requests for the Toledo and Dayton nonattainment areas in the July 26, 1994 Federal Register (59 FR 37947). 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. Some of the comments addressed similar points. The USEPA has responded to the adverse comments by issue as set forth below.

Submitting Entity (Date Received by USEPA)

Citizens Campaign for the Environment (7–27–94); Natural Resources Defense Council (8-9-94 and 8-24-94); New York State Electric and Gas Corporation (8–10–94); Northeast States for Coordinated Air Use Management (8-15-94 and 9-28-94); State of New York Department of Environmental Conservation (8-16-94 and 10-05-94); Commonwealth of Pennsylvania Department of Environmental Resources (8–31–94); Southern Environmental Law Center (10-3-94); Pollution Probe (10-03-94); Ohio Sierra Club (10–03–94); Conservation Law Foundation (10–03– 94); The Lung Association (Ontario, 10-11-94); Ohio Environmental Protection Agency (10-26-94); Fuller & Henry (10-26–94); and Individual Residents from the State of Ohio (various dates between 8/31/94 and 10/13/94).

A summary of the adverse comments and USEPA's responses follows:

Procedural Comments: Several commenters argued that USEPA should not approve the waiver requests at issue on procedural grounds. NO_X 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_X 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_X 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_X requirements, exemptions from the NO_X 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_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).

Despite the interpretation of the commenters regarding the process for considering exemption requests under section 182(f), 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 demonstrations are not due until November 1993 or 1994 (and USEPA may take 12-18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of, and USEPA action on, exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity with regard to federally-supported NO_{X} generating activities in relevant nonattainment and maintenance areas. However, USEPA's conformity rules explicitly provide that these NO_{X} requirements would not apply if USEPA grants an exemption under section 182(f).

In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, USEPA notes that this issue has previously been raised in a formal petition for reconsideration of USEPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. Thus the issue is under further consideration, but at this time the Agency's position is as stated above.

 $^{^2\,\}mbox{Section}$ 302(e) of the Act defines the term "person" to include States.

 $^{^3}$ The final section 185B report was issued July 30, 1993.