

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA-60-1-7551; FRL-7207-9]

Approval and Promulgation of Implementation Plans; Louisiana; Rescission of the Sections 182(f) and 182(b)(1) Exemptions to the Nitrogen Oxides (NO_x) Control Requirements for the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, we, the EPA, are proposing to rescind the nitrogen oxides (NO_x) exemptions for the Baton Rouge ozone nonattainment area. On January 26, 1996 (61 FR 2438), we granted an exemption under section 182(f) of the Clean Air Act (CAA) from the reasonably available control technology (RACT) and nonattainment new source review (NSR) requirements for major stationary sources of NO_x, as well as the vehicle inspection/maintenance (I/M) NO_x requirements and general conformity NO_x requirements. On February 27, 1996 (61 FR 7218), we also granted an exemption for the Baton Rouge ozone nonattainment area from the transportation conformity NO_x requirements. We based our approval of the exemptions on modeling showing that NO_x controls would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. In granting the exemptions, EPA reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_x emission controls. Photochemical modeling recently conducted for the Baton Rouge area State Implementation Plan (SIP) indicates that control of NO_x sources will help the area attain the NAAQS for ozone. The State of Louisiana has, therefore, requested that EPA rescind the NO_x exemption based on this new modeling. If EPA finalizes the rescissions, the State will be required to implement the NO_x requirements for RACT, NSR, vehicle I/M, and general and transportation conformity in the Baton Rouge area.

DATES: Comments must be received on or before June 6, 2002.

ADDRESSES: All comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733; Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6691.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

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I. What Action Is EPA Proposing to Take?

At the request of the State of Louisiana, we are proposing to rescind the sections 182(f) and 182(b)(1) exemptions from certain CAA NO_x requirements for the Baton Rouge ozone nonattainment area. Rescission of these NO_x exemptions would remove the Baton Rouge ozone nonattainment area from exempt status and the State would be required to immediately implement the Federal NO_x RACT, NSR, vehicle I/M, and general and transportation conformity requirements.

II. What Is a NO_x Exemption?

The CAA states, in section 182(f), that an exemption from NO_x controls may be given to an ozone nonattainment area if the Administrator determines that NO_x controls would not contribute to attainment of the ozone NAAQS. On November 17, 1994, Louisiana submitted a petition to the EPA requesting that the Baton Rouge serious ozone nonattainment area¹ be exempted

from requirements to implement NO_x controls pursuant to section 182(f) of the CAA. The exemption request, which addressed NO_x RACT, NSR, vehicle I/M, general and transportation conformity requirements, was based on modeling demonstrating additional NO_x emission controls within the nonattainment area would not contribute to attainment of the ozone NAAQS.

In April 1995, EPA changed the procedural mechanism through which a NO_x exemption from the transportation conformity requirements would be granted.² Instead of a petition under section 182(f), transportation conformity NO_x exemptions for ozone nonattainment areas subject to section 182(b)(1) of the CAA (i.e., moderate and above areas) would need to be submitted as a SIP revision. The Baton Rouge ozone nonattainment area is classified as serious and, thus, is subject to section 182(b)(1). Accordingly, on July 25, 1995, the State of Louisiana submitted to EPA, pursuant to section 182(b)(1), a SIP revision requesting an exemption from the transportation conformity NO_x requirements. The State based the section 182(b)(1) exemption request on the same modeling relied on for the earlier section 182(f) exemption request.

We approved the sections 182(f) and 182(b)(1) exemptions on January 26, 1996 (61 FR 2438), and February 27, 1996 (61 FR 7218), respectively. In our **Federal Register** notices approving the exemptions, we reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_x emission controls.

III. Why Is EPA Proposing To Take This Action?

We are proposing to take this action because the State has requested rescission of the NO_x waivers based on revised modeling, and we have evaluated the new modeling and find that it appears to demonstrate that NO_x controls will contribute to attaining the ozone NAAQS. Specifically, on September 24, 2001, the State of Louisiana submitted to EPA a request to rescind the section 182(f) NO_x exemption for the Baton Rouge ozone nonattainment area. The State based its request on photochemical modeling recently conducted for the Baton Rouge

Pointe Coupee has since been redesignated to ozone attainment. See 61 FR 37833, dated July 22, 1996.

² For a detailed discussion of the basis for the procedural change, please reference EPA's October 6, 1995, proposed approval of the Baton Rouge transportation conformity NO_x exemption (60 FR 52348).

¹ At the time, the Baton Rouge serious ozone nonattainment area consisted of six parishes: Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge. However,

area demonstrating that NO_x reductions are needed in order for the area to attain the one-hour ozone standard. In addition, on December 31, 2001, the State submitted to EPA a revision to the Baton Rouge SIP requesting rescission of the transportation conformity NO_x exemption based on this photochemical modeling.

As stated previously, when we approved the sections 182(f) and 182(b)(1) NO_x exemptions, we reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_x emission controls. Based on our preliminary review of the recently completed modeling, it appears that additional NO_x controls are now needed in order for the Baton Rouge area to attain the ozone standard.

IV. What Actions Has The State Taken?

The State has taken a number of actions aimed at NO_x control consistent with its revised modeling showing that NO_x reductions will contribute to achieving the ozone NAAQS.

Specifically, on December 20, 2001, the State of Louisiana adopted revisions to its NSR regulations to address the NO_x NSR requirements. See Louisiana Administrative Code (LAC) 33:III.504, "Nonattainment New Source Review Procedures." The rule revisions were effective on that date. The NO_x NSR requirements apply to owners or operators planning to construct or modify a source, in the Baton Rouge serious ozone nonattainment area, that emits or has the potential to emit 50 tons per year or more of NO_x. The compliance date for the State's NO_x NSR rule is December 20, 2001.

In addition, on February 20, 2002, the State adopted NO_x control regulations. See LAC 33:III.Chapter 22, "Control of Emissions of Nitrogen Oxides (NO_x). The rules were effective on that date. The regulations establish requirements for reducing emissions of NO_x from industrial sources in a nine-parish control region, which includes the five-parish Baton Rouge ozone nonattainment area (Ascension, East Baton Rouge, Iberville, Livingston and West Baton Rouge Parishes), as well as East Feliciana, West Feliciana, St. Helena, and Pointe Coupee Parishes. Affected facilities include those with one or more affected point sources³ that collectively emit, or have the potential to emit, fifty (50) tons per year or more of NO_x. The rules are intended not only to satisfy the Federal NO_x RACT

requirements applicable to the Baton Rouge ozone nonattainment area, but are also a key component of a broader control strategy to bring the Baton Rouge area into compliance with the one-hour ozone standard. The State's NO_x control rules' final compliance date is as expeditious as possible and varies from source to source, but no compliance date is later than May 1, 2005.

Lastly, on December 31, 2001, the State submitted to EPA a revision to the vehicle I/M SIP for the Baton Rouge area to address the I/M NO_x requirements.

V. What Would Be the Effect of Rescinding the NO_x Exemptions on Conformity?

The NO_x exemptions for transportation and general conformity determinations would no longer apply after the effective date of a final rule. The implications of rescinding the transportation and general conformity NO_x exemptions are discussed below.

The section 182(b)(1) transportation conformity NO_x exemption waived the Federal transportation conformity rule's "build-no build" test for NO_x emissions. The "build-no build" test applies to ozone nonattainment areas without motor vehicle emissions budgets. See 40 CFR 93.119. However, on July 2, 1999 (64 FR 35930), EPA approved motor vehicle emissions budgets for VOC and NO_x as part of its approval of the 1999 Attainment Demonstration for the Baton Rouge ozone nonattainment area. Because the State of Louisiana now has established motor vehicle emission budgets for volatile organic compounds (VOC) and NO_x as part of its approved SIP, rescission of the transportation conformity NO_x exemption has no practical implications for the Baton Rouge ozone nonattainment area. If the section 182(b)(1) NO_x exemption is rescinded, the State of Louisiana would not need to revise its transportation conformity rules. See LAC 33:III, Chapter 14, Subchapter B, Section 1432, and 40 CFR 93.118 for more information.

The section 182(f) NO_x waiver exempted Federal projects from general conformity determinations with respect to NO_x. If the exemption is rescinded, Federal agencies making future general conformity determinations for Federal projects in the Baton Rouge area would now be subject to the NO_x requirements outlined in the State's general conformity rules. The State would not need to revise its general conformity rules if the section 182(f) NO_x waiver is rescinded. See LAC 33:III, Chapter 14,

Subchapter A, and 40 CFR part 51 subpart W for more information.

Existing conformity determinations would not be affected by the rescission of the sections 182(f) and 182(b)(1) NO_x exemptions and will continue to be valid to the same extent as generally allowed under the rules; however, new conformity determinations will have to observe the NO_x requirements.

VI. What Would Be the Effect of Rescinding the Section 182(f) NO_x exemption on Vehicle I/M?

The vehicle I/M NO_x requirements would apply to the Baton Rouge ozone nonattainment area after the effective date of this rule. As stated previously, on December 31, 2001, the State submitted to EPA a revision to the vehicle I/M SIP for the Baton Rouge area to address the I/M NO_x requirements. The SIP includes a revised program design intended to meet the Federal low enhanced I/M performance standard for VOC and NO_x.⁴ See 40 CFR 51.351.

VII. What Further Actions Would EPA Need To Take?

We will be reviewing the State's NO_x control regulations to ensure that they meet the requirements for NO_x RACT. We will also be reviewing the revised NSR regulations to ensure that they satisfy the Federal NO_x NSR requirements. We will be acting upon these regulations in separate rulemaking actions because they are elements of a broader SIP for the Baton Rouge ozone nonattainment area that was submitted to EPA on December 31, 2001. This SIP includes, among other things, the photochemical modeling on which the State's NO_x exemption rescission requests are based. We will be acting on this modeling—and other elements of this SIP submittal—in a separate rulemaking action.

In addition, we will be reviewing the revised vehicle I/M SIP submitted to EPA on December 31, 2001, to determine whether it meets the Federal I/M program requirements (including NO_x). We will act upon this SIP revision in a future rulemaking action on that subject.

VIII. Where Can I Get Background Information on the Exemptions?

As discussed above, the sections 182(f) and 182(b)(1) NO_x exemptions were approved on January 26, 1996 (61 FR 2438), and February 27, 1996 (61 FR

³ Please see LAC 33:III.2201, "Affected Facilities in the Greater Baton Rouge NO_x Control Area," for definitions, exemptions, etc.

⁴ The new program design replaces the fuel inlet pressure test (which was not implemented) with on-board diagnostics. The existing anti-tampering check and gas cap pressure test are still applicable. See LAC 55:III.Chapter 8, "Motor Vehicle Inspections."

7218), respectively. We proposed approval of the sections 182(f) and 182(b)(1) NO_x exemptions on August 18, 1995 (60 FR 43100), and October 6, 1995 (60 FR 52349), respectively.

A copy of the recently completed modeling, NO_x control and NSR regulations, and I/M SIP revision that were submitted by the State to EPA are available from EPA and LDEQ at the addresses provided above.

IX. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not

subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 1, 2002.

Christine Todd Whitman,
Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC42-200220(a); FRL-7207-1]

Approval and Promulgation of Implementation Plans; South Carolina: Approval of Miscellaneous Revisions to The South Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the South Carolina Department of Health and Environmental Control, through the State of South Carolina, for the purpose of amending regulations relating to volatile organic compounds (VOC's), prevention of significant deterioration

(PSD) and other miscellaneous rules. In the Final Rules section of this **Federal Register**, the EPA is approving the South Carolina SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before June 6, 2002.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Randy Terry, 404/562-9032. South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201-1708.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562-9032, or by electronic mail at terry.randy@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: April 8, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7205-8]

Utah: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).