transportation and general conformity rules. Thus this issue is under consideration, but at this time the Agency's position remains as stated. The USEPA, therefore, believes that until the issue is resolved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

Conclusive Evidence Comment: 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.

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, 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 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 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.

Transboundary Pollution Comment: Several commenters noted that the Canada-U.S. Air Quality Agreement signed by the two countries on March 13, 1991, calls for each Party to notify the other of a proposed action, activity or project likely to cause significant transboundary air pollution, and, as appropriate, to take measures to avoid or mitigate the potential risk.

USEPA Response: The USEPA takes seriously international agreements entered into by our government. However, USEPA does not believe that the action of granting a NO_X exemption request would likely cause significant transboundary air pollution. The action to grant or deny these exemption requests will determine the amount of emission reductions, but not cause new or additional transboundary air pollution.

Air Quality Comment: Several commenters stated that the air quality monitoring data alone does not support this exemption proposal. 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: For the reasons provided below, USEPA does not agree with the commenter's conclusion. 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 concentrations above 0.12 parts per million (235 $\mu g/m^3$) is equal to or less than 1, as determined by Appendix H.'' Appendix H references USEPA's ''Guideline for Interpretation of Ozone Air Quality Standards'' (EPA–450/4–79–003, January 1979), which notes that the stated level of the standard is taken as defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up to 0.01). Thus, 0.125 ppm is the smallest concentration value in excess of the level of the ozone standard (please refer to ''Section IV. Analysis of the State Submittal'' in this notice for monitored ozone concentrations in the Toledo and Dayton areas). The ambient air monitoring data shows that no violation of the ozone standard has occurred for the Toledo and Dayton areas during the 1991–1993 ozone seasons.

IX. Final Action

The USEPA is approving the exemption requests for the Toledo and Dayton ozone nonattainment areas from the section 182(f) NO_X requirements based upon the evidence provided by the State and the State's compliance with the requirements outlined in the applicable USEPA guidance. This action exempts the Lucas, Wood, Clark, Greene, Miami, and Montgomery counties from the requirements to implement NO_X RACT, nonattainment area NSR for new sources and modifications that are major for NO_X, and the NO_X-related general and transportation conformity provisions. Also, the Clark, Greene, Miami, and Montgomery counties shall not be required to demonstrate compliance