



**OZONE  
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COMMISSION**

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Connecticut

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Maine

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Massachusetts

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New Jersey

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Pennsylvania

Rhode Island

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Virginia

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September 29, 2004

Air Docket  
U.S. Environmental Protection Agency  
Attention Docket ID No. OAR-2003-0079  
Mail Code: 6102T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: Comments on Availability of Draft Nitrogen Oxides Exemption Guidance for Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard,  
Docket ID No. OAR 2003-0079  
Document ID No. OAR 2003-0079-0724

To Whom It May Concern:

The Ozone Transport Commission (OTC) is providing these comments to Docket ID No. OAR-2003-0079 in response to U.S Environmental Protection Agency's (EPA's) Notice of Availability of "Draft Nitrogen Oxides Exemption Guidance for Proposed Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard." In short, for the reasons expressed below, we believe EPA must re-notice and extend the public comment period on this proposal.

As a multi-state organization created under the Clean Air Act (CAA), we are responsible for advising EPA on transport issues and for developing and implementing regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions. Our members are: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia.

The implementation of the 8-Hour Ozone National Ambient Air Quality Standard is undoubtedly at the core of OTC's work and purpose. The OTC plays an important role by representing and communicating common goals among our member states however, in this instance, we have been unable to serve in that capacity due to a series of inaccuracies and missteps in the process for making this document available for comment.

To date, the document has not been made available for comment via the Electronic Docket or through the alternate link provided on EPA's website via the Federal Register Notice (September 1, 2004, Volume 69, Number 169). As a result, there has been insufficient time for comment on any of the proposed guidance included in this announcement. An explanation of the attempts made to obtain this document, and the subsequent responses follows:

The announcement of the availability of the NOx exemption guidance was published in the Federal Register on September 1, 2004 and lists two avenues to obtain the document:

1. EPA's web site at: <http://www.epa.gov/ttn/naags/ozone/o3imp8hr>
2. EDOCKET at: <http://www.epa.gov/edocket/>

The link to EPA's web site leads to a screen titled, "Sorry, that page was not found." The link to EDOCKET leads to an Adobe Acrobat version of the Federal Register Notice, but no copies of the actual document.

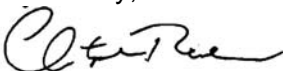
Both of these links were tried repeatedly and on September 9, 2004 a phone call was placed to the EDOCKET. OTC was informed that, contradictory to the Federal Register Notice, the document was "too large" to be placed online, but could be sent via e-mail if requested. An email request was submitted September 9, 2004, immediately following the conversation.

On September 17, 2004 a response was provided explaining that, "the scan machine was down," but that the request would be completed by the middle of the following week. On September 23, 2004 (five business days before the comment period closed) a document was received via four separate emails. The document was entitled, "Additional Options Considered for Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." It was not the document requested. Other organizations have had similar difficulties.

To date, OTC has still not received a copy of the correct document and neither of the links identified in the Federal Register lead to the correct document. We have since determined the link published in the Federal Register was wrong – a "g" published instead of a "q" in the "naaq" field. Of course, we, and anyone else clicking on the link, would get the error message we describe.

The work being done by EPA, OTC, states and many other organizations working to ensure the successful implementation of the 8-hour ozone standard is tremendous, and an undertaking critically important to public health and the environment. Public review and comment is a key aspect of this rule development process. Clearly, the unavailability of the document has resulted in insufficient time to allow for thoughtful or meaningful deliberation. As a result, OTC requests that the document be made available through the appropriate channels referenced in the Federal Register notice and that the comment period be extended for a sufficient period for us and other interested parties to receive, review and comment meaningfully on the proposal. Through recent communication we understand that EPA is not inclined to grant such a request in the interest finalizing the rule on schedule. While we disagree that a short extension would compromise such a schedule, we intend to submit substantive comments as expeditiously as possible and hope that they are seriously considered. Thank you.

Sincerely,



Christopher Recchia,  
Executive Director

cc: OTC Members