

Under section 182(f)(1)(A), an exemption from the NO_x requirements may be granted for nonattainment areas outside an ozone transport region if EPA 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. The EPA believes that, 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, it is clear 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. The EPA's approval of the exemption, if warranted, would be 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).

NRDC Comment 4

A waiver of NO_x controls is unlawful if such waiver will impede attainment and maintenance of the ozone standard in separated downwind areas.

EPA Response

As a result of the comments, EPA reevaluated its position on this issue and has revised the previously issued guidance. See Memorandum, "Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria" dated February 8, 1995, for John Seitz's signature. As described in this memorandum, EPA 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 EPA on a NO_x exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_x exemption request under section 182(f) would not shield that area from EPA 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 SIP revisions. Recent modeling data suggest that certain ozone

nonattainment areas may benefit from reductions in NO_x emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_x emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, the States have requested exemptions from NO_x requirements under section 182(f) for certain nonattainment areas in the modeling domain. Some of these areas may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_x requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of [NO_x] would not contribute to attainment of the national ambient air quality standard for ozone in the area."³ As described in section 4.3 of the Guidelines for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), December 16, 1993 ("guidance") document, EPA believes that the term "area" means the "nonattainment area" and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_x emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the

³ There are 3 NO_x exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the "contribute to attainment" test described above, and the "net air quality benefits" test. EPA must determine, under the latter test, that the net benefits to air quality in an area "are greater in the absence of NO_x reductions" from relevant sources. 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. Consequently, as stated in § 1.4 of the December 16, 1993 EPA guidance, "[w]here any 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."

guidance encourages States to "consider imposition of the NO_x requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State [see section 110(a)(2)(D)(i)(I)]."

In contrast, § 4.4 of the guidance states that the section 182(f) demonstration *would not be approved* if there is evidence, such as photochemical grid modeling, showing that the NO_x exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) [not section 182(f)] prohibits such impacts. Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence, is withdrawing the guidance presently contained in § 4.4. Thus, if there is evidence that NO_x emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_x RACT controls under section 182(f) and, in a separate action, require NO_x controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

NRDC Comment 5

Comments were received regarding exemption of areas from the NO_x requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_x emissions allowed under the transportation conformity rules and, 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