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**List of Subjects in 32 CFR part 311**

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

1. The authority citation for 32 CFR part 311 continues to read as follows:

**Authority:** Pub. L. 93-579, 88 Stat 1896 (5 U.S.C.552a).

2. Section 311.7, paragraphs (c)(1) is added as follows:

**§ 311.7 Procedures for exemptions.**

\* \* \* \* \*

(c) *Specific exemptions.* \* \* \*

(1) *System identifier and name*-DGC 16, Political Appointment Vetting Files.

*Exemption.* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections (d)(1) through (d)(5).

*Authority.* 5 U.S.C. 552a(k)(5).

*Reasons.* From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source.

\* \* \* \* \*

Dated: June 20, 1995.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[OH73-2-7033, OH74-2-7034, OH75-2-7035; FRL-5257-3]

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

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

**ACTION:** Final rule.

**SUMMARY:** The USEPA is approving, in final, 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 (Butler, Clermont, Hamilton and Warren Counties); Cleveland (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); Columbus (Delaware, Franklin, and Licking Counties); Youngstown (Mahoning and Trumbull Counties); Steubenville (Columbiana and Jefferson 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>.

**EFFECTIVE DATE:** This action will be effective August 14, 1995.

**ADDRESSES:** A copy of the exemption requests are available for inspection 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 designated 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 modifications that are major for NO<sub>x</sub>. For nonattainment areas classified as moderate and above, the State is also required to adopt reasonably available control technology (RACT) rules for major stationary sources of NO<sub>x</sub>.

Section 182(f) further provides that, for areas outside an ozone transport region (OTR), 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, 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 maintenance plan, as specified in the transportation conformity rule.

Until 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 the proposed transportation plan and program were not 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.

#### 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.

#### 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 inspection and maintenance (I/M) program.

#### 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,"; a USEPA memorandum from G. T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch, OAQPS, dated January 12, 1995, entitled "Scope of Nitrogen Oxides (NO<sub>x</sub>) Exemptions,"; a USEPA memorandum from John S. Seitz, Director, OAQPS, dated February 8, 1995, 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 (Delaware, Franklin and Licking Counties), Youngstown (Mahoning and Trumbull Counties), Steubenville (Columbiana and Jefferson Counties), Preble County, and Clinton County. Additionally, USEPA is granting exemptions from the nonattainment area NSR requirements for new sources and modifications that are major for NO<sub>x</sub>, for the following marginal ozone nonattainment areas: Canton (Stark County), Columbus (Delaware, Franklin and Licking Counties), and Youngstown (Mahoning and Trumbull Counties). The NSR requirements do not apply to the Steubenville area, Preble County, or Clinton County.

This exemption request is based upon three years (1991–1993) of ambient air monitoring data which demonstrate that the NAAQS for ozone has been attained in each of these areas without additional reductions of NO<sub>x</sub> emissions.

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

In a letter dated November 15, 1994, the OEPA submitted a request for an exemption from the NO<sub>x</sub> 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 (1992–1994) of ambient air monitoring data which demonstrate that the NAAQS for ozone has been attained in the Ohio portion of the interstate 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 also based upon ambient air monitoring for ozone which demonstrate that the NAAQS for ozone has been attained in this area without additional reductions of 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 (1992–1994) 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

The 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 in 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 (the average number of expected exceedances for this three year period are also presented):

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 (the average number of expected exceedances for this three year period are also presented):

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: Butler 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 number of expected exceedances were not greater than 1.0, and thus, the areas are currently meeting the NAAQS for ozone.

#### **V. Exemptions from the Conformity Provisions**

##### *Background*

With respect to conformity, USEPA's conformity rules<sup>1,2</sup> currently provide a NO<sub>x</sub> waiver from certain requirements if an area receives a Section 182(f) exemption. Under the transportation conformity rule, a NO<sub>x</sub> waiver relieves an area of the requirement to meet the "build/no build" and "less-than-1990-baseline" tests which apply during the period before State Implementation Plans (SIP) with emissions budgets are approved. In a notice published in the June 17, 1994 **Federal Register** (59 FR 31238, 31241), entitled "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," USEPA acknowledged that the rule should also have provided 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 published transportation conformity rules. The USEPA is in the process of amending the conformity rule so as to remedy the problem.

##### *Approval Under Section 182(b)*

An issue concerning the appropriate Act authority for granting transportation-related NO<sub>x</sub> waivers has been raised by several commenters. NO<sub>x</sub> exemptions are provided for in two separate parts of the Act, Section 182(b)(1) and Section 182(f). These commenters argue that exemptions from the NO<sub>x</sub> transportation conformity requirements must follow the process provided in Section 182(b)(1), since this is the only Section explicitly referenced by Section 176(c)(3)(A)(iii) in the Act's transportation conformity provisions.

With certain exceptions, USEPA agrees that Section 182(b)(1) is the appropriate authority under the Act for waiving the transportation conformity rule's NO<sub>x</sub> "build/no build" and "less-than-1990" tests, and is planning to amend the rule to be consistent with the statute. However, USEPA believes that this authority is only applicable with respect to those areas that are subject to Section 182(b)(1).

The change in authority for granting NO<sub>x</sub> waivers from Section 182(f) to Section 182(b)(1) has different impacts for areas subject to Section 182(b)(1) depending on whether the area is relying on "clean air" data or on modeling data. Areas relying on modeling data must meet the procedure established under Section 182(b)(1), including submitting the exemption request as part of a SIP revision. The USEPA may not take action on exemptions for such areas until the rulemaking amending the transportation conformity rule to establish Section 182(b)(1) as the appropriate authority for granting such relief has been completed. "Clean data" areas that would otherwise be subject to Section 182(b)(1), such as Cincinnati and Cleveland, will be relieved of the transportation conformity rule's interim period NO<sub>x</sub> requirements at such time as USEPA takes final action implementing its recently-issued policy regarding the applicability of Section 182(b)(1) requirements for areas demonstrating attainment of the ozone NAAQS based on "clean data". This policy is contained in a May 10, 1995, memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration,

and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," which should be referred to for a more thorough discussion. The aspect of the policy that is relevant here is USEPA's determination that the Section 182(b)(1) provisions regarding reasonable further progress (RFP) and attainment demonstrations may be interpreted so as not to require the SIP submissions otherwise called for in Section 182(b)(1) if an ozone nonattainment area that would otherwise be subject to those requirements is in fact attaining the ozone standard (i.e., attainment of the NAAQS is demonstrated with 3 consecutive years of complete, quality-assured, air-quality monitoring data). Any such "clean data" areas, under this interpretation, would no longer be subject to the requirements of Section 182(b)(1) once USEPA takes final rulemaking action adopting the interpretation in conjunction with its determination that the area has attained the standard. At that time, such areas would be treated like ozone nonattainment areas classified marginal and below, and hence eligible for NO<sub>x</sub> waivers from the interim-period transportation conformity requirements by obtaining a waiver under Section 182(f), as described below.

Marginal and below ozone nonattainment areas (which represents the majority of the areas USEPA is taking action on today) are not subject to Section 176(c)(3)(A)(iii) because they are not subject to Section 182(b)(1), and general federal actions are also not subject to Section 176(c)(3)(A)(iii) (and, hence, are not subject to Section 182(b)(1) either). These areas, however, are still subject to the conformity requirements of Section 176(c)(1), which sets out criteria that, if met, will assure consistency with the SIP. The USEPA believes it is reasonable and consistent with the Act to provide relief under Section 176(c)(1) for areas not subject to Section 182(b)(1) from applicable NO<sub>x</sub> conformity requirements where the Agency has determined that NO<sub>x</sub> reductions would not be beneficial, and to rely, in doing so, on the NO<sub>x</sub> exemption tests provided in Section 182(f) for the reasons given below.

The basic approach of the Act is that NO<sub>x</sub> reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach but also includes specific substantive tests which provide a basis for USEPA to determine when NO<sub>x</sub> requirements should not apply.

<sup>1</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>2</sup>"Determining Conformity of General Federal Actions to State or Federal Implementation Plans: Final Rule," November 30, 1993 (58 FR 63214).

Whether under Section 182(b)(1) or Section 182(f), where USEPA has determined that NO<sub>x</sub> reductions will not benefit attainment or would be counterproductive in an area, USEPA believes it would be unreasonable to insist on NO<sub>x</sub> reductions for purposes of meeting RFP or other milestone requirements. Moreover, there is no substantive difference between the technical analysis required to make an assessment of NO<sub>x</sub> impacts on attainment in a particular area whether undertaken with respect to mobile source or stationary source NO<sub>x</sub> emissions. Consequently, USEPA believes that granting relief from the NO<sub>x</sub> conformity requirements of Section 176(c)(1) under Section 182(f) in these cases is appropriate.

#### Action

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

The USEPA is approving, as proposed in the January 17, 1995 **Federal Register** (60 FR 3361), the transportation and general conformity exemption requests submitted under Section 182(f) of the Act for the following areas: Canton (Stark County), Columbus (Delaware, Franklin and Licking Counties), Youngstown (Mahoning and Trumbull Counties), Steubenville (Columbiana and Jefferson Counties), Preble County, and Clinton County.

##### \* Moderate and Above Ozone Nonattainment Areas

The USEPA is delaying action at this time on approval of the transportation conformity exemptions for the Cincinnati and Cleveland ozone nonattainment areas. As explained above, USEPA must complete its rulemaking determining that these areas have attained the ozone standard and, in conjunction, implementing its interpretation that the SIP submissions otherwise called for in Section 182(b)(1) no longer apply. Thus, further action on this approval will occur only as such time as USEPA takes final action.

#### VI. 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 the Ohio portion of the Cincinnati-Hamilton 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 the Ohio portion of the Cincinnati-Hamilton Interstate 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 rules if a violation of the ozone standard is monitored in the interstate area (which includes the following Counties located in the State of Kentucky: Boone, Kenton, and Campbell).

##### *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."

On November 1, 1994, the State of Ohio submitted a redesignation request to attainment of the ozone NAAQS for the Cleveland moderate 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 rules if a violation of the ozone standard is monitored in the area.

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

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

For the Cincinnati area, the local area government has 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>3</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 government has 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 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.

<sup>3</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."

### VIII. Withdrawal of the Exemptions

Until an area has been redesignated to attainment, continuation of the Section 182(f) exemptions granted herein is contingent upon continued monitoring and continued attainment of the ozone NAAQS in the affected area(s). 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) for the affected area(s). The NO<sub>x</sub> RACT requirements would also be applicable, with a reasonable time provided as necessary to allow major stationary sources subject to the RACT requirements to purchase, install and operate the required controls. The USEPA believes that the State may provide sources a reasonable time period after the USEPA determination to actually meet the RACT emission limits. The USEPA expects such time period to be as expeditious as practicable, but in no case longer than 24 months.

If a nonattainment area is redesignated to attainment of the ozone NAAQS, but then a violation of the ozone NAAQS occurs, NO<sub>x</sub> RACT shall be implemented as stated in the maintenance plan.

### IX. Notice of Proposed Rulemaking and Responses to Comments

The USEPA published a notice proposing to approve the exemption requests for the Cincinnati, Cleveland, and other nonattainment areas in Ohio in the January 17, 1995 **Federal Register** (60 FR 3361). The USEPA received comments supporting and adverse to this proposed action. Copies of all comments have been placed in the docket file. The following entities submitted adverse or supporting comments:

*Submitting Entity (date received by USEPA):* Natural Resources Defense Council (08-24-94); Columbia Gas Transmission Corporation (02-09-95); Private Citizen (02-14-95); LTV Steel Company (02-16-95); Ohio Sierra Club (02-21-95); Akron Regional Infrastructure Alliance (03-29-95); State of New Hampshire—Department of Environmental Services (03-30-95); Northeast States for Coordinated Air Use Management (03-30-95); Ameritech

(03-31-95); Southern Environmental Law Center (04-03-95); Private Citizen (04-03-95); Environmental Defense Fund (04-03-95); Greater Cleveland Growth Association (04-03-95); Portage County Board of Commissioners (04-04-95); State of New York—Department of Environmental Conservation (04-10-95); State of New Jersey—Department of Environmental Protection (04-10-95); Executive of the County of Summit (04-11-95).

Some of the adverse comments addressed similar points. The USEPA responds to these comments by issue as follows:

*Procedural Comments:* Several commenters argued that USEPA should not approve the waiver requests at issue on procedural grounds. NO<sub>x</sub> exemptions are provided for in two separate parts of the Act, Section 182(b)(1) and Section 182(f). Commenters took the position that because the NO<sub>x</sub> exemption tests in Subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," that all NO<sub>x</sub> exemption determinations by USEPA, including exemption actions taken under the petition process established by Subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated to attainment for the ozone NAAQS. These commenters also argue that even if the petition procedures of Subsection 182(f)(3) may be used to relieve areas of certain NO<sub>x</sub> requirements, exemptions from the NO<sub>x</sub> conformity requirements must follow the process provided in Subsection 182(b)(1), since this is the only provision explicitly referenced by Section 176(c) in the Act's conformity provisions.

*USEPA Response:* 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>4</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>5</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 from and more expeditious than 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 the comment that Section 182(b)(1) provides the appropriate authority to grant transportation conformity NO exemptions, please refer to the discussion in "Section V., Approval Under Section 182(b)," of this notice.

*Air Monitoring Network:* One commenter stated that the network established for air monitoring is

<sup>4</sup> Section 302(e) of the Act defines the term "person" to include States.

<sup>5</sup> The final Section 185B report was issued July 30, 1993.

insufficient to accurately assess the ambient air quality in these areas.

*USEPA Response:* The USEPA has established ambient air monitoring networks for each of these areas to provide the most accurate assessment of the ambient air concentrations of ozone as practicable. These monitors meet the requirements set in 40 CFR Part 58 for ambient air monitoring, and USEPA has not been provided with any evidence that would allow it to conclude either that the number of monitors nor their locations are inadequate.

*Attainment Data Comments:* Three years of "clean" data fail to demonstrate that NO<sub>x</sub> reductions would not contribute to attainment of the NAAQS for ozone. The USEPA's policy erroneously equates the absence of a violation for one three-year period with "attainment."

*USEPA Response:* The USEPA has separate criteria for determining if an area should be redesignated to an ozone attainment area under Section 107 of the Act. The Section 107 redesignation criteria are more comprehensive than the Act requires with respect to NO<sub>x</sub> exemptions under Section 182(f).

Under Section 182(f)(1)(A), an exemption from the NO<sub>x</sub> requirements may be granted for nonattainment areas outside an OTR 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. In cases where it is warranted, USEPA's approval of the exemption is 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).

*Review Criteria:* One commenter requested that USEPA should review all exemption requests with the same level of scrutiny.

*USEPA Response:* It is the Clean Air Act itself, not USEPA, that treats areas differently for purposes of qualifying for a NO<sub>x</sub> exemption. Section 182(f) establishes separate criteria for USEPA to use in determining whether an area

should be granted a NO<sub>x</sub> exemption or not depending on whether an area falls within or outside of an OTR. Within these bounds, USEPA has established national guidance for evaluating NO<sub>x</sub> petitions. The relevant NO<sub>x</sub> exemption guidance documents are listed earlier in this notice. Each USEPA Regional Office implements the established policy contained in the guidance when evaluating individual State's exemption requests. The USEPA—Region 5 used the same criteria and scrutiny in reviewing these exemption requests and finds that these exemption requests submitted by the State meet the procedures set forth in the guidance in order to meet the applicable requirements of the Act.

*Modeling Comments:* Some commenters stated that no modeling has been performed to show that NO<sub>x</sub> is not a contributor to the ozone "problem" in these nonattainment areas and in downwind areas. Other commenters stated that the modeling required by USEPA guidance is insufficient to establish that NO<sub>x</sub> reductions would not contribute to attainment of the ozone NAAQS.

*USEPA Response:* As described in USEPA's December 1993 NO<sub>x</sub> exemption guidance,<sup>6</sup> photochemical grid modeling is generally needed to document cases where NO<sub>x</sub> reductions are counterproductive to net air quality, do not contribute to attainment, do not show a net ozone benefit, or include excess reductions. The Urban Airshed Model (UAM) or, in the OTR, the Regional Oxidant Model (ROM), are acceptable methods for these purposes. However, the December guidance also provides that, under the "not contribute to attainment test," an area may qualify for a NO<sub>x</sub> exemption by attaining the ozone standard, as demonstrated by three years of ambient air monitoring data. The exemption requests submitted by the State for these areas are based upon ambient air monitoring data for ozone, which demonstrate that the area is in fact attaining the NAAQS and, consequently, additional reductions of NO<sub>x</sub> in that area would not "contribute to attainment". The comment regarding the sufficiency of USEPA's modeling guidance is not relevant to this action since these petitions are based on air monitoring data. For additional information, please refer to the "Downwind Area" comments and response below.

<sup>6</sup> "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)," from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated December 19, 1993.

*SIP Status Request:* One commenter stated that since other SIP revisions have not been approved (i.e., the 15% rate-of-progress plans, maintenance plans, contingency plans, and redesignation request), it is premature to approve the exemption requests.

*USEPA Response:* This action only addresses the requests for exemptions from the NO<sub>x</sub> requirements contained in Section 182(f) of the Act and from certain NO<sub>x</sub> requirements of USEPA's I/M and conformity regulations as submitted by the State of Ohio. Final actions by USEPA on these requests are not dependent on final actions on other required SIP submittals, such as the ones mentioned. Non-related SIP revisions will be addressed separately. See also USEPA response to "Conclusive Evidence" comments.

*Transportation Modeling and Emissions Estimates:* One commenter cited a specific highway project, and others stated that generally there were significant flaws in the transportation modeling and with the SIP emission estimates for several of the areas included in the exemption petition.

*USEPA Response:* This action addresses only the requests for exemptions from the NO<sub>x</sub> requirements contained in Section 182(f) of the Act and certain NO<sub>x</sub> requirements of USEPA's conformity and I/M regulations as submitted by the State of Ohio based upon ambient air monitoring data. Transportation modeling and emission estimates are not required to be reviewed as part of this approval. Therefore, adverse comments submitted concerning transportation modeling and emissions estimates are not being further addressed.

*Attainment Demonstration Comments:* Some commenters stated that ambient air monitoring data is a poor indicator for the purpose of demonstrating that NO<sub>x</sub> reductions would not contribute to attainment.

*USEPA Response:* Under Section 182(f)(1)(A), an exemption from the NO<sub>x</sub> requirements may be granted for nonattainment areas outside an OTR 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. In all such cases, USEPA's approval of the exemption is 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). The policy described above is applicable to the areas of the country that successfully meet the "not contribute to attainment" NO<sub>x</sub> exemption test in Section 182(f)(1)(A), and is further described in USEPA's December 1993 guidance and May 27, 1994, policy memorandum.

*Downwind Area Comments:* Several commenters note that USEPA's December 1993 guidance prohibits granting a Section 182(f) waiver based on 3 years of clean data if evidence exists showing that the waiver would interfere with attainment or maintenance in downwind areas. The commenters argue that the same condition should also apply to waiver requests based on modeling. Exemptions in Ohio cities, they claim, are likely to exacerbate ozone nonattainment downwind, and therefore are not consistent with the Act. If the exemptions are granted, emissions from new stationary sources and the transportation sector in Ohio, which are projected to increase, could delay attainment of the ozone standard in areas in the northeastern United States.

These commenters further claim that USEPA modeling has demonstrated that Ohio is a significant contributor to atmospheric transport of ozone precursors to the OTR. Since this modeling indicates that emissions of NO<sub>x</sub> from stationary sources west of the OTR contribute to increased ozone levels in the northeast, they argue that control of NO<sub>x</sub> emissions in the OTR and in States west of the OTR will contribute to significant reductions in peak ozone levels within the OTR.

*USEPA Response:* As a result of such comments, USEPA has re-evaluated its position on this issue and decided to revise the previously-issued guidance.<sup>7</sup> As described below, 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).

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 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 OTR 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>8</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 interfere 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, and, hence, is withdrawing the guidance presently contained in Section 4.4. Thus, if there is 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. 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 approving 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

<sup>7</sup>Please refer to "Section 182(f) Nitrogen Oxides (NO<sub>x</sub>) Exemptions—Revised Process and Criteria," from John Seitz, Director, OAQPS, dated February 8, 1995.

<sup>8</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."

downwind area, appropriate action shall be taken by the State(s) or, if necessary, by USEPA under Section 110(a)(2)(D). The USEPA also believes this approach is consistent with statements made by Mary Nichols, Assistant Administrator for Air and Radiation, in a March 2, 1995, memorandum entitled "Ozone Attainment Demonstrations," concerning the development of regional approaches to resolve NO<sub>x</sub> transport issues. Also see response to comment on "Alternative Ozone Attainment Demonstration Policy".

*Scope of Exemption:* One commenter stated that if USEPA granted these exemptions, NO<sub>x</sub> RACT and NSR would be waived for all NO<sub>x</sub> sources in the State of Ohio.

*USEPA Response:* Upon the effective date of this final approval, NO<sub>x</sub> RACT and NSR will not be required for any nonattainment area in the State of Ohio; however, the NO<sub>x</sub> requirements of Title IV, acid rain, are not affected by this action and must be met by affected sources in Ohio. Moreover, as noted earlier, all NO<sub>x</sub> exemption approvals are contingent upon the exempted areas continuing to attain the ozone NAAQS, and would no longer apply in any previously-exempted area where, prior to redesignation, a violation occurs. Also, NO<sub>x</sub> reductions that are needed for maintenance would still be applicable.

*Alternative Ozone Attainment Demonstration Policy:* One commenter stated that proposed approval of Ohio's exemption requests seems premature in light of a recent USEPA policy memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, entitled "Ozone Attainment Demonstrations," dated March 2, 1995.

*USEPA Response:* The March 2, 1995, policy memorandum is applicable to ozone nonattainment areas significantly affected by ozone transport that are classified as serious and above (discretion is given to the Regional Offices to determine, in consultation with State Agencies, whether it would be appropriate to apply the policy to other areas in the State). For the State of Ohio, the Cincinnati-Hamilton interstate area is the only area that may be affected by this memorandum. However, a redesignation request has been submitted for this area, and upon the effective date of the final approval, an attainment demonstration for this area would no longer be required, thus relieving that area of the need for the flexibility offered in the March 2nd memorandum. Please note that the States of Ohio and Kentucky are still funding a contractual effort to develop an attainment demonstration for the

area in the event the redesignation requests are not approved. See also response to comment regarding "Downwind Areas".

*Conclusive Evidence:* The Act does not authorize any waiver of the NO<sub>x</sub> reduction requirements until conclusive evidence exists that such reductions are counter-productive.

*USEPA Response:* The USEPA does not agree with this comment since it is contrary to Congressional intent as evidenced by the plain language of Section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. In developing and implementing its NO<sub>x</sub> exemption policies, USEPA has sought an approach that reasonably accords with that intent.

In addition to imposing control requirements on major stationary sources of NO<sub>x</sub> similar to those that apply for such sources of VOC, Section 182(f) also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, USEPA determines that in certain areas NO<sub>x</sub> reductions would generally not be beneficial. In Subsection 182(f)(1), Congress explicitly conditioned action on NO<sub>x</sub> exemptions on the results of an ozone precursor study required under Section 185B. Because of the possibility that reducing NO<sub>x</sub> in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in Section 182(f), but throughout the Title I ozone subpart, to avoid requiring NO<sub>x</sub> reductions where they would be non-beneficial or counterproductive.

In describing these various ozone provisions (including Section 182(f), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO<sub>x</sub>/VOC study provision in Section [185B] to serve as the basis for the various findings contemplated in the NO<sub>x</sub> provisions. The Committee does not intend NO<sub>x</sub> reduction for reduction's sake, but rather as a measure scaled to the value of NO<sub>x</sub> reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257-258 (1990).

As noted in response to a comment discussed above, the command in Subsection 182(f)(1) that USEPA "shall consider" the Section 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO<sub>x</sub> exemption petitions clearly demonstrate that Congress believed the information in the completed Section 185B report would

provide a sufficient basis for USEPA to act on NO<sub>x</sub> exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that USEPA actions granting NO<sub>x</sub> exemption requests must await "conclusive evidence," as the commenters argue, there is also nothing in the Act to prevent USEPA from revisiting an approved NO<sub>x</sub> exemption if warranted due to subsequent ambient monitoring information.

In addition, USEPA believes (as described in USEPA's December 1993 guidance) that Section 182(f)(1) of the Act provides that the new NO<sub>x</sub> requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the USEPA Administrator determines that any one of the following tests is met:

- (1) In any area, the net air quality benefits are greater in the absence of NO<sub>x</sub> reductions from the sources concerned;
- (2) In nonattainment areas not within an ozone transport region, additional NO<sub>x</sub> reductions would not contribute to ozone attainment in the area; or
- (3) In nonattainment areas within an ozone transport region, additional NO<sub>x</sub> reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of Section 182(f), USEPA believes that each test provides an independent basis for the granting of a full or limited NO<sub>x</sub> exemption.

Only the first test listed above is based on a showing that NO<sub>x</sub> reductions are "counter-productive." If even one of the tests is met, 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.

*Air Quality Comment:* One commenter stated that attainment of the ozone NAAQS has not occurred, while several commenters stated that the air quality monitoring data alone does not support this exemption proposal (even though the air quality levels are below USEPA's definition of an exceedance of the ozone NAAQS at 0.125 ppm, but are greater than the ozone NAAQS of 0.120 ppm).

*USEPA Response:* The exemption requests were evaluated against the standards set forth for this purpose under the Act, regulations, and USEPA policy. As stated in 40 CFR 50.9, the ozone "standard is attained when the expected number of days per calendar year with maximum hourly average

concentrations above 0.12 parts per million (235 ug/m<sup>3</sup>) is equal to or less than 1, as determined by Appendix H." Appendix H references USEPA's "Guideline for Interpretation of Ozone Air Quality Standards," (EPA-450/4-79-003, January 1979), which notes that the stated level of the standard is taken as defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up to 0.01). Thus, 0.125 ppm is the smallest concentration value in excess of the level of the ozone standard (please refer to "Section IV. Analysis of the State Submittal" in this notice for monitored ozone concentrations in these areas). Based on these criteria, the ambient air monitoring data shows that a violation of the ozone standard has not occurred for any of the areas during the indicated ozone seasons.

**Monitoring Data Demonstration:** One commenter was concerned that USEPA reviewed 1991-1993 ambient air ozone monitoring data for the exemption request submitted for the Canton, Columbus, Steubenville, Youngstown areas; Preble and Clinton Counties; and 1992-1994 ambient air ozone monitoring data for the Cleveland and Cincinnati areas. The commenter believed that the inconsistencies between these time periods brought into question the entire proposed approval.

**USEPA Response:** The USEPA reviewed the exemption requests based on when the submittal and accompanying ozone data were received by USEPA. For the marginal and nonclassifiable ozone nonattainment areas, the exemption requests were submitted to USEPA in a letter dated March 18, 1994 (based upon monitoring data from the 1991-1993 ozone seasons). For the Cleveland and Cincinnati areas, the State submitted the exemptions requests in letters dated November 1 and 15, 1994, respectively, (based upon monitoring data from the 1992-1994 ozone seasons). The approvals are consistent with the criteria in 40 CFR 50.9 and Appendix H, as well as with relevant USEPA guidance, under which the relevant factor is that there are 3 consecutive years during which the standard has been attainment as demonstrated by quality-assured ambient air quality data.

#### X. Final Action

The USEPA is approving, in final, the exemption requests submitted by the State of Ohio from the NO<sub>x</sub> requirements provided for in Section 182(f) of the Act. This approval would

exempt the following Counties in Ohio from the NO<sub>x</sub>-related general and transportation conformity provisions; and nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>: Clinton, Columbiana, Delaware, Franklin, Jefferson, Licking, Mahoning, Preble, Stark, and Trumbull.

This approval also exempts the following Counties in Ohio from the NO<sub>x</sub>-related general conformity provisions, nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>, NO<sub>x</sub> RACT; and a demonstration of compliance with the enhanced I/M performance standard for NO<sub>x</sub> (please note that the following counties are not being granted an exemption from the transportation conformity NO<sub>x</sub> provisions): Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit and Warren.

#### XI. General Provisions

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 exempted this regulatory action from Executive Order 12866 review.

#### XII. Regulatory Process

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. Today's exemptions do not create any new requirements, but allow suspension of the indicated requirements for the life of the exemptions. Therefore, because the approval does not impose any new requirements, I certify that it does not

have a significant impact on any small entities affected.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

The USEPA's final action relieves requirements otherwise imposed under the Act and hence, does not impose any federal intergovernmental mandate, as defined in Section 101 of the Unfunded Mandates Act. This action also will not impose a 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.

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 September 11, 1995. 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 30, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

Part 52, chapter 1, 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. 7401-7671q.

#### Subpart KK—Ohio

2. Section 52.1879 is amended by adding new paragraph (e) to read as follows:

**§ 52.1879 Review of new sources and modifications.**

\* \* \* \* \*

(e) *Approval*—The USEPA is approving exemption requests submitted by the State of Ohio on March 18, November 1, and November 15, 1994, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the following counties in Ohio from the NO<sub>x</sub>-related general and transportation conformity provisions; and nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>: Clinton, Columbiana, Delaware, Franklin, Jefferson, Licking, Mahoning, Preble, Stark, and Trumbull. This approval also exempts the following counties in Ohio from the NO<sub>x</sub>-related general conformity provisions, nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>, NO<sub>x</sub> RACT; and a demonstration of compliance with the enhanced I/M performance standard for NO<sub>x</sub>: Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit and Warren. If, prior to redesignation to attainment, a violation of the ozone NAAQS is monitored in the Canton, Cincinnati, Cleveland, Columbus, Youngstown, and Steubenville areas, Preble County and Clinton County, the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

3. Section 52.1885 is amended by adding new paragraph (x) to read as follows:

**§ 52.1885 Control strategy: Ozone.**

\* \* \* \* \*

(x) *Approval*—The USEPA is approving exemption requests submitted by the State of Ohio on March 18, November 1, and November 15, 1994, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the following counties in Ohio from the NO<sub>x</sub>-related general and transportation conformity provisions, and nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>: Clinton, Columbiana, Delaware, Franklin, Jefferson, Licking, Mahoning, Preble, Stark, and Trumbull. This approval also exempts the following counties in Ohio from the NO<sub>x</sub>-related general conformity provisions, nonattainment area NSR for new sources and modifications that are major for NO<sub>x</sub>, NO<sub>x</sub> RACT, and a demonstration of compliance with the enhanced I/M performance standard for NO<sub>x</sub>: Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, and Warren. If, prior to redesignation to

attainment, a violation of the ozone NAAQS is monitored in the Canton, Cincinnati, Cleveland, Columbus, Youngstown, and Steubenville areas, Preble County and Clinton County, the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

[FR Doc. 95-17211 Filed 7-12-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 52**

[IL101-1-6689a; FRL-5249-9]

**Approval and Promulgation of Implementation Plans; Illinois**

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

**ACTION:** Direct final rule.

**SUMMARY:** The USEPA is approving the Particulate Matter contingency measures State implementation plan (SIP) revisions submitted by the State of Illinois on July 29, 1994. The USEPA made a finding of completeness in a letter dated December 9, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM) for the areas designated as nonattainment for the PM National Ambient Air Quality Standards (NAAQS). In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

**DATES:** This final rule is effective September 11, 1995 unless notice is received by August 14, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the State's submittal and other information are available for inspection at the following address: (It is recommended that you telephone David Pohlman at (312) 886-3299 before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation

Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR-18J), Regulation Development Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** David Pohlman (312) 886-3299.

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

The four Illinois PM nonattainment areas are: (1) Lyons Township in Cook County; (2) The area in Cook County bounded on the north by 79th Street, on the west by interstate 57 between Sibley Boulevard and Interstate 94 and by Interstate 94 between Interstate 57 and 79th Street, on the south by Sibley Boulevard, and on the east by the Illinois/Indiana State line; (3) Oglesby, LaSalle County including the following townships ranges and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S30; T33N, R2E, S31; and T33N, R1E, S36; and (4) Granite City Township and Nameoki Township in Madison County. These nonattainment areas will be referred to in this notice as the McCook, Lake Calumet, LaSalle, and Granite City nonattainment areas, respectively. These areas were designated nonattainment for PM and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.314. The air quality planning requirements for moderate PM nonattainment areas are set out in subparts 1 and 4 of part D, Title I of the Clean Air Act. The USEPA has issued a "General Preamble" describing USEPA's preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under Title I of the Clean Air Act, including those State submittals containing moderate PM nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

The 1990 Amendments to the Clean Air Act made significant changes to the Clean Air Act. References herein are to the Clean Air Act, as amended (the Act). The Clean Air Act is codified, as