

U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award exceeding \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—Certain contracts shall not be made to parties listed on the nonprocurement portion of the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

9. Contracts which require performance outside the United States shall contain a provision requiring Worker's Compensation Insurance (42 U.S.C. 1651, et seq.). As a general rule, Department of Labor waivers will be obtained for persons employed outside the United States who are not United States citizens or residents provided adequate protection will be given such persons. The recipient should refer questions on this subject to the USAID Agreement Officer.

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Dated: January 6, 1995.

Michael D. Sherwin,
Deputy Assistant Administrator for
Management.

[FR Doc. 95-975 Filed 1-18-95; 8:45 am]

BILLING CODE 6116-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH71-1-6781, OH72-1-6782; FRL-5140-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection
Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving, in final, two exemption requests from the requirements contained in section 182(f) of the Clean Air Act (Act) for the Toledo and Dayton ozone nonattainment areas in Ohio. These exemption requests, submitted by the State of Ohio, are based upon three years of ambient air monitoring data which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained in each of these areas without additional reductions of nitrogen oxides (NO_x). Section 182(f) of the Act requires States with areas designated nonattainment of the NAAQS for ozone, and classified as moderate nonattainment and above, to adopt reasonably available control technology (RACT) rules for major stationary sources of NO_x, and to provide for nonattainment area new source review (NSR) for new sources and modifications that are major for NO_x. Section 182(f) provides that these requirements do not apply for areas outside an ozone transport region if USEPA determines that additional reductions of NO_x would not contribute to attainment of the NAAQS for ozone in the area.

EFFECTIVE DATE: This action will be effective February 21, 1995.

ADDRESSES: Written comments should be addressed to:

William MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the exemption requests are available for inspection at the following location (it is recommended that you contact Richard Schleyer at (312) 353-5089 before visiting the Region 5 office): United States Environmental Protection Agency, Region 5, Air Enforcement Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT:

Richard Schleyer, Regulation Development Section, Air Enforcement Branch (AE-17J), Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353-5089.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for the reduction of NO_x emissions are set out in section 182(f) of the Act. Section 182(f) of the Act requires States

with areas designated nonattainment of the NAAQS for ozone, and classified as moderate nonattainment and above, to impose the same control requirements for major stationary sources of NO_x as apply to major stationary sources of volatile organic compounds (VOC). These requirements include the adoption of RACT rules for major stationary sources and nonattainment area NSR for major new sources and major modifications. Section 182(f) provides further that these NO_x requirements do not apply for areas outside an ozone transport region if USEPA determines that additional reductions of NO_x would not contribute to attainment. Also, the NO_x-related general and transportation conformity provisions (see 58 FR 63214 and 58 FR 62188) would not apply in an area that is granted a section 182(f) exemption. In an area that did not implement the section 182(f) NO_x requirements, but did achieve attainment of the ozone standard, as demonstrated by ambient air monitoring data (consistent with 40 CFR Part 58 and recorded in the USEPA's—Aerometric Information Retrieval System (AIRS)), it is clear that the additional NO_x reductions required by section 182(f) would not contribute to attainment.

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

The criteria established for the evaluation of an exemption request from the section 182(f) requirements are set forth in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994, entitled "Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria." Additional guidance is provided in a document entitled "Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," dated December 1993, from USEPA, Office of Air Quality Planning and Standards, Air Quality Management Division.

III. State Submittals

On September 20, 1993, and November 8, 1993, the State of Ohio submitted requests to redesignate the Toledo (Lucas and Wood Counties) and Dayton (Montgomery, Greene, Miami, and Clark Counties) ozone nonattainment areas to attainment areas for the NAAQS for ozone. These redesignation requests are currently under review and will be evaluated in a separate rulemaking.

Included as part of the redesignation submittals were requests that the Toledo and Dayton ozone nonattainment areas

be exempt from the requirements contained in section 182(f) of the Act. These exemption requests are based upon three years of ambient air monitoring data (1991–1993) which demonstrate that the NAAQS for ozone has been attained in each of these areas without additional reductions of NO_x.

IV. Analysis of State Submittals

The USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) submitted by the OEPA in support of these exemption requests.

For ozone, an area is considered attainment of the NAAQS if there are no violations, as determined in accordance with 40 CFR Part 50.9, based on quality assured monitoring data from three complete consecutive calendar years. A violation of the ozone NAAQS occurs when the annual average number of expected exceedances is greater than 1.0 at any site in the area at issue. An exceedance occurs when the daily maximum hourly ozone concentration exceeds 0.124 parts per million (ppm).

The following ozone exceedances were recorded for the period from 1991 to 1993:

Toledo: Lucas County, 306 N. Yondota (1991)—0.127 ppm and (1993)—0.126 ppm; average expected exceedances: 0.7. Friendship Park (1993)—0.136 ppm; average expected exceedances: 0.3.

Dayton: Montgomery County, 2100 Timberlane (1993)—0.125 ppm; average expected exceedances: 0.3.

Thus, the annual average expected exceedances in a three year period were less than 1.0 and both areas are meeting the air quality standard for ozone.

A more detailed summary of the ozone monitoring data for both areas is provided in the USEPA technical support document dated April 20, 1994.

V. NO_x RACT Rules

The State of Ohio submitted adopted NO_x RACT rules to USEPA on July 1, 1994, for the Toledo, Dayton, and Cleveland ozone nonattainment areas. These rules are currently under review and will be evaluated in a separate rulemaking. These rules, when approved by USEPA, may be suspended by the State for the Toledo and Dayton areas upon the final approval effective date of the Section 182(f) exemption requests addressed in this Notice.

VI. Inspection and Maintenance (I/M) Programs

The I/M Final Rule (57 FR 52950) requires States to submit to USEPA a fully adopted I/M program by November

15, 1993. At this time, however, the preliminary interpretive guidance on basic I/M, is discussed in the USEPA policy memorandum dated September 17, 1993, from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, entitled "State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," (Shapiro Memorandum). The Shapiro Memorandum provides that, for areas where maintenance plans do not rely on implementation of a basic I/M program immediately following redesignation, upon revision to the I/M rule, if a State adopts and submits as a revision to its SIP the following:

- The legislative authority for a basic I/M program;
- A provision in the SIP providing that basic I/M be placed in the contingency measure portion of the maintenance plan upon redesignation; and
- An enforceable schedule and commitment by the Governor or his/her designee for adoption and implementation of a basic I/M program upon a specified, appropriate triggering event;

The State would have met the minimum requirements for I/M as they relate to USEPA's consideration of the State's redesignation request submitted for a nonattainment area. The USEPA is presently proceeding to establish this interpretation through regulatory action (see 59 FR 33237).

The State of Ohio is required to adopt a basic I/M program for the Toledo ozone nonattainment area (encompassing Lucas and Wood Counties). However, the State has submitted a redesignation request (SIP revision) to attainment of the NAAQS for ozone for the Toledo area. This SIP revision includes legislative authority for the adoption of a basic I/M program; a basic I/M program as a contingency measure in the maintenance plan upon redesignation; and an enforceable schedule for the implementation of the basic I/M program upon a specified triggering event. Under the approach set forth in the Shapiro Memorandum, the State has met the requirements for an area requesting redesignation that is required to adopt a basic I/M program.

For the Dayton ozone nonattainment area (encompassing Clark, Greene, Miami, and Montgomery Counties), the Dayton local area has opted for an enhanced I/M program. This requires the Dayton area to comply with all applicable enhanced I/M program

requirements. The I/M Final Rule (57 FR 52950) provides that if the USEPA Administrator determines that NO_x emission reductions are not beneficial in a given ozone nonattainment area, then NO_x emission reductions are not required of the enhanced I/M program, but the program shall be designed to offset NO_x increases resulting from the repair of hydrocarbon (HC) and carbon monoxide (CO) failures.¹

Upon the effective date of this action, the Dayton area shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO_x. However, the Dayton area shall be required to demonstrate, using USEPA's Mobile Source Emissions Model, Mobile 5a (or its successor), that NO_x emissions will be no higher than in the absence of any I/M program.

VII. Withdrawal of the Exemptions

Continuation of the Section 182(f) exemptions granted herein is contingent upon continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected areas. If a violation of the ozone NAAQS is monitored in the Toledo or Dayton area(s) (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), USEPA will provide notice to the public in the Federal Register. A determination that the NO_x exemption no longer applies would mean that the NO_x NSR and the NO_x-related general and transportation conformity provisions would immediately be applicable (see 58 FR 63214 and 58 FR 62188). The NO_x RACT requirements would also be applicable, with a reasonable time provided as necessary to allow major stationary sources subject to the RACT requirements to purchase, install and operate the required controls. The USEPA believes that the State may provide sources a reasonable time period after the USEPA determination to actually meet the RACT emission limits. The USEPA expects such time period to be as expeditious as practicable, but in no case longer than 24 months. If a nonattainment area is redesignated to attainment of the ozone NAAQS, NO_x RACT shall be implemented as stated in the USEPA-approved maintenance plan.

VIII. Notice of Proposed Rulemaking and Responses to Comments

The USEPA published a notice proposing to approve the exemption

¹ Additional clarification concerning the I/M requirements and areas with no NO_x exemptions is provided in a memorandum from Mary T. Smith, Acting Director, Office of Mobile Sources, dated October 14, 1994, entitled "I/M Requirements in NO_x RACT Exempt Areas."

requests for the Toledo and Dayton nonattainment areas in the July 26, 1994 Federal Register (59 FR 37947). The USEPA received comments supporting and adverse to this proposed action. Copies of all comments have been placed in the docket file. The following entities submitted adverse or supporting comments. Some of the comments addressed similar points. The USEPA has responded to the adverse comments by issue as set forth below.

Submitting Entity (Date Received by USEPA)

Citizens Campaign for the Environment (7-27-94); Natural Resources Defense Council (8-9-94 and 8-24-94); New York State Electric and Gas Corporation (8-10-94); Northeast States for Coordinated Air Use Management (8-15-94 and 9-28-94); State of New York Department of Environmental Conservation (8-16-94 and 10-05-94); Commonwealth of Pennsylvania Department of Environmental Resources (8-31-94); Southern Environmental Law Center (10-3-94); Pollution Probe (10-03-94); Ohio Sierra Club (10-03-94); Conservation Law Foundation (10-03-94); The Lung Association (Ontario, 10-11-94); Ohio Environmental Protection Agency (10-26-94); Fuller & Henry (10-26-94); and Individual Residents from the State of Ohio (various dates between 8/31/94 and 10/13/94).

A summary of the adverse comments and USEPA's responses follows:

Procedural Comments: Several commenters argued that USEPA should not approve the waiver requests at issue on procedural grounds. NO_x exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). Commenters took the position that 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," that all NO_x exemption determinations by USEPA, 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 to attainment for the ozone NAAQS. 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), in the Act's conformity provisions.

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

Despite the interpretation of the commenters regarding the process for considering exemption requests under section 182(f), USEPA believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures for USEPA to act on NO_x exemption requests. The language in subsection 182(f)(1), which indicates that USEPA should act on NO_x exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). While subsection 182(f)(3) references subsection 182(f)(1), USEPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], and not the procedural requirement that USEPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the Act defines to include States) may petition for NO_x exemptions "at any time," and requires USEPA to make its determination within six months of the petition's submission. These key differences lead USEPA 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).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that "person[s]"² may petition for a NO_x determination "at any time" after the ozone precursor study required under section 185B of the Act is finalized,³ and gives USEPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) "at any time" this must include times when there is no plan revision from the State pending at USEPA. The specific timeframe for USEPA action established in paragraph (3) is substantially shorter

than the timeframe usually required for States to develop and for USEPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on petitions under paragraph (3) to be distinct—and more expeditious—from the plan revision process intended under paragraph (1). Thus, USEPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the requirement in paragraph (1) for USEPA to grant exemptions only when acting on plan revisions.

With respect to major stationary sources, section 182(f) requires States to adopt NO_x NSR and RACT rules, unless exempted. These rules were generally due to be submitted to USEPA by November 15, 1992. Thus, in order to avoid sanctions under the Act, areas seeking a NO_x exemption would have needed to submit their exemption request for USEPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment demonstrations are not due until November 1993 or 1994 (and USEPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_x NSR), no attainment demonstration is called for in the Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of, and USEPA action on, exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity with regard to federally-supported NO_x generating activities in relevant nonattainment and maintenance areas. However, USEPA's conformity rules explicitly provide that these NO_x requirements would not apply if USEPA grants an exemption under section 182(f).

In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_x requirements of the conformity rule, USEPA notes that this issue has previously been raised in a formal petition for reconsideration of USEPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. Thus the issue is under further consideration, but at this time the Agency's position is as stated above.

² Section 302(e) of the Act defines the term "person" to include States.

³ The final section 185B report was issued July 30, 1993.

Additionally, subsection 182(f)(3) requires that NO_x exemption petition determinations be made by USEPA within six months. The USEPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the APA. The USEPA believes that the applicable rules governing this issue are those that appear in USEPA's final conformity regulations, and that USEPA remains bound by their existing terms.

Modeling Comments: Some commenters stated that the modeling required by USEPA is insufficient to establish that NO_x reductions would not contribute to attainment since only one level of NO_x control, i.e., "substantial" reductions, is required to be analyzed. They further explain that an area must submit an approvable attainment plan before USEPA can know whether NO_x reductions will aid or undermine attainment.

USEPA Response: As described in USEPA's December 1993 NO_x exemption guidance,⁴ 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 Urban Airshed Model (UAM) or, in the Ozone Transport Region (OTR), the Regional Oxidant Model (ROM), are acceptable methods for these purposes. The December guidance also provides that, under the "not contribute to attainment test," an area may qualify for a NO_x exemption by attaining the ozone standard, as demonstrated by three years of ambient air monitoring data. The exemption requests submitted by the State for the Toledo and Dayton areas are based upon ambient air monitoring data. Therefore, adverse comments submitted concerning modeling are not relevant to this action, and are not being further addressed.

Public Hearing Request: Some commenters requested that a public hearing be held on this action.

USEPA Response: This action is not considered a SIP revision and therefore the requirement for a public hearing under section 110(a) of the Act is not applicable.

Environmental Impact Statement (EIS) Request: Some commenters requested that an EIS be prepared regarding this action.

USEPA Response: All Clean Air Act programs are exempted from the

procedural requirements of the National Environmental Policy Act (NEPA) under section 7(c)(1) of the Energy Supply and Environmental Coordination Act, 15 U.S.C. 793(c)(1). Therefore, USEPA is not preparing an EIS for this action.

SIP Status Request: One commenter requested the status of other SIP revisions (i.e., the 15% rate-of-progress plan and the redesignation request) required to be submitted by the State.

USEPA Response: This action only addresses the section 182(f) exemption requests submitted by the State of Ohio for the Toledo and Dayton areas and USEPA final action on such requests are not dependent on final actions on other required SIP submittals, such as the ones mentioned. Non-related SIP revisions will be dealt with separately.

Toledo Transportation Improvement Program (TIP): One commenter provided comments on the basis of the determination of the conformity of the Toledo TIP and analysis of other Ohio TIPs.

USEPA Response: This action only addresses the section 182(f) exemption requests submitted by the State of Ohio for the Toledo and Dayton areas. Therefore, the comment is not being further addressed.

Attainment Data Comments: Three years of "clean" data fail to demonstrate that NO_x reductions would not contribute to attainment of the NAAQS for ozone. The USEPA's policy erroneously equates the absence of a violation for one three-year period with "attainment."

USEPA Response: The USEPA has separate criteria for determining if an area should be redesignated to an ozone attainment area under section 107 of the Act. The section 107 redesignation criteria are more comprehensive than the Act requires with respect to NO_x exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_x requirements may be granted for nonattainment areas outside an OTR if USEPA determines that "additional reductions of (NO_x) would not contribute to attainment" of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_x provisions over that 3-year period.

In cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_x provisions, USEPA believes that the section 182(f) test is met since "additional reductions of (NO_x) would

not contribute to attainment" of the NAAQS in that area. In cases where it is warranted, USEPA's approval of the exemption is granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Downwind Area Comments: Several commenters argued that USEPA's December 1993 guidance prohibits granting a section 182(f) waiver based on 3 years of clean data if evidence exists showing that the waiver would interfere with attainment or maintenance in downwind areas. The commenters argued that such condition should also apply to waiver requests based on modeling. Exemptions in Ohio cities, they claim, are likely to exacerbate ozone nonattainment downwind, and therefore are not consistent with the Act. If the exemptions are granted, emissions from new stationary sources and the transportation sector in Ohio, which are projected to increase, could delay attainment of the ozone standard in areas in the northeastern United States.

These commenters further claim that USEPA modeling has demonstrated that Ohio is a significant contributor to atmospheric transport of ozone precursors to the OTR. Since this modeling indicates that emissions of NO_x from stationary sources west of the OTR contribute to increased ozone levels in the northeast, they argued that control of NO_x emissions in the OTR and in States west of the OTR will contribute to significant reductions in peak ozone levels within the OTR.

USEPA Response: As a result of such comments, USEPA has re-evaluated its position on this issue and decided to revise the previously-issued guidance. As described below, USEPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_x emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_x emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by USEPA on a NO_x exemption request for stationary sources under section 182(f). That is, USEPA action to grant or deny a NO_x exemption request under section 182(f) would not shield that area from USEPA action to require NO_x emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994

⁴ "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under section 182(f)," from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated December 19, 1993.

SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_x emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_x emission reductions hundreds of miles upwind. The USEPA 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, USEPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas that are located in the area being modeled, have requested exemptions from NO_x requirements under section 182(f). Some areas requesting an exemption may impact upon downwind nonattainment areas. The USEPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_x requirements may be granted for nonattainment areas outside an ozone transport region if USEPA determines that "additional reductions of (NO_x) would not contribute to attainment of the national ambient air quality standard for ozone in the area."⁵ As described in section 4.3 of the December 16, 1993 guidance document, USEPA believes that the term "area" means the "nonattainment area," and that USEPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_x emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated

⁵ There are three NO_x exemption tests specified in section 182(f). Of these, two are applicable for areas outside an ozone transport region; the "contribute to attainment" test described above, and the "net air quality benefits" test. The USEPA 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), USEPA 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 USEPA 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."

nonattainment area. Specifically, the guidance encourages States to "consider imposition of the NO_x requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State (see section 110(a)(2)(D)(i)(I))."

In contrast, Section 4.4 of the guidance states that the section 182(f) demonstration *would not be approved* if there is evidence, such as photochemical grid modeling, showing that the NO_x exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts.

Consistent with the guidance in section 4.3, USEPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently. Thus, if there is evidence that NO_x emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by USEPA in a section 110(a)(2)(D) action. A section 182(f) exemption request should be independently considered by USEPA. In some cases, then, USEPA may grant an exemption from across-the-board NO_x RACT controls under section 182(f) and, in a separate action, require NO_x controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances. Consistent with these principles, USEPA is approving these exemption requests under 182(f) of the Act. If evidence appears that NO_x emissions in an upwind area would interfere with attainment or maintenance in a downwind area, appropriate action shall be taken by the State(s) or, if necessary, by USEPA under section 110(a)(2)(D).

Scope of Exemption Comments: Comments were received regarding exemption of areas from the NO_x requirements of the conformity rules. Several commenters argue that the exemptions should waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_x

emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_x emissions under the general conformity rules. The commenters admit that, in prior guidance, USEPA 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 USEPA, 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.

USEPA Response: With respect to conformity, USEPA's conformity rules⁶ provide a NO_x waiver if an area receives a section 182(f) exemption. In rulemaking on "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), USEPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that both 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 is not reflected in the current transportation conformity rules. As the commenters correctly note, USEPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_x motor vehicle emissions budget, USEPA also intends to require consistency with the attainment demonstration's NO_x motor vehicle emissions budget. However, the exemptions at issue were submitted pursuant to section 182(f)(3), and USEPA does not believe it is appropriate to delay action on these petitions, especially in light of the six-month statutory deadline provided for such action, until the conformity rule is amended. As noted above, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the

⁶ "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); "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).

transportation and general conformity rules. Thus this issue is under consideration, but at this time the Agency's position remains as stated. The USEPA, therefore, believes that until the issue is resolved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

Conclusive Evidence Comment: The Act does not authorize any waiver of the NO_x reduction requirements until conclusive evidence exists that such reductions are counter-productive.

USEPA Response: The USEPA does not agree with this comment since it is contrary to 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. In developing and implementing its NO_x exemption policies, USEPA has sought an approach that reasonably accords with that intent.

Section 182(f), in addition to imposing control requirements on major stationary sources of NO_x similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, USEPA determines that in certain areas NO_x reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_x exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_x in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout the Title I ozone subpart, to avoid requiring NO_x reductions where they would be nonbeneficial or counterproductive.

In describing these various ozone provisions (including section 182(f), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO_x/VOC study provision in section (185B) to serve as the basis for the various findings contemplated in the NO_x provisions. The Committee does not intend NO_x reduction for reduction's sake, but rather as a measure scaled to the value of NO_x reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257-258 (1990).

As noted in response to a comment discussed above, the command in subsection 182(f)(1) that USEPA "shall consider" the section 185B report taken

together with the timeframe the Act provides both for completion of the report and for acting on NO_x exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for USEPA to act on NO_x exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that USEPA actions granting NO_x exemption requests must await "conclusive evidence," as the commenters argue, there is also nothing in the Act to prevent USEPA from revisiting an approved NO_x exemption if warranted due to subsequent ambient monitoring information.

In addition, USEPA believes (as described in USEPA's December 1993 guidance) that section 182(f)(1) of the Act provides that the new NO_x requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the USEPA 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), USEPA believes that each test provides an independent basis for the granting of a full or limited NO_x exemption. Only the first test listed above is based on a showing that NO_x reductions are "counter-productive." If even one of the tests is met, the section 182(f) NO_x requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Transboundary Pollution Comment: Several commenters noted that the Canada-U.S. Air Quality Agreement signed by the two countries on March 13, 1991, calls for each Party to notify the other of a proposed action, activity or project likely to cause significant transboundary air pollution, and, as appropriate, to take measures to avoid or mitigate the potential risk.

USEPA Response: The USEPA takes seriously international agreements entered into by our government. However, USEPA does not believe that

the action of granting a NO_x exemption request would likely cause significant transboundary air pollution. The action to grant or deny these exemption requests will determine the amount of emission reductions, but not cause new or additional transboundary air pollution.

Air Quality Comment: Several commenters stated that the air quality monitoring data alone does not support this exemption proposal. The air quality levels are below USEPA's definition of an exceedance of the ozone NAAQS at 0.125 ppm, but are greater than the ozone NAAQS of 0.120 ppm.

USEPA Response: For the reasons provided below, USEPA does not agree with the commenter's conclusion. As stated in 40 CFR 50.9, the ozone "standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 µg/m³) is equal to or less than 1, as determined by Appendix H." Appendix H references USEPA's "Guideline for Interpretation of Ozone Air Quality Standards" (EPA-450/4-79-003, January 1979), which notes that the stated level of the standard is taken as defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up to 0.01). Thus, 0.125 ppm is the smallest concentration value in excess of the level of the ozone standard (please refer to "Section IV. Analysis of the State Submittal" in this notice for monitored ozone concentrations in the Toledo and Dayton areas). The ambient air monitoring data shows that no violation of the ozone standard has occurred for the Toledo and Dayton areas during the 1991-1993 ozone seasons.

IX. Final Action

The USEPA is approving the exemption requests for the Toledo and Dayton ozone nonattainment areas from the section 182(f) NO_x requirements based upon the evidence provided by the State and the State's compliance with the requirements outlined in the applicable USEPA guidance. This action exempts the Lucas, Wood, Clark, Greene, Miami, and Montgomery counties from the requirements to implement NO_x RACT, nonattainment area NSR for new sources and modifications that are major for NO_x, and the NO_x-related general and transportation conformity provisions. Also, the Clark, Greene, Miami, and Montgomery counties shall not be required to demonstrate compliance

with the enhanced I/M performance standard for NO_x. If a violation of the ozone NAAQS occurs in the Toledo or Dayton area(s), the exemption from the requirements of section 182(f) of the Act in the applicable area(s) shall no longer apply.

X. Procedural Background

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

XI. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's exemptions do not create any new requirements, but allow suspension of the indicated requirements for the life of the exemptions. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 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

Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Dated: January 5, 1995.

Valdas V. Adamkus,
Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Supart KK—Ohio

2. Section 52.1879 is amended by adding new paragraph (f) to read as follows:

§ 52.1879 Review of new sources and modifications.

* * * * *

(f) Approval—USEPA is approving two exemption requests submitted by the Ohio Environmental Protection Agency on September 20, 1993, and November 8, 1993, for the Toledo and Dayton ozone nonattainment areas, respectively, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the Lucas, Wood, Clark, Greene, Miami, and Montgomery Counties from the requirements to implement reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_x), nonattainment area new source review (NSR) for new sources and modifications that are major for NO_x, and the NO_x-related requirements of the general and transportation conformity provisions. For the Dayton ozone nonattainment area, the Dayton local area has opted for an enhanced inspection and maintenance (I/M) programs. Upon final approval of this exemption, the Clark, Greene, Miami, and Montgomery Counties shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO_x. If a violation of the ozone NAAQS is monitored in the Toledo or Dayton area(s), the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

3. Section 52.1885 is amended by adding new paragraph (r) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(r) Approval—USEPA is approving two exemption requests submitted by the Ohio Environmental Protection Agency on September 20, 1993, and November 8, 1993, for the Toledo and Dayton ozone nonattainment areas, respectively, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the Lucas, Wood, Clark, Greene, Miami, and Montgomery Counties from the requirements to implement reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_x), nonattainment area new source review (NSR) for new sources and modifications that are major for NO_x, and the NO_x-related requirements of the general and transportation conformity provisions. For the Dayton ozone nonattainment area, the Dayton local area has opted for an enhanced inspection and maintenance (I/M) program. Upon final approval of this exemption, the Clark, Greene, Miami, and Montgomery Counties shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO_x. If a violation of the ozone NAAQS is monitored in the Toledo or Dayton area(s), the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

[FR Doc. 95-1254 Filed 1-18-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[WY-001; FRL-5134-4]

Clean Air Act Final Interim Approval of Operating Permits Program; State of Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Wyoming for the purpose of complying with Federal requirements for an approvable State Program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: February 21, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency,