(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., crab may be taken only from June 1–January 31;

(vi) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male tanner crab.

Dated: April 30, 1997.

Thomas H. Boyd

Acting Chair, Federal Subsistence Board.

Dated: May 1, 1997.

James A. Caplan,

Acting Regional Forester, USDA—Forest Service.

[FR Doc. 97–13742 Filed 5–28–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–21–1–7318; FRL–5832–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing final approval of a petition from the State of Louisiana requesting that the Lake Charles marginal ozone nonattainment area be exempt from applicable nitrogen oxides (NO_X) control requirements of section 182(f) of the Clean Air Act (Act). The section 182(f) NO_X requirement from which the area will be exempt is NO_X new source review (NSR). In addition, approval of the section 182(f) petition would remove the NO_X general conformity provisions and the NO_X build/no build provisions of the transportation conformity rule. This document will also correct the drafting error in the proposed rule in which the Lake Charles area was referred to as the Calcasieu Parish nonattainment area. This correction is merely a nominal change, since the Lake Charles nonattainment area contains only Calcasieu Parish.

EFFECTIVE DATE: This action is effective as of May 27, 1997.

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

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Witosky , Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTAL INFORMATION:

I. Background

On October 28, 1994, the State of Louisiana submitted a petition to the EPA requesting that the Lake Charles marginal ozone nonattainment area be exempt from requirements to implement NO_X controls pursuant to section 182(f) of the Act. Hereafter, any reference to ''section'' shall be considered a reference to a portion of the Act. The exemption request was based on modeling that demonstrates additional NO_X emission controls within the nonattainment area will not contribute to attainment of the ozone National Ambient Air Quality Standard (NAAQS) within the area. Subsequent to the original request for a waiver, ambient data became available indicating that area was in attainment of the ozone standard. The EPA is approving the exemption request based on modeling and monitoring data that together demonstrate that additional NO_X reductions would not contribute to attainment. As stated in the summary, the Lake Charles ozone nonattainment area consists only of Calcasieu Parish.

On June 13, 1996, the EPA proposed approval of the NO_X exemption petition for the Lake Charles ozone nonattainment area (61 FR 30024, again, proposed as the Calcasieu Parish nonattainment area). Adverse comments were received from a single commenter. 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.

II. Public Comments

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

Comment: Commenters argued that NO_X exemptions are provided for in two separate parts of the Act, in sections 182(b)(1) and 182(f). Because the NO_X exemption tests in sections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when (the EPA) approves a plan or plan revision,'' these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by section 182(f)(3), must occur during consideration of an attainment or maintenance plan, unless the area has been redesignated as attainment.

Response: Section 182(f) contains very few details regarding the administrative procedures for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves the EPA with discretion to establish reasonable procedures consistent with the requirements of the Administrative 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 State Implementation Plans (SIPs). 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 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 and EPA action on NO_X exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

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

Response: 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. That proposal has since been finalized. 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).

It should be noted that a NO_X waiver under section 182(f) removes the NO_X general conformity requirements entirely and would continue to do so. Since general Federal actions are not subject to section 176(c)(3)(A)(iii), which explicitly references section 182(b)(1), the EPA will continue to offer relief from NO_X general conformity provisions under section 182(f)(3). The EPA intends to provide relief to marginal areas, such as Lake Charles, from transportation conformity provisions through the authority of section 182(f)(3) because marginal areas are not subject to section 182(b)(1). The EPA believes this approach is consistent both with the way NO_X requirements in ozone nonattainment areas are treated under the Act generally, and under section 182(f) in particular. The basic approach of the Act is that NO_X reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach but also includes specific substantive tests which provide a basis for the EPA to determine when NO_X requirements should not apply. There is no substantive difference between the technical analysis required to make an assessment of NO_X impacts on attainment in a particular area whether undertaken with respect to mobile source or stationary source NO_X emissions. Moreover, where the EPA has determined that NO_X reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO_X reductions for purposes of meeting reasonable further progress or other milestone requirements. Thus, even concerning the conformity requirements of section 176(c)(1), the EPA believes it is reasonable and appropriate to: (1) Offer relief from the applicable NO_X requirements of the general and transportation conformity rules in areas where such reductions would not be beneficial, and (2) rely in doing so on the exemption tests provided in section 182(f).

In summary, the EPA will continue to process actions not subject to section 182(b)(1) under section 182(f)(3). The Lake Charles ozone nonattainment area is not subject to the requirements of section 182(b)(1). Therefore, a transportation conformity NO_X waiver and general conformity waiver may be granted under section 182(f)(3).

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

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

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

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

Under section 182(f) of the 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.'' [1] As described in section

[1] There are three NO_X exemption tests specified in section 182(f). Of these, two are applicable for areas outside of an ozone transport region: The ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for

Continued

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 State of Louisiana is being included in one of the new modeling analyses referred to above that is being conducted by the EPA, States, and other agencies as part of the Ozone Transport Assessment Group (OTAG). The OTAG process is a consultative process among the eastern States and the EPA. 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. States have committed to submit plans (SIP revisions) that will show attainment of the ozone standard through local, regional, and national emission controls.

As noted in a prior EPA rulemaking dated November 28, 1994 (59 FR 60709), NO_X waivers are approved on a contingent basis; the waiver applies only so long as air quality analyses, such as from additional ozone modeling, in an exempted area continue to show NO_X reductions are detrimental to reaching attainment or would not contribute to attainment. Additionally, in the notice of proposed rulemaking on the Lake Charles exemption request, 61 FR 30024 (June 13, 1996), the EPA indicated that the NO_X exemption would remain effective for only as long as the area had no ozone violations, or modeling continued to show that NO_X control activities would not contribute to attainment, in the Lake Charles area.

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

Response: The EPA's transportation conformity rule[2] originally provided a NO_X transportation conformity waiver if an area received a section 182(f) exemption. As indicated in a previous response, the EPA has changed the reference from section 182(f) to section 182(b)(1) in the transportation conformity rule since that section is specifically referenced by the transportation conformity provisions of the Act. *See* 60 FR 44762. The EPA has also consistently held the view that, in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and the Transportation Improvement Program are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view was not reflected in the transportation conformity rule. The EPA has amended the rule to correct this error. *See* 60 FR 57179. However, the exemptions that are the subject of this final action are being processed under section 182(f)(3), which does not require the EPA to act under the authority of section 182(b).

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

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

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.''

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

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

Comment: Commenters provided a generic comment on all section 182(f) actions that three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment.

Response: The EPA does not agree with this comment. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. In cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, 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, 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). In the case of Lake Charles, the EPA is confident that three years of clean data taken together with the modeling performed to support the request for a waiver are sufficient evidence to support the issuance of the waiver.

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

Response: As described in the EPA's December 1993 NO_X exemption guidance, photochemical grid modeling is generally needed to document cases where NO_X reductions are counterproductive to net air quality, do not contribute to attainment, do not show a net ozone benefit, or include excess reductions. The UAM or, in a transport region, the Regional Oxidant Model are acceptable models for these purposes.

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

The EPA believes these analyses are appropriate to determine, in a directional manner, whether or not NO_X reductions are expected to be beneficial to the air quality in the area/region. These analyses described in the EPA's December 1993 guidance may be less precise than an attainment demonstration required under section 182(c). As discussed in the proposed rule, the EPA believes that the State's UAM demonstration together with the ambient air quality data showing that the area is attaining the ozone standard support the granting of an exemption from the NO_X requirements of section 182(f) of the Act.

Although many ozone nonattainment areas used photochemical grid modeling, required by the Act for their attainment demonstrations, to apply for a NO_X exemption, the Act did not require marginal areas like Lake Charles to perform such modeling for the purpose of an attainment demonstration. Thus, where such an area can make an adequate showing of the effects of NO_X reductions with respect to attainment through alternative means that are otherwise consistent with relevant guidance, the EPA could approve the area's demonstration.

The Louisiana Department of Environmental Quality (LDEQ) submitted the results of a photochemical grid modeling exercise that was carried out, in conjunction with Lake Charles' attainment efforts, to determine if the area was the object of ozone and precursor transport. The EPA acknowledges that the modeling performed for this exercise does not precisely replicate the procedures EPA guidance suggests be used to support a 182(f) exemption petition. Nonetheless, the EPA believes the modeling analysis that was performed by LDEQ, combined with the area's clean air data, is comprehensive enough to determine that the area merits an exemption.

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

Response: The EPA believes the modeling analyses submitted are appropriate to determine, in a directional manner, whether NO_X reductions are expected to be beneficial with respect to the air quality in the area/region. Furthermore, subsequent

monitoring data indicate the area has come into attainment, obviating NO_X controls to reach attainment.

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

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

The analyses performed in the Lake Charles area demonstrate no reduction in ozone concentrations as a result of NO_X control in the modeling domain. Based on these modeling results, the area meets the test under section 182(f)(1)(A) of the Act required to support a waiver from the NO_X requirements of section 182(f). The effect that NO_X controls in the Lake Charles area may have on ozone levels in the eastern U.S. will be addressed in the OTAG process. Again, the EPA notes that the modeling and subsequent ambient data support the conclusion that NO_X controls are not necessary for attainment.

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

Response: The NO_X exemption test Louisiana is relying on (pursuant to section 182(f)(1)(A)) requires an assessment of only the contribution of NO_X emissions reductions toward ozone attainment.

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

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

Comment: One commenter contended that the monitors which observed the highest ozone concentrations in Calcasieu Parish ceased operating in 1992, leaving an ozone monitoring network which does not appear to monitor the area of the highest concentration.

Response: As the commenter points out, the Lake Charles monitoring network underwent changes in 1992, when the State was obligated to move two monitors. When the Westlake monitor was originally established over 10 years ago, the site required improvement in order to marginally meet the siting criteria (see 40 CFR part 58, Appendix E titled Probe Siting Criteria for Ambient Air Quality Monitoring—Ozone). After reviewing the Westlake monitoring site in 1991 and reconsidering site conditions, LDEQ and the EPA agreed that this monitoring site should be relocated. The Westlake monitoring site was subsequently relocated in September 1992 to its present location on John Stine Road. The Vinton monitor was moved in 1992 because an adequate land lease could not be obtained. This monitor was relocated to its present location on Paul Bellow Road. Both sites meet the criteria for establishment of monitoring sites. The current monitoring network meets EPA-specified regulatory requirements, and adequately reflects air quality in the nonattainment area.

Comment: A commenter stated that the EPA did not consider the effects of the prolonged regional economic recession particularly affecting the Lake Charles, Louisiana area. The commenter alleged that reduced economic activity in Lake Charles from 1993 to 1995 likely resulted in temporary reductions in ozone and ozone precursor emissions from sources in Calcasieu Parish. They further asserted that as the regional economic conditions improve, there will likely be a return of ozone exceedances and violations similar to those observed in 1990–1992.

Response: The EPA does not agree with the comment that states seeking waivers of NO_X provisions are required to estimate and model what emissions might have been had economic conditions been more favorable. The State followed established procedures and EPA policy regarding the development of an emissions inventory for modeling purposes. The EPA approved the Lake Charles emissions inventory at 60 FR 13908 on March 15, 1995. As stated in the proposed rule, if the EPA later determines through subsequent analysis, such as through photochemical grid analysis that NO_X reductions would be beneficial in Lake Charles, the area would be removed from exempt status and would be required to adopt the NO_X provisions of the NSR and conformity rules except to the extent that NO_X reductions are shown to be ''excess reductions.''

Comment: The commenter contended that the EPA omits any comment on NO_X emissions in proximity to the oxygen depleted ''dead zone'' in the Gulf of Mexico. Further, the commenter asked why the EPA is permitting atmospheric nitrogen deposition from NO_X emissions. The commenter alleged that NO_X emissions from Calcasieu Parish will need to be reduced to mitigate nitrogen deposition damage in other areas, including Class I areas.

Response: The EPA does not agree with this comment. No Class I areas are known to be affected by NO_X emissions in Lake Charles. In addition, the requirements imposed by section 182 of the Act are to bring about attainment of the ozone standard in ozone nonattainment areas, and are independent of other requirements and controls under the Act, and any other applicable statutes that may address nitrogen deposition damage. The EPA's NO_X waiver policy was developed to prevent the imposition of requirements of section 182 that do not contribute to that attainment. The other beneficial affects those requirements might have on visibility are not grounds to maintain or waive section 182 requirements.

The EPA notes that the Breton National Wildlife refuge, the nearest Class I area to the Lake Charles nonattainment area, is approximately 394 kilometers from the nonattainment area and over 300 kilometers from the modeling domain used to develop the NO_X waiver. Since Lake Charles is not now considered a transport area for ozone or ozone precursors, the State is not required to evaluate the effect of a NO_X waiver on regional haze, adverse impact on visibility (unless part of an established integral vista), or ozone attainment, in the Refuge.

To address the substance of the comment, the EPA consulted the Department of Interior's (DOI) officials in charge of air quality and visibility in Breton National Wildlife Refuge. The DOI has no evidence that NO_X sources in Calcasieu Parish are upwind of or are affecting air quality in this Class I protected area. The EPA believes there is a very small probability that sources in the Parish could be affecting this Class I area. The meteorological and air quality modeling provided in the petition indicate no potential for transport from the Lake Charles area to the Refuge. As evidence, air flow patterns from the model indicate that typical wind directions are northeasterly and southeasterly, clearly not in the direction of the protected area. The DOI concurred with this assessment. It should be noted that if this Class I area were within 100 kilometers of the Calcasieu nonattainment area, new pollution sources within the nonattainment area would be subject to different requirements under the nonattainment new source review program or the prevention of significant deterioration program, to prevent deterioration of air quality in the protected area.

Finally, at 61 FR 29719 on June 12, 1996, the EPA published an Advance Notice of Proposed Rulemaking, in which the EPA informed the public that the EPA was combining the timing for its decision to retain or revise the current standards for particulate matter and ozone. The document also announced the EPA's intention to develop an integrated strategy for implementation of potential new ozone and particulate matter standards, and the regional haze program. The EPA will be accepting comments on the integration of control requirements for ozone precursors and gaseous emissions that contribute to the formation of fine particulate. The EPA invites the commenter to provide their comments to the EPA pursuant to the proposal of these new standards in November of 1996.

III. Effective Date

The EPA has opted to make this regulation effective May 27, 1997 to minimize delay by the EPA. As noted above, section 182(f)(3) provides for EPA action on NO_X exemption requests within six months of receipt, and the State originally requested the waiver over two years ago. Under the APA, 5 U.S.C. 553(d)(1), the EPA is authorized to establish an effective date for a substantive rule that is less than thirty days after publication if the rule ''relieves a restriction.'' The approval of the section 182(f) exemption for the Lake Charles ozone nonattainment area is a substantive rule that relieves the restrictions associated with the Act's title I requirements to control NO_X emissions. The EPA is also making this action effective as soon as possible to expedite an overdue action. Hence, this action is effective on May 27, 1997.

IV. Final Action

Although adverse comments were received, the EPA does not find these comments of sufficient merit to alter its proposed action on this NO_X exemption request. Therefore, in this action, the EPA approves the 182(f) NO_X exemption petition submitted by the State of Louisiana for the Lake Charles ozone nonattainment area. Approval of the exemption waives the Federal requirements for NO_X NSR, NO_X transportation conformity, and NO_X general conformity applicable to the Lake Charles 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 in the area's attainment plan. That is, a modeling based exemption would last for only as long as the area's modeling continued to demonstrate attainment without the additional NO_X reductions required by section 182(f). Similarly, 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 the EPA later determines, because of an ozone violation or based on new photochemical grid modeling, that NO_X reductions would be beneficial in Lake Charles, the area would be removed from exempt status and would be required to adopt the applicable NO_X provisions of the NSR and conformity rules except to the extent that NO_X reductions are shown to be ''excess reductions.'' In the rulemaking action which removes the exempt status, the EPA would provide specific information regarding the reapplication of the NSR rules and the conformity rules.

V. Regulatory Action

The EPA is issuing final approval of the request for a petition from the State of Louisiana requesting that the Lake Charles marginal ozone nonattainment area be exempt from applicable NO_X control requirements. The section 182(f) NO_X requirement from which the area will be exempt is NO_X NSR. In addition, approval of the section 182(f) petition would remove the NO_X general conformity provisions and the NO_X build/no build provisions of the transportation conformity rule.

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

VI Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified as a Table I action for signature by the Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. 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.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore,

because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 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 the private sector, of $100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA's final action relieves requirements otherwise imposed under the Act and, hence, does not impose any federal intergovernmental mandates, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector. Since this action will not significantly impact any small governments, the EPA is not required to establish a plan pursuant to section 203.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the 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 this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 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 July 28, 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, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: May 22, 1997.

Carol M. Browner,

Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

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

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

* * * * *

(d) The LDEQ submitted to the EPA on October 28, 1994, a petition requesting that the Lake Charles marginal ozone nonattainment area be exempted from the NO_X control requirements of the Act. The Lake Charles nonattainment area consists of Calcasieu Parish. The exemption request was based on photochemical grid modeling which shows that reductions in NO_X would not contribute to attainment in the nonattainment area. On May 27, 1997, the EPA approved the State's request for an area-wide exemption from the following requirements: NO_X new source review, NO_X general conformity, and NO_X transportation conformity requirements. The waiver was granted on the basis of modeling, and ambient air quality data demonstrating the area has attained the ozone NAAQS.

[FR Doc. 97–14100 Filed 5–28–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–14; RM–8916]

Radio Broadcasting Services; Idaho Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 296A to Idaho Falls, Idaho, as that community's fifth local FM service in response to a petition filed on behalf of IF Broadcasting of Idaho. *See* 62 FR 3653, January 24, 1997. Coordinates used for Channel 296A at Idaho Falls are 43–27–21 and 112–04–03. With this action, the proceeding is terminated.

DATES: Effective July 7, 1997. The window period for filing applications for Channel 296A at Idaho Falls, Idaho, will open on July 7, 1997, and close on August 7, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 296A at Idaho Falls, Idaho, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–14, adopted May 14, 1997, and released May 23, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Channel 296A at Idaho Falls.