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

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

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

(ii) Additional material.

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

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

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#### 40 CFR Part 52

[MI26-04-6805; FRL-5157-1]

Approval and Promulgation of Implementation Plan; Michigan Detroit-Ann Arbor  $NO_{\rm X}$  Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is granting an exemption to the Detroit-Ann Arbor ozone nonattainment area from applicable oxides of nitrogen (NO<sub>x</sub>) requirements found in the Clean Air Act (Act). Approval of the exemption would apply for various NO<sub>X</sub> requirements including adoption and implementation of regulations addressing general conformity, transportation conformity, inspection and maintenance, reasonably available control technology, and new source review. The State of Michigan submitted a NO<sub>X</sub> exemption request on November 12, 1993. A subsequent letter dated May 31, 1994 clarified this earlier submittal. This request is based on the fact that ozone monitoring in the Detroit-Ann Arbor area indicates that the average number of exceedances of the National Ambient Air Quality Standard for ozone during the most recent 3-year period, 1991 to 1993, is fewer than one per year. Given this monitoring data, Michigan petitioned for an exemption from the NO<sub>X</sub> requirements based on a demonstration that additional reductions of NOx would not contribute to attainment of the ozone standard.

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

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

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

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

# SUPPLEMENTARY INFORMATION:

### I. Background

On November 12, 1993 the State of Michigan submitted a petition to the EPA requesting that the Detroit-Ann Arbor ozone nonattainment area be exempted from the requirement to implement  $\mathrm{NO}_{\mathrm{X}}$  controls pursuant to section  $182(\mathrm{f})$  of the Act. The exemption request is based upon monitoring data which demonstrate that the average number of exceedances of the ozone standard in the Detroit-Ann Arbor area during the most recent 3-year period, 1991 through 1993, is fewer than one per year.

On August 10, 1994, EPA published a direct final rulemaking approving the NO<sub>X</sub> exemption petition for the Detroit-Ann Arbor nonattainment area. During the 15 day public comment period, EPA received joint adverse comments from the Natural Resources Defense Council, Sierra Club Legal Defense Fund, and the Environmental Defense Fund and 2 requests for additional time to comment on this rulemaking from the State of New York and the Citizens Commission for Clean Air in the Lake Michigan Basin. The EPA published a document announcing the opening of a second comment period on October 6, 1994. The second comment period lasted until November 7, 1994. During the second comment period, the State of New York submitted adverse comments.

### II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment. A more detailed discussion of the State submittal and the rationale for the EPA's action based on the Act and cited references appear in EPA's technical

support documents dated February 8, 1994 and December 1, 1994.

# NRDC Comments

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

NRDC Comment 1: Certain commenters argued that NO<sub>X</sub> exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). Because the NO<sub>X</sub> 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<sub>X</sub> exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO<sub>X</sub> requirements, exemptions from the NO<sub>X</sub> conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the Act's conformity provisions.

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

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO<sub>X</sub> exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO<sub>X</sub> exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which