

SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO<sub>x</sub> 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<sub>x</sub> emission reductions hundreds of miles upwind. The USEPA 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, USEPA 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, certain nonattainment areas that are located in the area being modeled, have requested exemptions from NO<sub>x</sub> requirements under section 182(f). Some areas requesting an exemption may impact upon downwind nonattainment areas. The USEPA 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<sub>x</sub> requirements may be granted for nonattainment areas outside an ozone transport region if USEPA determines that "additional reductions of (NO<sub>x</sub>) would not contribute to attainment of the national ambient air quality standard for ozone in the area."<sup>5</sup> As described in section 4.3 of the December 16, 1993 guidance document, USEPA believes that the term "area" means the "nonattainment area," and that USEPA's determination is limited to consideration of the effects in a single nonattainment area due to NO<sub>x</sub> 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

<sup>5</sup> There are three NO<sub>x</sub> exemption tests specified in section 182(f). Of these, two are applicable for areas outside an ozone transport region; the "contribute to attainment" test described above, and the "net air quality benefits" test. The USEPA must determine, under the latter test, that the net benefits to air quality in an area "are greater in the absence of NO<sub>x</sub> reductions" from relevant sources. Based on the plain language of section 182(f), USEPA believes that each test provides an independent basis for receiving a full or limited NO<sub>x</sub> exemption. Consequently, as stated in section 1.4 of the December 16, 1993 USEPA guidance, "(w)here any one of the tests is met (even if another test is failed), the section 182(f) NO<sub>x</sub> requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply."

nonattainment area. Specifically, the guidance encourages States to "consider imposition of the NO<sub>x</sub> 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, Section 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<sub>x</sub> 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, USEPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently. Thus, if there is evidence that NO<sub>x</sub> 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 USEPA in a section 110(a)(2)(D) action. A section 182(f) exemption request should be independently considered by USEPA. In some cases, then, USEPA may grant an exemption from across-the-board NO<sub>x</sub> RACT controls under section 182(f) and, in a separate action, require NO<sub>x</sub> 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. Consistent with these principles, USEPA is approving these exemption requests under 182(f) of the Act. If evidence appears that NO<sub>x</sub> emissions in an upwind area would interfere with attainment or maintenance in a downwind area, appropriate action shall be taken by the State(s) or, if necessary, by USEPA under section 110(a)(2)(D).

**Scope of Exemption Comments:** Comments were received regarding exemption of areas from the NO<sub>x</sub> requirements of the conformity rules. Several commenters argue that the exemptions should 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<sub>x</sub>

emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO<sub>x</sub> emissions under the general conformity rules. The commenters admit that, in prior guidance, USEPA 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<sub>x</sub>, but want USEPA, in actions on NO<sub>x</sub> exemptions, to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO<sub>x</sub> increases is in place.

**USEPA Response:** With respect to conformity, USEPA's conformity rules<sup>6</sup> provide a NO<sub>x</sub> waiver if an area receives a section 182(f) exemption. In rulemaking on "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), USEPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that both the transportation plan and the transportation improvement program (TIP) are consistent with the motor vehicle emissions budget for NO<sub>x</sub> even where a conformity NO<sub>x</sub> 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, USEPA 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<sub>x</sub> motor vehicle emissions budget, USEPA also intends to require consistency with the attainment demonstration's NO<sub>x</sub> motor vehicle emissions budget. However, the exemptions at issue were submitted pursuant to section 182(f)(3), and USEPA does not believe it is appropriate to delay action on these petitions, especially in light of the six-month statutory deadline provided for such action, until the conformity rule is amended. As noted above, 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

<sup>6</sup> "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); "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).