

evidence that NO<sub>x</sub> emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by USEPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by USEPA. In some cases, then, USEPA may grant an exemption from across-the-board NO<sub>x</sub> RACT controls under section 182(f) and, in a separate action, require NO<sub>x</sub> controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances. Consistent with these principles, USEPA is proposing to approve these exemption requests under section 182(f) of the Act. If evidence appears that NO<sub>x</sub> emissions in an upwind area would interfere with attainment or maintenance in a downwind area, appropriate action shall be taken by the State(s) or, if necessary, by USEPA under section 110(a)(2)(D).

#### Conformity Provisions

With respect to conformity, USEPA's conformity rules<sup>5 6</sup> provide a NO<sub>x</sub> waiver if an area receives a section 182(f) exemption. In its "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), 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<sub>x</sub> even where a conformity NO<sub>x</sub> waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. The June 17th notice states that USEPA intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO<sub>x</sub> motor vehicle emissions budget, USEPA also intends to require consistency with the attainment demonstration's NO<sub>x</sub> motor vehicle emissions budget. However, the exemptions at issue were submitted

pursuant to section 182(f)(3), and USEPA does not believe it is appropriate to delay action on these petitions, especially in light of the statutory deadline, until the conformity rule is amended. As noted above, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. Thus the issue is under further consideration, but at this time the Agency's position remains as stated. The USEPA, therefore, believes that the currently applicable rules governing this matter are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

#### IX. Proposed Action

The USEPA is proposing to approve the exemption requests from the requirements contained in section 182(f) of the Act for the areas previously identified. This approval would exempt the following counties in Ohio from the NO<sub>x</sub>-related general and transportation conformity provisions, NO<sub>x</sub> RACT (as applicable), and nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>: Hamilton, Butler, Warren, Clermont, Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, Stark, Delaware, Franklin, Licking, Mahoning, Trumbull, Jefferson, Columbiana, Preble, and Clinton. Additionally, the following counties in Ohio would not be required to demonstrate compliance with the enhanced I/M performance standard for NO<sub>x</sub>: Hamilton, Butler, Warren, Clermont, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit.

This proposed approval is based upon the evidence provided by the State and the State's compliance with the requirements outlined in the applicable USEPA guidance.

#### X. Procedural Background

Public comments are solicited on USEPA's proposed rulemaking action. Public comments received by February 16, 1995, will be considered in the development of USEPA's final rulemaking action.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic,

and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 4201-767q.

Dated: January 5, 1995.

**Valdas V. Adamkus,**

*Regional Administrator.*

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#### 40 CFR Part 81

[VA37-1-6812b; FRL-5139-9]

#### Clean Air Act Promulgation of Reclassification of Ozone Nonattainment Areas in Virginia, and Attainment Determinations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to reclassify the Norfolk-Virginia Beach-Newport News (Hampton Roads), VA ozone nonattainment area from marginal nonattainment to moderate nonattainment. This action also proposes a determination that the Allentown-Bethlehem-Easton, PA-NJ; Altoona, PA; Erie, PA; Greenbrier, WV; Harrisburg-Lebanon-Carlisle, PA; Johnstown, PA; Lancaster, PA; Scranton-Wilkes-Barre, PA; Youngstown-Warren-Sharon, PA-OH;

<sup>5</sup> "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).

<sup>6</sup> "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).