reductions would not contribute to maintenance of attainment.

EPA Response: EPA is required to base its SIP decisions on the information duly submitted by a State in fulfillment of requirements imposed by the Act. The basis for granting this exemption is the fact that the information submitted by the State of Michigan demonstrates that this area has not experienced a violation of the ozone standard for the most recent 3 years of monitored data. Consistent with the established EPA policy, the fact that the area has recorded the maximum number of exceedances without violating the standard is irrelevant to a determination regarding whether an area is showing attainment for the period in question. What is relevant is whether or not the standard was violated, and the submitted data confirms that it was not. (See 40 CFR 50.9, 40 CFR part 50, appendix H, and Guideline for Interpretation of Ozone Air Quality Standards, January 1979, EPA-450/4-79-003.) In addition to the fact that the ozone standard was not violated for the years 1991-1993, the years upon which this exemption request is based, monitoring data throughout the 1994 ozone season for the Detroit-Ann Arbor area continues to show attainment of the ozone standard.

State of New York Comment 3: The State of New York strongly objects to the guidance developed to allow these exemptions to be processed. The May 27, 1994 memorandum "Section 182(f) Nitrogen Oxides (NO_X Exemptions-Revised Process and Criteria" allows a nonattainment area to consider only its own air quality monitoring data and does not require a demonstration that the area does not negatively impact the attainment status of downwind areas. The guidance memorandum also allows the nonattainment area to submit the NO_X exemption request without a redesignation or maintenance request. This does not provide the federal government with the appropriate information to make an informed judgment on the contribution of NO_X to nonattainment. Finally, this guidance did not undergo State review before issuance. While not necessarily required, it is EPA's usual practice to allow the States to have input in the development of guidance.

EPA Response: EPA's guidance regarding both the adequacy of the demonstration needed to qualify for a NO_X exemption and the extent to which downwind impacts need to be considered was developed in accordance with what EPA considers to be the best interpretation of the language in section 182(f) of the Act. For

a more detailed discussion of that interpretation see EPA's responses to NRDC Comments 1 and 4 above. In addition, while it may be true that this guidance did not undergo State review before issuance, an opportunity for State participation is provided when such guidance is followed in proposed rulemaking actions. If a State objects to a proposed action and the guidance that action is based on, it is free to comment on the proposed action during the public comment period provided, as indeed, the State of New York has done here.

State of New York Comment 4: The Detroit-Ann Arbor area has been designated as moderate ozone nonattainment and as such requires a 15 percent rate-of-progress plan and a modeled attainment demonstration. It is unclear from the record whether these requirements have been fulfilled. An exemption request would need this information at a minimum to determine its validity. Please provide the status of these State implementation plan revisions.

EPA Response: As described previously in EPA's response to NRDC Comment 1, EPA action on NO_X exemption petitions submitted pursuant to section 182(f)(3) of the Act can be taken independently of action on attainment or maintenance demonstration plans or redesignation requests. Consequently, the issue of whether the State of Michigan's independent requirements under the Act to submit a 15 percent rate-ofprogress plan and an attainment demonstration plan have been met do not affect EPA's ability to act on the State's exemption request. (See also EPA's response to NRDC Comment 3, describing the Agency's policy regarding the use of monitoring data to meet the "contribute to attainment" test).

III. Final Action

The comments received were found to warrant no changes from proposed to final action on this NO_X exemption request. Therefore, EPA is granting the Detroit-Ann Arbor section 182(f) exemption petition based upon the evidence provided by the State and the State's compliance with the requirements outlined in the Act and in EPA guidance. However, it should be noted that this exemption is being granted on a contingent basis; i.e., the exemption will last for only as long as the area's ambient monitoring data continue to demonstrate attainment of the ozone NAAQS.

The EPA's transportation conformity rule 6 and EPA's general conformity rule ⁷ also reference the section 182(f) exemption process as a means for exempting affected areas from NO_X conformity requirements, and the conformity requirements apply on an areawide basis. Since this petition for exemption is areawide, as opposed to source-specific, an approval would also exempt this area from the NO_X conformity requirements of the Act (see John Seitz May 27, 1994 "Section 182(f) Nitrogen Oxides (NO_X) Exemptions-Revised Process and Criteria' memorandum). Additionally, the Inspection/Maintenance (I/M) Program Final Rule (57 FR 52950) allows for the omission of the basic I/M NO_X requirements if a 182(f) exemption is granted to an area. Michigan does not currently have—or need—an enhanced I/M program. If the State did adopt such a program (because further emissions reductions necessary to address other portions of the Act could be obtained through an enhanced program), it would have to be designed to offset NO_X increases resulting from the vehicle repairs due to hydrocarbon (HC) and carbon monoxide (CO) failures.

If, subsequent to the NO_X waiver being granted, EPA determines that the area has violated the standard, the section 182(f) exemption, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the Federal Register. If an exemption is revoked, the State must comply with any applicable NO_X requirements set forth in the Act, such as those for NO_X RACT, NSR, I/M, and conformity. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System. Additionally, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

The Federal Register document revoking the $\mathrm{NO_X}$ exemption would also establish the schedule for adoption and implementation of those $\mathrm{NO_X}$ requirements the area was previously exempt.

⁶ "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).

^{7 &}quot;Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule" November 30, 1993 (58 FR 63214).