

### VIII. Withdrawal of the Exemptions

Until an area has been redesignated to attainment, continuation of the Section 182(f) exemptions granted herein is contingent upon continued monitoring and continued attainment of the ozone NAAQS in the affected area(s). 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<sub>x</sub> exemption no longer applies would mean that the NO<sub>x</sub> NSR, general conformity, and transportation conformity provisions would immediately be applicable (see 58 FR 63214 and 58 FR 62188) for the affected area(s). The NO<sub>x</sub> RACT requirements would also be applicable, with a reasonable time provided as necessary to allow major stationary sources subject to the RACT requirements to purchase, install and operate the required controls. The USEPA believes that the State may provide sources a reasonable time period after the USEPA determination to actually meet the RACT emission limits. The USEPA expects such time period to be as expeditious as practicable, but in no case longer than 24 months.

If a nonattainment area is redesignated to attainment of the ozone NAAQS, but then a violation of the ozone NAAQS occurs, NO<sub>x</sub> RACT shall be implemented as stated in the maintenance plan.

### IX. Notice of Proposed Rulemaking and Responses to Comments

The USEPA published a notice proposing to approve the exemption requests for the Cincinnati, Cleveland, and other nonattainment areas in Ohio in the January 17, 1995 **Federal Register** (60 FR 3361). The USEPA received comments supporting and adverse to this proposed action. Copies of all comments have been placed in the docket file. The following entities submitted adverse or supporting comments:

*Submitting Entity (date received by USEPA):* Natural Resources Defense Council (08–24–94); Columbia Gas Transmission Corporation (02–09–95); Private Citizen (02–14–95); LTV Steel Company (02–16–95); Ohio Sierra Club (02–21–95); Akron Regional Infrastructure Alliance (03–29–95); State of New Hampshire—Department of Environmental Services (03–30–95); Northeast States for Coordinated Air Use Management (03–30–95); Ameritech

(03–31–95); Southern Environmental Law Center (04–03–95); Private Citizen (04–03–95); Environmental Defense Fund (04–03–95); Greater Cleveland Growth Association (04–03–95); Portage County Board of Commissioners (04–04–95); State of New York—Department of Environmental Conservation (04–10–95); State of New Jersey—Department of Environmental Protection (04–10–95); Executive of the County of Summit (04–11–95).

Some of the adverse comments addressed similar points. The USEPA responds to these comments by issue as follows:

*Procedural Comments:* Several commenters argued that USEPA should not approve the waiver requests at issue on procedural grounds. NO<sub>x</sub> exemptions are provided for in two separate parts of the Act, Section 182(b)(1) and Section 182(f). Commenters took the position that because the NO<sub>x</sub> exemption tests in Subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place “when [EPA] approves a plan or plan revision,” that all NO<sub>x</sub> exemption determinations by USEPA, including exemption actions taken under the petition process established by Subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated to attainment for the ozone NAAQS. These commenters also argue that even if the petition procedures of Subsection 182(f)(3) may be used to relieve areas of certain NO<sub>x</sub> requirements, exemptions from the NO<sub>x</sub> conformity requirements must follow the process provided in Subsection 182(b)(1), since this is the only provision explicitly referenced by Section 176(c) in the Act’s conformity provisions.

*USEPA Response:* Section 182(f) contains very few details regarding the administrative procedure for USEPA action on NO<sub>x</sub> 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<sub>x</sub> exemption requests. The language in Subsection 182(f)(1), which indicates that USEPA should act on NO<sub>x</sub> 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<sub>x</sub> 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]”<sup>4</sup> may petition for a NO<sub>x</sub> determination “at any time” after the ozone precursor study required under Section 185B of the Act is finalized,<sup>5</sup> 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 from and more expeditious than 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 the comment that Section 182(b)(1) provides the appropriate authority to grant transportation conformity NO<sub>x</sub> exemptions, please refer to the discussion in “Section V., Approval Under Section 182(b),” of this notice.

*Air Monitoring Network:* One commenter stated that the network established for air monitoring is

<sup>4</sup> Section 302(e) of the Act defines the term “person” to include States.

<sup>5</sup> The final Section 185B report was issued July 30, 1993.