

("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: March 25, 1999.

#### A. Stanley Meiburg,

*Acting Regional Administrator, Region 4.*

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

#### PART 52 [AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et. seq.*

#### Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(165) to read as follows:

#### § 52.2220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(165) The revisions to the maintenance plan and emission inventory for the Memphis and Shelby County Area which includes Shelby County and the City of Memphis submitted by the Tennessee Department of Environment and Conservation on September 18, 1997, and June 30, 1998, as part of the Tennessee SIP.

(i) Incorporation by reference. Non-Regulatory SIP Submittal Including I. The 1993 Ozone, Nitrogen Oxides, and Carbon Monoxide Triennial Emission Inventory; II. Revisions to the 1990 Base Year Inventory; III. Amendments to the CO and O<sub>3</sub> Maintenance Plans to Specify Conformity Emission Budgets adopted on September 10, 1997.

(A) Mobile and point source emission budgets volatile organic compounds summer season tons per day (PJVCTD3.WK1)

(B) Mobile and point source emission budgets nitrogen oxides summer season tons per day (PjNXTD3.WK1)

(C) Mobile and point source emission budgets carbon monoxide winter season tons per day (PJCOTD3.WK1)

(D) Mobile and point source emission budgets volatile organic compounds summer season tons per day

(E) Mobile and point source emission budgets nitrogen oxides summer season tons per day

(F) Mobile and point source emission budgets carbon monoxide winter season tons per day.

(ii) Other material. None.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TX 109-1-7412a; FRL-6329-2]

### Rescission of the Conditional Section 182(f) Exemption to the Nitrogen Oxides (NO<sub>x</sub>) Control Requirements for the Dallas/Fort Worth Ozone Nonattainment Area; TX

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

**ACTION:** Direct final rule.

**SUMMARY:** In this direct final action, we, the EPA, are rescinding the conditional nitrogen oxides (NO<sub>x</sub>) exemption for the Dallas/Fort Worth (DFW) ozone nonattainment area. We granted the conditional exemption under the Federal Clean Air Act (Act) on November 21, 1994, conditioned on our approval of initial modeling showing that NO<sub>x</sub> controls were not needed in the DFW area to reach attainment. However, the DFW area failed to attain EPA's National Ambient Air Quality Standard (NAAQS) for ozone by its moderate ozone deadline of November 15, 1996, and we reclassified the area to "serious" ozone nonattainment on February 18, 1998. The modeling conducted for this serious area State Implementation Plan shows control of NO<sub>x</sub> sources will help the area attain the ozone. The State of Texas requested the rescission of the conditional NO<sub>x</sub> exemption based on this new photochemical modeling. We agree with the need for future NO<sub>x</sub> controls and are rescinding the conditional exemption. The State must now implement NO<sub>x</sub> control rules and conformity determinations will have to consider NO<sub>x</sub> in the DFW area.

**DATES:** This direct final rule is effective on June 21, 1999, unless we receive adverse comments by May 20, 1999. If we receive such comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following

locations. If you want to examine these documents you should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section, (6PD-L), Multimedia Planning and Permitting Division, 1445 Ross Ave, Dallas, TX 75202-2733, telephone: (214) 665-7214.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Mr. Herbert R. Sherrow, Jr., Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone: 214-665-7237.

#### SUPPLEMENTARY INFORMATION:

##### What Action is EPA Taking?

At the request of the State of Texas, we are rescinding the conditional exemption from the NO<sub>x</sub> control requirements for the DFW ozone nonattainment area. We are not taking any action on the El Paso NO<sub>x</sub> exemption. Rescission of the section 182(f) NO<sub>x</sub> exemption means the DFW ozone nonattainment area is removed from Federal exempt status and the State is required to immediately implement its existing NO<sub>x</sub> Reasonably Available Control Technology (RACT), New Source Review (NSR), vehicle Inspection and Maintenance (I/M) program, and general and transportation conformity requirements.

However, because of the lead time needed for sources to be able to comply, we are also setting a final compliance date for implementation of the NO<sub>x</sub> RACT controls. Final NO<sub>x</sub> RACT compliance is required as expeditiously as practicable, but no later than March 31, 2001. The NO<sub>x</sub> RACT final compliance date is consistent with the State's rule.

##### What is a NO<sub>x</sub> Exemption?

The Act states, in section 182(f), that an exemption from NO<sub>x</sub> controls may be given to an ozone nonattainment area if the Administrator determines that NO<sub>x</sub> controls would not help the area attain the ozone NAAQS. Texas sent us modeling which showed that the DFW area could attain the NAAQS by additional controls for Volatile Organic Compounds only; therefore, new NO<sub>x</sub> controls would not be needed. The State requested a NO<sub>x</sub> exemption for the DFW area and we granted a conditional exemption effective November 21, 1994. In our **Federal Register** notice

approving the exemption we said that if we later determine that NO<sub>x</sub> reductions are beneficial, based on new photochemical modeling, the area would be removed from exempt status.

##### Why is EPA Taking This Action?

We are taking this action because the State requested the rescission, because the condition for the exemption has not been met, and because the area's modeling now shows the need for NO<sub>x</sub> reductions to achieve attainment.

The Texas Natural Resource Conservation Commission (TNRCC) sent a letter, dated November 13, 1998, from Mr. Barry McBee, Chairman of the TNRCC at the time of the letter, to Mr. Gregg Cooke, EPA Region 6, Regional Administrator, requesting the rescission.

The State conducted new photochemical modeling which shows NO<sub>x</sub> controls are now needed for the DFW area to attain the ozone NAAQS. We reviewed the new modeling and find it supports the need for NO<sub>x</sub> controls.

We also conditioned the exemption on our approving initial modeling showing that NO<sub>x</sub> was not needed. Before we could act on the initial modeling, monitoring data showed the area did not attain the NAAQS by November 15, 1996, which was the attainment date for moderate ozone areas. Section 181(b)(2)(A) requires us to reclassify ozone areas to the next higher nonattainment classification within six months after the applicable attainment deadline if we find the area has not attained the ozone standard by that date. Therefore, instead of acting on the initial modeling, we reclassified the area from "moderate" to "serious" nonattainment on February 19, 1998, and the state initiated new modeling. The condition for receiving full approval of the exemption has never been and cannot now be met by Texas.

##### What Actions has the State Taken?

The State adopted its NO<sub>x</sub> RACT and New Source Review (NSR) rules on February 24, 1999, and they became effective on March 21, 1999.

The state's approved Inspection and Maintenance (I/M) program for the DFW area does not allow NO<sub>x</sub> increases. For a discussion of the State's vehicle I/M program, please refer to the conditional interim approval in 62 FR 3718. Therefore, the State does not need to revise its DFW I/M rule as a result of this action.

##### Who do the NO<sub>x</sub> RACT and NSR rules apply to?

The NO<sub>x</sub> RACT rules will apply to you if you own or operate a major

source of NO<sub>x</sub> emissions. A major source is defined as any stationary source, or group of sources, located in a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons of NO<sub>x</sub> a year. Please see TNRCC rules, Chapter 117—Control of Air Pollution from Nitrogen Compounds for additional information.

The NSR rules apply to you if you are an owner or operator planning to construct or modify a source that has the potential to emit at least 50 tons of NO<sub>x</sub> a year. Please see TNRCC rules, Chapter 116—Control of Air Pollution By Permits for New Construction or Modification, Subchapter B: New Source Review Permits, Division 5: Nonattainment New Source Review for additional information.

##### When do I Have To Comply With the NO<sub>x</sub> RACT and NSR Rules?

The NO<sub>x</sub> RACT final compliance date is as expeditiously as practicable but not later than March 31, 2001; and the NSR compliance date is March 21, 1999. Under the State's NSR rule, permit applications determined to be complete prior to March 21, 1999, are not subject to the new NO<sub>x</sub> requirements.

##### What is the Effect of Rescinding the NO<sub>x</sub> Exemption on Conformity?

The NO<sub>x</sub> waiver for transportation and general conformity determinations no longer applies after the effective date of this rule.

The NO<sub>x</sub> waiver exempted the North Central Texas Council of Governments (NCTCOG) from the transportation conformity rule's "build-no build" test for NO<sub>x</sub> emissions. After the effective date of this notice, the NCTCOG must observe the NO<sub>x</sub> requirements in future transportation conformity determinations on transportation improvement programs, transportation plans, and projects. See the State Transportation Conformity Rule, 30 Texas Administrative Code (TAC) Chapter 114, and 40 CFR part 93 subpart A for more information. The State does not need to revise its transportation conformity rule as a result of this action.

The NO<sub>x</sub> requirements also apply in future general conformity determinations. The NO<sub>x</sub> waiver exempted Federal projects from general conformity determinations regarding NO<sub>x</sub>. Federal agencies that must make a conformity determination for Federal actions in the DFW area according to the State's General Conformity Rule are now subject to the NO<sub>x</sub> requirements. See the State General Conformity Rule, 30 TAC Section 101.30, and CFR part 51 subpart W for more information. The State does not need to revise its General

Conformity Rules as a result of this action.

Existing conformity determinations will not be affected by this rescission of the NO<sub>x</sub> exemption and will continue to be valid to the same extent as generally allowed under the rules, but new conformity determinations will have to observe the NO<sub>x</sub> requirements.

#### **Where Can I Get Background Information on the Exemption?**

We approved the exemption on November 21, 1994, and published the approval in a **Federal Register** notice, 59 FR 60709, November 28, 1994. We proposed approval of the exemption in a **Federal Register** notice, 59 FR 44386, August 29, 1994.

#### **What Further Action Must EPA Take?**

We plan to review the State's RACT and NSR NO<sub>x</sub> submissions for approval in separate rulemaking actions because those submissions will be contained in a broader SIP that also includes Volatile Organic Compounds controls, modeling, and rate of progress requirements. The State submitted this SIP March 18, 1999.

#### **What is the Process for EPA Approval of This Action?**

We are publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the action if adverse comments are filed. This rule will be effective on June 21, 1999, without further notice unless we receive adverse comment by May 20, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** telling the public that the rule will not take effect. If this happens, we will address all public comments in a subsequent final rule based on the proposed rule. We will not initiate a second comment period on this action. Any parties interested in commenting must do so at this time.

#### **Administrative Requirements**

##### *A. Executive Order (E.O.) 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

##### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Removal of the NO<sub>x</sub> exemption under section 182(f) of the Act is an action that affects the status of a geographical area and does not directly regulate any entities. See *Mid-Tex Electric Cooperative Inc. v. FERC*, 773 F.2d 327 (D.C. 1985) (Agency's certification need only consider the rule's impact on entities subject to the requirements of the rule. To the extent that the area must adopt new regulations, we will review the effect of those actions at the time the State submits those regulations. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

##### *C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, Local, or Tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the rescission action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Statutory requirements that previously were waived for the DFW area are now applicable. To the extent that the State must adopt new regulations, we will review the effect of these actions at the time the State submits the regulations.

##### *D. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 21, 1999.

##### *E. Executive Order 12875*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, Local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, Local and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, Local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule implements statutory provisions but would not impose a mandate on State, Local, or Tribal governments. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

##### *F. Executive Order 13084*

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O.

13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule implements requirements specifically set forth by the Congress in the Federal Clean Air Act without the exercise of any discretion by EPA. However, today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any new requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### G. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the order has the potential to influence the regulation.

This rule is not subject to E.O. 13045 because it implements a previously promulgated health or safety-based Federal standard.

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 14, 1999.

**Carol M. Browner,**  
*Administrator.*

Part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart SS—Texas

2. Section 52.2308 is amended by adding paragraph (g) to read as follows:

#### § 52.2308 Area-wide nitrogen oxides (NO<sub>x</sub>) exemptions.

\* \* \* \* \*

(g) The Texas Natural Resource Conservation Commission submitted a letter to EPA requesting rescission of the previously-granted conditional exemption from the NO<sub>x</sub> control requirements of section 182(f) of the Act for the Dallas/Fort Worth ozone nonattainment area. The letter was sent on November 13, 1998. The conditional exemption was granted on November 21, 1994, conditioned upon EPA approving the modeling portion of the DFW attainment demonstration SIP. The conditional exemption was also approved on a contingent basis. The modeling-based exemption would last only as long as the area's modeling continued to demonstrate attainment without the additional NO<sub>x</sub> reductions required by section 182(f). The State's request is based on new photochemical modeling which shows the need for NO<sub>x</sub> controls to help the area attain the ozone National Ambient Air Quality Standards. Furthermore, EPA would not and could not approve the earlier attainment demonstration SIP modeling upon which the condition was based.

(1) On June 21, 1999, the conditional NO<sub>x</sub> exemption for the DFW area granted on November 21, 1994 is rescinded. Upon rescission, the Federal requirements pertaining to NO<sub>x</sub> Reasonably Available Control Technology (RACT), New Source Review, vehicle Inspection/Maintenance, general and transportation conformity now apply.

(2) The NO<sub>x</sub> RACT final compliance date must be implemented as

expeditiously as practicable, but no later than March 31, 2001.

[FR Doc. 99-9868 Filed 4-19-99; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[OH 122-1a; FRL-6328-6]

#### Approval and Promulgation of Maintenance Plan Revisions; Ohio

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

**ACTION:** Direct final rule.

**SUMMARY:** We are approving a March 18, 1999 request from Ohio for a State Implementation Plan (SIP) revision of the Stark County (Canton, Ohio) ozone maintenance plan. The maintenance plan revision establishes new transportation conformity mobile source emissions budgets for the year 2005. We are approving the allocation of a portion of the safety margin for volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) to the area's 2005 mobile source emissions budgets for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations.

**DATES:** This rule is effective on June 21, 1999, unless EPA receives adverse written comments by May 20, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353-8656 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency,