan, and Wisconsin in a July 13, 1994 submittal. This approval also covers the exemption of NO_X transportation and general conformity requirements of section 176(c) for the Counties of Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Gratiot, Genesee, Hillsdale, Ingham, Ionia, Jackson, Kalamazoo, Lenawee, Midland, Montcalm, St. Joseph, Saginaw, Shiawasse, and Van Buren.

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (i) to read as follows:

§ 52.2585 Control Strategy: Ozone.

* * * * *

(i) Approval—EPA is approving the section 182(f) oxides of nitrogen (NO_X) reasonably available control technology (RACT), new source review (NSR), vehicle inspection/maintenance (I/M), and general conformity exemptions for the moderate and above ozone nonattainment areas within Wisconsin as requested by the States of Illinois, Indiana, Michigan, and Wisconsin in a July 13, 1994 submittal. This approval also covers the exemption of transportation and general conformity requirements of section 176(c) for the Door and Walworth marginal ozone nonattainment areas. Approval of these exemptions is contingent on the results of the final ozone attainment demonstration expected to be submitted in mid-1997. The approval will be modified if the final attainment demonstration demonstrates that NO_X emission controls are needed in any of the nonattainment areas to attain the ozone standard in the Lake Michigan Ozone Study modeling domain.

[FR Doc. 96–1413 Filed 1–25–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[LA–22–1–7184; FRL–5402–7]

Approval and Promulgation of Section 182(f) Exemption to the Nitrogen Oxides (NO_X) Control Requirements for the Baton Rouge Ozone Nonattainment Area; Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As requested by the State of Louisiana in a petition submitted to the EPA pursuant to section 182(f)(3) of the Clean Air Act (CAA), the EPA is granting an exemption from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of Oxides of Nitrogen (NO_X), from the vehicle Inspection/Maintenance (I/M) NO_X requirements, and general conformity NO_X requirements for the Baton Rouge, Louisiana serious ozone nonattainment area. The EPA is approving the exemption based on a demonstration that additional NO_X reductions would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone in the nonattainment area. The EPA is not taking final action at this time on the granting of an exemption from the transportation conformity requirements of the CAA for the Baton Rouge area. The EPA is reserving the right to reverse the approval of the exemption if subsequent modeling data demonstrate an ozone attainment benefit from NO_X emission controls.

EFFECTIVE DATE: This action is effective as of January 18, 1996.

ADDRESSES: Copies of the exemption request, public comments and EPA's responses are available for inspection at the following address:

United States Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne McDaniels or Mr. Quang Nguyen, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTAL INFORMATION:

I. Background

On November 17, 1994, the State of Louisiana submitted a petition to the EPA requesting that the Baton Rouge serious ozone nonattainment area be exempted from requirements to implement NO_X controls pursuant to section 182(f) of the CAA. The exemption request is based on modeling that demonstrates additional NO_X emission controls within the nonattainment area will not contribute to attainment of the ozone NAAQS within the area. The Baton Rouge ozone nonattainment area consists of the following parishes: East Baton Rouge, West Baton Rouge, Pointe Coupee, Livingston, Iberville, and Ascension. The State also provided supplemental technical reports pertaining to the modeling as part of the Baton Rouge post-1996 rate-of-progress plan submitted to the EPA on November 15, 1994. In addition, the State submitted several follow-up letters to the petition to: (1) revise a number of tables in the November 17, 1994, petition, and (2) broaden the scope of the original request to also include exemptions under section 182(f) for NO_X NSR, general conformity, and I/M NO_X requirements.

On August 18, 1995, the EPA published a rulemaking proposing approval of the NO_X exemption petition for the six-parish ozone nonattainment area (60 FR 43100). During the 30-day public comment period, the EPA received two letters commenting on the proposal. Both expressed opposition to the exemption. In addition to these comments, in August 1994 three environmental groups submitted joint adverse comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas. The comments addressed the EPA's general policy regarding NO_X exemptions. The commenters requested that these comments be addressed in all EPA rulemakings dealing with section 182(f) exemptions.

II. Public Comments

The following discussion summarizes the comments received regarding the State's petition and/or the EPA's proposed rulemaking and presents the EPA's responses to these comments.

Comment: Commenters argued that NO_X exemptions are provided for in two separate parts of the CAA, in sections

182(b)(1) and 182(f). Because the NO_X exemption tests in sections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when (the 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 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 argued that, even if the petition procedures of section 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 section 182(b)(1), since section 182(b)(1) 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 procedures for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves the EPA with discretion to establish reasonable procedures consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering NO_X 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_X exemption requests. The language in section 182(f)(1), which indicates that the EPA should act on NO_X 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 ''a person'' (which section 302(e) of the CAA defines to include a State) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within six months of the petition's submission. These key differences lead the EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO_X 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_X 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 the EPA may take up to 12 months to approve or disapprove the demonstrations). For marginal ozone nonattainment areas (subject to NO_X 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, the 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_X exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

With respect to the comment that section 182(b)(1) is the appropriate authority for granting interim period transportation conformity NO_X exemptions, the EPA agreed with the commenters and published an interim final rule that changed the transportation conformity rule's reference to section 182(b)(1) as the correct authority under the CAA for waiving the NO_X ''build/no-build'' and ''less-than-1990 emissions'' tests for certain areas. See 60 FR 44762, dated August 29, 1995. A related proposed rule (60 FR 44790), published on the same day, invited public comment on how the Agency plans to implement section 182(b)(1) transportation conformity NO_X exemptions. That proposal has since been finalized. *See* 60 FR 57179 (November 14, 1995). However, the EPA also notes that section 182(b)(1), by its terms, only applies to moderate and above ozone nonattainment areas. Consequently, the 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). The 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). In addition, because general Federal actions are not subject to section 176(c)(3)(A)(iii), which explicitly references section 182(b)(1), the EPA will also continue to offer relief under section 182(f)(3) from the applicable NO_X 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. The 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, the EPA intends to continue to offer relief under section 182(f)(3) from the interim NO_X 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. The EPA believes this approach is consistent both with the way NO_X requirements in ozone nonattainment areas are treated under the CAA generally, and under section 182(f) in particular. The basic approach of the CAA is that NO_X 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 the EPA to determine when NO_X requirements should not apply. There is no substantive difference between the technical analysis required to make an assessment of NO_X impacts on attainment in a particular area whether undertaken with respect to mobile source or stationary source NO_X emissions. Moreover, where the EPA has determined that NO_X reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO_X reductions for purposes of meeting reasonable further progress or other milestone requirements. Thus, even concerning the conformity

requirements of section 176(c)(1), the EPA believes it is reasonable and appropriate to (1) offer relief from the applicable NO_X requirements of the general and transportation conformity rules in areas where such reductions would not be beneficial, and (2) rely in doing so on the exemption tests provided in section 182(f).

For moderate and above ozone nonattainment areas which are relying on modeling data in petitioning for a transportation conformity NO_X exemption, the final rule (60 FR 57179) affects the process for applying for such waivers. Unlike section 182(f)(3), section 182(b)(1) requires that the EPA approve a NO_X waiver (i.e., determine that additional reductions of NO_X would not contribute to attainment) as part of a SIP revision. Thus, under section 182(b)(1), petitions for transportation conformity NO_X waivers for areas subject to that section must be submitted as formal SIP revisions by the Governor (or designee) following a public hearing. As explained previously, the EPA will continue to process and approve, under section 182(f)(3), conformity NO_X waivers for areas not subject to section 182(b)(1) without public hearings or submission by the Governor. The Baton Rouge serious ozone nonattainment area is subject to the requirements of section 182(b)(1). Hence, a transportation conformity NO_X waiver would have to be submitted as a revision to the SIP. As mentioned previously, in this rulemaking, the EPA is not taking a final action on a NO_X exemption for transportation conformity for the Baton Rouge area. The State of Louisiana has requested a transportation conformity NO_X exemption for the Baton Rouge area through a formal SIP revision pursuant to section 182(b)(1) of the CAA. The EPA proposed approval of the revision on October 6, 1995 (60 FR 52348). A final action on the SIP submittal will be taken in a subsequent rulemaking by the EPA.

Finally, as noted earlier, the NO_X provisions of the general conformity rule would not be affected by this proposal. A NO_X waiver under section 182(f) removes the NO_X general conformity requirements entirely and would continue to do so. The CAA's provision for transportation conformity NO_X waivers stems from section 176(c)(3)(A)(iii), which addresses only transportation conformity, and not general conformity. Therefore, the statutory authority for general conformity NO_X waivers is not required to be section 182(b) for any areas and may continue to be section 182(f) for all areas.

Comment: Commenters argued that waiver of NO_X control requirements is unlawful if such a waiver would impede attainment and maintenance of the ozone standard in downwind areas.

Response: As a result of these comments, the EPA reevaluated its position on this issue and has revised previously issued guidance. See Memorandum, ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria,'' dated February 8, 1995, from John Seitz. As described in this memorandum, the EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by the EPA on a NO_X exemption request under section 182(f). That is, the EPA's action to grant or deny a NO_X exemption request under section 182(f) for any area would not shield that area from the EPA's action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway or will soon be conducted in many areas for the attainment demonstration SIP revisions required pursuant to section 182(c)(2)(A). Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions upwind of the nonattainment areas. For example, the Northeast Corridor States and the Lake Michigan Ozone Study are considering attainment strategies which may rely, in part, on NO_X emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, the EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as the large scale modeling analyses are being conducted, States have requested exemptions from NO_X requirements under section 182(f) for certain nonattainment areas in the modeling domains. Some of these nonattainment areas may impact downwind nonattainment areas. The EPA intends to address the transport issue under section 110(a)(2)(D), based on a regional modeling analysis.

Under section 182(f) of the CAA, an exemption from NO_X requirements may be granted for nonattainment areas outside of an ozone transport region if the EPA determines that ''additional reductions of (NO_X) would not contribute to attainment of the national ambient air quality standard for ozone in the area.'' [1] As described in section 4.3 of the December 13, 1993, EPA guidance document, ''Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' the EPA encourages, but does not require, States/petitioners to consider the impacts on the entire modeling domain since the effects of an attainment strategy may extend beyond a designated nonattainment area. Specifically, the guidance encourages States to consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or interstate. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State. *See* section 110(a)(2)(D)(i)(I) of the CAA.

In contrast, section 4.4 of the December 16, 1993, guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance further explains that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts. Consistent with section 4.3 of the guidance, the EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence, has revised section 4.4 of the December 16, 1993, guidance document. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that problem should be

[1] There are three NO_X exemption tests specified in section 182(f). Of these, two are applicable for areas outside of an ozone transport region: the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993, EPA guidance, ''[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.''

separately addressed by the State(s) or, if necessary, by the EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by the EPA. In some cases, therefore, the EPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending on the circumstances.

The State of Louisiana is being included in one of the new modeling analyses referred to above that is being conducted by the EPA, States, and other agencies as part of the Ozone Transport Assessment Group (OTAG). The OTAG process is a consultative process among the eastern States and the EPA which was initiated by the EPA in a March 2, 1995, policy memorandum.[2] The OTAG assessment process, which is scheduled to end at the close of 1996, will evaluate regional and national emission control strategies using improved regional modeling analyses. The goal of the OTAG process is to reach consensus on additional regional and national emission reductions that are needed to support efforts to attain the ozone standard in the eastern United States. Based on the results of the OTAG process, States have committed to submit plans (SIP revisions) by mid-1997 which show attainment of the ozone standard through local, regional, and national emission controls.

The OTAG plans to complete additional modeling between now and September 1996 using emissions data and emission control strategies currently being developed among OTAG workgroups.

As noted in a prior EPA rulemaking dated November 28, 1994 (59 FR 60709), NO_X waivers are approved on a contingent basis; the waiver applies only so long as air quality analyses, such as from additional ozone modeling, in an exempted area continue to show an attainment disbenefit or lack of benefit from NO_X emission reductions. Additionally, in the notice of proposed rulemaking on the Baton Rouge exemption request, 60 FR 43100 (August 18, 1995), the EPA indicated that the NO_X exemption would remain effective for only as long as modeling continued to show that NO_X control activities would not contribute to attainment in the Baton Rouge area.

The State of Louisiana has conducted a number of additional modeling analyses (subsequent to the preparation of the NO_X waiver request) to assess the impact of specific emission controls on peak ozone concentrations. These additional modeling analyses have been performed to support the State's demonstration of attainment, which is under development. These modeling analyses are well documented and are based on a modeling system which has been accepted by the EPA as being validated for the Baton Rouge modeling domain. EPA continues to believe that the modeling completed thus far supports granting a NO_X waiver.

As discussed above, the State of Louisiana has been included in the superregional photochemical modeling of the eastern United States (U.S.) by the OTAG. The EPA expects the OTAG to complete their work as scheduled. The EPA will then evaluate the modeling results and their implications concerning NO_X versus volitle organic compound (VOC) emission controls. The results of this modeling may supersede the urban airshed model (UAM) demonstration that the EPA is using as the basis for granting this waiver. To continue the waiver for all NO_X source categories, the modeling must continue to show attainment of the ozone standard without the use of additional NO_X emission controls. The final modeling may demonstrate attainment of the ozone standard using a subset of the possible NO_X emission controls. In this situation, the EPA may continue the waiver for the remaining ''non-controlled'' NO_X sources under section 182(f)(2) of the CAA.

Comment: Comments were received regarding the scope of exemption of areas from the NO_X requirements of the conformity rules. The commenters argued that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules, and similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admitted that, in prior guidance, the EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want the EPA, in actions on NO_X exemptions, to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

Response: The EPA's transportation conformity rule[3] originally provided a NO_X transportation conformity waiver if an area received a section 182(f) exemption. As indicated in a previous response, the EPA has changed the reference from section 182(f) to section 182(b)(1) in the transportation conformity rule since that section is specifically referenced by the transportation conformity provisions of the CAA. *See* 60 FR 44762. The EPA has also consistently held the view that, in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and the Transportation Improvement Program (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 was not reflected in the transportation conformity rule. The EPA has amended the rule to correct this error. See 60 FR 57179. However, the exemptions that are the subject of this final action do not include transportation conformity NO_X requirements and are being processed under section 182(f)(3), which requires the EPA to act within 6 months on the submitted petition. The EPA believes it is appropriate to act on received petitions as close to the prescribed 6 month time frame as practicable. Therefore, the EPA intends to process this exemption request without further delay.

Comment: Commenters argued that the CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counterproductive.

Response: The 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_X exemption policies, the EPA has sought an approach that reasonably accords with that intent. In addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for sources of VOC, section 182(f), also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, the EPA

[2] Memorandum, ''Ozone Attainment Demonstrations,'' dated March 2, 1995, from Mary Nichols, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency.

[3] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

determines that, in certain areas, NO_X reductions would generally not be beneficial towards attainment of the ozone standard. In section 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B of the CAA. Because of the possibility that reducing NO_X 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 CAA, to avoid requiring NO_X 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_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 the response to an earlier comment, the command in section 182(f)(1) that the EPA ''shall consider'' the section 185B report taken together with the timeframe the CAA provides for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for the EPA to act on NO_X exemption requests, even in the absence of the additional information that would be included in affected areas' attainment or maintenance demonstrations. While there is no specific requirement in the CAA that EPA actions granting NO_X exemption requests must await ''conclusive evidence,'' as the commenters argue, there is also nothing in the CAA to prevent the EPA from revisiting an approved NO_X exemption if warranted by additional, current information.

In addition, the EPA believes, as described in the EPA's December 1993 guidance, that section 182(f)(1) of the CAA provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region. Based on the plain language of section 182(f), the EPA believes that each test provides an independent basis for a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are ''counterproductive.'' If one of the tests is met (even if another test is failed or not applied), 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: Commenters provided a generic comment on all section 182(f) actions that three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment.

Response: The EPA does not believe that this comment is applicable to the Baton Rouge action because the area has not based its section 182(f) petition on ''clean'' air monitoring data.

Comment: Commenters stated that the modeling required by the EPA is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of control, ''substantial'' reductions, is required to be analyzed. As such, the waiver does not provide a complete picture of the effect larger amounts of NO_X reductions will have on ozone levels. They further explained that an area must submit an approvable attainment plan before the EPA can know whether NO_X reductions will aid or undermine attainment.

Response: As described in the EPA's December 1993 NO_X exemption guidance, 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 a transport region, the Regional Oxidant Model are acceptable models for these purposes.

The EPA guidance also states that application of UAM should be consistent with techniques specified in the EPA ''Guideline on Air Quality Models (Revised)'' (December 1993). Further, application of UAM should also be consistent with procedures contained in the EPA ''Guideline for Regulatory Application of the Urban Airshed Model'' (July 1991). Thus, episode selection for the section 182(f) demonstration should be consistent with the UAM guidance for SIP attainment demonstrations.

The section 182(f) ''contribute to attainment'' and ''net ozone benefit'' demonstrations concern an unspecified ''additional reductions'' of NO_X. The EPA's December 1993 guidance specifies that the analysis should reflect three scenarios of ''substantial'' NO_X and VOC emission reductions. The guidance states that, in scenario (1), the demonstration should use the VOC reductions needed to attain, as demonstrated by Empirical Kinetic Modeling Approach 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 scenario (2), 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 scenario (3), a similar level of NO_X reductions would be modeled along with the level of VOC reductions chosen. That is, if a 40 percent VOC reduction is chosen in scenario (1), then the model for scenario (3) would simulate a 40 percent VOC reduction and approximately a 40 percent NO_X reduction. It would be inappropriate to select a high level of VOC reductions and a low level of NO_X reductions since this could artificially favor a finding that NO_X reductions are not beneficial; thus, the scenarios are constrained to avoid an inappropriate analysis.

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

The State's modeling demonstration reflected substantial NO_X reductions in addition to substantial VOC reductions in order to more accurately characterize near-term VOC and NO_X control

scenarios. In fact, for the NO_X waiver, the State modeled a 100 percent reduction in the point source NO_X inventory (which represented a 57 percent reduction in total projected NO_X emissions), along with a 100 percent reduction in point source VOC emissions (which represented a 46 percent reduction in the total projected anthropogenic VOC emissions). The analyses showed that the modeled domain-wide peak ozone concentrations exceeding 120 parts per billion decreased in response to substantial VOC emission reductions and increased in response to substantial NO_X emission reductions for all episodes.

Comment: Commenters argued that the CAA does not authorize delaying implementation of NO_X controls if attainment modeling is not complete.

Response: The EPA believes the modeling analyses submitted 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.

Comment: One commenter argued that, while NO_X controls may be less beneficial than VOC-only controls in reducing ozone concentrations in some areas of the Baton Rouge region on some days, the State has not demonstrated that VOC-only controls will sufficiently reduce ozone concentrations for the majority of episodes, particularly in areas farther downwind.

Response: The modeling analyses performed examined the relative benefits of VOC versus NO_X emissions reductions primarily in the ozone nonattainment and surrounding areas as required by the EPA's NO_X exemption guidance. An assessment of the impact of VOC versus NO_X emission reductions in areas farther downwind (beyond the modeling domain) was not required by the EPA and, thus, was not considered in the State analyses submitted in support of the NO_X exemption. The modeling domain selected, however, was large enough to ensure that it provided resolution of ozone and precursor advection upwind and downwind of the area of interest. The Baton Rouge modeling domain, which includes all or part of 20 parishes in Louisiana, covers both attainment as well as nonattainment parishes. As mentioned earlier, the analyses showed that the modeled domain-wide peak ozone concentrations exceeding 120 parts per billion decreased in response to VOC emission reductions and increased in response to NO_X emission reductions for all episodes.

As noted in the response to an earlier comment, the State of Louisiana has been included in the OTAG regional modeling domain to address the impact that transport may have on downwind areas in the eastern U.S. Based on the outcome of the modeling analyses, the EPA may require, pursuant to section 110(a)(2)(D), NO_X reductions in upwind areas to address the transport issue.

Comment: One commenter stated that the EPA must rely on the recent National Academy of Sciences (NAS) report in its review of NO_X waivers. The commenter pointed out that the NAS report found that to reduce transported ozone NO_X reductions are needed.

Response: The NAS report and the EPA's companion report both support the conclusion that, as a general matter for ozone nonattainment areas across the country, NO_X reductions in addition to VOC reductions will be needed to achieve attainment. This general conclusion, however, must be assessed in the context of the more detailed analysis provided in those same reports. For example, the NAS report notes that NO_X reductions can have either a beneficial or detrimental effect on ozone concentrations, depending on the locations and emission rates of VOC and NO_X sources in a region. The effect of NO_X reductions depends on the local VOC/NO_X ratio and a variety of other factors. In its report issued pursuant to section 185B of the CAA, the EPA stated that ''[a]pplication of gridded photochemical models on a case by case basis is required to determine the efficacy of NO_X controls, because the ozone response to precursor reductions is area specific.''

The analyses performed in the Baton Rouge area demonstrate a local disbenefit from NO_X control in the modeling domain. Based on these modeling results, the area meets the test under section 182(f)(1)(A) of the CAA required to support a waiver from the NO_X requirements of section 182(f). The effect that NO_X controls in the Baton Rouge area may have on ozone levels in the eastern U.S. will be addressed in the OTAG process.

Comment: NO_X emission reductions will not only reduce transported ozone, but will also improve visibility, especially in downwind Class I areas.

Response: The NO_X control waiver request was submitted based on sensitivity analyses performed on the episodes selected for the attainment demonstration required for moderate and above ozone nonattainment areas. To this end, the focus is on the local ozone problem in the Baton Rouge area. Other air pollution problems will be dealt with as part of separate regulatory activities. Moreover, the NO_X exemption test Louisiana is relying on (pursuant to section 182(f)(1)(A)) requires an assessment of only the contribution of NO_X emissions reductions toward ozone attainment.

Comment: One commenter argued that the EPA Administrator has an obligation, under section 110(a)(2)(D), to prohibit any activity in a State which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State. To this end, a ''superregional'' NO_X strategy should be adopted before the Administrator grants any section 182(f) NO_X exemption or, at the very least, NO_X exemptions should be restricted to expire if the OTAG and the EPA are unsuccessful in completing the requirements outlined in the EPA's March 2, 1995, attainment guidance document.

Response: As discussed earlier in the response concerning transport to downwind areas, the EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by EPA on a NO_X exemption request under section 182(f).

Comment: One commenter stated that the current ozone standard, 120 parts per billion, may not be adequately protective of public health and even greater reductions in ozone levels could be required.

Response: The adequacy of the current ozone standard is not the subject of this rulemaking. The EPA will reserve discussions regarding the adequacy of the ozone standard for future rulemaking actions on that subject.

Comment: One commenter argued that biogenic VOC emissions are underestimated, which would cause a bias in the model towards favoring VOC control. The commenter further stated that, in the petition, no mention is made of what an upward revision in the biogenic VOC emissions inventory would mean for the effectiveness of a VOC-based control strategy. The commenter argued that mobile source VOC emissions are significantly underestimated, which would compound with the possible underestimation of biogenic VOC emissions to make VOC controls even less effective in reality than they appear in modeling studies. Also, the commenter asserted that a significant

underestimation of the mobile source VOC inventory has large implications because it comprises the largest portion of the anthropogenic inventory.

Response: Depending on the locality, the mobile source inventory could comprise a major portion of the anthropogenic inventory. However, in the case of the Baton Rouge area, the mobile source inventory accounts for only 18 percent of the total VOC inventory, whereas the biogenic emissions inventory, which is the major source of VOC emissions in the Baton Rouge area, accounts for 57 percent of the total VOC emissions inventory.

In calculating the mobile source emissions inventory for the Baton Rouge area, the State used the EPA recommended method (i.e., MOBILE5a for mobile source emission factors and area-specific data for vehicle miles traveled).

Biogenic hydrocarbon emissions have been determined to play an important role in the chemistry of urban ozone formation, especially in warm southern cities. In light of this, the State developed the biogenic emission inventory for the Baton Rouge area based on area-specific data. For instance, the area-specific land use database used in the biogenic emission development was derived from four different sources: the Louisiana Department of Transportation and Development, a study of Baton Rouge's biogenic hydrocarbon emissions by Carlos Cardolino and William Chameides[4] at the Georgia Institute of Technology using Landsat imagery, the U.S. Geological Survey's Geo-ecology database, and the U.S. Forest Service's 1991 Forest Statistics for the Southeast Louisiana Parishes and Forest Statistics of South Delta Louisiana Parishes. Meanwhile, the emission factors used in estimating biogenic emissions in the Baton Rouge area were obtained from the Rasmussen and Khalil[5] and Zimmermann[6] studies of biogenic sources. (The emission factors from the Rasmussen and Khalil and Zimmermann studies were derived from direct measurements of various types of vegetation in the Baton Rouge and Tampa Bay, Florida areas, respectively.)

The EPA believes that the mobile and biogenic VOC inventories are sufficiently accurate to produce acceptable modeling results. In accordance with the EPA's UAM guidance, the State used the 1990 emissions inventory for developing its modeling demonstration. (The EPA evaluated the State's 1990 base year emissions inventory for Baton Rouge and published a final approval in the Federal Register on March 15, 1995. *See* 60 FR 13908.)

Comment: One commenter stated that uncertainties in meteorology can act as a source of compensating errors for erroneously low VOC inventories. In the Baton Rouge area, the regions of high anthropogenic NO_X emissions are generally well-separated from the regions of highest biogenic VOC emissions. This creates uncertainty in accurately modeling the transport of a high-NO_X plume into high biogenic VOC areas under stagnant wind conditions.

Response: The EPA believes that the conditions described above (i.e., regions of high-NO_X emissions generally well-separated from high biogenic VOC emissions under stagnant wind conditions) are not characteristic of the Baton Rouge area, where many major NO_X point sources are either collocated or located within the regions of highest biogenic VOC emissions. Many of the major NO_X point sources, which are located within the Baton Rouge modeling domain, were taken into account in the simulations. The model performed well for the episodes selected, providing a good representation of the spatial and temporal characteristics of the episode, and generally simulating the observed peaks well. Also, consistent with EPA guidance, the State performed diagnostic and sensitivity simulations to determine whether compensating errors occurred as a result of meteorology and other inputs and found that no such errors occurred.

Comment: One commenter stated that the EPA should place the burden of proof on Louisiana to provide affirmative evidence that no negative impact will occur in downwind areas if NO_X reductions are not imposed in the Baton Rouge area.

Response: Modeling and data analyses addressed in the State's NO_X waiver request demonstrate the positive benefits of VOC control in the modeling domain. And, as required under section 182(f), the State has demonstrated that implementing NO_X emission controls will result in greater domain-wide peak ozone concentrations throughout the Baton Rouge modeling domain. Since the State is relying on the section 182(f)(1)(A) ''contribute to attainment'' test, it does not also need to demonstrate that no negative impact will occur in downwind areas if NO_X reductions are not imposed in the Baton Rouge area. (Also, see the EPA's previous response to comment on transport issues.)

Comment: One commenter stated that NO_X reductions have other air quality benefits in addition to their effect on ozone, and that granting a NO_X waiver will undermine the EPA's efforts to improve a broad range of air and water quality values in several regional efforts to address regional environmental problems (i.e., acid rain and nitrogen deposition into estuaries).

Response: The EPA agrees that NO_X emissions can contribute to air pollution problems independent of their role in ozone formation; however, the EPA disagrees that the NO_X controls required under section 182(f) of the CAA should be implemented in the Baton Rouge area regardless of their impact on ozone. As noted in the response to an earlier comment, section 182(f)(1)(A) specifically provides for an exemption in cases where NO_X emission reductions would not contribute to attainment of the NAAQS for ozone in the area. The LDEQ has demonstrated in its petition and in the EPA's proposed action that the NO_X reductions required by section 182(f) would not contribute to attaining the ozone NAAQS in the Baton Rouge area and, thus, the area qualifies for an exemption from the CAA's NO_X requirements.

At this time, ambient concentrations of nitrogen dioxide (NO_2) in the Baton Rouge area are significantly below the federal NAAQS for NO_2. Therefore, based on the current federal standards, the EPA does not believe the NO_2 levels in Baton Rouge are unsafe. The EPA is mandated to periodically reevaluate the NAAQS for each criteria pollutant based on the best information available. The EPA is currently reviewing the NO_2 standard and will evaluate any potential concerns over the standard through a separate rulemaking process. Additionally, for the purposes of reducing acid rain deposition, certain NO_X sources will still be required to reduce NO_X emissions under Title IV of the CAA. Other air pollution problems (i.e., nitrogen deposition into estuaries) will be dealt with as part of separate regulatory activities.

For these reasons, the EPA does not believe that the NO_X controls required under section 182(f) of the CAA should

[4] Cardelino, C.A., and W.L. Chameides. ''A Gridded Inventory of Biogenic Hydrocarbon Emissions for the Baton Rouge Non-attainment Area.'' October 1989.

[5] Rasmussen, R.A., and M.A.K. Khalil. ''Forest Hydrocarbon Emissions: Relationships Between Fluxes and Ambient Concentrations.'' Journal of the Air and Waste Management Association. Volume 42, No. 6 (June 1992), p. 5.

[6] Zimmermann, P.R. ''Testing for Hydrocarbon Emissions from Vegetation Leaf Litter and Aquatic Surfaces, and Development of a Methodology for Compiling Biogenic Emission Inventories.'' EPA–450, 4–4–79–004 (1979).

be implemented in the Baton Rouge area regardless of the impact on ozone.

Comment: One commenter argued that, since the OTAG's assessment of the influence of NO_X on regional transport will not be completed until late-1996, in the interim, the EPA should, at a minimum, cap NO_X emissions at current levels in the Baton Rouge area, and require offsets for new emission sources to prevent NO_X emissions increases.

Response: The EPA disagrees with this comment as it pertains to this action. The CAA authorizes the EPA to grant NO_X exemptions for areas, like Baton Rouge, that qualify under section 182(f) and requires that the EPA make such determinations within 6 months of submission of a petition. Also, the EPA anticipates that the State will submit a modeled attainment demonstration for the six-parish Baton Rouge nonattainment area well ahead of the schedule outlined in the EPA's March 2, 1995, attainment guidance. (The State has developed an attainment demonstration submittal for the Baton Rouge area, which was put forth for public comment in the October 20, 1995, edition of the *Louisiana Register*.) The attainment demonstration establishes a target level for both VOC and NO_X emissions in the area. Additionally, if a NO_X waiver is approved, major point sources of NO_X emissions are still subject to Prevention of Significant Deterioration requirements. Moreover, in the section 182(f) modeling demonstration, the State has projected negative growth in point source NO_X emissions from the base year (1990) out to the attainment year (1999).

As noted previously, the EPA's action to grant or deny a NO_X exemption under section 182(f) would not shield the area from EPA action, under section 110(a)(2)(D), to require even further NO_X emission reductions (beyond those modeled in the attainment demonstration) if, through the OTAG process or other subsequent modeling, such reductions are determined to be necessary to address transport to downwind areas.

III. Effective Date

This rulemaking is effective as of January 18, 1996. The Administrative Procedure Act (APA), 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication if the rule ''relieves a restriction.'' Since the approval of the section 182(f) exemption for the Baton Rouge ozone nonattainment area is a substantive rule that relieves the restrictions associated with the CAA Title I requirements to control NO_X emissions, the NO_X exemption approval may be made effective upon signature by the EPA Administrator.

IV. Final Action

The comments received were found to warrant no significant changes from proposed to final action on this NO_X exemption request. The primary difference between the proposed and final rulemaking is the addition of the statement that the EPA may require NO_X emission controls in general or on a source-specific basis under section 110(a)(2)(D) of the CAA if future ozone modeling (for example, the OTAG modeling expected to be completed in late-1996) demonstrates that such controls are needed to achieve the ozone standard in downwind areas. Based on subsequent modeling results, the EPA may rescind all or part(s) of the NO_X waiver. Approval of the exemption waives the Federal requirements for NO_X RACT, NO_X NSR, vehicle I/M NO_X requirements, and NO_X general conformity applicable to the Baton Rouge ozone nonattainment area. To maintain the waiver, future modeling must demonstrate attainment of the ozone standard without the use of additional NO_X emission controls. (The modeling may demonstrate the need for some NO_X emission controls, necessitating the need for a reduction in the source coverage of the NO_X waiver under section 182(f)(2) of the CAA.) Should the EPA rescind the exemption, the State would be required to begin implementing applicable NO_X RACT, NO_X NSR, vehicle I/M NO_X requirements, and NO_X general conformity. (To allow point sources time to purchase NO_X control equipment, install it, etc., NO_X RACT compliance would be required as expeditiously as practicable, but no later two years following the rescission.)

This action stops the mandatory sanctions clock started on July 1, 1994, as a result of the EPA's finding of failure to submit the NO_X RACT SIP pursuant to section 179(a) of the CAA.

V. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any state implementation plan. The EPA shall consider each request for revision to the state implementation plan in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

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

C. Regulatory Flexibility

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

This approval does not create any new requirements. Therefore, I certify that this action 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 the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids the EPA to base its actions concerning state implementation plans on such grounds (*Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

D. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must assess whether various actions undertaken in association with proposed or final regulations 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.

The EPA's final action will relieve requirements otherwise imposed under the CAA and, hence, does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

E. Petitions for Judicial 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 March 26, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purpose of judicial rule, 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 CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: January 18, 1996.

Carol M. Browner,

Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.992 is amended by adding paragraph (b) to read as follows:

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

* * * * *

(b) The LDEQ submitted to the EPA on November 17, 1994, a petition requesting that the Baton Rouge serious ozone nonattainment area be exempted from the NO_X control requirements of the CAA. In addition, supplemental information was submitted to the EPA by the LDEQ on January 26, 1995, June 6, 1995, and June 16, 1995. The Baton Rouge nonattainment area consists of East Baton Rouge, West Baton Rouge, Pointe Coupee, Livingston, Iberville, and Ascension Parishes. The exemption request was based on photochemical grid modeling which shows that reductions in NO_X would not contribute to attainment in the nonattainment area. On January 18, 1996, the EPA approved the State's request for an areawide exemption from the following requirements: NO_X new source review, NO_X reasonably available control technology, NO_X general conformity, and NO_X inspection and maintenance requirements.

[FR Doc. 96–1288 Filed 1–25–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 185

[OPP–300394A; FRL–4983–6]

RIN 2070–AB78

Trifluralin; Revocation of Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking the food additive regulation (FAR) for residues of the herbicide trifluralin in peppermint oil and spearmint oil. EPA is taking this action because peppermint oil and spearmint oil are not ready-to-eat commodities, and residues of trifluralin are not likely to concentrate in ready-to-eat foods containing peppermint and spearmint oil. Therefore, this FAR is not required.

EFFECTIVE DATE: This final rule becomes effective January 26, 1996.

ADDRESSES: Written objections, requests for a hearing, and/or requests of stays identified by the document control number, OPP-300394A, must be submitted by February 26, 1996, and comments on all of the above must be submitted by March 11, 1996 to the OPP docket: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand deliver to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a filing concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the filings that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written (non-CBI) filings will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300394A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review Branch (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1113, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-308-8028; e-mail: nazmi.niloufar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is revoking the FAR for residues of the herbicide trifluralin in peppermint oil and spearmint oil (40 CFR 185.5900).

A. Statutory Background

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as ''tolerances.'' Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is ''adulterated'' under section 402 of the Federal Food, Drug, and Cosmetic Act (FFDCA) and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. EPA was authorized to establish pesticide tolerances under Reorganization Plan No. 3 of 1970. 5 U.S.C. App. at 1343 (1988). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). EPA can establish a tolerance in response to a petition (FFDCA sections 408(d)(1) and 409(b)(1)) or on its own initiative (FFDCA sections 408(e) and 409(d)).

The FFDCA has separate provisions for tolerances for pesticide residues on raw agricultural commodities (RACs) and tolerances on processed food. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408 of the act (21 U.S.C. 346a.) EPA regulates pesticide residues in processed foods under section 409 of