Under section

demonstrations are not due until November 1993 or 1994 (and USEPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO<sub>x</sub> NSR), no attainment demonstration is called for in the Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of, and USEPA action on, exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity with regard to federally-supported  $NO_X$ generating activities in relevant nonattainment and maintenance areas. However, USEPA's conformity rules explicitly provide that these  $NO_X$ requirements would not apply if USEPA grants an exemption under section 182(f).

The USEPA notes that the issue of using section 182(b)(1) as the appropriate vehicle for dealing with exemptions from the NO<sub>X</sub> requirements of the conformity rule has been raised in a formal petition for reconsideration of USEPA'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. Thus the issue is under further consideration, but at this time the Agency's position remains as stated above.

Additionally, section 182(f)(3)requires that NO<sub>x</sub> 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 until the issue is resolved, the applicable rules governing this matter are those that appear in USEPA's final conformity regulations, and that USEPA remains bound by their existing terms.

## Demonstrating Attainment

Under section 182(f)(1)(A), an exemption from the NO<sub>X</sub> requirements may be granted for nonattainment area outside an ozone transport region if USEPA determines that "additional reductions of (NO<sub>X</sub>) 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<sub>X</sub> 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. The USEPA's approval of the exemption 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).

## Transport of Ozone Precursors

The USEPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO<sub>X</sub> emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO<sub>X</sub> 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<sub>X</sub> exemption request for stationary sources under section 182(f). That is, USEPA action to grant or deny a NO<sub>X</sub> exemption request under section 182(f) would not shield that area from USEPA action to require NO<sub>X</sub> 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<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  $NO_X$ requirements under section 182(f). Some areas requesting an exemption may be upwind of and 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>4</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 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 interference 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

<sup>&</sup>lt;sup>4</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 NOx 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.