

Date: November 6, 1997.

Bruce A. Lehman,

*Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks.*
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-036-1 9715; FRL-5922-4]

Revocation of the Section 182(f) Oxides of Nitrogen (NO_x) Exemption Granted to the Birmingham Ozone Nonattainment Area

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule; informational notice.

SUMMARY: The EPA has rescinded its previous approval of the State of Alabama's exemption from NO_x provisions for the Birmingham marginal nonattainment area. The exemption was originally approved by EPA in 1993. It is now rescinded because the conditions which formed the basis of the original approval no longer exist; and there is no other showing from the State of Alabama that reductions of NO_x would not contribute to attainment of the ozone standard for the area.

EFFECTIVE DATE: This action was effective September 19, 1997.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by the Alabama Department of Environmental Management (ADEM) may be examined during normal business hours at the following locations:

Environmental Protection Agency,
Region 4, Air Planning Branch, 61
Forsyth Street, SW, Atlanta, Georgia
30303-3104.

Alabama Department of Environmental
Management, 1751 Congressman W.
L. Dickinson Drive, Montgomery,
Alabama 36109.

FOR FURTHER INFORMATION CONTACT:
Kimberly Bingham, Regulatory Planning
Section, Air Planning Branch, Air,
Pesticides and Toxics Management
Division, Region 4, Environmental
Protection Agency, 61 Forsyth Street,
SW, Atlanta, Georgia 30303. The
telephone number is (404) 562-9038.

SUPPLEMENTARY INFORMATION:

Section 182(f)(1)(A) of the Clean Air Act (CAA) provides for an exemption from New Source Review (NSR) offsets for NO_x emissions in ozone

nonattainment areas where a state shows and EPA agrees that additional NO_x reductions would not contribute to attainment of the ozone standard in that area. At the time of the request submitted by the State of Alabama through the Alabama Department of Environmental Management (ADEM), the Birmingham area was required to attain the National Ambient Air Quality Standards (NAAQS) for ozone by November 15, 1993. Given this deadline, offsets from new sources of NO_x emissions applying for a permit to locate in the Birmingham area after November 15, 1992, would not in practice have been achieved prior to the expected ozone attainment date. Based on this information, the EPA determined that the application of the NO_x provisions would not have contributed to the timely attainment of the ozone standard and, therefore, approved the NO_x exemption for the Birmingham area. (58 FR 45439). Moreover, the area had ambient air quality data that demonstrated attainment of the ozone NAAQS on November 15, 1993.

Accordingly, on August 30, 1993, the EPA announced in the **Federal Register** (58 FR 45439) that it had determined, pursuant to the State's request according to the provisions of section 182(f) of the CAA, that additional reductions of NO_x would not contribute to attainment of the NAAQS for ozone in the Birmingham nonattainment area. In that same notice, the EPA approved a request from ADEM for an exemption from the CAA requirements for NSR offsets for NO_x. In addition to exempting the Birmingham ozone nonattainment area from NO_x NSR, this action also exempted the Birmingham ozone nonattainment area from applicable transportation and general conformity requirements for NO_x in accordance with 58 FR 62188 and 58 FR 63214. Because the EPA previously issued an area wide exemption under section 182(f) of the CAA, Region 4 acknowledged on November 21, 1994, that additional exemptions from the conformity requirements automatically applied to the Birmingham area.

On March 16, 1995, ADEM submitted a request for redesignation of the Birmingham marginal ozone nonattainment area to attainment status. However, prior to the close of the administrative record on the redesignation request, the Birmingham area registered a violation of the ozone standard on August 18, 1995. EPA proposed disapproval of the redesignation request and the associated maintenance plan on April 30, 1997. On September 19, 1997, EPA published in

the **Federal Register**, a final rulemaking which disapproved the ozone redesignation request for the Birmingham area (See 62 FR 49154). In light of the fact that the Birmingham area continued to violate the NAAQS for ozone in 1996, the EPA could no longer conclude that additional NO_x reductions would not contribute to attainment of the ozone standard for this area. For those reasons, the NO_x exemption for the Birmingham marginal ozone nonattainment area has been revoked.

This determination was made as of the effective date of the redesignation disapproval, September 19, 1997, because the basis of the disapproval is the violation of the ozone NAAQS. A letter dated September 11, 1997, provided ADEM official notification that the waiver for Birmingham would be revoked as of the aforementioned date.

As a result of the NO_x waiver being rescinded for the Birmingham marginal ozone nonattainment area, the State will be required to implement New Source Review for major stationary sources of NO_x. Furthermore, the State will no longer have a waiver for the Birmingham ozone nonattainment area which exempts the area from CAA requirements to satisfy the general and transportation conformity requirements for NO_x. Consequently, the Birmingham Metropolitan Planning Organization and the Alabama Department of Transportation must demonstrate that the future long-range transportation plan (LRTP) and the transportation improvement program (TIP) conformity analyses satisfy the applicable VOC and NO_x requirements in section 93.109 of the transportation conformity rule, as amended on August 15, 1997. The approved conformity determination for the existing 2015 LRTP demonstrated that the "Action" scenarios for 2005 and 2015 will have NO_x emissions over the respective "Baseline" scenarios. Without an NO_x waiver, any new LRTP and/or TIP for the Birmingham area which shows such increases would not satisfy the emission reduction requirements of section 93.119 of the transportation conformity rule and would not be in conformance with the Alabama State Implementation Plan.

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

Dated: October 31, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

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