Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by USEPA within six months. The USEPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the APA. The USEPA believes that the applicable rules governing this issue are those that appear in USEPA's final conformity regulations, and that USEPA remains bound by their existing terms.

Modeling Comments: Some commenters stated that the modeling required by USEPA is insufficient to establish that NO_x reductions would not contribute to attainment since only one level of NO_x control, i.e., "substantial" reductions, is required to be analyzed. They further explain that an area must submit an approvable attainment plan before USEPA can know whether NO_x reductions will aid or undermine attainment.

USEPA Response: As described in USEPA's December 1993 NO_X exemption guidance,⁴ photochemical grid modeling is generally needed to document cases where NO_X reductions are counterproductive to net air quality, do not contribute to attainment, do not show a net ozone benefit, or include excess reductions. The Urban Airshed Model (UAM) or, in the Ozone Transport Region (OTR), the Regional Oxidant Model (ROM), are acceptable methods for these purposes. The December guidance also provides that, under the "not contribute to attainment test," an area may qualify for a NO_X exemption by attaining the ozone standard, as demonstrated by three years of ambient air monitoring data. The exemption requests submitted by the State for the Toledo and Dayton areas are based upon ambient air monitoring data. Therefore, adverse comments submitted concerning modeling are not relevant to this action, and are not being further addressed.

Public Hearing Request: Some commenters requested that a public hearing be held on this action.

USEPA Response: This action is not considered a SIP revision and therefore the requirement for a public hearing under section 110(a) of the Act is not applicable.

Environmental Impact Statement (*EIS*) *Request:* Some commenters requested that an EIS be prepared regarding this action.

USEPA Response: All Clean Air Act programs are exempted from the

procedural requirements of the National Environmental Policy Act (NEPA) under section 7(c)(1) of the Energy Supply and Environmental Coordination Act, 15 U.S.C. 793(c)(1). Therefore, USEPA is not preparing an EIS for this action.

SIP Status Request: One commenter requested the status of other SIP revisions (i.e., the 15% rate-of-progress plan and the redesignation request) required to be submitted by the State.

USEPA Response: This action only addresses the section 182(f) exemption requests submitted by the State of Ohio for the Toledo and Dayton areas and USEPA final action on such requests are not dependent on final actions on other required SIP submittals, such as the ones mentioned. Non-related SIP revisions will be dealt with separately.

Toledo Transportation Improvement Program (TIP): One commenter provided comments on the basis of the determination of the conformity of the Toledo TIP and analysis of other Ohio TIPs.

USEPA Response: This action only addresses the section 182(f) exemption requests submitted by the State of Ohio for the Toledo and Dayton areas. Therefore, the comment is not being further addressed.

Attainment Data Comments: Three years of "clean" data fail to demonstrate that NO_x reductions would not contribute to attainment of the NAAQS for ozone. The USEPA's policy erroneously equates the absence of a violation for one three-year period with "attainment."

USEPA Response: The USEPA has separate criteria for determining if an area should be redesignated to an ozone attainment area under section 107 of the Act. The section 107 redesignation criteria are more comprehensive than the Act requires with respect to NO_x exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_x requirements may be granted for nonattainment areas outside an OTR if USEPA determines that "additional reductions of (NO_x) would not contribute to attainment" of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_x provisions over that 3-year period.

In cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, USEPA believes that the section 182(f) test is met since "additional reductions of (NO_X) would not contribute to attainment'' of the NAAQS in that area. In cases where it is warranted, USEPA's approval of the exemption is granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Downwind Area Comments: Several commenters argued that USEPA's December 1993 guidance prohibits granting a section 182(f) waiver based on 3 years of clean data if evidence exists showing that the waiver would interfere with attainment or maintenance in downwind areas. The commenters argued that such condition should also apply to waiver requests based on modeling. Exemptions in Ohio cities, they claim, are likely to exacerbate ozone nonattainment downwind, and therefore are not consistent with the Act. If the exemptions are granted, emissions from new stationary sources and the transportation sector in Ohio, which are projected to increase, could delay attainment of the ozone standard in areas in the northeastern United States.

These commenters further claim that USEPA modeling has demonstrated that Ohio is a significant contributor to atmospheric transport of ozone precursors to the OTR. Since this modeling indicates that emissions of NO_x from stationary sources west of the OTR contribute to increased ozone levels in the northeast, they argued that control of NO_x emissions in the OTR and in States west of the OTR will contribute to significant reductions in peak ozone levels within the OTR.

USEPA Response: As a result of such comments, USEPA has re-evaluated its position on this issue and decided to revise the previously-issued guidance. As described below, USEPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_x emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by USEPA on a NO_X exemption request for stationary sources under section 182(f). That is, USEPA action to grant or deny a NO_X exemption request under section 182(f)would not shield that area from USEPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994

^{4 &}quot;Guideline for Determining the Applicability of Nitrogen Oxide Requirements under section 182(f)," from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated December 19, 1993.