(3745-14-02(B)(3)) for the suspension of the RACT rules:

The Director also may suspend the requirements of this Chapter in an area in the event that the USEPA issues a national policy and/or promulgates a regulation which, based upon the ambient air monitoring data for ozone in the area, eliminates the need for NO_X control requirements in that area.

VI. Inspection and Maintenance (I/M) Programs

Cincinnati-Hamilton Interstate Moderate Ozone Nonattainment Area

For the Cincinnati area, the local area opted for an enhanced I/M program. The I/M Final Rule (57 FR 52950) provides that if the Administrator determines that NO_X emission reductions are not beneficial in a given ozone nonattainment area, then NO_x emission reductions are not required of the enhanced I/M program, but the program shall be designed to offset NO_X increases resulting from the repair of motor vehicles that have failed the hydrocarbon (HC) and carbon monoxide (ČO) testing procedures. 1 Upon the effective date of this action, the Butler, Clermont, Hamilton, and Warren Counties shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO_X. However, the State shall be required to demonstrate, using USEPA's—Mobile Source Emissions Model, Mobile 5a (or its successor), that NO_X emissions will be no higher than in the absence of any I/M program.

Cleveland Moderate Ozone Nonattainment Area

For the Cleveland area, the local area opted for an enhanced I/M program for the following counties: Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit. The I/M Final Rule (57 FR 52950) provides that if the Administrator determines that NO_X emission reductions are not beneficial in a given ozone nonattainment area, then NO_X emission reductions are not required of the enhanced I/M program, but the program shall be designed to offset NO_X increases resulting from the repair of motor vehicles that have failed the hydrocarbon (HC) and carbon monoxide (CO) testing procedures. Upon the effective date of this action, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties shall not be required to demonstrate compliance with the enhanced I/M

performance standard for NO_X . However, the State shall be required to demonstrate, using USEPA's—Mobile Source Emissions Model, Mobile 5a (or its successor), that NO_X emissions will be no higher than in the absence of any I/M program.

VII. Withdrawal of the Exemptions

Continuation of the Section 182(f) exemptions granted herein is contingent upon continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. If a violation of the ozone NAAQS is monitored in an area(s) (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) USEPA will provide notice to the public in the **Federal Register** withdrawing the exemption.

A determination that the NO_x exemption no longer applies would mean that the NO_X NSR, general conformity, and transportation conformity provisions would immediately be applicable (see 58 FR 63214 and 58 FR 62188) to the affected areas. The NO_X RACT requirements would also be applicable, with a reasonable time provided to allow major stationary sources subject to the RACT requirements to purchase, install and operate required controls. The USEPA believes that the State may provide sources a reasonable time period after such USEPA determination to actually meet the RACT emission limits. The USEPA expects the entire time period to be as expeditious as practicable, but in no case longer than 24 months.

VIII. Miscellaneous Topics

Processing NO_X Exemptions

Section 182(f) contains very few details regarding the administrative procedure for USEPA action on $\mathrm{NO_X}$ exemption requests. The absence of specific guidelines by Congress leaves USEPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The USEPA believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures for USEPA to act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that USEPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). While subsection 182(f)(3) references subsection 182(f)(1), USEPA believes that this reference encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), and not the procedural requirement that USEPA act

on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which Section 302(e) of the Act defines to include States) may petition for NO_X exemptions "at any time," and requires USEPA to make its determination within six months of the petition's submission. These key differences lead USEPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that "person[s]" 2 may petition for a NO_X determination "at any time" after the ozone precursor study required under Section 185B of the Act is finalized,³ and gives USEPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) "at any time" this must include times when there is no plan revision from the State pending at USEPA. The specific timeframe for USEPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for USEPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on petitions under paragraph (3) to be distinct—and more expeditious—from the plan revision process intended under paragraph (1). Thus, USEPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the requirement in paragraph (1) for USEPA to grant exemptions only when acting on plan revisions.

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to USEPA by November 15, 1992. Thus, in order to avoid sanctions under the Act, areas seeking a NO_X exemption would have needed to submit their exemption request for USEPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment

 $^{^{\}rm I}$ Additional clarification concerning the I/M requirements and areas with NO $_{\rm X}$ exemptions is provided in a memorandum from Mary T. Smith, Acting Director, Office of Mobile Sources, dated October 14, 1994, entitled "I/M Requirements in NO $_{\rm X}$ RACT Exempt Areas."

² Section 302(e) of the Act defines the term "person" to include States.

³ The final Section 185B report was issued July 30, 1993.