

contribute to attainment of the NAAQS for O<sub>3</sub> in the area.

**EFFECTIVE DATE:** This action will be effective June 2, 1995.

**ADDRESSES:** A copy of the exemption request is available for inspection at the following location (it is recommended that you contact Kimberly Bingham at (404) 347-3555 extension 4195 before visiting the Region 4 office):

United States Environmental Protection Agency, Air, Pesticides, and Toxics Management Division, Air Programs Branch, Regulatory Planning and Development Section, Stationary Source Planning Unit, 345 Courtland Street NE., Atlanta, Georgia 30365.

Department for Environmental Protection Natural, Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Bingham, Stationary Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

**SUPPLEMENTARY INFORMATION:** The air quality planning requirements for the reduction of NO<sub>x</sub> emissions are set out in section 182(f) of the CAA. Section 182(f) of the CAA requires states with areas designated nonattainment for O<sub>3</sub> and classified as moderate or 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 (VOCs). Section 182(f) provides further that these NO<sub>x</sub> requirements do not apply to areas outside an O<sub>3</sub> transport region if EPA determines that additional reductions of NO<sub>x</sub> would not contribute to attainment in such areas. In an area that did not implement the section 182(f) NO<sub>x</sub> requirements, but did attain the O<sub>3</sub> standard as demonstrated by ambient air monitoring data (consistent with 40 CFR part 58 and recorded in the EPA's—Aerometric Information Retrieval system (AIRS)), it is clear that the additional NO<sub>x</sub> reductions required by section 182(f) would not contribute to attainment of the NAAQS.

The criteria established for the evaluation of an exemption request from the section 182(f) requirements are set forth in an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994, entitled "Section 182(f) Nitrogen Oxides (NO<sub>x</sub>) Exemptions—Revised Process and Criteria," and an EPA guidance document entitled

"Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," dated December 1993, from EPA, Office of Air Quality Planning and Standards, Air Quality Management Division.

On November 12, 1993, the Commonwealth of Kentucky submitted to EPA Region 4 a request to redesignate the Kentucky portion of the Huntington-Ashland moderate O<sub>3</sub> nonattainment area to attainment. The redesignation request is currently under review and will be addressed in a separate rulemaking. On August 16, 1994, the Commonwealth requested that the Kentucky portion of the Huntington-Ashland area be exempt from the NO<sub>x</sub> RACT requirement in section 182(f) of the CAA. The 182(f) exemption also relieves the area of all NO<sub>x</sub> requirements of the CAA such as New Source Review, General Conformity, and Inspection/Maintenance. The exemption request is based upon ambient air monitoring data from 1991, 1992, and 1993, which demonstrate that the NAAQS for O<sub>3</sub> has been attained in the area without additional reductions of NO<sub>x</sub> (a violation of the ozone NAAQS occurs when the average number of exceedances for any O<sub>3</sub> monitoring site in a three year period is greater than 1.0).

Only one O<sub>3</sub> exceedance was recorded in the Huntington-Ashland area for the period from 1991 to 1993: Monitor 21-019-0015—0.129ppm (1993). Thus, there has been no violation of the NAAQS in the area during this period and the area has maintained the standard through 1994.

EPA has reviewed the ambient air monitoring data for O<sub>3</sub> (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) submitted by the Commonwealth of Kentucky in support of the exemption request and has determined that a violation of the O<sub>3</sub> NAAQS has not occurred in the Huntington-Ashland, Kentucky portion area for the relevant three year period. Because the Kentucky portion of the Huntington-Ashland area is meeting the O<sub>3</sub> NAAQS, this exemption request for the area meets the applicable requirements contained in the EPA policy and guidance documents referenced above.

Continuation of the section 182(f) exemption granted herein is contingent upon continued monitoring and continued maintenance of the O<sub>3</sub> NAAQS for the entire Huntington-Ashland area. If a violation of the O<sub>3</sub> NAAQS is monitored in the Kentucky portion of the Huntington-Ashland area, EPA will provide notice in the **Federal Register**. A determination that the NO<sub>x</sub>

exemption no longer applies would mean that the NO<sub>x</sub> RACT provision (see 58 FR 63214 and 58 FR 62188) would immediately be applicable to the affected area. Although the NO<sub>x</sub> RACT requirements would be applicable, some reasonable period of notice is necessary to provide major stationary sources subject to the RACT requirements time to purchase, install, and operate any required controls. Accordingly, the Commonwealth may provide sources a reasonable time period to meet the RACT emission limits after the EPA determination that NO<sub>x</sub> RACT requirements are necessary. EPA expects the time period to be as expeditious as practicable, but in no case longer than 24 months.

The EPA proposed approval of the Commonwealth of Kentucky's request for an exemption request from NO<sub>x</sub> and RACT requirements of the CAA as amended in 1990 (60 FR 5881). Comments were received supporting the exemption request. However, the National Resources Defense Council (NRDC), Sierra Defense Club, and EDF submitted adverse comments to Mary Nichols on August 24, 1994, addressing all **Federal Register** notices proposing to approve section 182(f) NO<sub>x</sub> exemption requests. The EPA has responded to the adverse comments by issue as set forth below.

#### *NRDC Comment 1*

Certain commenters argued that NO<sub>x</sub> exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). 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," these commenters conclude that all NO<sub>x</sub> exemption determinations by the EPA, 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 as attainment. 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), the CAA's conformity provisions.

#### *EPA Response*

Section 182(f) contains very few details regarding the administrative