

**40 CFR Part 52**

[FRL-5175-4]

**Transportation Conformity; Proposed Approval of Petition for Exemption From Nitrogen Oxides Provisions, Colorado****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a petition that was submitted pursuant to section 182(f) of the Clean Air Act (as amended in 1990) (CAA) by the Denver Regional Council of Governments (DRCOG) requesting that the Denver metropolitan area, an ozone nonattainment area classified as transitional, be exempted from the requirements regarding the control of oxides of nitrogen (NO<sub>x</sub>) imposed by the Federal conformity rules. These rules waive certain NO<sub>x</sub> requirements if an exemption under section 182(f) is granted by EPA. The EPA has indicated in relevant guidance that areas (including transitional areas, like the Denver Metropolitan area) demonstrating attainment based on ambient air quality monitoring data without additional NO<sub>x</sub> reductions satisfy the exemption test.

**DATES:** Comments must be received on or before April 24, 1995.

**ADDRESSES:** Written comments should be addressed to: Douglas M. Skie, Chief, Air Quality Branch (8ART-AP), United States Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466.

Copies of the DRCOG petition and other information relevant to this action are available for inspection between 8 a.m. and 4 p.m. Monday through Friday at the following locations: United States Environmental Protection Agency, Region VIII, Air Quality Branch (8ART-AP), 999 18th Street, suite 500, Denver, Colorado 80202-2466.

Air and Radiation Docket and Information Center, United States Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460

Anyone wishing to review this petition at the Denver EPA Regional office is asked to contact the person below to schedule an appointment 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Ms. Aundrey C. Wilkins, SIP Section (8ART-AP), Air Programs Branch, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202-2466, telephone (303) 294-1379.

**SUPPLEMENTARY INFORMATION:****I. Background**

Section 182(f) of the Clean Air Act contains requirements for major stationary NO<sub>x</sub> sources in marginal and above ozone nonattainment areas and in an ozone transport region. Section 182(f) also specifies circumstances under which the NO<sub>x</sub> requirements would be limited or would not apply.

Under section 182(f)(1)(A), an exemption from the NO<sub>x</sub> requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of NO<sub>x</sub> would not contribute to attainment" of the ozone NAAQS in those areas. EPA has indicated that 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, it is clear that this test is met since "additional reductions of NO<sub>x</sub> would not contribute to attainment" of the NAAQS in that area.

EPA's general and transportation conformity rules reference the section 182(f) exemption process as a means for exempting affected areas from certain NO<sub>x</sub> conformity requirements. See 58 FR 62197, November 24, 1993, Transportation Conformity, and 58 FR 63240, November 30, 1993, General Conformity.

This interpretation is discussed in a May 27, 1994 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), entitled "Section 182(f) Nitrogen Oxides (NO<sub>x</sub>) Exemptions—Revised Process and Criteria." This memorandum revised relevant portions of previously-issued OAQPS guidance dated December, 1993, entitled "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)." Both documents address EPA's policy regarding NO<sub>x</sub> exemptions for areas outside an ozone transport region that have air quality monitoring data showing attainment. The section 182(f) NO<sub>x</sub> provisions and the guidance cited above apply to marginal and above ozone nonattainment areas, but not nonclassifiable ozone nonattainment areas (i.e., submarginal, transitional, and incomplete/no data). However, on June 17, 1994, EPA published a document entitled "Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions" (59 FR 31238) ("General Preamble"). This document provides guidance on the exemption of nonclassifiable ozone nonattainment areas, outside an ozone transport region,

from the conformity rule's NO<sub>x</sub> provisions based on air quality monitoring data showing attainment. As a transitional ozone nonattainment area, the Denver metropolitan area falls within the "nonclassifiable" category.

Pursuant to section 182(f), a person or State may petition EPA to grant an exemption which would relieve the relevant nonattainment area from certain requirements of the general and transportation conformity rule. DRCOG submitted a NO<sub>x</sub> exemption petition on May 25, 1994 and submitted supporting documentation via a letter dated August 1, 1994. Ambient air quality data provided with the DRCOG petition showed no violations of the ozone NAAQS during the three-year period from 1991 through 1993. Further, the Colorado Air Pollution Control Division (APCD) provided additional air quality data for the same time period supporting DRCOG's position that there were no violations.

**II. Analysis of the DRCOG Petition for a NO<sub>x</sub> Exemption**

EPA believes that DRCOG has demonstrated that the Denver metropolitan area qualifies for an exemption from the NO<sub>x</sub> conformity requirements based on the ambient data provided by DRCOG and APCD for 1991, 1992, and 1993. The AIRS data show no violations of ozone NAAQS during these three years.

The APCD has endorsed the DRCOG petition in a letter dated December 15, 1994, from Tom Getz, Director, APCD, to Mr. William Yellowtail, the EPA Region VIII Regional Administrator.

**III. Analysis of Other Ozone Network Issues**

EPA considered the condition of the ozone ambient air monitoring network as part of evaluating the DRCOG NO<sub>x</sub> exemption request. In 1989, EPA called attention to suspected deficiencies in the ozone ambient air monitoring network. EPA and the APCD have continued to address these concerns over the years. The APCD conducted studies of the ozone network in 1991 and 1992. A 1993 study report noted that the network was not measuring at maximum concentrations. The APCD found that the maximum concentration area covered the northwest and southwest parts of the ozone nonattainment area. The state is required to designate at least one site, but should include as many as are necessary, to adequately monitor the maximum concentration area. (40 CFR Part 58).

In 1993, it was determined that higher values appeared in the northwest part of

the maximum concentration area rather than in the southwest. Priority was given to placing new sites in the northwest.

In 1993, APCD added two new sites in the northwest—Enrel and South Boulder Creek. No violations were recorded at these two sites in 1993. However, data in AIRS show one exceedance at the South Boulder Creek site in 1993. Three exceedances must occur for there to be a violation.

These two new sites were retained and studied in 1994. The APCD has reported that no violations or exceedances occurred at either of these sites in 1994.

There are nine sites currently on the Denver ozone ambient air monitoring network, including the two new sites. The Enrel and South Boulder Creek sites continue to record higher values than other sites on the network. The one exceedance at the South Boulder Creek site in 1993 and the continued higher value readings at the same site and at the Enrel site confirm study findings that these sites are within the maximum concentration area and should remain in place.

Modifying the network to ensure monitoring of maximum concentrations is an EPA priority and is required by 40 CFR part 58. The EPA is working with APCD to ensure that at least one monitoring site is established in the southwest area in 1995. In addition, the APCD plans to conduct further study in this southwest area during the 1995 summer ozone season to more accurately identify where sites should be placed.

Although there have been concerns with the monitoring network, EPA believes that many of the concerns have been corrected and that any remaining concerns are not significant enough to deny the NO<sub>x</sub> waiver. As indicated above, no violations have been recorded by the network, even since installation of the Enrel and South Boulder Creek sites in 1993. In addition, the NO<sub>x</sub> waiver policy published in the General Preamble provides further protection by providing for granting a NO<sub>x</sub> exemption on a contingent basis as described in section IV of this **Federal Register** document. This allows EPA to revoke the exemption if violations are recorded at any monitoring sites.

#### **IV. Approval of the NO<sub>x</sub> Exemption on a Contingent Basis**

According to the General Preamble, approval of an exemption based solely on ambient air quality monitoring data shall be granted on a contingent basis, i.e., the exemptions will last for only as long as the area's monitoring data

continue to demonstrate attainment. If EPA subsequently determines that the area has violated the ozone standard, the exemption, as of the date of the determination, will no longer apply. If a violation of the ozone NAAQS is monitored in the Denver Metropolitan Area, EPA will provide notice in the **Federal Register**. Existing transportation plans and TIPs and past conformity determinations will not be affected by a determination that the NO<sub>x</sub> exemption no longer applies, but new conformity determinations would have to observe the NO<sub>x</sub> requirements of the conformity rule. The State must continue to operate an appropriate ambient air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied on for the above determination must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance, and recorded in EPA's AIRS national database.

The EPA NO<sub>x</sub> exemption guidelines, published in the General Preamble, do not require that a redesignation request be submitted with a request for a NO<sub>x</sub> transportation conformity exemption. Conditional exemptions from the transportation conformity NO<sub>x</sub> requirements do not substitute for the redesignation process.

The General Preamble stated that for areas which are relying on monitoring data for the exemption request, the notice proposing approval of the exemption request should provide opportunity for comment on the preliminary interpretations contained in the General Preamble. It should also offer opportunity for comment on the appropriateness of using monitoring data which are consistent with the requirements in 40 CFR part 58 and are recorded in AIRS as the basis of EPA's approval and rescission of the contingent NO<sub>x</sub> exemption. Accordingly, EPA requests comments regarding these matters.

#### **V. Impacts of Granting a NO<sub>x</sub> Waiver for Denver Metropolitan Area**

In ozone nonattainment areas classified as transitional, such as the Denver metropolitan area, the effect of a NO<sub>x</sub> exemption is limited solely to the issue of whether such areas may be exempted from meeting the applicable NO<sub>x</sub> requirements of the transportation and general conformity rule.

EPA also stated in the General Preamble that it plans to amend the transportation conformity rule to require that once an area's maintenance plan is approved, any previously approved NO<sub>x</sub> conformity exemption no longer applies. The area must then demonstrate

as part of its conformity determinations that the transportation plan and TIP are consistent with the motor vehicle emissions budgets for NO<sub>x</sub> where such a budget is established by the maintenance plan. As currently written, none of the transportation conformity rule's NO<sub>x</sub> requirements would ever apply to an area once such an area had received a NO<sub>x</sub> transportation conformity exemption.

#### **Regulatory Flexibility**

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA 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, EPA 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.

This proposal does not create any new requirements. Therefore, I certify that it does not have significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action.

The OMB has exempted these actions from review under Executive Order 12866.

Interested parties are invited to comment on all aspects of this proposed action.

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

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: March 10, 1995.

**William P. Yellowtail,**

*Regional Administrator.*

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#### **40 CFR Part 52**

[OH45-1-5974b; FRL 5169-3]

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

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

**ACTION:** Proposed rule.