

are significant reductions and are expected to ensure that the area maintains the ozone standard. Thus, deferral of the I/M program does not frustrate meaningful control of vehicle emissions.

(12) *Comment:* One commentator stated that Toledo illegally obtained a waiver from NO_x conformity requirements under a section 182(f) submittal, and because of it NO_x conformity requirements should be incorporated into Toledo's maintenance plan. The commentator notes that a NO_x waiver for conformity purposes can only be issued under section 182(b)(1)(A). Also, not requiring Toledo, Ohio to submit general and transportation conformity SIP revisions with the redesignation request removes any incentive for Toledo, Ohio to adopt procedures for preventing emissions from transportation and federal construction projects contributing to ozone pollution levels. Another commentator stated that land use and transportation controls under the Clean Air Act will not be taken, resulting in increased pollution, if these requirements are changed.

(12) *Response:* Ohio is currently developing transportation and conformity SIP revisions. The USEPA expects to receive these submittals this summer. Maintenance areas are subject to the transportation and general conformity rules and therefore, must submit the SIP revisions required by these rules. The approval of these submissions was not required for the approval of the redesignation request because the redesignation request was submitted before the transportation and general conformity SIPs were due and were, therefore, not applicable requirements for purposes of evaluating this redesignation. Upon redesignation, the transportation conformity rule requires that a regional emission analyses of proposed transportation plans and programs for the Toledo area demonstrate that emissions from the future transportation system are below the motor vehicle emission budget established in the maintenance plan and lower than 1990 levels. The general conformity rule will also apply to the Toledo area after redesignation.

With respect to conformity, USEPA's conformity rules^{3,4} 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 only of the requirement to meet the "build/no build" and "less-than-1990-baseline" tests. 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 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 published transportation conformity rules. USEPA is in the process of amending the conformity rule to remedy the problem.

An issue concerning the appropriate Act authority for granting transportation-related NO_x waivers has been raised by several commentators. NO_x exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). These commentators 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

³ "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).

⁴ "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).