

As stated above, the analysis contained in the State's limited exemption request assumes that reductions beyond those required by Chapter 138 in the non-moderate areas are not necessary for purposes of attainment for either the moderate nonattainment areas or other states in the OTR. Therefore, emission reductions achieved from units operating at rates below the limitations of Chapter 138 in this 9 county area cannot be considered creditable for the purpose of facilities complying with either New Source Review offsetting or NO_x RACT requirements at facilities located in the moderate nonattainment areas (see the TSD prepared for this action for additional details).

VII. New Source Review

EPA is not taking action on Maine's New Source Review rule in this rulemaking. However, in a separate action, EPA is proposing to approve revisions to Maine's New Source Review rules. These revisions include an exemption provision for major new sources or major modifications of NO_x. This provision states that lowest achievable emission rate (LAER) and offsets for NO_x shall not apply in those areas that have received an exemption from the EPA under Section 182(f) of the CAA.

VIII. Withdrawal of the Exemptions

Continuation of the Section 182(f) exemptions granted herein is based on the demonstration that NO_x emissions in this area are not impacting Maine's moderate nonattainment areas or other nonattainment areas in the Ozone Transport Region (OTR) during times when elevated ozone levels are monitored in those areas. If future air quality analyses demonstrate that additional NO_x controls are necessary and the exemption should no longer apply, EPA will provide notice to the public in the Federal Register. A determination that the NO_x exemption no longer applies would mean that the NO_x NSR and the NO_x-related general conformity provisions (see 58 FR 63214) would immediately be applicable. For the marginal and below ozone nonattainment areas addressed by today's action, rescinding this section 182(f) exemption would no longer relieve the transportation conformity requirements of 40 CFR 51.436–51.440 and 40 CFR 93.122–93.124 for NO_x (see 60 FR 44795). The requirement for NO_x RACT would also be applicable, with a reasonable time provided as necessary to allow major stationary sources subject to the RACT requirements to purchase, install and operate the required

controls. The EPA believes that the State may provide sources a reasonable time period after the EPA determination to actually meet the RACT emission limits. The EPA expects such time period to be as expeditious as practicable, but in no case longer than 24 months.

IX. Miscellaneous Topics

Comments From Parties Interested in Previous NO_x Exemptions

An adverse comment letter has been previously submitted by three environmental groups and contained generic comments objecting to the EPA's general policy on NO_x exemptions. The three environmental groups who submitted the generic comments requested that these comments be included in each EPA rulemaking action on NO_x exemption requests. While some of the comments are not entirely relevant to this action, we have responded to them in an effort to be complete. EPA is treating these comments as part of the administrative record for this action, and they may serve as the basis for a challenge to this final action without being resubmitted to the Agency in response to the proposed rule.

Comment

In the past, commenters argued that NO_x exemptions are provided for in two separate parts of the Act, in sections 182(b)(1) and 182(f). Because the NO_x exemption tests in sections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO_x exemption determinations by the EPA, including exemption actions taken under the petition process established by section 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. The commenters also argue that even if the petition procedures of section 182(f)(3) may be used to relieve areas of certain NO_x requirements, exemptions from the NO_x conformity requirements must follow the process provided in section 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the Act's conformity provisions.

Response

Section 182(f) contains very few details regarding the administrative procedures for acting on NO_x exemption requests. The absence of specific guidelines by Congress leaves the EPA with discretion to establish

reasonable procedures consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering NO_x exemption requests under section 182(f), and instead believes that sections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_x exemption requests. The language in section 182(f)(1), which indicates that the EPA should act on NO_x exemptions in conjunction with action on a plan or a plan revision, does not appear in section 182(f)(3). While section 182(f)(3) references section 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on State Implementation Plans (SIPs). Additionally, section 182(f)(3) provides that "person[s]" [which section 302(e) of the Act defines to include States] may petition for NO_x exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO_x RACT and NSR rules, unless exempted. These rules were generally due to be submitted to the EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO_x exemption would have needed to submit this exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations were not due until November 1993 or 1994 (and EPA may take 12 to 18 months to approve or disapprove the demonstrations). For marginal ozone nonattainment areas (subject to NO_x NSR), no attainment demonstrations are called for in the CAA. For areas seeking redesignation to attainment of the ozone NAAQS, the CAA does not specify a deadline for submittal of maintenance demonstrations (in reality, EPA would generally consider redesignation requests without accompanying maintenance plans to be unacceptable). Clearly, the CAA envisions the submittal of and EPA action on NO_x exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations. It is