downwind area, appropriate action shall be taken by the State(s) or, if necessary, by USEPA under Section 110(a)(2)(D). The USEPA also believes this approach is consistent with statements made by Mary Nichols, Assistant Administrator for Air and Radiation, in a March 2, 1995, memorandum entitled ''Ozone Attainment Demonstrations,'' concerning the development of regional approaches to resolve NO_X transport issues. Also see response to comment on ''Alternative Ozone Attainment Demonstration Policy''.

Scope of Exemption: One commenter stated that if USEPA granted these exemptions, NO_X RACT and NSR would be waived for all NO_X sources in the State of Ohio.

USEPA Response: Upon the effective date of this final approval, NO_X RACT and NSR will not be required for any nonattainment area in the State of Ohio; however, the NO_X requirements of Title IV, acid rain, are not affected by this action and must be met by affected sources in Ohio. Moreover, as noted earlier, all NO_X exemption approvals are contingent upon the exempted areas continuing to attain the ozone NAAQS, and would no longer apply in any previously-exempted area where, prior to redesignation, a violation occurs. Also, NO_X reductions that are needed for maintenance would still be applicable.

Alternative Ozone Attainment Demonstration Policy: One commenter stated that proposed approval of Ohio's exemption requests seems premature in light of a recent USEPA policy memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, entitled ''Ozone Attainment Demonstrations,'' dated March 2, 1995.

USEPA Response: The March 2, 1995, policy memorandum is applicable to ozone nonattainment areas significantly affected by ozone transport that are classified as serious and above (discretion is given to the Regional Offices to determine, in consultation with State Agencies, whether it would be appropriate to apply the policy to other areas in the State). For the State of Ohio, the Cincinnati-Hamilton interstate area is the only area that may be affected by this memorandum. However, a redesignation request has been submitted for this area, and upon the effective date of the final approval, an attainment demonstration for this area would no longer be required, thus relieving that area of the need for the flexibility offered in the March 2nd memorandum. Please note that the States of Ohio and Kentucky are still funding a contractual effort to develop an attainment demonstration for the area in the event the redesignation requests are not approved. See also response to comment regarding ''Downwind Areas''.

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

USEPA Response: The USEPA does not agree with this comment since it is contrary to 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. In developing and implementing its NO_X exemption policies, USEPA 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 such sources of VOC, Section 182(f) also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, USEPA 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 they would be non-beneficial 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 a comment discussed above, the command in Subsection 182(f)(1) that USEPA ''shall consider'' the Section 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 USEPA 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 USEPA actions granting NO_X exemption requests must await ''conclusive evidence,'' as the commenters argue, there is also nothing in the Act to prevent USEPA from revisiting an approved NO_X exemption if warranted due to subsequent ambient monitoring information.

In addition, USEPA believes (as described in USEPA'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 USEPA 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), USEPA believes that each test provides an independent basis for the granting of 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 even 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.

Air Quality Comment: One commenter stated that attainment of the ozone NAAQS has not occurred, while several commenters stated that the air quality monitoring data alone does not support this exemption proposal (even though the air quality levels are below USEPA's definition of an exceedance of the ozone NAAQS at 0.125 ppm, but are greater than the ozone NAAQS of 0.120 ppm).

USEPA Response: The exemption requests were evaluated against the standards set forth for this purpose under the Act, regulations, and USEPA policy. 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