

The Department recognizes that affiliated carriers operating under a network name sometimes use the airport facilities of their major airline partner, and airport signs frequently identify the facilities of these affiliated carriers only by their network name. Thus, to avoid confusion among passengers arriving at the airport, the Department expects airlines and ticket agents also to disclose the network name, if that is the name in which service is generally held out to the public. We are not now proposing to require disclosure of the network name, however, because we tentatively believe that the competitive benefits of promoting the network name are adequate to ensure that airlines and travel agents will, in fact, tell passengers the network name. We solicit comment on whether we should make this an explicit requirement in the final rule.

The Department invites specific comments on the feasibility and costs of implementation of this proposal, if any. Comments discussing the implementation cost must be supported by data and economic analyses.

The usual 60-day comment period has been reduced to 30 days because the proposed change is minor and because commenters have already had an opportunity to address the issue in the original NPRM.

Proposed section 257.5, in revised form, appears immediately below. For convenience, we have put additions in quotes and show the deletion as two asterisks [\*\*]:

#### Section 257.5 Notice Requirement

(a) Notice in schedules. In written or electronic schedule information provided by carriers to the public, the Official Airline Guides and comparable publications, and, where applicable, computer reservations systems, carriers involved in code-sharing arrangements or long-term wet leases shall ensure that [\*\*] each flight in scheduled passenger air transportation on which the designator code is not that of the transporting carrier "is identified by an asterisk or other easily identifiable mark and that information disclosing the corporate name of the transporting carrier is also provided."

(b) Oral notice to prospective consumers. In any directoral communication with a prospective consumer concerning a flight that is part of a code-sharing arrangement or long-term wet lease, a ticket agent doing business in the United States or a carrier shall tell the consumer, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket and shall identify the transporting carrier "by its corporate name."

(c) Written notice. At the time of sale, each selling carrier or ticket agent shall provide each consumer of scheduled passenger air transportation sold in the United States that involves a code-sharing arrangement or long-term wet lease with the following notice:

(1) If an itinerary is issued, there shall appear in conjunction with the listing of any flight segment on which the designator code is not that of the transporting carrier a legend that states 'Operated by' followed by the "corporate" name of the transporting carrier. In the case of single-flight number service involving a segment or segments on which the designator code is not that of the transporting carrier, the notice shall clearly identify the segment or segments and the transporting carrier "by its corporate name." The following form of statement will satisfy the requirement of the preceding sentence: IMPORTANT NOTICE: Service between XYZ City and ABC City will be operated by Jane Doe Airlines;' or

(2) If no itinerary is issued, the selling carrier or ticket agent shall provide a separate written notice that clearly identifies the transporting carrier "by its corporate name" for any flight segment on which the designator code is not that of the transporting carrier. The following form of notice will satisfy the requirement of this subparagraph: IMPORTANT NOTICE: Service between XYZ City and ABC City will be operated by Jane Doe Airlines.'

(d) Advertising In any advertisement for service in a city-pair market that is provided under a code-sharing arrangement or by long-term wet lease, the advertising carrier or ticket agent shall clearly indicate the nature of the service and shall identify the transporting carrier[s] "by corporate name."

#### Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. The Department placed a draft regulatory evaluation that examines the estimated costs and impacts of the proposed rule in the docket in connection with the NPRM. It does not expect the proposal made in this supplemental notice to increase those costs or impacts.

The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Although many ticket agents and some air carriers are small entities, the Department believes that the costs of notification will be minimal. The Department seeks comment on whether there are small entity impacts that should be considered. If comments provide information that there are significant small entity impacts, the Department will prepare a regulatory flexibility analysis at the final rule stage.

The Department does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

#### Paperwork Reduction Act

The proposed rule does not contain information collection requirements that

require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 2507 *et seq.*).

#### List of Subjects in 14 CFR Part 257

Air carriers, Foreign air carriers, and Consumer protection.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend the part 257 proposed in Notice 94-11, 59 FR 40836, published on August 10, 1994, as follows:

#### PART 257—[AMENDED]

##### § 257.5 [Amended]

1. By deleting from the proposed §257.5(a) the words "an asterisk or other easily recognizable mark identifies" and adding to the end of paragraph (a) the following: "is identified by an asterisk or other easily identifiable mark and that information disclosing the corporate name of the transporting carrier is also provided";

2. By inserting the words "by its corporate name" at the end of proposed §257.5(b);

3. By inserting the word "corporate" between "the" and "name" in the first sentence, and by inserting the words "by its corporate name" at the end of the second sentence after "transporting carrier," of proposed §257.5(c)(1);

4. By inserting the words "by its corporate name" between the first "transporting carrier" and "for any flight segment" in proposed §257.5(c)(2); and

5. By inserting the words "by corporate name" at the end of proposed §257.5(d).

Issued under authority delegated in 49 CFR 1.56a(h)(2) in Washington, D.C. on January 10, 1995.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Aviation and International Affairs.*

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[OH73-1-6809, OH74-1-6810, CH75-1-6811; FRL-5140-1]

#### Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** The USEPA is proposing to approve requests for exemptions from the nitrogen oxides (NO<sub>x</sub>) requirements as provided for in Section 182(f) of the Clean Air Act (Act) for the following ozone nonattainment areas in Ohio: Canton (Stark County); Cincinnati (Hamilton, Butler, Warren, and Clermont Counties); Cleveland (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); Columbus (Delaware, Franklin, and Licking Counties); Youngstown (Mahoning and Trumbull Counties); Steubenville (Jefferson and Columbiana Counties); Preble County; and Clinton County. These exemption requests, submitted by the Ohio Environmental Protection Agency (OEPA), are based upon three years of ambient air monitoring data which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained in each of these areas without additional reductions of NO<sub>x</sub>.

**DATES:** Comments on these exemption requests and USEPA's proposed action must be received by February 16, 1995.

**ADDRESSES:** Written comments should be addressed to: William MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the exemption requests and supporting air quality data are available for inspection during normal business hours at the following location (it is recommended that you contact Richard Schleyer at (312) 353-5089 before visiting the Region 5 office): United States Environmental Protection Agency, Region 5, Air Enforcement Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Richard Schleyer, Regulation Development Section, Air Enforcement Branch (AE-17J), Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353-5089.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*Section 182(f) Requirements*

The air quality planning requirements for the reduction of NO<sub>x</sub> emissions are set out in section 182(f) of the Act. Section 182(f) of the Act requires States with areas designed nonattainment of the NAAQS for ozone, and classified as marginal and above, to impose the same

control requirements for major stationary sources of NO<sub>x</sub> as apply to major stationary sources of volatile organic compounds (VOC). The requirements include, for marginal and above areas, nonattainment area new source review (NSR) for major new sources and major modifications. For nonattainment areas classified as moderate and above, the State is required to adopt reasonable available control technology (RACT) rules for major stationary sources of NO<sub>x</sub>, as well as nonattainment areas NSR.

Section 182(f) further provides that, for areas outside an ozone transport region, these NO<sub>x</sub> reduction requirements shall not apply if the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment of the NAAQS for ozone.

*Transportation Conformity*

The transportation conformity rule, entitled "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. or the Federal Transit Act," was published in the November 24, 1993 **Federal Register** (58 FR 62188). The rule was promulgated under section 176(c)(4) of the Act.

The transportation conformity rule requires regional emissions analysis of motor vehicle NO<sub>x</sub> emissions for ozone nonattainment and maintenance areas in order to determine the conformity of transportation plans and programs to implementation plan requirements. This analysis must demonstrate that the NO<sub>x</sub> emissions which would result from the transportation system if the proposed transportation plan and program were implemented are within the total allowable level of NO<sub>x</sub> emissions from highway and transit motor vehicles as identified in a submitted or approved attainment demonstration or maintenance plan.

Until an attainment demonstration, and the fifteen-percent rate-of-progress plan (if applicable), or a maintenance plan, is approved by USEPA, the regional emissions analysis of the transportation system must also satisfy the "build/no-build" test. That is, the analysis must demonstrate that emissions from the transportation system, if the proposed transportation plan and program were implemented, would be less than the emissions from the transportation system if only the previous applicable transportation plan and program were implemented. Furthermore, the regional emissions analysis must show that emissions from

the transportation system, if the transportation plan or program were implemented, would be lower than 1990 levels.

The transportation conformity rules provide for an exemption from these requirements with respect to NO<sub>x</sub> if the Administrator determines, under section 182(f) of the Act, that additional reductions of NO<sub>x</sub> would not contribute to attainment of the ozone NAAQS.

*General Conformity*

The general conformity rule, entitled "Determining Conformity of General Federal Actions to State or Federal Implementation Plans," was published in the **Federal Register** on November 30, 1993 (58 FR 63214). The rule was promulgated under section 176(c)(4) of the Act. The general conformity rule provides for an exemption from considering NO<sub>x</sub> if the area has been exempted under section 182(f) of the Act.

*Scope of Exemptions*

If the USEPA Administrator determines, under section 182(f) of the Act, that additional reductions of NO<sub>x</sub> would not contribute to attainment of the ozone NAAQS, the area at issue shall automatically (i.e., a State would not need to submit an exemption request for each requirement) be exempt from the following requirements (as applicable): the NO<sub>x</sub>-related general and transportation conformity provisions, NO<sub>x</sub> RACT, and nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>. Additionally, NO<sub>x</sub> emission reductions would not be required of an enhanced I/M program (see Section VI. for additional information).

**II. Criteria for Evaluation of Exemption Requests**

The criteria used in the evaluation of the exemption requests can be found in the following: a notice published in the June 17, 1994 **Federal Register** (59 FR 31238), entitled "Conformity General Preamble for Exemption from Nitrogen Oxides Provisions," a USEPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), dated May 27, 1994, entitled "Section 182(f) Nitrogen Oxides (NO<sub>x</sub>) Exemptions—Revised Process and Criteria," and a USEPA guidance document entitled "Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under section 182(f)," dated December 1993, OAQPS, Air Quality Management Division.

### III. State Submittals

#### *Marginal and Nonclassifiable Ozone Nonattainment Areas*

In a letter dated March 18, 1994, the OEPA submitted a request that the following marginal and nonclassifiable ozone nonattainment areas be exempt from the NO<sub>x</sub>-related transportation and general conformity requirements contained in Section 176(c) of the Act: Canton (Stark County), Columbus (Franklin, Delaware, and Licking Counties), Youngstown (Mahoning and Trumbull Counties), Steubenville (Jefferson and Columbiana Counties), Preble County, and Clinton County. Additionally, USEPA is proposing to grant exemptions from the NSR requirements for the following marginal ozone nonattainment areas: Canton (Stark County), Columbus (Franklin, Delaware, and Licking Counties), Youngstown (Mahoning and Trumbull Counties). The NSR requirements do not apply to the Steubenville area, Preble County, and Clinton County.

#### *Cincinnati-Hamilton Interstate Moderate Ozone Nonattainment Area*

In a letter dated November 15, 1994, the OEPA submitted a request for an exemption from the requirements contained in section 182(f) of the Act for the Ohio portion of the Cincinnati-Hamilton Interstate Moderate ozone nonattainment area (which includes the Counties of Butler, Clermont, Hamilton, and Warren). This exemption request is based upon the most recent three years of ambient air monitoring data which demonstrate that the NAAQS for ozone has been attained in this area without additional reductions of NO<sub>x</sub> emissions.

An exemption request from the requirements contained in section 182(f) of the Act has also been submitted to USEPA—Region 4 by the Kentucky Department for Environmental Protection (KDEP) for the Kentucky portion of the interstate area (which includes the counties of Boone, Kenton, and Campbell). This exemption request is based upon the most recent three years of ambient air monitoring for ozone which demonstrate that the NAAQS for ozone has been attained in this area without additional reductions of nitrogen oxides (NO<sub>x</sub>). This exemption request will be evaluated in a separate rulemaking, to be performed by USEPA—Region 4.

#### *Cleveland Moderate Ozone Nonattainment Area*

In a letter dated November 1, 1994, the OEPA submitted a request for an exemption from the requirements contained in section 182(f) of the Act for

the Cleveland moderate ozone nonattainment area (which includes the counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit). This exemption request is based upon the most recent three years of ambient air monitoring data which demonstrate that the NAAQS for ozone has been attained in this area without additional reductions of NO<sub>x</sub>.

### IV. Analysis of State Submittals

USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in USEPA's—Aerometric Information Retrieval System—AIRS) submitted by the OEPA in support of these exemption requests.

For ozone, an area is considered attainment of the NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9, based on quality assured monitoring data from three complete consecutive calendar years. A violation of the ozone NAAQS occurs when the annual average number of expected exceedances is greater than 1.0 at any site in the area at issue. An exceedance occurs when the daily maximum hourly ozone concentration exceeds 0.124 parts per million (ppm).

#### *Marginal and Nonclassifiable Ozone Nonattainment Areas*

The following ozone exceedances were recorded for the period from 1991 to 1993:

Canton: Stark County, 6318 Heminger Ave. (1991)—0.130 ppm; average expected exceedances: 0.3.

Columbus: Franklin County, 5750 Maple Canyon (1991)—0.131 ppm; average expected exceedances: 0.3.

Steubenville: no exceedances recorded;

Youngstown: Mahoning County, 9 West Front Street (1991)—0.143 ppm; average expected exceedances: 0.3. Trumbull County, Community Hall (1993)—0.127 ppm; average expected exceedances: 0.3.

Preble County: National Trials (1991)—0.129 ppm; average expected exceedances: 0.3.

Clinton County: 62 Laurel Drive (1993)—0.125 ppm; average expected exceedances: 0.5 (based only on two years of monitoring data).

#### *Cincinnati and Cleveland Ozone Nonattainment Areas*

The following ozone exceedances were recorded for the period from 1992 to 1994:

Cleveland: Medina County, 6364 Deerview (1994)—0.127 ppm; average expected exceedances: 0.5 (based only on two years of monitoring data).

Cuyahoga County, 891 E. 125 St. (1993)—0.126 ppm, (1994) 0.127 ppm and 0.125 ppm; average expected exceedances: 1.0.

Cincinnati: Buttlar County, Schuler and Bend (1993)—0.131 ppm; average expected exceedances: 0.3. Hook Field Municipal (1993)—0.138 ppm; average expected exceedances: 0.3. Clermont County, 389 Main St. (1994)—0.128 ppm; average expected exceedances: 0.3. Warren County, Southeast St. (1994)—0.139 ppm and 0.128 ppm; average expected exceedances: 0.7.

Thus, for all of the areas at issue, the annual average expected exceedances were not greater than 1.0, and thus, the areas are meeting the air quality standard for ozone.

### V. NO<sub>x</sub> RACT Rules

#### *Cincinnati-Hamilton Interstate Moderate Ozone Nonattainment Area*

The State of Ohio was required to submit NO<sub>x</sub> RACT rules to USEPA for Ohio portion of the interstate area. On July 14, 1994, USEPA notified the Governor of Ohio that the State had failed to submit the required rules. The State is required to either submit complete rules to USEPA (or have its NO<sub>x</sub> exemption request approved, in final) within 18 months from the date of the finding in order to avoid the initiation of sanctions under section 179(b) of the Act. Upon the effective date of the final approval of the exemption request for this area, the 18 month "sanctions clock" shall stop.

On November 15, 1994, the State of Ohio submitted a redesignation request to attainment of the ozone NAAQS for the Ohio portion of the Cincinnati-Hamilton interstate ozone nonattainment area. This redesignation request will be evaluated in a separate rulemaking. The State has included NO<sub>x</sub> RACT as a contingency measure of the maintenance plan. The USEPA does not require that these rules be adopted to be included as a contingency measure. However, a specific schedule is provided for the adoption and implementation of NO<sub>x</sub> RACT if a violation is monitored in the area.

#### *Cleveland Moderate Ozone Nonattainment Area*

The State of Ohio submitted adopted NO<sub>x</sub> RACT rules to USEPA on July 1, 1994, for the Toledo, Dayton, and Cleveland ozone nonattainment areas. These rules are currently under review and will be evaluated in a separate rulemaking. The State provided the following provision in the RACT rules submittal (Ohio Administrative Code

(3745-14-02(B)(3)) for the suspension of the RACT rules:

The Director also may suspend the requirements of this Chapter in an area in the event that the USEPA issues a national policy and/or promulgates a regulation which, based upon the ambient air monitoring data for ozone in the area, eliminates the need for NO<sub>x</sub> control requirements in that area.

#### VI. Inspection and Maintenance (I/M) Programs

##### *Cincinnati-Hamilton Interstate Moderate Ozone Nonattainment Area*

For the Cincinnati area, the local area opted for an enhanced I/M program. The I/M Final Rule (57 FR 52950) provides that if the Administrator determines that NO<sub>x</sub> emission reductions are not beneficial in a given ozone nonattainment area, then NO<sub>x</sub> emission reductions are not required of the enhanced I/M program, but the program shall be designed to offset NO<sub>x</sub> increases resulting from the repair of motor vehicles that have failed the hydrocarbon (HC) and carbon monoxide (CO) testing procedures.<sup>1</sup> Upon the effective date of this action, the Butler, Clermont, Hamilton, and Warren Counties shall not be required to demonstrate compliance with the enhanced I/M performance standard for NO<sub>x</sub>. However, the State shall be required to demonstrate, using USEPA's—Mobile Source Emissions Model, Mobile 5a (or its successor), that NO<sub>x</sub> emissions will be no higher than in the absence of any I/M program.

##### *Cleveland Moderate Ozone Nonattainment Area*

For the Cleveland area, the local area opted for an enhanced I/M program for the following counties: Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit. The I/M Final Rule (57 FR 52950) provides that if the Administrator determines that NO<sub>x</sub> emission reductions are not beneficial in a given ozone nonattainment area, then NO<sub>x</sub> emission reductions are not required of the enhanced I/M program, but the program shall be designed to offset NO<sub>x</sub> increases resulting from the repair of motor vehicles that have failed the hydrocarbon (HC) and carbon monoxide (CO) testing procedures. Upon the effective date of this action, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties shall not be required to demonstrate compliance with the enhanced I/M

<sup>1</sup> Additional clarification concerning the I/M requirements and areas with NO<sub>x</sub> exemptions is provided in a memorandum from Mary T. Smith, Acting Director, Office of Mobile Sources, dated October 14, 1994, entitled "I/M Requirements in NO<sub>x</sub> RACT Exempt Areas."

performance standard for NO<sub>x</sub>. However, the State shall be required to demonstrate, using USEPA's—Mobile Source Emissions Model, Mobile 5a (or its successor), that NO<sub>x</sub> emissions will be no higher than in the absence of any I/M program.

#### VII. Withdrawal of the Exemptions

Continuation of the Section 182(f) exemptions granted herein is contingent upon continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. If a violation of the ozone NAAQS is monitored in an area(s) (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) USEPA will provide notice to the public in the **Federal Register** withdrawing the exemption.

A determination that the NO<sub>x</sub> exemption no longer applies would mean that the NO<sub>x</sub> NSR, general conformity, and transportation conformity provisions would immediately be applicable (see 58 FR 63214 and 58 FR 62188) to the affected areas. The NO<sub>x</sub> RACT requirements would also be applicable, with a reasonable time provided to allow major stationary sources subject to the RACT requirements to purchase, install and operate required controls. The USEPA believes that the State may provide sources a reasonable time period after such USEPA determination to actually meet the RACT emission limits. The USEPA expects the entire time period to be as expeditious as practicable, but in no case longer than 24 months.

#### VIII. Miscellaneous Topics

##### *Processing NO<sub>x</sub> Exemptions*

Section 182(f) contains very few details regarding the administrative procedure for USEPA action on NO<sub>x</sub> exemption requests. The absence of specific guidelines by Congress leaves USEPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The USEPA believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures for USEPA to act on NO<sub>x</sub> exemption requests. The language in subsection 182(f)(1), which indicates that USEPA should act on NO<sub>x</sub> exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). While subsection 182(f)(3) references subsection 182(f)(1), USEPA believes that this reference encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), and not the procedural requirement that USEPA act

on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which Section 302(e) of the Act defines to include States) may petition for NO<sub>x</sub> exemptions "at any time," and requires USEPA to make its determination within six months of the petition's submission. These key differences lead USEPA 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).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that "person[s]"<sup>2</sup> may petition for a NO<sub>x</sub> determination "at any time" after the ozone precursor study required under Section 185B of the Act is finalized,<sup>3</sup> and gives USEPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) "at any time" this must include times when there is no plan revision from the State pending at USEPA. The specific timeframe for USEPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for USEPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on petitions under paragraph (3) to be distinct—and more expeditious—from the plan revision process intended under paragraph (1). Thus, USEPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the substantive tests in paragraph (1) (and, by extension, paragraph (2)), not the requirement in paragraph (1) for USEPA to grant exemptions only when acting on plan revisions.

With respect to major stationary sources, section 182(f) requires States to adopt NO<sub>x</sub> NSR and RACT rules, unless exempted. These rules were generally due to be submitted to USEPA by November 15, 1992. Thus, in order to avoid sanctions under the Act, areas seeking a NO<sub>x</sub> exemption would have needed to submit their exemption request for USEPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment

<sup>2</sup> Section 302(e) of the Act defines the term "person" to include States.

<sup>3</sup> The final Section 185B report was issued July 30, 1993.

demonstrations are not due until November 1993 or 1994 (and USEPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO<sub>x</sub> NSR), no attainment demonstration is called for in the Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of, and USEPA action on, exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity with regard to federally-supported NO<sub>x</sub> generating activities in relevant nonattainment and maintenance areas. However, USEPA's conformity rules explicitly provide that these NO<sub>x</sub> requirements would not apply if USEPA grants an exemption under section 182(f).

The USEPA notes that the issue of using section 182(b)(1) as the appropriate vehicle for dealing with exemptions from the NO<sub>x</sub> requirements of the conformity rule has been raised in a formal petition for reconsideration of USEPA'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 above.

Additionally, section 182(f)(3) requires that NO<sub>x</sub> exemption petition determinations be made by USEPA within six months. The USEPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the APA. The USEPA believes that until the issue is resolved, the applicable rules governing this matter are those that appear in USEPA's final conformity regulations, and that USEPA remains bound by their existing terms.

#### *Demonstrating Attainment*

Under section 182(f)(1)(A), an exemption from the NO<sub>x</sub> requirements may be granted for nonattainment area outside an ozone transport region if USEPA determines that "additional reductions of (NO<sub>x</sub>) would not contribute to attainment" of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the Section 182(f) NO<sub>x</sub> provisions over that 3-year period.

In cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO<sub>x</sub> provisions, USEPA believes that the section 182(f) test is met since "additional reductions of (NO<sub>x</sub>) would not contribute to attainment" of the NAAQS in that area. The USEPA's approval of the exemption would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

#### *Transport of Ozone Precursors*

The USEPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO<sub>x</sub> emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO<sub>x</sub> emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by USEPA on a NO<sub>x</sub> exemption request for stationary sources under section 182(f). That is, USEPA action to grant or deny a NO<sub>x</sub> exemption request under section 182(f) would not shield that area from USEPA action to require NO<sub>x</sub> emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO<sub>x</sub> emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO<sub>x</sub> emission reductions hundreds of miles upwind. The USEPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, USEPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas that are located in the area being modeled have requested exemptions from NO<sub>x</sub> requirements under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. The USEPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO<sub>x</sub> requirements may be granted for nonattainment areas outside an ozone transport region if USEPA determines that "additional reductions of (NO<sub>x</sub>) would not contribute to attainment of the national ambient air quality standard for ozone in the area."<sup>4</sup> As described in section 4.3 of the December 16, 1993 guidance document, USEPA believes that the term "area" means the "nonattainment area," and that USEPA's determination is limited to consideration of the effects in a single nonattainment area due to NO<sub>x</sub> emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to "consider imposition of the NO<sub>x</sub> requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interference with maintenance by, any other State (see section 110(a)(2)(D)(i)(I))."

In contrast, section 4.4 of the guidance states that the Section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO<sub>x</sub> exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts.

Consistent with the guidance in section 4.3, USEPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently. Thus, if there is

<sup>4</sup>There are three NO<sub>x</sub> exemption tests specified in Section 182(f). Of these, two are applicable for areas outside an ozone transport region; the "contribute to attainment" test described above, and the "net air quality benefits" test. The USEPA must determine, under the latter test, that the net benefits to air quality in an area "are greater in the absence of NO<sub>x</sub> reductions" from relevant sources. Based on the plain language of Section 182(f), USEPA believes that each test provides an independent basis for receiving a full or limited NO<sub>x</sub> exemption. Consequently, as stated in Section 1.4 of the December 16, 1993 USEPA guidance, "[w]here any one of the tests is met (even if another test is failed), the Section 182(f) NO<sub>x</sub> requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply."

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

<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).

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;