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MEMORANDUM

SUBJECT: Scope of Nitrogen Oxides (NOx) Exemptions

FROM: G.T. Helms, Group Leader
Ozone/Carbon Monoxide Programs Branch (MD-15)

TO: Air Branch Chiefs, Region I - X

This memorandum addresses the effects of EPA action to grant an exemption under section 182(f) of the Clean Air Act. It was coordinated with the Office of General Counsel (OGC) and NOx Work Group. Specifically, the issue was raised as to whether a NOx exemption can be made applicable only to NOx Reasonably Available Control Technology (RACT). As described below, where EPA grants a NOx exemption under section 182(f), the exemption applies to RACT, nonattainment New Source Review (NSR), conformity; and inspection/maintenance (I/M).

Section 182(f) provides three cases where the NOx requirements shall not apply: (1) net air quality benefits, (2) contribution to attainment, and (3) net ozone benefit. If EPA determines that any one of the three cases applies, the section 182(f) NOx requirements "shall not apply." The section 182(f) NOx requirements are RACT (section 182(b))¹ and nonattainment NSR (section 173)². Thus, where one of the three cases applies and the exemption is granted by EPA, the affected sources are no longer required to meet either the NOx RACT or nonattainment NSR requirements.

In addition section 182(f) provides a separate mechanism to fine tune the NOx exemption. That is, under the "excess reductions" provision in section 182(f)(2), EPA may "limit the application of section 182(f) to the extent necessary to avoid achieving such excess reductions." Thus, where EPA grants a NOx exemption under the "excess reductions" provision, the exemption

¹EPA discusses economic and technical feasibility guidance for determining NOx RACT in Section 4 of 57 FR 55624.

²EPA discusses Nonattainment NSR requirements which include Lowest Achievable Emission Reductions and emission offsets under 57 FR 55623.

could be for RACT only and not NSR. Further, under this provision, an exemption could be granted for certain RACT categories while RACT could be applied to other categories.

Where EPA grants an areawide exemption under section 182(f), other effects apply beyond RACT and NSR. As stated in EPA's inspection and maintenance (57 FR 52950) and conformity rules (58 FR 62188 for transportation rules and 58 FR 63214 for general rules), certain NOx requirements do not apply where EPA granted an areawide exemption under section 182(f). This exemption automatically applies; i.e., a State does not need to request the application or granting of the inspection/maintenance or conformity exemptions.³

As Regional Offices develop and complete rulemaking actions on NOx exemption requests, the rulemaking notices should clearly state all the effects of the EPA action consistent with the requirements of the Administrative Procedure Act (APA). The APA requires, for example, rulemaking notices to include either the terms or substance of the proposed rule or a description of the subjects and issues involved [section 553(b)]. For example, the July 26, 1994 Federal Register for Ohio (59 FR 37948) describes the rulemaking effects as follows:

This action exempts the Toledo and Dayton areas from the requirements to implement NOx RACT requirements, nonattainment area new source review for new sources and modifications that are major for NOx, and the applicable general and transportation conformity provisions for NOx.

For the Toledo nonattainment area, a Basic I/M program is required. This approval allows the basic I/M NOx requirement to be omitted from the program. For the Dayton nonattainment area, the State has adopted an enhanced I\M program. Based on this approval, NOx emission reductions are not required of this program (however, the program shall be designed to offset NOx increases resulting from the repair of HC and CO failures).

The rulemaking actions should also note that EPA approval of a NOx exemption is granted on a contingent basis. That is, the exemption would last for only as long as the area continued to demonstrate attainment without NOx reductions from major

³The section 182(f) exemption does not affect EPA's requirements for maintenance plans; the maintenance plan required for redesignation must still address NOx in accordance with EPA guidance.

stationary sources (or is redesignated to attainment). For example language regarding a monitoring based exemption, see 59 FR 37948. For example language regarding a modeling based exemption, see the November 28, 1994 Federal Register for Texas (59 FR 60713).

If you have any questions, please contact Ted Creekmore of my staff at 919-541-5699.

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