MEMORANDUM

SUBJECT: Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard

FROM: John S. Seitz, Director
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TO: Director, Air, Pesticides and Toxics
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I. Policy

This memorandum sets forth EPA's interpretation of certain requirements of subpart 2 of part D of title I of the Clean Air Act as they relate to ozone nonattainment areas that are meeting the ozone NAAQS. Specifically, it addresses whether such areas must submit SIP revisions concerning reasonable further progress and attainment demonstrations. The requirements at issue include the 15 percent plan and attainment demonstration requirements of section 182(b)(1) for moderate and above ozone nonattainment areas and the attainment demonstration and post-1996 RFP requirements of section 182(c)(2) for serious and above ozone nonattainment areas. Related requirements include the moderate ozone nonattainment requirements of section 172(c)(9) concerning contingency measures, the serious ozone nonattainment area requirements of section 182(c)(9) concerning contingency measures, section 182(c)(5) concerning transportation control measures and section 182(g) concerning milestones. They also include the elements of the severe and extreme ozone nonattainment area requirements of section 182(d)(1)(A)

concerning vehicle miles traveled that are related to RFP requirements.

For the reasons described below, EPA believes that it is reasonable to interpret these provisions so as not to require areas that are meeting the ozone standard to make the SIP submissions to EPA described in the provisions as long as the areas continue to meet the standard. If such an area were to monitor a violation of the standard prior to being redesignated to attainment, however, the area would have to address the pertinent requirements and submit the SIP revisions described in those provisions to EPA.

This memorandum also describes the process by which EPA will determine that an area is attaining the ozone standard and need not make these SIP submissions.

II. Interpretation and Legal Rationale

The EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an ozone nonattainment area 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). The EPA has previously interpreted the general provisions of subpart 1 of part D of title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures, and EPA believes it is appropriate to interpret the ozone-specific provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2)),[1] the stated purpose of RFP is to ensure attainment by

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[1]EPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section

the applicable attainment date. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1) and 182(c)(2)(B) and (C).

The EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point" (57 FR 13564).[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1) and 182(c)(2), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions . . . as necessary to attain the primary NAAQS by the attainment date applicable under this Act." Section 182(c)(2)(A) simply requires a "demonstration that the plan, as revised, will provide for attainment of the ozone NAAQS by the applicable attainment date." As with the RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble to title I, as EPA stated there that no other measures to provide for

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182(c)(2) are specific varieties of RFP requirements.

[2]See also "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress . . . will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" (57 FR 13564; see also September 4, 1992 Calcagni memorandum).

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. The first of these additional requirements are the contingency measure requirements of section 172(c)(9) and section 182(c)(9). The EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date" (57 FR 13564; see also September 4, 1992 Calcagni memorandum). Similarly, as the section 182(c)(9) contingency measures are linked with the RFP requirements of section 182(b)(1) and 182(c)(2), the requirement of section 182(c)(9) no longer applies once an area has attained the standard.

Other requirements related to the attainment demonstration and RFP provisions include: (1) the section 182(c)(5) requirement regarding the submission of a demonstration as to whether various parameters related to transportation "are consistent with those used for the area's demonstration of attainment"; (2) the section 182(g) requirements concerning milestones that are based on the section 182(b)(1) and 182(c)(2)(B) and (C) submissions; and (3) the elements of the section 182(d)(1)(A) requirement for SIP revisions identifying and adopting transportation control strategies to achieve reductions in motor vehicle emissions that relate to the RFP requirements of section 182(b)(1)(A) and 182(c)(2)(B). Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP revision either.

The EPA emphasizes that this interpretation does not extend to requirements of subpart 2 that are not linked by the language of the Act with the attainment demonstration and RFP requirements. For example, this interpretation does not apply to requirements such as VOC RACT requirements, for which, in contrast to NOx RACT requirements under section 182(f), the Act does not establish a mechanism to grant exemptions if an area has attained the standard, or to the requirements to submit SIP revisions providing for basic or enhanced I/M programs.

The EPA also emphasizes that the lack of a requirement to submit SIP revisions concerning these RFP, attainment

demonstration, and other related requirements exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements not being applicable would no longer exist. Therefore, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard. If EPA ultimately redesignates the area to attainment, then the area will be entirely relieved of these requirements to the extent the maintenance plan for the area does not rely on them.

Also, EPA notes that in the case of a multistate nonattainment area, the entire multistate nonattainment area must have monitoring data demonstrating attainment for the SIP submission requirements to be suspended. Thus, the requirements applicable to one part of such an area may not be suspended on the basis of a determination only that that part of the nonattainment area is monitoring attainment. The EPA's Regional Offices should coordinate these determinations for any multistate nonattainment areas that involve more than one Region.

III. Process

The EPA Regional Offices will conduct individual rulemakings concerning areas that have 3 consecutive years of clean air quality monitoring data demonstrating attainment of the ozone standard to make binding determinations that the areas have attained the standard and need not make whichever of the SIP revisions discussed above are pertinent. Since EPA has the relevant air quality data in its possession, no submission from a State would be required to initiate this process. However, a State would be free to submit a petition to the appropriate EPA Regional Office to notify the office that it believes that a certain nonattainment area is eligible for these determinations on the basis of monitored attainment of the ozone NAAQS.

As noted above, these determinations would be contingent on the existence of monitoring data for the areas that continue to demonstrate attainment. If EPA subsequently determines that an area has violated the standard, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the State of that determination and would also provide notice to the public in the Federal Register. Such a determination would mean that the area would thereafter have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish

taking into account the individual circumstances surrounding the particular SIP submissions at issue.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

Determinations made by EPA in accordance with this interpretation would not shield an area from EPA action to require emission reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. The EPA has authority under the Act (section 110(a)(2)(D) in the case of areas in other States and section 110(a)(2)(A) in the case of intrastate areas) to require emissions reductions if necessary and appropriate to deal with transport situations.

IV. Consequences for Redesignations, Sanctions, and Conformity

Determinations made by EPA that an area has attained the NAAQS and need not make one or more of the SIP submissions discussed above is not equivalent to the redesignation of the area to attainment. Attainment of the standard is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated, the State must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions, and the requirements that the area have a fully-approved SIP which meets all of the applicable requirements under section 110 and part D, and a fully-approved maintenance plan.

If an area for which the determination of attainment is made has submitted or subsequently submits a redesignation request, the SIP submissions discussed in this memorandum would not be required for the area's redesignation request to be approved since they would no longer be considered applicable requirements under section 107(d)(3)(E). If the area violates the standard prior to final action on the redesignation request, however, not only would the requirements again become applicable, but the redesignation request could not be approved because the area

would no longer meet the criterion of having attained the standard.

As a consequence of a determination that an area has monitoring data demonstrating attainment of the ozone standard, thereby removing, at least temporarily, the pertinent SIP submittal requirements discussed above, any sanction clock that had been started as a consequence of the failure to make such a submission, the incompleteness of such a submission, or the disapproval of such a submission, would be stopped since the deficiency that had led to the starting of the clock would no longer exist.

The issuance of a determination pursuant to this policy will have no immediate impact on the way conformity is demonstrated. Areas will continue to demonstrate conformity using the build/no-build test and less-than-1990 test (section 51.436-51.446 of the conformity rule), and the 15 percent SIP if one has been submitted (and attainment/RFP SIP, if one with a budget has been submitted).

Since areas that are the subject of determinations pursuant to this policy will not be required to submit RFP or attainment demonstration SIP's, those areas will not generally be in the control strategy period for conformity purposes (i.e., have a control strategy SIP approved and build/no-build test no longer required) for so long as the area does not violate the standard. Those areas will not generally have approved budgets until a maintenance plan is approved as part of the approval of a redesignation request, so the build/no-build test and less-than-1990 test--in addition to any applicable submitted budgets--will be required until then. (A maintenance plan budget does not apply for conformity purposes until the maintenance plan has been approved, except as provided by section 51.448(i) of the conformity rule (which applies to areas that are required to submit a 15 percent SIP but submit a maintenance plan instead).)

If an area receiving a determination pursuant to this policy had previously submitted a 15 percent or attainment SIP, it may choose to withdraw the submitted SIP through the submission of a letter from the Governor or his or her designee in order to eliminate the applicability of its motor vehicle emission budget for conformity purposes. This is because that area would not be subject to the 15 percent and attainment demonstration requirements of section 182(b)(1) for so long as the area continues to attain the standard. If the submitted SIP is not withdrawn, the budget in that submission will continue to apply for conformity purposes. If the submitted 15 percent or

attainment SIP is withdrawn, only the build/no-build and less-than-1990 tests would apply until a maintenance plan is approved.

However, areas that are already demonstrating conformity to a submitted maintenance plan pursuant to section 51.448(i) may continue to do so, or may elect to withdraw the applicability of the submitted maintenance plan budget for conformity purposes until the maintenance plan is approved. The applicability may be withdrawn through the submission of a letter from the Governor or his or her designee. If the applicability of the submitted maintenance plan budget is withdrawn for conformity purposes, the build/no-build and less-than-1990 tests will apply until the maintenance plan is approved.

For areas which receive a determination pursuant to this policy and whose conformity status has lapsed due to a failure to submit a 15 percent SIP or to the submission of an incomplete 15 percent SIP without a protective finding, the lapse imposed by section 51.448(b) and (c)(1)(ii) will be removed. However, the conformity status of the plan and TIP cannot be restored if conformity has lapsed for any other reason (e.g., failure to redetermine conformity by a certain date).

If you have any questions, please feel free to call me or Sally Shaver. The contact persons for this policy are Carla Oldham at (919) 541-3347 and Kathryn Sargeant at (313) 668-4441 for transportation conformity requirements.

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