

MEMORANDUM

SUBJECT: Emission Statement Requirement Under 8-hour Ozone NAAQS Implementation

FROM: Thomas C. Curran, Director
Air Quality Assessment Division (C304-02)

TO: Regional Air Division Directors

SUMMARY

This memorandum clarifies that the Emission Statement requirement under the Clean Air Act (“Act”) section 182(a)(3)(B), is applicable to all areas designated nonattainment for the 8-hour ozone national ambient air quality standard (NAAQS) and classified marginal or higher under subpart 2, part D, title I of the Act.

BACKGROUND

Section 182(a)(3)(B) requires a State to revise its State implementation plan (SIP) for ozone nonattainment areas that are classified marginal or higher to:

. . . require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement . . .

On April 30, 2004, EPA published in the Federal Register the Phase 1 rule to implement the 8-hour ozone NAAQS (69 FR 23951). The Phase 1 implementation rule set forth provisions to have some 8-hour ozone nonattainment areas covered under subpart 1 of part D of title I of the Act, and the remainder to be covered under subpart 2 of the same part and title of the Act, and classified accordingly. On the same date, EPA set forth nonattainment and attainment designations for the 8-hour ozone NAAQS (69 FR 23858), and classified the areas covered under subpart 2 as marginal and above. The Phase 1 rule also provided for revoking the 1-hour ozone NAAQS and anti-backsliding provisions related to the transition from the 1-hour to the 8-hour ozone standard.

On November 29, 2005, EPA published the Phase 2 rule to implement the 8-hour ozone NAAQS (70 FR 71612), which covered the remaining issues related to implementation, such as the requirement for nonattainment SIPs to contain an emission inventory, attainment demonstration, and provisions for reasonably available control technology (RACT) and reasonable further

progress (RFP). Neither the Phase 1 nor Phase 2 implementation rules addressed how the section 182(a)(3)(B) requirement for emission statements would apply in areas classified under subpart 2. In this memorandum, we are clarifying that we plan to interpret this requirement for the 8-hour standard in the same manner in which we interpreted it for the 1-hour standard. We note that under section 182(a)(3)(B)(ii), the State may waive the emissions statement requirement for any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by EPA or other methods acceptable to EPA.

Regional Offices should advise their respective States of this requirement and remind them to submit their SIP revisions to address the emissions statement requirements of the Act. Consistent with EPA's interpretation of the submission period for other subpart 2 obligations, the 2-year submission period for the emission statement rule for the 8-hour ozone standard will run from the date an area was designated nonattainment and classified under subpart 2 for the 8-hour standard. Thus, States should submit their emission statement rule by June 15, 2006, and the rule should provide that sources submit their first emission statements to the State by no later than June 15, 2007 (for the 2006 calendar year). If an area has a previously approved emission statement rule for the 1-hour standard that covers all portions of the designated 8-hour nonattainment area, such rule should be sufficient for purposes of the emissions statement requirement for the 8-hour standard.