115.316(b)(2)(C), 115.316(b)(3), 115.316(b)(4), 115.319(a)(1), 115.319(a)(2), 115.319(b), 115.421(a), 115.421(a)(12), 115.421(a)(12)(A), 115.421(a)(12)(A)(i), 115.421(a)(12)(A)(ii), 115.421(a)(12)(B), 115.425(a)(4)(C)(ii), 115.426 title (Monitoring and Recordkeeping Requirements), 115.426(a)(2), 115.426(a)(2)(A)(i), 115.426(b)(2), 115.426(b)(2)(i), 115.427(a)(5)(C), 115.427(a)(6), 115.427(a)(6)(A) through 115.427(a)(6)(C), 115.427(a)(7), 115.429(d), 115.436 title (Monitoring and Recordkeeping Requirements), 115.436(a)(3), 115.436(a)(3)(C), 115.436(b), 115.436(b)(3), 115.436(b)(3)(B) through 115.436(b)(3)(D), 115.439(d), 115.536 title (Monitoring and Recordkeeping Requirements), 115.536(a)(1), 115.536(a)(2), 115.536(a)(2)(A), 115.536(a)(2)(A)(ii), 115.536(a)(5), 115.536(b)(1), 115.536(b)(2), 115.536(b)(2)(A), 115.536(b)(2)(A)(ii) through 115.536(b)(2)(A)(iv), 115.539(c).

* * * * *

[FR Doc. 95–5344 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–21–1–6634; FRL–5134–6]

Clean Air Act Approval and Promulgation of Title I, Section 182(d)(1)(B), Employee Commute Options/Employer Trip Reduction Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Texas for the purpose of establishing an Employee Commute Options (ECO) program (also known as the Employer Trip Reduction (ETR) program). Pursuant to Section 182(d)(1)(B) of the Clean Air Act (CAA), as amended in 1990, the SIP was submitted by Texas to satisfy the statutory mandate that an ETR Program be established for employers with 100 or more employees, such that compliance plans developed by such employers are designed to convincingly demonstrate an increase in the average passenger occupancy (APO) of their employees who commute to work during the peak period, by no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area.

EFFECTIVE DATE: This action will be effective on April 6, 1995.

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

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

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

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Hal D. Brown, Planning Section (6T–AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7248.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA will require employers with 100 or more employees in the Houston-Galveston ozone nonattainment area to participate in a trip reduction program. Section 182(d)(1)(B) requires that employers submit ETR compliance plans to the State two years after the SIP is submitted to the EPA. These compliance plans must ''convincingly demonstrate'' that within four years after the SIP is submitted, the employer will achieve an increase in the APO of its employees who commute to work during the peak period by not less than 25 percent above the AVO of the nonattainment area. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

For an approvable ETR SIP, the State submittal must contain each of the following program elements: (1) The AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25 percent above the AVO(s); (3) an ETR program that includes a process for compliance demonstration; and, (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. The EPA issued guidance on December 17, 1992, interpreting various aspects of the statutory requirements [Employee Commute Options Guidance, December 1992].

On November 13, 1992, the EPA received from the Governor of Texas a SIP revision to incorporate the ETR regulation which was adopted by the State on October 16, 1992. On October 18, 1993, the EPA proposed approval of the Texas ETR SIP in the Federal Register (FR) because it meets the requirements of section 182(d)(1)(B) of the CAA and the criteria listed above (see 58 FR 53693). The proposed rulemaking action provides a detailed discussion of the EPA's rationale for proposing approval of the State's ETR SIP, and should be referred to. The EPA requested public comments on all aspects of the proposal. A summary of the comments received and the EPA's response to them are provided below. A more detailed response to comments is available from the EPA Region 6 office.

II. Response to Comments

The EPA received three comment letters, one from the State of Texas which supported the EPA's action, one from a local citizen which raised concerns with the Texas program, and one from a local environmental group which objected to EPA's proposed approval.

Comment 1—The Texas Natural Resource Conservation Commission (TNRCC) supported the EPA's proposed approval of the Texas ETR SIP. In addition, the State pointed out a correction to our notice. On page 53695, part D under ''Enforcement Procedures,'' the EPA states that violators may be subject to up to $10,000 in administrative penalties and up to $25,000 in civil penalties. The State commented that this provision should instead read, ''may subject the violator up to $10,000 in administrative penalties or up to $25,000 in civil penalties per violation.''

EPA Response—The EPA agrees with the State's comment. Violators may be subject to either administrative or civil penalties for a given violation. The penalty provisions of the Texas program are approvable.

Comment 2—A local citizen and the environmental group commented that the emphasis of the ETR program should be on reducing work-related trips. In addition, the environmental group commented that it would be illegal to also emphasize reductions in vehicle miles travelled (VMT).

EPA Response—The EPA agrees that the intent of the section 182(d)(1)(B) of the CAA is to reduce work-related commute trips. We feel that Texas' program will accomplish this goal. The ETR regulation subjects employers to a

violation for not achieving the target APO. The SIP clearly provides for sufficient penalties to deter non-compliance. In addition to this ''penalty-based'' approach, the State regulation also requires employers to sufficiently plan to ensure that they meet their target APO. Employers are required to register with the State, submit ETR compliance plans, implement their plan, and monitor their progress towards meeting their target APO.

The EPA disagrees that it would be illegal to also emphasize reductions in VMT. Section 182(d)(1)(B) of the CAA states that States ''shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees.'' It is clear that the intent of this provision is to accomplish a reduction in both trips and VMT associated with commuting. Therefore, we do not believe it would be illegal to incorporate reductions in VMT as part of the ETR program, as long as other provisions of section 182(d)(1)(B) are met. While Texas currently does not include VMT considerations in its ETR program, the EPA believes that the State is not precluded from subsequently revising its ETR rule to allow for VMT considerations.

Comment 3—One local citizen and the environmental group objected to ETR trading or banking.

EPA Response—The current State ETR regulation does not allow for ETR trading although the EPA's Employee Commute Options Guidance, issued in December 1992, does allow employers in the same nonattainment area to aggregate APO credits through averaging, banking and trading (see page 16 of that guidance). We understand that the State may consider establishing a trading program, which would require a subsequent SIP revision.

The current State ETR rule does allow companies to bank ETR credits for only one year. As explained in the EPA's ECO Guidance (see page 19), the EPA believes that in terms of public health benefits, early reductions achieved through banking of APO credits offset later application of banked credits because as the fleet turns over and cleaner fuels are employed, each vehicle trip generates less emissions. The TNRCC restricts the use of banked credits to one year. The EPA believes that the use of the banked APO credits complies with the intent of the statute and will not materially affect attainment by the required date of 2007.

Comment 4—The environmental group commented that the term ''regular basis'' must be defined in the definition of ''carpool,'' otherwise a loophole will be created.

EPA Response—The EPA disagrees with this comment. The term ''carpool'' is defined in the SIP narrative to help clarify what types of trip reduction measures may be effective in achieving compliance with the target APO. The ETR regulation, however, does not define the term ''carpool.'' The EPA does not believe that a loophole will be created by not defining ''regular basis'' in the definition of ''carpool'' in the SIP. Compliance with the target APO is not determined by the use of carpools, but rather through specific calculations of actual occupancy based on travel commute data collected through the employee surveys.

Comment 5—The environmental group commented that it is their understanding that the definition of employer would not allow different companies located at one common location to submit one ETR plan. Instead, each company would have to submit its own ETR plan.

EPA Response—The EPA agrees with this comment, and believes that the State regulation is unambiguous in requiring different companies that occupy a common worksite to submit individual company plans.

Comment 6—The environmental group commented that they believe motorcycles should be included in the definition of ''single occupancy vehicle'' (SOV).

EPA Response—The EPA agrees but believes that the SIP narrative is unambiguous in including motorcycles as part of the definition for a SOV.

Comment 7—The environmental group commented that the amount of credit given for alternative trip reduction strategies (e.g., alternative fuels) must be included in the ETR SIP. Currently, the SIP states that such credit will be calculated in accordance with procedures and formulas provided by the TNRCC.

EPA Response—It is our understanding that the State will not grant credit for alternative trip reduction strategies unless and until the protocols for granting such credit are adopted into the regulation. In addition, the EPA will need to approve any credit for alternative trip reduction strategies as part of the SIP. We understand that the State plans to revise the ETR SIP through the full rulemaking process, to incorporate appropriate credit for various alternative trip reduction strategies.

Comment 8—The environmental group asked for clarification of the term ''common control'' as used in the definition for ''worksite.''

EPA Response—In the definition of ''worksite,'' the State makes clear that the term ''common control'' is further defined under the definition of ''employer.'' We believe that the definition found under ''employer,'' is consistent with the EPA's guidance and is sufficiently clear as to what types of organizations are intended.

Comment 9—The environmental group objected to the use of two target APOs for the rural and urbanized areas. The group argued that all employers in the nonattainment area should be required to meet a 1.46 target APO, rather than giving those in outlying areas ''a break.''

EPA Response—Section 182(d)(1)(B) of the CAA states that, ''The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes.'' The EPA believes that Congress intended to provide States with the flexibility to set different target APOs in a nonattainment area based on varying existing occupancy rates and the availability of alternative transportation modes.

In addition, as articulated in the EPA's ECO guidance (see page 16), the statutory phrase ''commuting trips between home and the workplace'' can be interpreted to refer to the trips by any employees in the area rather than only the employees of a specific employer. Although the rural areas are required to meet a target that is less than 25 percent above the AVO, the urbanized areas are required to meet a target greater than 25 percent above the AVO. Therefore, across the entire nonattainment area, the State of Texas is complying with the 25 percent increase requirement. The EPA's guidance explicitly allows for averaging and trading between employers such that an employer who did not achieve the target APO may still be in compliance if it obtains sufficient credit from another employer who exceeded the target. The TNRCC's two target area program is an institutionalized form of averaging between employers.

Comment 10—The environmental group argued that there was not adequate public participation in the development of the ETR regulation.

EPA Response—Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable

notice and public hearing.[1] Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing. 40 CFR 51.102 defines adequate public notice and comment to include: (1) Public notification of the proposed SIP revision in a major newspaper in the affected area; (2) a comment period of at least 30 days; (3) public hearing; and (4) State analysis and response to the public comments. The TNRCC met these requirements. Public notice on the proposed ETR regulation was published in the Houston ozone nonattainment area on May 30, 1992, in the Houston Chronicle, and on May 31, 1992, in the Baytown Sun, in accordance with the State of Texas's public notice requirements. Public notice was also published in the Texas Register on June 5, 1992 (see 17 Texas Register (TexReg) 4067). The State held a public hearing on the proposed regulations on June 30, 1992, and the comment period closed on July 8, 1992. Following the public hearing, the ETR regulation was adopted by the State on October 16, 1992. The publication of the final ETR regulation in the Texas Register on November 27, 1992 (see 17 TexReg 8297), includes an extensive analysis by the State of the comments received during the public comment period and the State's recommended action. The EPA therefore disagrees with this comment.

Comment 11—This environmental group argued that the term ''approvable ETR Plans'' is not defined, and recommended that the phrase ''plans that meet all ETR plan requirements under the CAAA,'' be used instead. The group also stated that the term ''convincingly demonstrate'' must be defined.

EPA Response—The term ''approvable ETR plans'' is clarified on page 28 of the SIP narrative, which states that the TNRCC ''will review ETR plans based on completeness and accuracy of information requested.'' We do not believe that the phrase ''plans that meet all ETR plan requirements under the CAAA'' provides any additional clarification because the CAA only requires that plans ''convincingly demonstrate'' prospective compliance. As to a definition of ''convincingly demonstrate,'' as described in more detail in our proposed approval of the Texas ETR SIP (see 58 FR 53694), the EPA provided four options for States to meet the requirement that plans ''convincingly demonstrate'' prospective compliance. The TNRCC met this requirement by selecting our fourth option by imposing significant penalties for not meeting the target APO.

Comment 12—The environmental group challenged the adequacy of the tracking and auditing procedures, and the current implementation of the SIP.

EPA Response—The EPA disagrees that the tracking and auditing procedures contained in the SIP are inadequate. Even though the EPA's ECO guidance did not require specific tracking and auditing procedures, the State's ETR SIP narrative and regulation address these provisions. The SIP and the regulation specify numerous recordkeeping and reporting requirements for affected employers. For example, § 114.21(g) of the regulation requires employers to maintain complete and accurate records for at least two years, and details seven types of information which must be included as part of those records. Section 114.21(h) details the specific reports that employers must submit to the TNRCC. Section 8.c. of the SIP specifies the State's ETR quality assurance procedures, which include auditing of employee surveys, announced and unannounced site visits, and auditing of the required employer records. We believe the TNRCC's procedures included in the SIP are fully adequate to ensure proper implementation of the ETR program.

As to the commenter's concerns about current implementation of the SIP, we do not believe that the TNRCC has fallen short of its responsibility to implement the SIP. During 1994, the TNRCC has increased the ETR staff, both in its headquarters office in Austin, and in its Regional office in Houston. The TNRCC has implemented the registration of affected employers, initiated training programs, and developed the necessary forms and systems to implement the ETR employer plans. The EPA believes that Texas's implementation of the ETR program to date does not indicate that the EPA should hesitate to approve the program.

Comment 13—The environmental group argued that allowing employers to demonstrate compliance with the target APO up to two years after the date of their plan submission deadline gave the employers too much time.

EPA Response—The EPA disagrees since the TNRCC regulation is fully consistent with the time frames specified in section 182(d)(1)(B) of the CAA, which requires that employer plans convincingly demonstrate compliance within two years of plan submittal.

Comment 14—The environmental group argued that records should by kept by affected employers for five years, rather than only two years.

EPA Response—This comment was also provided to the TNRCC during the State's public comment period. In response, the TNRCC stated that they believed two years of information appears to be adequate to assess compliance with the ETR requirements. The EPA agrees with the State because the primary driving force behind compliance with the target APO in Texas's program is the fact that substantial financial penalties may be imposed on an employer for not meeting the target APO.

Comment 15—The environmental group commented that the SIP narrative should state that ''falsifying or failing to maintain appropriate records will be considered a violation of [TNRCC] Regulation IV,'' rather than ''may be.''

EPA Response—This comment was submitted to the State during its public comment period. The State responded that it is understood that falsifying and failing to maintain required records are considered to be violations of the regulation. The EPA agrees with the State since section 114.21(g) of the ETR regulation clearly establishes mandatory requirements for all employers to maintain complete and accurate records for at least two years. In considering whether to issue a notice of violation for falsifying or failing to maintain records, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. Therefore, the language contained in the SIP narrative is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 16—This environmental group argued that the SIP should not be approved because it does not detail the specific quality assurance procedures that will be carried out by the State. The group also commented that the SIP should state that audits will be conducted and site visits will be conducted, rather than ''may be.''

EPA Response—Please see our response to comments 12 and 15 above with respect to quality assurance and enforcement discretion.

Comment 17—The environmental group argued that the certification of training programs procedures and the public information program must be specified in the SIP. Also, the group asked that ''comprehensive training course'' be defined and that the training should include a discussion of the

[1] Also Section 172(c)(7) of the CAA requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

health, welfare effects, and costs due to air pollution.

EPA Response—While the EPA agrees that these items would be beneficial to include in the SIP, we do not believe that the integrity of the ETR program is threatened by not including these items since the TNRCC ETR SIP fully meets the requirements of the CAA.

Comment 18—The environmental group argued that the SIP narrative should read, ''failure to attain the appropriate target APO will be considered violations of [TNRCC] Regulation IV,'' rather than ''may be.''

EPA Response—Similar to our response to comment 15, we believe that section 114.21(j)(4) of the State's ETR regulation clearly establishes mandatory requirements for all employers to achieve final compliance with the target APO no later than two years after the applicable ETR plan submission deadline. It is therefore understood that not complying with this requirement would be considered to be a violation of the regulation. In considering whether to issue a notice of violation for not achieving the target, however, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. Therefore, the language contained in the SIP narrative is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 19—This environmental group objected to the provision in the SIP narrative that ''[i]n formulating an enforcement policy, the [TNRCC] may consider any good faith effort made by the employer to achieve compliance.''

EPA Response—An enforcement policy is developed to cover the implementation and enforcement of a rule, not just the enforcement of a particular case. The policy would discuss the appropriate enforcement response that the State would take at each level of violation and might also discuss what and how much penalty, if any, to assess. Any enforcement policy of this type may always consider the good faith efforts made to comply. In addition, as discussed above, in considering whether to issue a notice of violation for not achieving the target, the State looks at all facts and evaluates any possible mitigating circumstances before committing State resources to take an enforcement action. For these reasons, we believe the language contained in the SIP narrative, is consistent with the State's enforcement discretion over when it is appropriate for the State to commit resources to initiate an enforcement action.

Comment 20—This environmental group commented that the methodology to estimate the emission reductions from the ETR program should be included in the SIP.

EPA Response—The EPA disagrees that the emission reduction estimates must be included in this SIP submittal. The estimates need to be included only to the extent that the State takes credit for the reductions to meet a Reasonable Further Progress or attainment demonstration requirement. In that case, the emissions estimates would need to be included in that SIP submittal.

III. Final Action

In this action, the EPA is approving the ETR SIP revision adopted by the State of Texas on October 16, 1992, and submitted to the EPA on November 13, 1992. The State of Texas has submitted a SIP revision implementing each of the ETR program elements required by section 182(d)(1)(B) of the CAA.

On February 23, 1994, the TNRCC adopted revisions to the ETR regulation, revising the compliance deadlines for affected employers to submit the ETR plans and comply with the target APO. These revisions were submitted to the EPA on March 9, 1994.

In this FR document, the EPA is approving only the ETR SIP revision which was submitted by the State of Texas on November 13, 1992. The EPA will act upon the subsequent ETR SIP revision submitted by the State on March 9, 1994, in a separate rulemaking action in the near future.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant 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 the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by May 8, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone.

Dated: December 23, 1994.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(91) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(91) Revisions to the TNRCC Regulation IV, concerning the Employer Trip Reduction program, were submitted by the Governor on November 13, 1992.

(i) Incorporation by reference.

(A) Revisions to the TNRCC Regulation IV (31 TAC § 114.21, Employer Trip Reduction Program), as adopted by the TACB on October 16, 1992.

(B) TACB Order 92–14 as adopted on October 16, 1992.

(C) SIP narrative entitled, ''Employer Trip Reduction Program, Houston-Galveston Area,'' adopted by the TACB on October 16, 1992, pages 31–38, addressing: 8.c. Quality Assurance Measures; 9. Training and Information Assistance; 11. Enforcement; and 12. Notification of Employers.

(ii) Additional material.

(A) SIP narrative entitled, ''Employer Trip Reduction Program, Houston-Galveston Area,'' adopted by the TACB on October 16, 1992.

(B) The TACB certification letter dated November 10, 1992, signed by William R. Campbell, Executive Director, TACB.

[FR Doc. 95–5439 Filed 3–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI26–04–6805; FRL–5157–1]

Approval and Promulgation of Implementation Plan; Michigan Detroit-Ann Arbor NO_X Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is granting an exemption to the Detroit-Ann Arbor ozone nonattainment area from applicable oxides of nitrogen (NO_X) requirements found in the Clean Air Act (Act). Approval of the exemption would apply for various NO_X requirements including adoption and implementation of regulations addressing general conformity, transportation conformity, inspection and maintenance, reasonably available control technology, and new source review. The State of Michigan submitted a NO_X exemption request on November 12, 1993. A subsequent letter dated May 31, 1994 clarified this earlier submittal. This request is based on the fact that ozone monitoring in the Detroit-Ann Arbor area indicates that the average number of exceedances of the National Ambient Air Quality Standard for ozone during the most recent 3-year period, 1991 to 1993, is fewer than one per year. Given this monitoring data, Michigan petitioned for an exemption from the NO_X requirements based on a demonstration that additional reductions of NO_X would not contribute to attainment of the ozone standard.

EFFECTIVE DATE: This final rule will be effective April 6, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the request and the EPA's analysis are available for inspection at the following address: USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993 the State of Michigan submitted a petition to the EPA requesting that the Detroit-Ann Arbor ozone nonattainment area be exempted from the requirement to implement NO_X controls pursuant to section 182(f) of the Act. The exemption request is based upon monitoring data which demonstrate that the average number of exceedances of the ozone standard in the Detroit-Ann Arbor area during the most recent 3-year period, 1991 through 1993, is fewer than one per year.

On August 10, 1994, EPA published a direct final rulemaking approving the NO_X exemption petition for the Detroit-Ann Arbor nonattainment area. During the 15 day public comment period, EPA received joint adverse comments from the Natural Resources Defense Council, Sierra Club Legal Defense Fund, and the Environmental Defense Fund and 2 requests for additional time to comment on this rulemaking from the State of New York and the Citizens Commission for Clean Air in the Lake Michigan Basin. The EPA published a document announcing the opening of a second comment period on October 6, 1994. The second comment period lasted until November 7, 1994. During the second comment period, the State of New York submitted adverse comments.

II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment. A more detailed discussion of the State submittal and the rationale for the EPA's action based on the Act and cited references appear in EPA's technical support documents dated February 8, 1994 and December 1, 1994.

NRDC Comments

Following is a summary of comments received from the NRDC in a letter dated August 24, 1994 signed by Sharon Buccino. After each comment is EPA's response.

NRDC Comment 1: Certain commenters argued that NO_X exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the Act's conformity provisions.

EPA Response: Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that ''person[s]'' (which