

similarly, the maximum allowable amounts of any such NO_x emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_x, but want EPA in actions on NO_x exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_x increases is in place.

Response: With respect to conformity, EPA's conformity rules^{4,5} provide a NO_x waiver if an area receives a section 182(f) exemption. In its "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and transportation improvement program (TIP) are consistent with the motor vehicle emissions budget for NO_x even where a conformity NO_x waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_x motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_x motor vehicle emissions budget. However, the exemption for Monterey Bay was submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on this petition until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency'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. This issue, thus, is under consideration within the Agency,

but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

Comment: The commenters argue that the CAA does not authorize any waiver of the NO_x reduction requirements until conclusive evidence exists that such reductions are counter-productive.

Response: EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_x exemption policies, EPA has sought an approach that reasonably accords with Congress' intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_x similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_x reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_x exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_x in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_x reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO_x/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_x provisions. The Committee does not intend NO_x reduction for reduction's sake, but rather as a measure scaled to the value of NO_x reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257-258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA "shall consider" the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_x exemption petitions clearly demonstrate that Congress

believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_x exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_x exemption requests must await "conclusive evidence", as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_x exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO_x requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

- (1) In any area, the net air quality benefits are greater in the absence of NO_x reductions from the sources concerned;
- (2) In nonattainment areas not within an ozone transport region, additional NO_x reductions would not contribute to ozone attainment in the area; or
- (3) In nonattainment areas within an ozone transport region, additional NO_x reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_x exemption.

Only the first test listed above is based on a showing that NO_x reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section 182(f) NO_x requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

EPA Action

EPA is finalizing this action to exempt Monterey Bay from implementing the NO_x requirements for RACT, NSR, the applicable general and transportation conformity requirements, and I/M.

The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO_x Supplement to the General Preamble (57 FR 55628, November 25, 1992) and further guidance issued by

⁴ See "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

⁵ See "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).