should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 3, 1995.

Final Action

EPA is approving sections 1 to 9, inclusive, 13 to 35, inclusive, 37 to 42, inclusive, parts of 43, and appendices A to H of Delaware Regulation 24 as a revision to the Delaware SIP. The State of Delaware submitted these amendments to EPA as a SIP revision on January 11, 1993 and January 20, 1994.

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

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action approving twenty-nine VOC RACT regulations for Delaware must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 27, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart I of chapter I, title 40 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 I—Delaware

2. Section 52.420 is amended by adding paragraphs (c)(46) and (c)(51) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to the Delaware State Implementation Plan submitted on January 11, 1993 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference. (A) Letter of January 11, 1993 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 24—''Control of Volatile Organic Compound Emissions'', effective January 11, 1993.

(B) Regulation 24—''Control of Volatile Organic Compound Emissions'', Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, and Appendices A, B, C, D, E, F, G, & H.

* * * * *

(51) Revisions to the Delaware State Implementation Plan submitted on January 20, 1994 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference. (A) Letter dated January 20, 1994, from the Delaware DNREC transmitting an amendment to Regulation 24, ''Control of Volatile Organic Compound Emissions'', Section 43—''Other Facilities that Emit VOCs'', effective November 24, 1993.

(B) Amendment to Regulation 24, ''Control of VOC Emissions'', Section 43—''Other Facilities that Emit VOCs'', Sections 43(a)(1), 43(a)(2), 43(a)(3), 43(a)(4), 43(b)(1), 43(b)(2), 43(c), 43(d), 43(e), and 43(f).

(ii) Additional Material. (A) Remainder of January 11, 1993 and January 20, 1994 State submittal pertaining to Regulation 24 referenced in paragraphs (c)(46)(i) and (c)(51)(i) of this section.

(iii) Additional Information. (A) These rules supersede paragraph (c)(44)(i)(C) of this section.

[FR Doc. 95–10817 Filed 5–2–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[KY–80–1–6943; FRL–5200–8]

Control Strategy: Ozone (O_3); Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving an exemption request from the oxides of nitrogen (NO_X) reasonably available control technology (RACT) requirement of the Clean Air Act as amended in 1990 (CAA) for the Kentucky portion of the Huntington-Ashland, moderate ozone (O_3) nonattainment area. The exemption request, submitted by the Commonwealth of Kentucky through the Department of Environmental Protection, is based upon the most recent three years of ambient air monitoring data, which demonstrate that additional reductions of NO_X would not contribute to the attainment of the National Ambient Air Quality Standard (NAAQS) for O_3 in the area. The CAA requires states with designated nonattainment areas of the NAAQS for O_3, and classified as moderate nonattainment or above, to adopt RACT rules for major stationary sources of NO_X. The CAA provides further that the NO_X requirements do not apply to these areas outside an O_3 transport region if EPA determines that additional reductions of NO_X would not

contribute to attainment of the NAAQS for O_3 in the area.

EFFECTIVE DATE: This action will be effective June 2, 1995.

ADDRESSES: A copy of the exemption request is available for inspection at the following location (it is recommended that you contact Kimberly Bingham at (404) 347–3555 extension 4195 before visiting the Region 4 office):

United States Environmental Protection Agency, Air, Pesticides, and Toxics Management Division, Air Programs Branch, Regulatory Planning and Development Section, Stationary Source Planning Unit, 345 Courtland Street NE., Atlanta, Georgia 30365.

Department for Environmental Protection Natural, Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Stationary Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for the reduction of NO_X emissions are set out in section 182(f) of the CAA. Section 182(f) of the CAA requires states with areas designated nonattainment for O_3 and classified as moderate or above to impose the same control requirements for major stationary sources of NO_X as apply to major stationary sources of volatile organic compounds (VOCs). Section 182(f) provides further that these NO_X requirements do not apply to areas outside an O_3 transport region if EPA determines that additional reductions of NO_X would not contribute to attainment in such areas. In an area that did not implement the section 182(f) NO_X requirements, but did attain the O_3 standard as demonstrated by ambient air monitoring data (consistent with 40 CFR part 58 and recorded in the EPA'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 of the NAAQS.

The criteria established for the evaluation of an exemption request from the section 182(f) requirements are set forth in an EPA 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,'' and an EPA guidance document entitled ''Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' dated December 1993, from EPA, Office of Air Quality Planning and Standards, Air Quality Management Division.

On November 12, 1993, the Commonwealth of Kentucky submitted to EPA Region 4 a request to redesignate the Kentucky portion of the Huntington-Ashland moderate O_3 nonattainment area to attainment. The redesignation request is currently under review and will be addressed in a separate rulemaking. On August 16, 1994, the Commonwealth requested that the Kentucky portion of the Huntington-Ashland area be exempt from the NO_X RACT requirement in section 182(f) of the CAA. The 182(f) exemption also relieves the area of all NO_X requirements of the CAA such as New Source Review, General Conformity, and Inspection/Maintenance. The exemption request is based upon ambient air monitoring data from 1991, 1992, and 1993, which demonstrate that the NAAQS for O_3 has been attained in the area without additional reductions of NO_X (a violation of the ozone NAAQS occurs when the average number of exceedances for any O_3 monitoring site in a three year period is greater than 1.0).

Only one O_3 exceedance was recorded in the Huntington-Ashland area for the period from 1991 to 1993: Monitor 21–019–0015—0.129ppm (1993). Thus, there has been no violation of the NAAQS in the area during this period and the area has maintained the standard through 1994.

EPA has reviewed the ambient air monitoring data for O_3 (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) submitted by the Commonwealth of Kentucky in support of the exemption request and has determined that a violation of the O_3 NAAQS has not occurred in the Huntington-Ashland, Kentucky portion area for the relevant three year period. Because the Kentucky portion of the Huntington-Ashland area is meeting the O_3 NAAQS, this exemption request for the area meets the applicable requirements contained in the EPA policy and guidance documents referenced above.

Continuation of the section 182(f) exemption granted herein is contingent upon continued monitoring and continued maintenance of the O_3 NAAQS for the entire Huntington-Ashland area. If a violation of the O_3 NAAQS is monitored in the Kentucky portion of the Huntington-Ashland area, EPA will provide notice in the **Federal Register**. A determination that the NO_X exemption no longer applies would mean that the NO_X RACT provision (see 58 FR 63214 and 58 FR 62188) would immediately be applicable to the affected area. Although the NO_X RACT requirements would be applicable, some reasonable period of notice is necessary to provide major stationary sources subject to the RACT requirements time to purchase, install, and operate any required controls. Accordingly, the Commonwealth may provide sources a reasonable time period to meet the RACT emission limits after the EPA determination that NO_X RACT requirements are necessary. EPA expects the time period to be as expeditious as practicable, but in no case longer than 24 months.

The EPA proposed approval of the Commonwealth of Kentucky's request for an exemption request from NO_X and RACT requirements of the CAA as amended in 1990 (60 FR 5881). Comments were received supporting the exemption request. However, the National Resources Defense Council (NRDC), Sierra Defense Club, and EDF submitted adverse comments to Mary Nichols on August 24, 1994, addressing all **Federal Register** notices proposing to approve section 182(f) NO_X exemption requests. The EPA has responded to the adverse comments by issue as set forth below.

NRDC Comment 1

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

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 section 302(e) of the CAA defines to include States) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

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]'' may petition for a NO_X determination ''at any time'' after the ozone precursor study required under section 185B of the Act is finalized, and gives EPA 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 EPA. The specific timeframe for EPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct—and more expeditious—from the plan-revision process intended under paragraph (1). Thus, EPA 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 EPA 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 EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO_X exemption would need to submit their exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the CAA. For maintenance plans, the CAA does not specify a deadline for submittal of maintenance demonstrations. Clearly, the CAA envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The CAA requires conformity with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedure Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

NRDC Comment 2

Three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment.''

EPA Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA 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 ozone transport region if EPA 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. The EPA believes that, 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, it is clear 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. The EPA's approval of the exemption, if warranted, would be 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).

NRDC Comment 3

Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, 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, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to

ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

EPA Response

With respect to conformity, EPA's conformity rules, provide a NO_X waiver if an area receives a section 182(f) exemption. In its ''Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions,'' 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemptions were submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

NRDC Comment 4

The CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response

EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with 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, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f), the House Conference Committee Report states in pertinent part: ''[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area.'' H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA ''shall consider'' the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await ''conclusive evidence'', as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

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

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

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

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Only the first test listed above is based on a showing that NO_X reductions are ''counter-productive.'' If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Pollution Probe (Ontario 9–27–94)

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 exeedance of the ozone NAAQS at 0.125 ppm, but are greater than the ozone NAAQS of 0.120 ppm.

EPA Response

For the reasons provided below, EPA 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 $\mu g/m^3$) is equal to or less than 1, as determined by Appendix H.'' Appendix H references EPA'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.

Final Action

EPA is approving Kentucky's request to exempt the Kentucky portion of the Huntington-Ashland area moderate O_3 nonattainment area from the section 182(f) NO_X RACT requirement. This approval is based upon the evidence provided by Kentucky and the Commonwealth's compliance with the requirements outlined in the applicable EPA guidance. If a violation of the O_3 NAAQS occurs in the Kentucky portion of the Huntington-Ashland area, the exemption from the NO_X RACT requirement of section 182(f) of the CAA in the applicable area shall no longer apply. This action will be effective June 2, 1995.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2)).

The OMB has exempted these actions from review under Executive Order 12866.

This action is not a SIP revision and is not subject to the requirements of section 110 of the CAA. The authority to approve or disapprove exemptions from NO_X requirements under section 182 of the CAA was delegated to the Regional Administrator from the Administrator in a memo dated July 6, 1994, from Jonathan Cannon, Assistant Administrator, to the Administrator, titled, ''Proposed Delegation of Authority: 'Exemptions from Nitrogen Oxide Requirements Under Clean Air Act Section 182(f) and Related Provisions of the Transportation and General Conformity Rules'—Decision Memorandum.''

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 17, 1995.

Patrick M. Tobin,

Acting 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.

Subpart II—Kentucky

2. Section 52.937 is added to read as follows:

§ 52.937 Review of new sources and modifications.

(a) Approval—EPA is approving the section 182(f) oxides of nitrogen (NO_X) reasonably available control technology (RACT) exemption request submitted by the Kentucky Department for Environmental Protection on August 16, 1994, for the Kentucky portion of the Huntington-Ashland ozone (O_3) moderate nonattainment area. This approval exempts this area from implementing NO_X RACT on major sources of NO_X. If a violation of the O_3 NAAQS occurs in the area, the exemption from the requirement of section 182(f) of the CAA in the applicable area shall not apply.

(b) [Reserved]

[FR Doc. 95–10826 Filed 5–2–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN44–1–6538a; FRL–5190–6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On March 23, 1994, the State of Indiana requested a revision to the Indiana State Implementation Plan (SIP) for lead, in accordance with part D, title I requirements of the Clean Air Act (the Act) for the Marion County lead nonattainment area. Supplemental information was received on September 21, 1994. The submittal provides for the control of both stack and fugitive emissions by requiring, among other things, revised emission limitations, improved monitoring, building enclosures, an amended fugitive lead dust plan, and contingency measures in the event that subsequent violations of the lead National Ambient Air Quality Standard (NAAQS) occur. USEPA made a finding of completeness in a letter dated September 23, 1994. Therefore, because the submittal contains all the necessary elements under part D, USEPA is approving it. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This final rule is effective on July 3, 1995 unless an adverse comment is received by June 2, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Rosanne Lindsay at (312) 353–1151, before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Rosanne Lindsay at (312) 353–1151.