emissions described in the motor vehicle emissions budget.

Until an attainment demonstration or maintenance plan is approved by the EPA, this emissions analysis must pass the build/no-build test. This analysis must demonstrate that the emissions from the planned transportation project, if implemented, would be less than the emissions without the planned transportation project. Thus, the build/no-build test is intended to ensure that the transportation plan contributes to annual emissions reductions consistent with the CAA until such time as the attainment demonstration or maintenance plan is approved.

On June 17, 1994 (59 FR 31238), the EPA published a national interpretation of transportation conformity and 182(f) exemptions entitled "Transportation Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions" (General Preamble). This General Preamble clarifies and interprets how ozone nonattainment areas classified as less than marginal, which have air quality monitoring data demonstrating attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, may be exempted from certain NO<sub>X</sub> requirements.

As explained in the General Preamble, the EPA believes that a demonstration of attainment made through adequate air quality monitoring data, consistent with 40 CFR part 58 and recorded in EPA's Aerometric Information Retrieval System (AIRS), can qualify an area as a "clean data area". Further, the EPA believes these "clean data areas" can request an exemption from the NO<sub>X</sub> provisions of transportation conformity. The 182(f) exemption will be conditioned upon the area's monitoring data continuing to demonstrate attainment after an exemption is granted. If the EPA determines that an exempted area has violated the ozone standard, the 182(f) exemption will be rescinded. Any decision to rescind the NO<sub>X</sub> exemption would be based on an evaluation of the air quality data recorded in AIRS. Past conformity determinations and transportation plans would not be affected, but new conformity determinations would be subject to the NO<sub>X</sub> provisions of the conformity rule.

On August 5, 1994, the State of Louisiana submitted a petition to the EPA requesting that the parishes of Beauregard, Grant, Lafayette, Lafourche, Jefferson, Orleans, St. Bernard, St. Charles, St. James, and St. Mary be exempted from the requirement to perform the NO<sub>X</sub> portion of the build/no-build test required by the new transportation conformity rule. This

exemption request for the abovementioned nonclassifiable ozone nonattainment areas is pursuant to the General Preamble for transportation conformity  $NO_{\rm X}$  exemptions.

On November 7, 1994, EPA announced its proposed approval of the NO<sub>X</sub> exemption request for the nonclassifiable ozone nonattainment areas in Louisiana (57 FR 55400). In that proposed rulemaking action, EPA described in detail its rationale for approving this NO<sub>X</sub> exemption request, considering the specific factual issues presented. Rather than repeating that entire discussion in this document, it is incorporated by reference here. Thus, the public should review the notice of proposed rulemaking for relevant background on this final rulemaking action.

## Response to Comments

EPA requested public comments on all aspects of the proposed rulemaking action (please reference 59 FR 55400). One adverse comment letter was received from three environmental groups and contained generic comments objecting to the EPA's general policy on section 182(f) exemptions.

## Comment

Certain commenters argued that NO<sub>X</sub> exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). 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," these commenters conclude that all NOx exemption determinations by the EPA, 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 as attainment. 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), the CAA's conformity provisions.

## Response

Section 182(f) contains very few details regarding the administrative procedure for acting on  $NO_X$  exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable

procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO<sub>X</sub> exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NOx exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the CAA defines to include States) may petition for NO<sub>X</sub> exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct from 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]" 1 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,2 and gives EPA 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 EPA. The specific timeframe for EPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct from and more expeditious than the plan-revision

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

 $<sup>^{2}</sup>$ The final section 185B report was issued July 30, 1993.