

exceedances: 0.5 (based only on two years of monitoring data).

Cincinnati and Cleveland Ozone Nonattainment Areas

The following ozone exceedances were recorded for the period from 1992 to 1994 (the average number of expected exceedances for this three year period are also presented):

Cleveland: Medina County, 6364 Deerview (1994)—0.127 ppm; average expected exceedances: 0.5 (based only on two years of monitoring data). Cuyahoga County, 891 E. 125 St. (1993)—0.126 ppm, (1994) 0.127 ppm and 0.125 ppm; average expected exceedances: 1.0.

Cincinnati: Butler County, Schuler and Bend (1993)—0.131 ppm; average expected exceedances: 0.3. Hook Field Municipal (1993)—0.138 ppm; average expected exceedances: 0.3. Clermont County, 389 Main St. (1994)—0.128 ppm; average expected exceedances: 0.3. Warren County, Southeast St. (1994)—0.139 ppm and 0.128 ppm; average expected exceedances: 0.7.

Thus, for all of the areas at issue, the annual average number of expected exceedances were not greater than 1.0, and thus, the areas are currently meeting the NAAQS for ozone.

V. Exemptions from the Conformity Provisions

Background

With respect to conformity, USEPA's conformity rules^{1,2} currently provide a NO_x waiver from certain requirements if an area receives a Section 182(f) exemption. Under the transportation conformity rule, a NO_x waiver relieves an area of the requirement to meet the "build/no build" and "less-than-1990-baseline" tests which apply during the period before State Implementation Plans (SIP) with emissions budgets are approved. In a notice published in the June 17, 1994 **Federal Register** (59 FR 31238, 31241), entitled "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," USEPA acknowledged that the rule should also have provided 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 published transportation conformity rules. The USEPA is in the process of amending the conformity rule so as to remedy the problem.

Approval Under Section 182(b)

An issue concerning the appropriate Act authority for granting transportation-related NO_x waivers has been raised by several commenters. NO_x exemptions are provided for in two separate parts of the Act, Section 182(b)(1) and Section 182(f). These commenters argue that exemptions from the NO_x transportation conformity requirements must follow the process provided in Section 182(b)(1), since this is the only Section explicitly referenced by Section 176(c)(3)(A)(iii) in the Act's transportation conformity provisions.

With certain exceptions, USEPA agrees that Section 182(b)(1) is the appropriate authority under the Act for waiving the transportation conformity rule's NO_x "build/no build" and "less-than-1990" tests, and is planning to amend the rule to be consistent with the statute. However, USEPA believes that this authority is only applicable with respect to those areas that are subject to Section 182(b)(1).

The change in authority for granting NO_x waivers from Section 182(f) to Section 182(b)(1) has different impacts for areas subject to Section 182(b)(1) depending on whether the area is relying on "clean air" data or on modeling data. Areas relying on modeling data must meet the procedure established under Section 182(b)(1), including submitting the exemption request as part of a SIP revision. The USEPA may not take action on exemptions for such areas until the rulemaking amending the transportation conformity rule to establish Section 182(b)(1) as the appropriate authority for granting such relief has been completed. "Clean data" areas that would otherwise be subject to Section 182(b)(1), such as Cincinnati and Cleveland, will be relieved of the transportation conformity rule's interim period NO_x requirements at such time as USEPA takes final action implementing its recently-issued policy regarding the applicability of Section 182(b)(1) requirements for areas demonstrating attainment of the ozone NAAQS based on "clean data". This policy is contained in a May 10, 1995, memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration,

and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," which should be referred to for a more thorough discussion. The aspect of the policy that is relevant here is USEPA's determination that the Section 182(b)(1) provisions regarding reasonable further progress (RFP) and attainment demonstrations may be interpreted so as not to require the SIP submissions otherwise called for in Section 182(b)(1) if an ozone nonattainment area that would otherwise be subject to those requirements is in fact attaining the ozone standard (i.e., attainment of the NAAQS is demonstrated with 3 consecutive years of complete, quality-assured, air-quality monitoring data). Any such "clean data" areas, under this interpretation, would no longer be subject to the requirements of Section 182(b)(1) once USEPA takes final rulemaking action adopting the interpretation in conjunction with its determination that the area has attained the standard. At that time, such areas would be treated like ozone nonattainment areas classified marginal and below, and hence eligible for NO_x waivers from the interim-period transportation conformity requirements by obtaining a waiver under Section 182(f), as described below.

Marginal and below ozone nonattainment areas (which represents the majority of the areas USEPA is taking action on today) are not subject to Section 176(c)(3)(A)(iii) because they are not subject to Section 182(b)(1), and general federal actions are also not subject to Section 176(c)(3)(A)(iii) (and, hence, are not subject to Section 182(b)(1) either). These areas, however, are still subject to the conformity requirements of Section 176(c)(1), which sets out criteria that, if met, will assure consistency with the SIP. The USEPA believes it is reasonable and consistent with the Act to provide relief under Section 176(c)(1) for areas not subject to Section 182(b)(1) from applicable NO_x conformity requirements where the Agency has determined that NO_x reductions would not be beneficial, and to rely, in doing so, on the NO_x exemption tests provided in Section 182(f) for the reasons given below.

The basic approach of the Act is that NO_x reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach but also includes specific substantive tests which provide a basis for USEPA to determine when NO_x requirements should not apply.

¹ "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).

² "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).