not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 1997. 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, Lead, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: June 18, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended to read 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 P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(109) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(109) On October 25, 1994, and April 29, 1997, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to the General Provisions and Permit Review Rules intended to update and add regulations which have been effected by recent SIP revisions, and to change regulations for streamlining purposes. This revision took the form of an amendment to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 1–1 Provisions Applicable Throughout Title 326, 1–2 Definitions, 1–6 Malfunctions, 2–1 Construction and Operating Permit Requirements.

(i) Incorporation by reference. 326 IAC 1–1–2 and 1–1–3. 326 IAC 1–2–2, 1–2–4, 1–2–12, 1–2–33.1, and 1–2–33.2. 326 IAC 1–6–1. 326 IAC 2–1–1, 2–1–3, and 2–1–10. Adopted by the Indiana Air Pollution Control Board March 10, 1994. Filed with the Secretary of State May 25, 1994. Effective June 24, 1994. Published at Indiana Register, Volume 17, Number 10, July 1, 1994.

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[FR Doc. 97–19092 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No.VA062–5019; FRL–5861–2]

Approval and Promulgation of Air Quality Implementation Plans; Richmond, Virginia—NO_X Exemption Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing final approval of a petition from the Commonwealth of Virginia requesting that the Richmond moderate ozone nonattainment area be exempt from applicable nitrogen oxides (NO_X) reasonably available control technology (RACT) control requirements of section 182(f) of the Clean Air Act (Act). This exemption request, submitted by the Virginia Department of Environmental Quality, is 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 the Richmond area without additional reductions of NO_X. The effect of this action is to remove the requirement for NO_X RACT contingent upon continued monitoring of attainment in the Richmond area. The action will also stop application of the offset sanction imposed on January 8, 1996 and defer application of future sanctions as of the effective date of the exemption approval. This action is being taken under section 182(f) of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on August 20, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Christopher H. Cripps, (215) 566–2179, at the EPA Region III address above (or via e-mail at cripps.christopher@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: On December 18, 1995, the Commonwealth of Virginia's Department of Environmental Quality submitted a NO_X exemption petition that would exempt the Richmond ozone nonattainment area from the NO_X RACT requirement under section 182(f) of the Act. The exemption request was based upon ambient air monitoring data for 1993, 1994, and 1995, which demonstrated that the NAAQS for ozone has been attained in the area without additional reductions of NO_X. Subsequent to the original request for an exemption, additional ambient data for 1996 became available. The EPA has reviewed the ambient air monitoring data for 1994, 1995, and 1996 and concludes that the area is still attaining the ozone standard.

The current design value for the Richmond nonattainment area, computed using ozone monitoring data for 1994 through 1996, is 116 parts per billion (ppb). The average annual number of expected exceedances is 0.7 for that same time period. For the 1993 to 1995 time period, the average annual number of expected exceedances was 1.0, and the corresponding design value was 124 ppb. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0.

On July 26, 1996, the Commonwealth of Virginia submitted a redesignation request and complete maintenance plan for the Richmond ozone nonattainment area based on the 1993 to 1995 air quality monitoring data. The EPA will be acting on this submittal in a separate rulemaking document.

On March 19, 1996, the EPA proposed approval of the NO_X exemption petition for the Richmond ozone nonattainment area (61 FR 11170). Also, in a March 19, 1996 interim final rule, EPA made a determination that the Commonwealth, contingent on continued monitored attainment of the ozone NAAQS, had corrected the deficiency of failing to submit NO_X RACT rules (61 FR 11162). This interim final rule did not stop the sanction clock that started under section 179 for this area on July 8, 1994. However, this interim final rule did stay the application of the offset sanction and has deferred the application of the highway sanction. The EPA provided

the public with an opportunity to comment on the proposed action and on the interim final rule.

Response to Public Comment

Adverse comments to the proposed exemption and the interim final rule were received from six commenters. In addition, three environmental groups submitted joint adverse comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas in August of 1994. These comments addressed the EPA's general policy regarding NO_X exemptions. The commenters requested that these comments be addressed in all EPA rulemakings dealing with section 182(f) exemptions. Even though some of these August 1994 comments are not pertinent to the proposed action, EPA has addressed them for completeness.

In addition to commenters who fully opposed the exemption, two letters were received that either conditionally supported the exemption or that fully supported the exemption but commented adversely on supplemental information in the preamble of the notice of proposed rulemaking. One of these two comment letters supported the proposed exemption only if no further controls on volatile organic compounds (VOC) would be required in lieu of NO_X RACT. The second of these two comment letters fully supported the exemption and provided urban airshed modeling results to show further reduction of NO_X would not contribute to attainment although EPA's action to grant the exemption is based upon ambient air quality data indicating that the Richmond area has attained the ozone NAAQS and not upon a modeled demonstration. The following discussion summarizes the comments received regarding the Commonwealth's petition and EPA's proposed rulemaking and presents the EPA's responses to these comments.

Comment #1 Certain commenters argued 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 a state implementation plan (SIP) revision. These 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 SIP revision such as attainment demonstrations or maintenance plans, unless the area has been redesignated as attainment. Several commenters stated NO_X exemptions should only be considered in conjunction with attainment or maintenance plans whereas one commenter stated NO_X exemptions should only be considered in conjunction with any implementation plans containing control measures.

Response #1 Section 182(f) contains very few details regarding the administrative procedures for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves the EPA with discretion to establish reasonable procedures consistent with the requirements of the Administrative Procedures Act (APA).

The EPA disagrees with the commenters regarding the process for considering NO_X exemption requests under section 182(f) and instead, believes that sections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in section 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or a plan revision, does not appear in section 182(f)(3). While section 182(f)(3) references section 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on SIP revisions. Additionally, section 182(f)(3) provides that ''a person'' (which section 302(e) of the Act defines to include a State) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within 6 months of the petition's submission. These key differences lead the EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires marginal areas to adopt new source review (NSR) rules, unless exempted. These rules were generally due to be submitted to the EPA by November 15, 1992. Thus, in order to avoid the Act's sanctions, areas seeking a NO_X exemption would have needed to submit this exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment demonstrations were not due until November 1993 or 1994 (and the EPA may take up to 12 months to approve or disapprove the demonstrations). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstrations are called for in the Act. For areas seeking redesignation to attainment of the ozone NAAQS, the Act does not specify a deadline for submittal of maintenance demonstrations (in reality, the EPA would generally consider redesignation requests without accompanying maintenance plans to be unacceptable). Clearly, the Act envisions the submittal of an EPA action on NO_X exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

Comment #2 Commenters argued that for various reasons three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment and that EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment''. Two commenters argued that three years of violation-free data could be reflecting an economic downturn that resulted in temporarily lower than normal emissions.

Several of these commenters argued that three years of data without a violation might be only the result of favorable weather conditions. One commenter argued that the weather in 1995 was in fact abnormal in that the Richmond area experienced high-altitude winds which prevented stagnation.

Response #2 The EPA does not agree with the comment that three years of air quality monitoring data is an insufficient basis to grant an exemption under section 182(f). In cases where a nonattainment area outside an ozone transport region is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, the EPA 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 all cases, in the absence of approved maintenance and contingency plans and an approved redesignation request, EPA'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).

The EPA has separate criteria for determining if an area should be officially redesignated to attainment under section 107(d)(3)(E) of the Act. The section 107 criteria are more

comprehensive than the Act requires with respect to NO_X exemptions under section 182(f). If all the criteria, other than that related to air quality data, for redesignation are met, EPA would act to redesignate an area to attainment of the ozone NAAQS based upon only (and at least) three years of violation-free data.

In addition to air quality monitoring data showing attainment, under section 107, EPA can only redesignate an area to attainment if EPA has fully approved a maintenance plan. One of EPA's criteria for an approvable maintenance plan is that the plan demonstrate maintenance with the standard for a period of twelve years after the submission of the maintenance plan. One method of demonstrating maintenance is a showing that future year emissions of each of the ozone precursors including NO_X will remain stable or decline over the twelve-year period. In the absence of such redesignation with an approved maintenance plan, EPA's approval of the exemption is granted on a contingent basis.

EPA must, as a legal matter, use the ambient air quality monitoring data and related evaluation methodologies to determine if an area is attaining or violating the ozone NAAQS and base its action on the particular facts of each exemption petition. Therefore, the EPA cannot require that states seeking exemption from NO_X provisions based on monitoring data estimate what emissions might have been under different economic conditions. The EPA cannot require that states seeking exemptions from NO_X provisions based on monitoring data estimate what ozone concentrations might have been under different meteorological conditions. Furthermore, the determination of compliance with the ozone NAAQS uses air quality monitoring data over a three year period and therefore accounts for fluctuations in meteorology.

Comment #3 One commenter stated that because the Virginia petition did not take into account meteorological fluctuations any perceived trends in ambient ozone monitoring data are a poor basis for an exemption, and cited the conclusions in the report of the National Academy of Sciences (NAS) ''*Rethinking the Ozone Problem in Urban and Regional Air Pollution*'' [National Academy Press, Wash., DC, 1991] by the National Research Council that year-to-year variability in ozone concentrations are attributable to meteorological fluctuations. This commenter also cited the conclusion in this NAS report that the current use of the second-highest daily maximum 1-hour concentration in a given year as the principal measure to assess ozone trends is not a reliable measure of progress in reducing ozone and that more statistically robust methods should be used. This commenter noted that there were seven ozone nonattainment areas (Kansas City, San Francisco, Memphis, Detroit, Cincinnati, Pittsburgh and Muskegon) which violated the ozone NAAQS in 1995 that had been redesignated to attainment since 1990 or had redesignation requests pending. The commenter also argued that a conclusion based solely upon three years of ''clean'' data fails to demonstrate that NO_X reductions would not contribute to attainment because in the absence of reliable methods for monitoring reductions in precursor emissions EPA cannot conclude that real progress in reducing ozone has been made.

Response #3 EPA does not agree with the comment. As noted in the response to an earlier comment, EPA must, as a legal matter, use the current ozone standard and related evaluation methodologies to determine if an area is attaining or violating the ozone NAAQS and base its action on the particular facts of each exemption petition. The cited NAS report and EPA's companion report both support the conclusion that, as a general matter for ozone nonattainment areas across the country, NO_X reductions in addition to VOC reductions will be needed to achieve attainment. However, as stated in the response to an earlier comment, EPA believes that an area outside an ozone transport region qualifies for an exemption under section 182(f) when the area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions. For the Richmond area the issue is whether the additional reductions from the requirements of section 182(f) would contribute to attainment of the ozone NAAQS in the Richmond area. The reductions required under section 182(f) are ''additional'' in the sense that these reductions will occur in addition to other requirements of the Act. For example, the Clean Air Act mandated a number of new control measures such as those required under Title II concerning national standards for new motor vehicles which will reduce both NO_X and VOC emissions as cars built prior to these standards are replaced by those required to meet these standards. For the reasons stated in the previous response, EPA believes there is a basis for granting a NO_X exemption for the Richmond area on a contingent basis (in the absence of approved maintenance and contingency plans and an approved redesignation request).

Comment #4 One of these commenters provided newspaper articles which reported that the Richmond area was slated for construction of one major new manufacturing facility and was one of a few areas under consideration for location of another major new manufacturing facility. This commenter noted that future ozone precursor emissions growth is likely.

Response #4 The EPA's decisions on whether or not to grant a NOX waiver are not dependent on estimates of what emissions may be in future years. As explained in the response to a previous comment, EPA must, as a legal matter, use the ambient air quality monitoring data and related evaluation methodologies to determine if an area is attaining or violating the ozone NAAQS and base its action on the particular facts of each exemption petition. As also explained in the response to a previous comment, a determination that an area is in ''attainment'' based on three years of clean data does not result in official redesignation to attainment until the other requirements of section 107(d)(3)(E) of the Act are met. These other requirements include a demonstration of continued maintenance for twelve years after submittal of the redesignation request and maintenance plan. Such a demonstration may be based upon a showing that emissions of ozone precursors will remain stable or decline relative to the emissions in the attainment year inventory or be based upon photochemical modeling that a future year mix of ozone precursor emissions will not result in violation of the ozone NAAQS. Either method for a demonstration of maintenance sets emission budgets for ozone precursors. In all cases, in the absence of approved maintenance and contingency plans and an approved redesignation request, EPA'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).

Comment #5 Many commenters opposed the exemption based on 3 years of clean data where there is evidence that shows the exemption interferes with attainment or maintenance in downwind areas. Several commenters noted that either one or both of EPA's December 1993 guidance and May 27, 1994 policy prohibits granting a section 182(f) exemption based on 3 years of clean data if evidence exists showing that the exemption would interfere with attainment or maintenance in

downwind areas. Such conditions should also apply to exemption requests based on modeling.

One commenter provided evidence that shows NO_X reductions in the Richmond area provide ozone benefits in large areas of the ozone transport region. Several commenters referenced results of regional oxidant modeling (ROM) performed by the EPA and mentioned in the notice of proposed rulemaking for this action that show regional NO_X control is needed in combination with localized VOC control in order to attain the ozone NAAQS throughout the Ozone Transport Region (OTR); thus, control of NO_X emissions throughout the eastern United States will contribute to significant reductions in peak ozone levels within the OTR. Several commenters asked EPA to re-evaluate the February 8, 1995 memorandum from John S. Seitz, Director, Office of Air Quality and Standards, entitled ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'' to require that exemptions only be granted to areas that do not interfere with attainment or maintenance in downwind areas. Three of these commenters contend that EPA cannot segregate action under section 182(f) from the requirements of section 110(a)(2)(D).

One of these commenters also opposed the interim final rule to stay sanctions because it ignores the detrimental effects on air quality on areas downwind.

Response #5 As a result of comments on previous NO_X exemptions, the EPA reevaluated its position on this issue and has revised previously-issued guidance. See the Memorandum, ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria,'' dated February 8, 1995, from John Seitz. As described in this memorandum, the EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by the EPA on a NO_X exemption request under section 182(f). That is, the EPA's action to grant or deny a NO_X exemption request under section 182(f) for any area would not shield that State's need in response to a call by EPA for revisions to state implementation plans (SIP call), for example, area from the EPA's action to require additional NO_X emission reductions from sources in that area, if necessary, under section 110.

Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions upwind of the nonattainment areas. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. At the same time, States have requested exemptions from NO_X requirements under section 182(f) for certain nonattainment areas in the modeling domains. Some of these nonattainment areas may impact downwind nonattainment areas. The EPA intends to address the transport issue under section 110(a)(2)(D), based on a regional modeling analysis.

Under section 182(f)(1)(A) of the Act, an exemption from NO_X requirements may be granted for nonattainment areas outside of an ozone transport region if the EPA determines that ''additional reductions of (NO_X) would not contribute to attainment of the national ambient air quality standard for ozone in the area.'' There are three NO_X exemption tests specified in section 182(f). Of these, two are applicable for areas outside of an ozone transport region: the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. The EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993, EPA guidance,

> [w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

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

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

The Commonwealth of Virginia is being included in modeling analyses being conducted by the EPA, States, and other agencies as part of the Ozone Transport Assessment Group (OTAG). The OTAG process is a consultative process among the eastern States and the EPA. The OTAG assessment process will evaluate regional and national emission control strategies using improved regional modeling analyses. The goal of the OTAG process is to reach consensus on additional regional and national emission reductions that are needed to support efforts to attain the ozone standard in the eastern United States.

On January 10, 1997 (62 FR 1420) EPA issued a notice of intent to issue a SIP call to reduce regional transport of ozone. In this notice, in accordance with section 110(k)(5) and 110(a)(2)(D) of the Clean Air Act (Act), the EPA announced its plans to require States to submit SIP measures to ensure that emission reductions are achieved as needed to allow current nonattainment areas to prepare attainment demonstrations for the current NAAQS. This action will reflect the technical work done by OTAG and other pertinent regional and urban scale analyses of ozone transport.

Furthermore, this exemption in no way insulates or alleviates the Commonwealth of Virginia from any future obligations to secure additional NO_X reductions, perhaps even from among sources in the Richmond area, should technical evidence, including but not limited to that which may result from the OTAG process, indicate that such reductions are required because NO_X emissions generated in Virginia interfere with the ability of another state or legally responsible jurisdiction to attain and maintain the NAAQS for ozone, and EPA makes such a finding.

Comment #6 One commenter asked EPA to require NO_X RACT immediately under section 110(a)(2)(D) if the Commonwealth's petition for an exemption from NO_X RACT is approved.

Response #6 The EPA does not agree with this comment for two reasons. First, EPA noted in the Technical Support Document for this action that the level of reductions required under section 110 may be greater or less than that required by RACT, depending upon the circumstances. The EPA established general policy for NO_X RACT in the ''NO_X Supplement to the General Preamble for Implementation of Title I'' (57 FR 55620, November 25, 1992) and established NO_X RACT presumptive emission limits for four categories of utility boilers. These limits require reductions on the order of 25 to 50 percent from emission rates prior to control. The ozone transport assessment process described previously has evaluated regional and national emission control strategies for NO_X that considered levels of reductions well in excess of 50 percent. Therefore RACT alone may not be a significant level of control. Secondly, the geographic scope of the January 10, 1997 notice of intent to issue SIP calls for areas throughout the OTAG domain that are contributing significantly to ozone pollution in downwind areas includes Virginia. The SIP call process will therefore address the transport of ozone from all areas influencing the various ozone nonattainment areas in the eastern half of the United States. As noted in the response to an earlier comment, EPA's position is that an action to grant or deny a NO_X exemption request under section 182(f) for any area would not shield that area if additional NO_X emission reductions are determined to be necessary to meet the requirements of section 110(a)(2)(D).

Comment #7 One commenter stated it was inappropriate to issue the NO_X exemption and interim final rule prior to final action on the request that EPA exercise its authority under section 110(a)(2)(D) made by the State of New York in the November 1994 SIP revision for an attainment demonstration for the New York City metropolitan area.

Response #7 The EPA does not agree with this comment for the reasons discussed in the previous two responses. The EPA continues to believe that actions under section 110(a)(2)(D) are independent of any action taken by the EPA on a NO_X exemption request under section 182(f). However, the EPA's action to grant or deny a NO_X exemption request under section 182(f) for any area would not shield that area if additional NO_X emission reductions are determined to be necessary to meet the requirements of section 110(a)(2)(D). In the January 10, 1997 notice of intent, the EPA announced its plans to require certain States to submit additional SIP measures to ensure that emission reductions are achieved as needed to allow current nonattainment areas to prepare attainment demonstrations for the current NAAQS. This action will reflect the technical work done by OTAG and other pertinent regional and urban scale analyses of ozone transport.

Comment #8 One commenter asserted that exemptions should be granted considering transport issues under section 110(2)(2)(D) and referenced a ''limited exemption'' granted for the State of Maine. The limited exemption was ''based upon a demonstration that NO_X emissions in the Northern Maine area are not impacting Maine's moderate ozone nonattainment areas or any other area in the Ozone Transport Region during the time periods when elevated ozone levels are monitored in these areas.''

Response #8 As noted in the response to an earlier comment, EPA does not agree that exemptions granted under section 182(f) for areas outside an ozone transport region must consider transport under section 110(a)(2)(D). The EPA believes, as described in the EPA'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 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.

Only the first and third tests are applicable for areas inside an ozone transport region; the ''net air quality benefits test'' and the ''net ozone air quality benefit'' test. The EPA must determine, under the first test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Under the third test, EPA must determine ''that additional NO_X reductions would not produce net ozone benefits in the transport region.'' The exemption for Northern Maine was granted under the third test (60 FR 66749, December 26, 1995). Therefore, the exemption petition for Northern Maine had to consider net ozone benefits in areas within the transport region that are downwind of that State.

Comment #9 In addition to stating that perceived trends are a poor basis for a conclusion and three years of data fail to consider meteorological fluctuations, one commenter said that sections 110(a)(2), 161 and 162 of the Act, obligate EPA to protect the public health by ensuring that the air quality standards are attained and then maintained, not simply to respond after a violation has occurred. (EPA's response to the interplay of section 182(f) and section 110(a)(2) of the Act is also noted in the response to previous comments.)

Response #9 The EPA does not agree with this comment since it ignores the Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, the EPA has sought an approach that reasonably accords with that intent. In addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for sources of VOC, section 182(f) also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, the EPA determines that, in certain areas, NO_X reductions would generally not be beneficial towards attainment of the ozone standard.

Sections 161 and 162 deal with requirements for areas designated ''attainment'' of the ozone (and any other) NAAQS. Section 182(f) authorizes when a nonattainment area may be exempted from the NO_X RACT requirement for purposes of attaining the ozone NAAQS; however, the exemption does not preclude future NO_X controls needed for maintenance of

the ozone NAAQS that may be required once the area has been redesignated to attainment. The EPA has not interpreted the ''contribute to attainment'' language in the section 182(f)(1)(A) test to mean ''contribute to attainment and maintenance.'' (Refer to the May 27, 1994, John S. Seitz, Director, Office of Air Quality Planning and Standards, memorandum entitled ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria''.)

In section 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B of the Act. Because of the possibility that reducing NO_X in an area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout Title I of the Act, to avoid requiring NO_X reductions where such reductions would not be necessary. In describing these various ozone provisions, including section 182(f), the House Conference Committee Report states in the pertinent part:

> [T]he Committee included a separate NO_X/VOC (volatile organic compound) 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. See H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990).

Therefore, EPA has concluded that the determination of the benefits of NO_X reductions required under section 182(f)(1)(A) is limited to a determination of whether such reductions would contribute only to ''attainment'' of the ozone NAAQS and need not consider the benefits for maintenance in areas that have been redesignated to attainment of the ozone NAAQS.

Comment #10 Several commenters stated that the exemption should not be granted because the Act does not authorize any exemption of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

Response #10 The EPA does not agree with this comment since it ignores the Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, the EPA has sought an approach that reasonably accords with that intent. In addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for sources of VOC, section 182(f) also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, the EPA determines that, in certain areas, NO_X reductions would generally not be beneficial towards attainment of the ozone standard. In section 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B of the Act. Because of the possibility that reducing NO_X in an area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout Title I of the Act, to avoid requiring NO_X reductions where such reductions would not be beneficial or would be counterproductive. In describing these various ozone provisions, including section 182(f), the House Conference Committee Report states in the pertinent part:

> [T]he Committee included a separate NO_X/VOC [volatile organic compound] 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. See H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990).

As noted in the response to an earlier comment, the command in section 182(f)(1) that the EPA ''shall consider'' the section 185B report taken together with the time period the Act provides for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for the EPA to act on NO_X exemption requests, even in the absence of the additional information that would be included in affected areas' attainment or maintenance demonstrations. While there is no specific requirement in the 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 the EPA from revisiting an approved NO_X exemption if warranted by additional, current information.

In addition, the EPA believes, as described in the EPA's December 1993 guidance, that section 182(f)(1) of the 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 Administrator determines that any one of the following tests is met:

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

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

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

Based on the plain language of section 182(f), the EPA believes that each test provides an independent basis for a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are ''counterproductive.'' If any 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.

Comment #11 Many commenters opposed the exemption because it ignored the other benefits of NO_X reductions. Other benefits noted were reduction of nitrogen loading to waterways, bays and estuaries, especially noted was the Chesapeake Bay, reduction of other (non-ozone) secondary pollution, such as fine particulate matter, formed from NO_X-VOC mixtures, and reduction of acid deposition. One of these commenters wondered if EPA can relieve an ozone nonattainment area of the NO_X RACT requirement where the Commonwealth is not meeting alternative requirements for nitrogen controls in water discharges.

Response #11 The EPA does not agree nor does the Act require that decisions regarding granting of a NO_X exemption be made contingent on addressing other environmental benefits such as those raised by the commenters. As noted in the responses to the two previous comments, based upon the plain language of section 182(f) and relevant legislative history, the EPA believes that each of the three tests discussed in section 182(f) provides an independent basis for a full or limited NO_X exemption. Only the ''net air quality test'' is based on a showing that NO_X reductions provide environmental benefits beyond attainment of the ozone NAAQS. In addition, based upon the language, not just in section 182(f), but throughout Title I of the Act regarding NO_X reductions and upon the relevant

legislative history, EPA has concluded that the determination of the benefits of NO_X reductions required under the ''contribute to attainment'' test is limited to a determination of whether such reductions would contribute only to ''attainment'' of the ozone NAAQS and need not consider the benefits in relation to other environmental media. Moreover, some of the pollution problems to which NO_X emissions contribute are addressed by separate Titles of the Clean Air Act or other environmental statutes.

Comment #12 One commenter contended that the air quality monitoring data alone does not support this exemption proposal. The commenter stated the actual measured ozone concentrations reflect the Richmond nonattainment area's failure to consistently attain the federal standard. The air quality levels are below EPA's definition of an exceedance of the ozone NAAQS at 0.125 parts per million (ppm), but are greater than the ozone NAAQS of 0.12 ppm. The commenter protested rounding of ozone concentration measurements less than or equal to 124 ppb down to 120 ppb. The commenter stated that had the EPA adhered to a ''brightline'' 120 ppb standard the Richmond area would be in violation of the ozone NAAQS. The commenter stated that more control of NO_X should be required in the Richmond area because the ozone concentrations are routinely at or above the current ozone NAAQS. The commenter contended that the ozone readings for 1995 were more than ''twice'' the current standard.

Response #12 For the reasons provided below, EPA does not agree with the commenter's conclusions. 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 ug/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. Likewise, the calculated expected exceedances are rounded to zero decimal places. Thus, the smallest sum of expected exceedances for any one monitor that cause the 3-year average to exceeds 1 would be 3.2. Before proposing the exemption, EPA had analyzed the 1993 to 1995 air quality monitoring data in accordance with Appendix H and had determined that the expected number of days per calendar year maximum hourly average concentrations above 0.12 parts per million (235 ug/m^3) did not exceed 1. Because the largest sum of expected exceedances for the 1993 to 1995 data at any one monitor was 3.1, the standard was not exceeded. The largest recorded one-hour, maximum ozone concentration recorded in the 1993 to 1995 period was 0.154 ppm which is well less than twice the standard of 0.12 ppm. It is true that during 1995 three monitoring locations in the Richmond area each recorded one valid monitored exceedance of the 0.12 ppm standard during 1995. However, the form of the ozone NAAQS requires the use of a 3-year period to determine the average number of exceedances per year. The determination of expected number of exceedances is performed on a monitor by monitor basis. An area with more than one monitor would violate the standard if the expected number of days per calendar year maximum hourly average concentrations above 0.12 parts per million exceeds 1 at any one monitor. The EPA has determined that the Richmond area did not violate the ozone NAAQS based upon monitoring data for 1993 to 1995 and has continued without violation through 1996.

Comment #13 One commenter said that NO_X reductions would benefit the Richmond area as demonstrated by the Urban Airshed Modeling performed by the Virginia Department of Environmental Quality for the May 15, 1995, Virginia Attainment Demonstration SIP submittal for Richmond.

Response #13 The EPA does not agree with this comment. The EPA considered the Attainment Demonstration submittal for Richmond in the Technical Support Document (TSD) for the notice of proposed rulemaking. The EPA's evaluation weighed the air quality monitoring more heavily than the attainment demonstration. The reason for doing so was discussed in the TSD and is summarized and clarified below.

In section 4.3 of the December 1993 EPA applicability guidance, the ''contribute to attainment'' test is described for the case where an exemption request is submitted with a redesignation request with violation-free monitoring data for the most recent three years. This policy was amended in the May 27, 1994 Seitz memo to allow a petition for a section 182(f) exemption to be submitted prior to a redesignation request. The same section of the guidance (since amended as discussed above under transport) requires EPA to deny the petition if creditable modeling shows that NO_X reduction in the area seeking the section 182(f) is necessary for a downwind area to attain or maintain the ozone NAAQS. The guidance is silent on the case where modeling and monitoring results in the area are at odds.

Under the policy set forth in a May 10, 1995 memorandum from John S. Seitz, Director, OAQPS, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'', EPA concluded that the requirements for reasonable further progress towards attainment, the attainment demonstration itself, and certain attainment-related requirements are moot when an area is monitoring attainment of the NAAQS. The determination that these requirements are waived would remain effective as long as the area remains free of violations of the ozone NAAQS. In a recent **Federal Register** notice EPA has acted to waive these requirements for the Richmond area based upon air quality monitoring data for 1993 to 1996. *See* 62 FR 32204 (June 13, 1997). The reasonable further progress, attainment demonstration and related requirements become permanently moot if and when the area is redesignated to attainment. To redesignate an area to attainment, EPA must determine that, among other things, the area is free of violations of the ozone NAAQS, that attainment was the result of real, permanent, quantifiable reductions in precursor emissions and that maintenance of the standard is demonstrated. The EPA does not require the maintenance demonstration to be air quality modeling based where a demonstration is made that the future year emission inventories will remain at or below the inventory of the attainment year.

The December 1993 guidance is silent on situations where EPA must consider an exemption petition based upon air quality monitoring data that is not consistent with air quality modeling. The EPA has determined nonattainment areas can be exempted from certain other nonattainment requirements contingent upon continued monitoring of attainment. The EPA therefore has granted greater weight to the air quality monitoring data than the air quality modeling data when considering this exemption petition.

Comment #14 Several commenters argued that the monitoring network in Richmond does not adequately cover this large airshed. All argued that the four monitors cannot reflect all areas where an exceedance of the ozone NAAQS may occur. One stated that according to the Virginia Department of Environmental Quality the four monitors are not placed in high-activity areas in order to more ''accurately reflect consistent ambient concentrations,'' that is, the monitors are placed to measure ''background'' or ''diluted'' concentrations. One commenter argued that to address the inadequacies of the monitoring networks the Act establishes several prerequisites before an area can be redesignated to attainment and that three-years of data do not address any potential increases in NO_X emissions.

Response #14 The EPA does not agree with these comments because the current monitoring network meets EPA-specified regulatory requirements (see 40 CFR part 58), and adequately reflects air quality in the nonattainment area.

Comment #15 Comments were received regarding the process by which the reapplication of the NO_X RACT requirement and sanctions in the event a violation is monitored. One commenter stated the notice of proposed rulemaking and the interim final rule contained conflicting statements regarding staying and deferring imposition of sanctions. The commenter noted that the interim final rule mentions that the stay and deferment of sanctions will occur while the EPA completes the rulemaking process on the Commonwealth's petition. In contrast the commenter noted that the notice of proposed rulemaking stated the 2:1 offset sanction cannot be lifted until either a NO_X RACT SIP is deemed complete by the EPA or the exemption under section 182(f) is granted. Another commenter asked EPA to clarify what steps will be taken regarding reapplication of NO_X RACT in the event a violation of the ozone NAAQS occurs in the future.

Response #15 The purpose of the interim final rule was to stay, for the duration of EPA's rulemaking process on the exemption petition, further application of the 2:1 offset sanction which went into effect in the Richmond ozone nonattainment area as of January 8, 1996 as a result of the July 8, 1994 finding of failure to submit. On July 8, 1994, EPA sent a letter to the Governor of Virginia stating that, under section 179 of the Act, EPA made a finding that Virginia failed to submit a SIP revision for NO_X RACT. This finding commenced the sanctions process outlined by section 179. The two to one (2:1) offset sanction went into effect 18 months later.

The interim final rule also established the procedure by which sanctions would be reapplied if, based upon comments to the proposed and/or interim final rules, EPA determined that the petition was not approvable. The basis for staying and deferring sanctions in the interim final rule was that EPA had concluded that the Commonwealth was eligible for an exemption from the NO_X RACT requirement, under section 182(f) and, therefore, was no longer subject to the requirement for which the July 8, 1994 finding of failure to submit was issued. If, based upon comment, EPA determined that the exemption petition was in fact unapprovable then the basis for the interim final rule would no longer exist. Therefore, the interim final rule provided that sanctions would be applied at the time of a final action disapproving the NO_X exemption petition (or, if action is re-proposed, at the time of the proposed disapproval).

The notice of proposed rulemaking also had to address how sanctions would be affected if EPA approved the exemption. Basically, the notice of proposed rulemaking proposed, on the effective date of the exemption approval, to stop application of the 2:1 offset sanction and to defer application of the highway sanction which was to take effect July 8, 1996. In essence, final approval (contingent upon continued monitoring of attainment) of the exemption petition would continue the stay and deferment of sanctions initiated by the interim final rule. However, the stay would be lifted, should a monitored violation of the ozone NAAQS be recorded under the conditions set forth in the notice of proposed rulemaking. These conditions were:

> ''If there is a violation of the ozone NAAQS in any portion of the Richmond ozone nonattainment area while this area is designated nonattainment for ozone, the exemption will no longer be applicable as of the date of any such determination. Should this occur, EPA will provide notice both of the exemption revocation and of the date sanctions will re-apply in the **Federal Register**. A determination that the NO_X exemption no longer applies would mean that the NO_X requirements become once more applicable to the affected area, that the sanctions would be reinstated, and that deferred sanctions would be imposed on the date originally due or the effective date of the notice, whichever is later.'' See 61 FR 11172.

The contingent nature of the exemption lasts only as long as the Richmond area is designated nonattainment. If prior to redesignation to attainment, a violation of the ozone NAAQS is monitored in the Richmond area and recorded in AIRS, then the section 182(f) exemption would no longer apply. In the rulemaking action which removes the exempt status, the EPA would provide specific information regarding the reapplication of the NO_X RACT requirement and sanctions. Because NO_X RACT is a nonattainment area requirement, once the area is redesignated to attainment, NO_X RACT is no longer required for purposes of attainment. Once the Richmond area is redesignated to attainment, then the response to a violation of the ozone NAAQS would be addressed in the manner prescribed by the approved maintenance plan. NO_X RACT would be implemented to the extent as required under the approved maintenance plan.

Because the sanctions were applied pursuant to a finding that the Commonwealth of Virginia failed to submit a state implementation plan (SIP) revision for NO_X RACT, both the notice of proposed rulemaking and interim final rules noted that, even if the exemption were granted, a NO_X RACT SIP for the Richmond ozone nonattainment area that meets the completeness criteria of section 110(k) would permanently correct the July 8, 1994 finding of failure to submit and would permanently lift sanctions. If prior to redesignation to attainment, a violation of the ozone NAAQS is monitored in the Richmond area and recorded in AIRS, then the section 182(f) exemption would no longer apply, and the only way to lift sanctions would be through submittal of a complete NO_X RACT SIP for the Richmond area.

EPA acknowledges that the precise terminology regarding reapplication of sanctions after an approval of the exemption petition differed slightly in the interim final rule and the proposed rule. The EPA intended the description of the reapplication of sanctions after an exemption approval in the interim final rule to summarize the detailed proposal language contained in the notice of proposed rulemaking. In response to this comment, the final rule clarifies the process for reapplication of sanctions after an exemption approval in the event of a monitored violation as set forth in the notice of proposed rulemaking and defines the role of a complete NO_X RACT SIP revision submittal in terminating sanctions.

Comment #16 One commenter supported the exemption but expressed concerns that the exemption will result in stricter regulation on emissions of other pollutants, specifically on VOC. The commenter encouraged EPA not to approve any additional VOC control

regulations adopted by the Commonwealth that are needed in lieu of an exemption from NO_X RACT. The commenter asked that any final approval address further VOC regulation and asked EPA to clarify that NO_X RACT will be required before any additional VOC control.

Response #16 The EPA does not agree with this comment. As explained in the response to previous comments (refer to responses to comments numbers 9 and 10) in section 182(f)(1), Congress included attenuating language, not just in section 182(f), but throughout Title I of the Act, to avoid requiring NO_X reductions where such reductions would not provide net benefits or contribute to attainment. No such similar language is found concerning VOC reductions in section 182(f) or elsewhere in Title I of the Act. Because today's action is taken under section 182(f) EPA has no basis for conditioning the exemption on future VOC regulation.

Comment #17 One commenter fully supported the proposed action, but commented negatively on the portion of the preamble dealing with other possible benefits of NO_X reductions in the Richmond area. One commenter stated that the proposal alleges several other environmental effects of additional NO_X reductions. If such benefits exist, they should be addressed in the context of regulations dealing with those specific environmental effects, not in context of regulations dealing with attainment of the ozone NAAQS. The commenter said any conclusion regarding benefits on transport of ozone from reducing NO_X emissions are premature pending the outcome of the studies underway by OTAG. The commenter also noted that the compensation for future growth in NO_X emissions is an issue to be addressed in a maintenance plan.

Response #17 The EPA included discussion of the potential other environmental effects of NO_X reductions to inform the public that the action proposed could affect air quality in ways not related to attainment of the ozone NAAQS. Nowhere in the proposal did EPA state that the EPA's proposed action was based upon other than a determination that the NO_X reductions required under section 182(f) would not contribute to attainment. As explained in the response to previous comments, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence showing that the NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State, and this action would be independent of any action taken by the EPA on a NO_X exemption request under section 182(f). As noted in that earlier response, EPA began that process in a January, 10, 1997 **Federal Register** notice. Further in an earlier response, EPA noted it has not interpreted ''contribute to attainment'' in section 182(f)(1)(A) to mean ''contribute to attainment and maintenance.'' Therefore, the demonstration that an area qualifies for an exemption under section 182(f)(1)(A) is limited to the effects of the section 182(f) requirements on attainment.

Comment #18 Some commenters stated that the modeling required by EPA 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 explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

Response #18 As discussed in the Notice of Proposed rulemaking and in the responses to previous comments, the basis for granting this exemption on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment) is ambient air monitoring data.

Therefore this comment is not pertinent to the granting of the exemption for the Richmond area. But EPA has included this comment because it was one of the ''standing'' comments as discussed previously in the introduction to the ''Response to Public Comment'' portion of this notice.

Comment #19 Commenters contended that section 182(b)(1) is the appropriate authority for granting interim period transportation conformity NO_X exemptions.

Response #19 The EPA agreed with the commenters and published an interim final rule that changed the transportation conformity rule to reference section 182(b)(1) as the correct authority under the Act for waiving the NO_X ''build/no-build'' and ''less-than-1990 emissions'' tests for certain areas. See 60 FR 44762, (August 29, 1995). A related proposed rule (60 FR 44790), published on the same day, invited public comment on how the Agency plans to implement section 182(b)(1) transportation conformity NO_X exemptions. The final rule for that proposal has since been promulgated. See 60 FR 57179 (November 14, 1995). In that final rule, the EPA noted that section 182(b)(1), by its terms, only applies to moderate and above ozone nonattainment areas. Consequently, the EPA believes that the interim reduction requirements of section 176(c)(3)(A)(iii), and the authority provided in section 182(b)(1) to grant relief from those interim reduction requirements, apply only to those areas subject to section 182(b)(1). The EPA, however, is not granting a NO_X exemption from the interim period transportation conformity requirements by today's action because the Commonwealth submitted its NO_X petition pursuant to section 182(f).

Comment #20 Comments were received regarding the scope of exemption of areas from the NO_X requirements of the conformity rules. The commenters argued that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions during the period before submission of conformity SIPs, not the requirement that conformity SIP revisions contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules, and similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admitted that, in prior guidance, the EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but have wanted the EPA, in actions on NO_X exemptions, to explicitly affirm this obligation and to also avoid granting exemptions until a budget controlling future NO_X increases is in place.

Response #20 The EPA's transportation conformity rule originally provided a NO_X transportation conformity exemption if an area received a section 182(f) exemption. See 58 FR 62188 (November 24, 1993). As indicated in a previous response, the EPA has changed the reference from section 182(f) to section 182(b)(1) in the transportation conformity rule since that section is specifically referenced by the transportation conformity provisions of the Act. See 60 FR 44762 (August 29, 1995). The EPA has also consistently held the view that, in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and the Transportation Improvement Program are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X exemption has been granted. Due to a drafting error, that view was not reflected in the transportation conformity rule. The EPA

has amended the rule to correct this error. See 60 FR 57179 (November 14, 1995).

Final Action

EPA approves the 182(f) NO_X exemption petition submitted by the Commonwealth of Virginia for the Richmond ozone nonattainment area. Approval of the exemption waives the Federal requirements for NO_X RACT applicable to the Richmond ozone nonattainment area. The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO_X Supplement to the General Preamble (57 FR 55628, November 25, 1992), the EPA would rescind a NO_X exemption in cases where NO_X reductions were later found to be beneficial for attainment of the ozone NAAQS in an area's attainment plan. That is, if an area that received an exemption based on clean air quality data which shows that the area is attaining the ozone standard experiences a violation prior to redesignation of the area to attainment, the exemption would no longer be applicable.

If, prior to redesignation of the area to attainment, a violation of the ozone NAAQS is monitored in Richmond (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), the section 182(f) exemption would no longer apply, as of the date EPA makes a determination that a violation has occurred. The EPA would notify the area that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**.

If the exemption is revoked, the area must comply with any applicable NO_X requirements set forth in the Act. 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 EPA believes that the Commonwealth may provide sources a reasonable time period after the EPA determination to actually meet the RACT emission limits. The EPA expects such time period to be as expeditious as practicable, but in no case longer than 24 months.

This action stops application of the offset sanction imposed on January 8, 1996 and defers application of future sanctions on the effective date of the exemption approval. Sanctions would then remain stopped or deferred contingent upon continued monitoring that demonstrates continued attainment of the ozone NAAQS in the entire Richmond ozone nonattainment area. If there is a violation of the ozone NAAQS in any portion of the Richmond ozone nonattainment area while this area is designated nonattainment for ozone, the exemption will no longer be applicable as of the date of any such determination. Should this occur, EPA will provide notice both of the exemption revocation and of the date sanctions will re-apply in the **Federal Register**. A determination that the NO_X exemption no longer applies would mean that the NO_X requirements become once more applicable to the affected area, that the sanctions would be reinstated, and that deferred sanctions would be imposed on the date originally due or the date specified in the notice, whichever is later.

The sanctions were applied pursuant to a finding that the Commonwealth of Virginia failed to submit a state implementation plan (SIP) revision for NO_X RACT. Therefore, if prior to redesignation to attainment, the sanctions have been reapplied, they then can only be permanently lifted by submittal of a NO_X RACT SIP for the Richmond ozone nonattainment area that meets the completeness criteria of section 110(k).

If Richmond is redesignated to attainment of the ozone NAAQS, NO_X RACT is to be implemented as provided for as contingency measures in the maintenance plan.

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.

Administrative Requirements

A. Executive Order 12866

This action is not a SIP revision and is not subject to the requirements of section 110 of the Act. The authority to approve or disapprove exemptions from NO_X requirements under section 182 of the Act 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.'' The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. The EPA has determined that the action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not create any new requirements, but suspends the indicated requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller

General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2).

E. Petitions for Judicial Review

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 September 19, 1997. 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, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 8, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52, subpart VV 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 VV—Virginia

2. Section 52.2428 is amended by redesignating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

(a) * * *

(b) EPA is approving an exemption request submitted by the Virginia Department of Environmental Quality on December 18, 1995 for the Richmond ozone nonattainment area, which consists of the counties of Charles City, Chesterfield, Hanover and Henrico, and of the cities of Richmond, Colonial Heights and Hopewell, from the oxides of nitrogen (NO_X) requirements for reasonably available control technology (RACT). This approval exempts the Richmond ozone nonattainment area from implementing the NO_X RACT requirements contained in section 182(f) of the Clean Air Act. The exemption is based on ambient air monitoring data. The exemption is applicable during the period prior to redesignation of the Richmond area to attainment of the National Ambient Air Quality Standard for ozone only as long as ambient air quality monitoring data for the Richmond ozone nonattainment area continue to demonstrate attainment without NO_X reductions from major stationary sources of NO_X.

[FR Doc. 97–19090 Filed 7–18–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD45

Endangered and Threatened Wildlife and Plants; Final Rule to Designate the Whooping Cranes of the Rocky Mountains as Experimental Nonessential and to Remove Whooping Crane Critical Habitat Designations From Four Locations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines that it will designate the whooping crane (*Grus americana*) population of the Rocky Mountains as an experimental nonessential population and will remove whooping crane critical habitat designations from four National Wildlife Refuges; Bosque del Apache in New Mexico, Monte Vista and Alamosa in Colorado, and Grays Lake in Idaho. The private lands involved are holdings inside refuge boundaries and a 1-mile buffer around Grays Lake National Wildlife Refuge. The Service will use this population, and captive-reared sandhill cranes and whooping cranes, in experiments to evaluate methods for introducing whooping cranes into the wild where migration is required.

EFFECTIVE DATE: August 20, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Southwest Regional Office, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87103–1306.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Southwest Regional Office, Albuquerque, New Mexico (see **ADDRESSES** section) (telephone 505/248–6663; facsimile 505/248–6922).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act Amendments of 1982, Public Law 97–304, added section 10(j) to the Endangered Species Act (Act) of 1973, (16 U.S.C. 1531 *et seq.*) that provides for the designation of specific introduced populations of listed species as ''experimental populations.'' Under other authority of the Act, the Service already was permitted to reintroduce populations into unoccupied portions of the historic range of a listed species when it would foster the conservation and recovery of the species. However, local opposition to reintroduction efforts, based on concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, hampered efforts to use reintroductions as a management tool.

Under section 10(j) of the Act, past and future reintroduced populations established outside the current range of a species may be designated as ''experimental'' and, under some circumstances further designated ''nonessential'' experimental. Such designations increase the Service's flexibility to manage such populations because ''experimental'' populations may be treated as threatened species, which allows more discretion in devising management programs than for endangered species, especially regarding incidental and other takings. Experimental populations ''nonessential'' to the continued existence of the species are to be treated as if they were only proposed for listing for purposes of section 7 of the Act, except as noted below.

A ''nonessential'' experimental population is not subject to the formal consultation requirement of section 7(a)(2) of the Act, except that the full protections accorded a threatened species under section 7 apply to individuals found on units of the National Wildlife Refuge System or the National Park System. Section 7(a)(1) of the Act, which requires Federal agencies to carry out programs to conserve listed species, applies to all experimental populations. Individuals to be reintroduced into any experimental population can be removed from an existing source or donor population only if such removal is not likely to jeopardize the continued existence of the species; a permit issued in accordance with 50 CFR 17.22 is also required.

An experiment to reintroduce whooping cranes to their historic range in the Rocky Mountains began in 1975,