regulations, and the Agency remains bound by their existing terms.

NRDC Comment 6: The Act does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response: EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_x similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA "shall consider" the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_x exemption requests, even absent the additional information that

would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await "conclusive evidence", as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the Act provides that the new NO_{X} requirements shall not apply (or may by 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 $NO_{\rm X}$ reductions would not produce net ozone air quality benefits in the transport region.

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

Only the first test listed above is based on a showing that NO_X reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section $182(f)\ NO_X$ requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

State of New York Comment 1: The State of New York reaffirms its objection to this proposed rulemaking originally stated in an August 24, 1994 letter. According to the May 27, 1994 memorandum from Mr. John Seitz and the December 1993 section 182(f) NO_X exemption guidance, the exemption cannot be approved if there is evidence that NO_X exemption would interfere with the attainment of a downwind area.

Section 3.3 of the December 1993 guidance states;

The net air quality benefit test is not specifically limited to an ozone nonattainment area or ozone transport region and may be directed at a specific set of sources. Thus, a broad geographic area should be considered. The area may, in some cases, extend beyond an ozone nonattainment area or ozone transport region

* * * Sufficient area is needed to allow for completion of the various chemical transformations of NO_X and interaction with other pollutants.

The latest results of the EPA regional oxidant modeling (ROM) indicate that emissions of NO_X from stationary sources west of the Ozone Transport Region contribute to increased ozone levels in the northeast, including New York State. These results show that control of NO_X emissions throughout the eastern United States will contribute to significant reductions in peak ozone levels within the ozone transport region (OTR).

EPA Response: With respect to the comments regarding the latest ROM results and downwind impacts in general, EPA refers the commenter to its previous responses to NRDC Comments 3 and 4.

The State of New York incorrectly cites section 3.3 of EPA's December 1993 guidance. Section 3.3 applies only to those areas applying for a NO_X exemption under the "net air quality benefit" test. The Detroit-Ann Arbor petition is based on the "contribute to attainment" test. The "contribute to attainment" test requires that only the emissions from the immediate nonattainment area be considered in evaluating the petition (see December 1993 guidance document, "Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)", section 4.3). In its petition the State of Michigan has demonstrated that the average number of exceedances of the ozone standard in the area during the past 3 years (1991-1993, the most current monitored years at the time the exemption request was made) is fewer than one per year which is sufficient to receive an exemption under this test. In addition, the 1994 ozone season has passed and no violation of the ozone standard has been recorded in the area.

State of New York Comment 2: The air quality monitoring data alone does not support this exemption proposal. This is supported by a July 28, 1994 letter from the Michigan Department of Natural Resources which states that "(we) are nearly in violation of the ozone standard at several monitoring sites, primarily due to the many excursions we had in June." This proposal does not appear to consider this data. In addition, the data submitted for the period 1991 to 1993 (November 12, 1993 section 182(f) NO_X exemption request letter to EPA Region V) contain the maximum number of exceedances allowed to still be considered attainment. This does not provide a clear test that additional