ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 159–1a; FRL–7774–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On September 27, 2003, Ohio requested revisions to the State Implementation Plan (SIP) for sulfur dioxide (SO_2) for several counties in Ohio, along with a request for redesignation of Cuyahoga County to attainment for SO_2. In general, the submitted rules are at least equivalent to limitations promulgated by EPA in a Federal Implementation Plan (FIP) for the area. Therefore, EPA is approving these revisions to the SIP. In conjunction with this action, EPA is rescinding the federally promulgated emission limitations for SO_2 for these counties. By this pair of actions, EPA is replacing FIP limits with SIP limits for the affected counties.

EPA finds Ohio's request for the redesignation of Cuyahoga County to attainment for SO_2 approvable. EPA believes that the prerequisites for redesignation to attainment are satisfied, including meeting the air quality standard, replacing FIP limits with federally approved state limits, providing an approvable plan for continued attainment, and addressing other relevant planning requirements. Therefore, EPA is redesignating Cuyahoga County to attainment for SO_2.

DATES: This direct final rule is effective on September 7, 2004, unless EPA receives an adverse written comment or a request for a public hearing by August 9, 2004. If EPA receives an adverse written comment or a request for a public hearing, EPA will publish a timely withdrawal of the rule in the **Federal Register** and will inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. OH159 by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

E-mail: *bortzer.jay@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Acting Chief, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

You may request a public hearing. Requests for a hearing should be submitted to J. Elmer Bortzer. Interested persons may call John Summerhays at (312) 886–6067 to learn if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this action, the scope of which is discussed below.

Instructions: Direct your comments to Docket ID No. OH159. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. ''For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.''

Docket: All documents in the docket are listed in an index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: John Summerhays at (312) 886–6067.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information.

A. Does This Action Apply To Me?

This action applies to industries that produce sulfur dioxide emissions.

B. What Should I Consider As I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

II. Background on Ohio SO_2

This rulemaking action principally addresses the nature of the federally enforceable emission limits for SO_2 in several Ohio counties. Specifically, this action establishes numerous State-adopted emission limits as federally enforceable, and in turn deletes the corresponding federally promulgated FIP limits.

In most cases, SIPs reflect regulations and related materials that have been prepared and adopted by the state and approved by EPA pursuant to section 110 of the Clean Air Act. However, in rare cases EPA uses authority, presently found in section 110(c) of the Clean Air Act, for federal promulgation of regulations and other plan elements required by the Clean Air Act. An important element of today's action is to approve numerous state adopted SO_2 regulations that will supersede the corresponding federally promulgated regulations.

The second action taken here is to redesignate the Cleveland area (Cuyahoga County) from a nonattainment area to an attainment area for SO_2. Among the prerequisites to redesignation is that EPA has approved State adopted rules sufficient to provide for attainment and to satisfy other planning requirements. Ohio's submittal and EPA's approval of State limits for Cuyahoga County for replacing FIP limits addresses this prerequisite.

The key antecedent to today's action was promulgation of a FIP, published on August 27, 1976, at 41 FR 36324, establishing SO_2 control regulations for 55 Ohio counties. EPA promulgated the FIP after Ohio submitted State Implementation Plans for SO_2 in 1972 and again in 1974 but withdrew these plans from consideration. Then, in 1980, Ohio submitted a comprehensive set of SO_2 limits for the State. EPA approved Ohio's limits for a majority of its counties on January 27, 1981, at 46 FR 8481. In that rulemaking, EPA explained that the approved State adopted rules superseded the corresponding FIP limits. EPA has undertaken similar rulemaking several times thereafter.

Nevertheless, in an assortment of cases, EPA did not approve the state-adopted SO_2 limits. For some counties, EPA approved most limits but did not act on limits for specific sources, for example because Ohio withdrew the limits from consideration due to a source's concern about the limit. For other counties, EPA did not approve any limits, for example because EPA identified deficiencies in the analysis underlying the limits. In the absence of an approved State limit, the FIP limit remained in effect as the federally enforceable limit.

Most of EPA's rulemakings concerning SO_2 in Ohio have approved State-adopted limits that superseded FIP limits without actually removing the FIP rule language from the Code of Federal Regulations. Actual removal of Ohio SO_2 FIP rule language has occurred on two prior occasions: June 29, 1995, at 60 FR 33915, and on January 31, 2002, at 67 FR 4669. The first of these involved no new approvals of State rules; instead, it involved removal of previously superseded FIP rules, as part of a broader package of actions to remove unnecessary language in the Code of Federal Regulations. The second previous elimination of FIP rules included approval of State rules for some or all of two counties with FIP rules, elimination of FIP rules for these counties, and elimination of FIP rules for portions of an additional three counties for which EPA had previously approved Ohio's rules. (This latter rulemaking also approved State rules for one county without corresponding FIP rules.) Today's rulemaking includes similar State rule approval and FIP removal as did this latter rulemaking.

Today's removal of FIP regulations is contingent on having enforceable superseding State regulations in effect. Today's rulemaking provides for Federal enforceability of superseding State regulations, and invalidation of these State regulations is unlikely because the period for legal challenge of these State regulations has passed without challenge. Nevertheless, if for any reason the State rules become invalidated or otherwise become unenforceable, EPA would view the FIP removal to be invalidated, and EPA would revert to enforcing the FIP regulations removed today.

III. Review of Rule Revisions

Today's rulemaking addresses SO_2 limits for the following counties: Adams, Allen, Clermont, Cuyahoga, Lake, Lawrence, Mahoning, Monroe, Montgomery, Muskingum, Pike, Ross, Washington, and Wood Counties. For Cuyahoga, Mahoning, Monroe, and Washington Counties, the submitted limits differ from the current federally enforceable limits. The first four subsections that follow address each of these counties individually. The fifth subsection addresses the counties in which the submitted limits are largely equivalent to current federally enforceable limits. A final subsection addresses revisions to generic rules with statewide applicability.

Criteria for this review are described in guidance issued from the Director of the Air Quality Management Division to the Director of Region 5's Air and Radiation Division on September 28, 1994. This memorandum recommended approving State rules in place of FIP rules if three criteria are met:

1. That the FIP demonstrated the limits were adequately protective at the time of promulgation.
2. There is no evidence now that the FIP and associated emission limits are inadequate to protect the SO_2 national ambient air quality standards.
3. This is not a relaxation of existing emission limits.

A. Cuyahoga County

Following promulgation of FIP limits in 1976, a lawsuit by Republic Steel Company led to extended re-analysis of Cuyahoga County's SO_2 limits, culminating in promulgation of a new set of limits on September 3, 1993, at 58 FR 46867. The preamble of that rulemaking describes the re-analysis in more detail. The control strategy analysis for Cuyahoga County included routine modeling, sufficient to address most sources in the county, plus substantial additional analysis for the steelmaking facility now owned by International Steel Group (ISG, formerly LTV Steel, which includes the merged properties of Republic Steel and J&L Steel). The additional analysis addressed the impacts of the combustion of undesulfurized coke oven gas and focused on two ''critical receptors'' identified in the initial modeling as the two locations most likely to have modeled violations.

A first step in this additional analysis was to estimate the concentrations at the two critical receptors that could arise with unlimited availability of undesulfurized coke oven gas. A second step was to address the impact of a limit on the availability of undesulfurized coke oven gas. Because the alternatives to undesulfurized coke oven gas (such as blast furnace gas and natural gas) have lower sulfur content, the restriction on coke oven gas production

(and therefore coke oven gas combustion) significantly reduces overall allowable SO_2 emissions. The challenge in this analysis was to identify and address the worst case distribution of the allowable undesulfurized coke oven gas resulting in the largest allowable impacts. For this purpose, the analysis first allocated coke oven gas to the emission point burning coke oven gas with the greatest impact per ton of emissions, then to the emissions point with the next greatest impact per ton of emissions, and so on, until the available coke oven gas was fully allocated. The analysis used a spreadsheet that identified the modeled impacts at the two critical receptors per ton of emissions and assessed the impacts of various distributions of undesulfurized coke oven gas. From this analysis, EPA concluded that the worst case distribution of the undesulfurized coke oven gas, in combination with source-specific emission limits, would yield concentrations below the SO_2 air quality standards.

Most of the Cuyahoga County limits that Ohio submitted in September 2003 are identical to the 1993 FIP limits. The differences between the 2003 State rules and the FIP for Cuyahoga County are of three types: (a) Limit revisions for ISG based on a combination of an increase in emissions allowed at the facility's C–1 blast furnace and the shutdown of the number 6 coke battery, (b) a special provision relating to the sulfur content of oil burned at the ISG facility, and (c) establishment of limits for sources that are not identified in the FIP.

Ohio's revised rule allows the ISG facility's C–1 blast furnace to increase emissions from 0.024 to 0.15 pounds per million British Thermal Units (#/MMBTU), corresponding to an increase in allowable emissions from 7.7 #/hour to 48.0 #/hour. Since most of the SO_2 emitted by the ISG facility arose from the combustion of undesulfurized coke oven gas produced by the number 6 and number 7 coke batteries, the shutdown of the number 6 battery yielded a reduction in SO_2 emissions and impacts that is much greater than the increase at the C–1 blast furnace.

The regulation submitted by Ohio requires 0.0 #/hour of SO_2 emissions from the ISG facility's number 6 battery. However, the regulation also continues to permit production of coke oven gas containing 265 of the prior 315 #/hour of hydrogen sulfide (H_2S). Based on the difference in molecular weights, combustion of 50 fewer pounds per hour of H_2S results in an SO_2 emission reduction of 94 #/hour.

Under one interpretation of Ohio's rules, ISG remains allowed to produce 265 pounds per hour of H_2S from the number 6 coke battery. Under this interpretation, if ISG in the future becomes subject to a restriction prohibiting some or all of this H_2S production, it may be possible for ISG to take a shutdown credit for new source permitting or other purposes for the implicit associated reduction in allowable SO_2 emissions. Under a second interpretation of Ohio's rules, the battery is already required to be shut down, and no further shutdown credits are available. (The battery is in fact shut down, but the difference between the two interpretations is whether the rules *require* the battery to be shut down.)

EPA is not choosing between these two interpretations today. That is, EPA is not rulemaking today on whether Ohio's rule requires shutdown of the ISG facility's number 6 battery (and thus termination of coke oven gas production) or whether credits would be granted in the future for eliminating the nominal allowance for producing (and combusting) coke oven gas containing 265 #/hour of H_2S. EPA is rulemaking only on the question of whether a conservative interpretation of Ohio's rules, reflecting a 50 #/hour reduction in allowable H_2S production in combination with a provision for no SO_2 emissions from the number 6 battery and a 40 #/hour increase in SO_2 emissions allowed at the C–1 blast furnace, provides at least as much air quality protection as the control strategy of the current FIP.

EPA is examining the air quality impact of these changes in allowable emissions using the attainment demonstration underlying the current FIP. Comparing the worst case scenario with 265 #/hour of H_2S production versus the worst case scenario with 315 #/hour of H_2S production, the difference is combustion of 50 fewer #/hour of H_2S. Both worst case scenarios would continue to reflect use of undesulfurized coke oven gas at the emission points with the highest impacts per ton of emissions. The difference between the two worst case scenarios would be the availability of 50 fewer #/hour of H_2S for combustion at the emission point with the lowest impact per ton ranking that is allocated undesulfurized coke oven gas in the worst case allocation. For both critical receptors, the net effect of one less pound of emissions from the affected emission point and one more pound of emissions from the C–1 blast furnace is a reduction of worst case concentrations. Therefore, EPA concludes that the net effect of this pair of rule changes is to reduce the modeled SO_2 concentration, even if Ohio's rule is interpreted to allow the ISG facility's number 6 battery to produce 265 #/hour of H_2S.

The second difference between Ohio's rule and the FIP involves the limit on sulfur content of oil combusted at the ISG facility. Ohio's rule provides that the sulfur content of oil combusted at the ISG facility shall be limited to 0.525 #/MMBTU of heat content on any day that the facility is burning coke oven gas. The FIP applies this limit to all days. Under Ohio's rule, for days when coke oven gas is not used (which, with the shutdown of the coke batteries at the ISG facility, is always the case), the oil sulfur content is limited by the Ohio rules' unit-specific limits applicable to units with the capacity to burn oil. For days without coke oven gas, even if the ISG facility uses sufficiently sulfur-laden oil to approach these limits for the few units that can burn oil, the absence of undesulfurized coke oven gas as a fuel will result in most units emitting far less than their limit and will clearly yield better air quality. Therefore, this provision on oil sulfur content provides adequate air quality protection.

A third difference between Ohio's rule and the FIP is the explicit inclusion in Ohio's rules of several sources that are not explicitly regulated in the FIP. The FIP establishes generic limits of 1.2 #/MMBTU for boilers and 6 #/ton of actual process weight input. Most of the sources listed in Ohio's rules that are not listed in the FIP have boilers, many of which have limits above 1.2 #/MMBTU. In the attainment demonstration justifying the FIP, these sources were included and modeled as having emissions corresponding to their State limit. Therefore, EPA is satisfied that these limits are an acceptable part of an overall plan that provides for attainment. More generally, EPA concludes that in spite of the differences between the State rule and the FIP, the State rules serve adequately in assuring attainment of the SO_2 standards in Cuyahoga County.

B. Mahoning County

As in Cuyahoga County, currently all federally enforceable SO_2 limits in Mahoning County reflect the federally promulgated limits of the FIP. Comparison of the State rules to the FIP is complicated by the numerous facility ownership changes that occurred between the time the FIP was promulgated and the time the State rules were first adopted. The comparison is simplified by the shutdown of numerous facilities. The following is a synopsis of this comparison for the four key remaining facilities that are addressed in the FIP:

Youngstown Thermal (previously Ohio Edison/North Avenue)—The State limit is rounded to a slightly tighter limit than the FIP limit.

Youngstown Sinter (limited in the FIP by the generic limit of 1.0 #/ton of process weight input)—The State seeks to raise the limit to 3.3 #/ton of process weight input.

Whitacre Greer—The State has raised the limit to equal the limit in the FIP.

Lonardo Greenhouse—State and FIP limits are identical.

Thus the principal issue in reviewing these limits is whether Ohio has justified the increased limit for the Youngstown Sinter Plant.

Ohio's justification for increasing the limit for the Youngstown Sinter Plant is based on the shutdown of a nearby U.S. Steel facility. Although the U.S. Steel facility is not identified in either the FIP or the State rules, the facility was included in the modeling analysis underlying the FIP. Ohio noted that the emission decrease from the shutdown of the U.S. Steel facility, which Ohio calculates as a reduction of 1703 tons per year of SO_2, is greater than the emissions increase at the Youngstown Sinter Plant, which Ohio calculates as allowing an increase of 1293 tons per year. Ohio further provided results of a modeling analysis addressing the net effects of the increase in the allowable emissions from the Youngstown Sinter Plant and the shutdown of the U.S. Steel facility. This analysis was conducted in accordance with the Emission Trading Policy Statement published by EPA on December 4, 1986, at 51 FR 43814. Since the area includes some complex terrain, the analysis used both the ISCST3 model and the CTSCREEN model to assess the impact of the emission changes inherent in this revision and the shutdown of the U.S. Steel facility. This analysis showed that selected receptors more influenced by the Youngstown Sinter Plant would have a net concentration increase but that these increases were small. Specifically, the analysis indicated that at all receptors, the limit revisions would yield either a decrease in concentrations or an increase by an amount smaller than the levels defined in the Emission Trading Policy Statement as significant. Further, this pair of sources are somewhat distant from other sources (and former sources) in Mahoning County, suggesting that concentrations from other sources, to which this net impact is added, are relatively low. Therefore, EPA concludes that the revised limit for the Youngstown Sinter Plant continues to provide for attainment.

C. Monroe County

The Ormet facility was addressed in an attainment plan developed for the Ohio Power Kammer Plant in neighboring Marshall County, West Virginia. EPA approved the attainment plan and the associated West Virginia limits on August 2, 2000, at 65 FR 47339. That rulemaking notice provides a complete discussion of the CALPUFF modeling conducted to define the necessary limits and the other elements of the attainment plan. This attainment plan indicated the need for Ohio to reduce the limits for the Ormet facility below the generic limits that are currently federally enforceable (reflecting a State-wide formula establishing an emission limit based on process weight rate), though the limits did not need to be reduced below actual current Ormet emission rates. EPA concludes that these revised limits, in combination with the approved West Virginia limits, provide for attainment in the area.

D. Washington County

Ohio submitted rules for Washington County that reduced the emission limit for American Municipal Power's Gorsuch Generating Station from 9.5 #/MMBTU to 4.5 #/MMBTU. Ohio explained that this limit was necessitated by modeling during new source permitting of another source that showed this limit reduction to be needed to assure attainment in the area. Ohio did not submit this modeling as part of its submittal. Nevertheless, this limit reduction clearly improves air quality protection. Therefore, EPA approves this revision.

E. Additional Counties

In the 1980s, although Ohio submitted regulations applicable to most sources in the State, Ohio withdrew or did not submit limits for numerous sources. Consequently, the federally enforceable limits for numerous sources are FIP limits. In addition, in a few cases, a source is subject to no federally enforceable limits because Ohio withdrew or did not submit limits for sources that lacked applicable FIP limits. Ohio's submittal of September 27, 2003, addresses this situation by submitting rules for many of these sources. This submittal includes limits for Adams County (Dayton Power & Light-Stuart Station), Allen County (Marsulex), Clermont County (Cincinnati Gas & Electric-Beckjord Station), Lawrence County (Allied Chemical), Montgomery County (Glatfelter and Miami Paper), Muskingum County (AK Steel), Pike County (Portsmouth Diffusion Plant), Ross County (Mead), and Wood County (Libby-Owens-Ford Plants 4 & 8 and Plant 6). In addition, Ohio submitted revised rules for Lake County (Lubrizol) and Muskingum County (Armco Steel). The following is a brief synopsis of these limits:

Adams County—The limit for Dayton Power & Light-Stuart Station is equivalent to the current FIP limit.

Allen County—No FIP limits apply. Approval of these limits provides for a complete set of limits for Allen County.

Clermont County—The FIP subjects the Cincinnati Gas & Electric-Beckjord Station to either a plant-wide limit of 2.02 #/MMBTU or an equivalent set of equations addressing use of multiple coal supplies at different stacks. Ohio's limits for this source reflect two coal supplies and satisfy the equation version of the FIP requirements. Thus, the State limits are equivalent to the FIP limits.

Lake County—Ohio revised these regulations for one source, the Lubrizol facility, most notably to have its regulations match the contents of the Findings and Orders issued by the State to this facility. EPA approved the Findings and Orders on June 12, 2001, at 66 FR 31552. The revised regulation also identifies the limits resulting from Ohio's generic limitation for several emissions points that did not previously have explicit emission limits. Since all of these limits are equivalent to currently federally enforceable limits, EPA finds these revisions approvable.

Lawrence County—The State limit is slightly tighter than the FIP limit.

Montgomery County—The State limits for the Glatfelter and Miami Paper facilities are equivalent to the generic Montgomery County FIP limit to which these sources are currently subject.

Muskingum County—For Armco Steel Corporation (now known as AK Steel), Ohio retained the previously approved emission limit but removed a limit on hours of operation that was not necessary to provide for attainment.

Pike County—The State limit for the Portsmouth Diffusion Plant is equivalent to the FIP limit.

Ross County—The State limit for recovery furnaces at the Mead facility are equivalent to the FIP limit. The FIP limit for boilers at this source is 0.00 #/MMBTU, based on anticipation that these boilers would shut down; however, the boilers did not in fact shut down. The State limit reflects the emissions for these boilers included in the FIP attainment demonstration.

Wood County—The State limits for Libby-Owens-Ford Plants 4 & 8 and Plant 6 are equivalent to the generic

Wood County FIP limit to which these sources are currently subject.

EPA has reviewed these rules, finds their limits to be at least equivalent to the limits in the FIP, and finds that the attainment demonstration that yielded these limits remains a valid basis for approving these limits.

F. Additional Rule Revisions

In addition to the revisions of source limits, Ohio adopted and submitted selected revisions to its general sulfur dioxide rules. The following paragraphs describe and review these revisions.

Rule 3745–18–01, entitled ''Definitions and incorporation by reference,'' is changed by adding a definition of natural gas and by adding a list of materials incorporated by reference into the rule, principally consisting of test methods. These revisions are approvable.

For Rule 3745–18–04, Ohio specifically requests rulemaking on paragraphs (F) and (J). Paragraph (F)(4) provides that sources that are burning natural gas may be considered to have zero SO_2 emissions. The revision removes the specific criteria of heat content and sulfur content, recognizing that natural gas uniformly has low sulfur content and so such criteria are not needed to assure that sources burning natural gas will have minimal SO_2 emissions. Paragraph (J) provides for test methods for the Lubrizol facility in Lake County, including the continuous emission monitoring that is needed to address compliance with the interconnected array of limits in effect at this facility. EPA finds the revised rules equally as protective as the prior provisions.

Rule 3745–18–06 provides that sources burning only natural gas are exempt from the limits of Chapter 3745–18, insofar as emissions are certain to be below applicable limits. The revision again removes the specific criteria of heat content and sulfur content, instead relying on the definition of natural gas in Rule 3745–18–01(B)(9). EPA finds that these criteria are not needed to assure minimal SO_2 from combustion of natural gas.

IV. Review of Redesignation Request for Cuyahoga County

Section 107(d)(3)(E) of the Clean Air Act identifies five criteria for redesignating areas from nonattainment to attainment. The following addresses these criteria in turn:

Section 107(d)(3)(E)(i) makes redesignation contingent on EPA determining that the area is attaining the applicable standard. The available monitoring data indicate that Cuyahoga County is attaining the SO_2 standards. In addition, Ohio submitted evidence that Cuyahoga County sources are complying with applicable emission limits, which indicates that modeling using the same meteorological data as the attainment demonstration but using actual emissions data would also show attainment. For these reasons, EPA concludes that Cuyahoga County is attaining the SO_2 air quality standard.

Section 107(d)(3)(E)(ii) requires that Ohio have addressed all applicable planning requirements. This rulemaking, approving state rules to replace the FIP rules that previously addressed applicable requirements, provides that Ohio has now addressed all applicable planning requirements.

Section 107(d)(3)(E)(iii) requires that the air quality improvement leading to attainment be the result of permanent and enforceable emission reductions. Attainment in Cuyahoga County was the result of a combination of switches to lower sulfur fuel and installation of control equipment necessitated by applicable permanent and enforceable emission limits.

Section 107(d)(3)(E)(iv) requires a maintenance plan assuring continued attainment. Ohio's submittal of September 27, 2003, includes a maintenance plan. The core of this maintenance plan is the emission limits for key sources in Cuyahoga County, which provide for attainment even if these sources operate at full capacity emitting at their full allowable levels. The only additional condition for assuring maintenance is to assure that background concentrations remain at or below current levels. Ohio's maintenance plan reflects existing federal measures, including the acid rain program and rules that require lower sulfur fuels for gasoline-fueled and diesel-fueled vehicles. Both the emission reductions in recent years from the acid rain program and the reductions in motor vehicle SO_2 emissions expected in the next few years will assure that background SO_2 concentrations will remain below levels defined in the 1980s for attainment planning purposes. Therefore, Ohio's maintenance plan assures continued attainment of the SO_2 standards for the foreseeable future.

Section 107(d)(3)(E)(v) requires that the State has met all planning requirements for the area under Clean Air Act Section 110 and Part D of Title I. With this submittal and the rules therein, Ohio now satisfies all requirements for SO_2 in Cuyahoga County under Section 110 and Part D of Title I. Thus, all five prerequisites for redesignation Cuyahoga County to attainment for SO_2 have been satisfied.

V. EPA Action

This rulemaking approves numerous SO_2 limits adopted and submitted by Ohio to replace limits that EPA promulgated as part of a FIP. EPA is approving rules for Adams County (limits for Dayton Power & Light-Stuart Station), Allen County (limits for the Marsulex facility), Clermont County (limits for Cincinnati Gas & Electric-Beckjord Station), Cuyahoga County (full rule), Lake County (full rule), Lawrence County (limits for the Allied Chemical facility), Mahoning County (full rule), Monroe County (full rule), Montgomery County (limits for the Glatfelter and Miami Paper facilities), Muskingum County (Armco Steel), Pike County (limits for the Portsmouth Diffusion Plant), Ross County (limits for the Mead facility), Washington County (full rule), and Wood County (Libby-Owens-Ford Plants 4 & 8 and Plant 6).

In those cases where the affected plants are subject to FIP limits, the approved State rules supersede the FIP limits. In today's action, EPA is removing the FIP rules that have thus been superseded.

EPA is redesignating Cuyahoga County to attainment for SO_2. EPA is also approving Ohio's plan for maintenance of the SO_2 air quality standard in Cuyahoga County.

In the proposed rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted plan revision. If we receive adverse comments by August 9, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final rule will not take effect, and we will address the comments in a subsequent final rule based on the proposal. If we do not receive timely adverse comments, the direct final rule will be effective without further notice on September 7, 2004. This will incorporate these rules into the federally enforceable SIP. Any parties interested in commenting must do so at this time.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must

approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because this action does not create any new requirements but simply approves requirements that the State is already imposing, the Paperwork Reduction Act does not apply to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because approvals of preexisting state rules under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being promulgated does not include a Federal 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Because this rule merely approves a state rule implementing a Federal standard and imposes no new requirements, it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act

(NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 7, 2004, unless EPA receives adverse written comments by August 9, 2004.

K. Petitions for Judicial Review

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 7, 2004. 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 10, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, part 52, chapter I, 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 *et seq.*

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(129) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(129) On September 27, 2003, the Ohio Environmental Protection agency submitted revised rules for sulfur dioxide. The submittal includes revised provisions in Rules 3745–18–01, 3745–18–04, and 3745–18–06, relating to natural gas use, as well as special provisions in Rule 3745–18–04 for compliance testing for Lubrizol in Lake County. The submittal includes recently revised limits Ohio in Cuyahoga, Lake, Mahoning, Monroe, and Washington Counties, as well as previously adopted source-specific limits in Adams, Allen, Clermont, Lawrence, Montgomery, Muskingum, Pike, Ross, and Wood Counties that had not previously been subject to EPA rulemaking.

(i) Incorporation by reference.

(A) Rules OAC 3745–18–01; OAC 3745–18–04(F); OAC 3745–18–04(J); OAC 3745–18–06; OAC 3745–18–24; OAC 3745–18–49; OAC 3745–18–56; OAC 3745–18–62; and OAC 3745–18–90. Adopted August 19, 2003, effective September 1, 2003.

(B) Rules OAC 3745–18–07(B); OAC 3745–18–08(H); OAC 3745–18–19(B); OAC 3745–18–66(C); OAC 3745–18–72(B);, effective May 11, 1987.

(C) OAC 3745–18–50(C); OAC 3745–18–77(B); effective December 28, 1979.

(D) OAC 3745–18–63 (K) and (L); and OAC 3745–18–93 (B) and (C); effective November 1, 1984.

(ii) Additional material—Letter from Robert Hodanbosi to Thomas Skinner dated September 27, 2003.

■ 3. Section 52.1881 is amended by revising paragraphs (a)(4) and (a)(8) and adding paragraph (a)(15) to read as follows:

§ 52.1881 Control strategy: Sulfur Oxides (sulfur dioxide).

(a) * * *

(4) Approval-EPA approves the sulfur dioxide emission limits for the following counties: Adams County, Allen County, Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Butler County, Carroll County, Champaign County, Clark County, Clermont County, Clinton County, Columbiana County, Coshocton County, Crawford County, Cuyahoga County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County, Lawrence County, Licking County, Logan County, Lorain County, Lucas County, Madison County, Mahoning County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Montgomery County, Morgan County, Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County, Portage County, Preble County, Putnam County, Richland County, Ross County, Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County, Wayne County, Williams County, Wood County, and Wyandot County.

* * * * *

(8) No Action-EPA is neither approving nor disapproving the emission limitations for the following counties/sources pending further review: Franklin County, Sandusky County (Martin Marietta Chemicals), and Stark County.

* * * * *

(15) On September 27, 2003, Ohio submitted maintenance plans for sulfur dioxide in Cuyahoga County and Lucas County.

* * * * *

■ 3. Section 52.1881 is further amended by removing paragraphs (b)(7) through (b)(15), redesignating paragraph (b)(16) (Franklin County) as (b)(7), removing paragraphs (b)(17) through (b)(25), redesignating paragraphs (b)(26) (Sandusky County), (b)(27) (Stark County) and (b)(28) (Summit County) as

(b)(8), (b)(9), and (b)(10), respectively, and removing paragraphs (b)(29) and (b)(30).

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.336 is amended by revising the entry for ''Cuyahoga County'' in the sulfur dioxide table to read as follows:

§ 81.336 Ohio.

OHIO—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Cuyahoga County				X
* * *	*	*	*	*

* * * * *

[FR Doc. 04–15202 Filed 7–7–04; 8:45 am]
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