Division proposes to apply the standard not only to persons similarly situated to the plaintiffs in *Ishida* and *Consolo*, who were born after their parents ''voluntarily'' evacuated the prohibited military zones on the West Coast pursuant to military proclamations, but also to persons who were born after their parents had been evacuated from the prohibited military zones on the West Coast and interned. These latter persons, who were born outside of the prohibited military zones after their parents were released from internment camps, also could not return to their parents' original places of residence in the prohibited military zones on the West Coast. Because, consistent with the Federal Circuit's reasoning, persons in this category can also be deemed to have been deprived of liberty, based solely on their Japanese ancestry, as a result of certain Federal Government actions, the Civil Rights Division proposes to make redress available to them. Accordingly, redress will be made available to persons born outside of the prohibited military zones after their parents were interned where at least one parent's original place of residence immediately prior to his or her internment was in the prohibited military zones of the West Coast. However, this change will not affect those persons born outside of the prohibited military zones after their parents were released from internment camps during the defined war period where such parents had resided outside of the prohibited military zones on the West Coast immediately prior to their internment.

Second, the Civil Rights Division proposes to limit eligibility under this policy to claimants born prior to January 3, 1945, the effective date of Proclamation No. 21 (midnight on January 2, 1945). Proclamation No. 21 lifted the general restrictions that had prevented persons of Japanese ancestry from returning to their original places of residence in the prohibited military zones on the West Coast. Accordingly, persons born on or after January 3, 1945, could legally return to their parents' original residence on the West Coast.

Historical evidence indicates that persons of Japanese ancestry were, in fact, allowed to return to the West Coast without any restrictions as early as December 17, 1944, the date on which Proclamation No. 21 was issued and the War Department publicly announced the lifting of the general exclusion orders. In addition, on December 18, 1944, the Secretary of the Interior issued a press release stating that the blanket exclusion orders for persons of Japanese ancestry on the Pacific Coast were revoked. Moreover, War Relocation Authority (''WRA'') records indicate that 26 people of Japanese ancestry left WRA internment camps and returned to California between December 17, 1944 and January 3, 1945. However, because the proclamation might not have been fully implemented or fully publicized at the time of its issuance, ORA will not use the earlier date of issuance but will use the effective date of Proclamation No. 21.

Third, the West Coast is defined as those geographic areas in the State of California, the western portions of Washington and Oregon, and the southern portion of Arizona, where persons of Japanese ancestry were initially required to reside and later barred from entering, pursuant to several proclamations. Proclamation No. 4 prohibited persons of Japanese ancestry from leaving parts of the West Coast while the United States Government was preparing to forcibly evacuate them. Subsequent proclamations were issued to exclude those of Japanese ancestry from these defined West Coast areas. For example, persons of Japanese ancestry were excluded from Military Area No. 1 pursuant to Proclamation No. 7, dated June 8, 1942, and excluded from the California portion of Military Area No. 2 pursuant to Proclamation No. 11, dated August 18, 1942.

III. Regulatory Impact Analysis

The Attorney General has determined that this proposed rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this proposed rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 74

Administrative practice and procedure, Aliens, Archives and records, Citizenship and naturalization, Civil rights, Indemnity payments, Minority groups, Nationality, War claims.

For the reasons set forth in the preamble and by the authority vested in me, including 28 U.S.C. 509 and 510, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by revising part 74 to read as follows:

PART 74—CIVIL LIBERTIES ACT REDRESS PROVISION

1. The authority citation for Part 74 continues to read as follows:

Authority: 50 U.S.C. app. 1989b.

2. In Subpart B, section 74.3 is amended by adding paragraph (b)(9) to read as follows:

Subpart B—Standards of Eligibility

§ 74.3 Eligibility determinations.

(a) * * *

(b) * * *

(9) Individuals born after a parent had been evacuated, relocated, or interned pursuant to paragraph (a)(4) of this section, and whose parent's or parents' original place of residence was in the prohibited military zones on the West Coast on or after March 2, 1942, and who could not legally return to their parent's or parents' original place of residence in the prohibited military zones on the West Coast prior to January 3, 1945. This also includes those individuals who were born after a parent had ''voluntarily'' evacuated pursuant to paragraph (b)(3), and whose parent's or parents' original place of residence was in the prohibited military zones on the West Coast immediately prior to their evacuation, and who could not legally return to their parent's or parents' original place of residence in the prohibited military zones on the West Coast prior to January 3, 1945.

* * * * *

Dated: April 9, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–9505 Filed 4–19–96; 8:45 am]

BILLING CODE 4410–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH96–1; FRL–5462–1]

Proposed Approval and Promulgation of Revisions to the New Source Review State Implementation Plan; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to conditionally approve a requested State Implementation Plan (SIP) revision submitted by the State of Ohio for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This proposed conditional approval is based upon the State's agreeing with two USEPA interpretations of the Ohio rules and a commitment by the State to remedy the omission of a definition for

''Pollution Control Project'' in its NSR rules.

DATES: Comments on this proposed action must be received in writing by June 21, 1996.

ADDRESSES: Comments on this proposed rule should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Nearmyer, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Anyone wishing to come to the Region 5 offices should first contact Ms. Nearmyer at (312) 353–4761. Reference file OH96.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the CAA. The USEPA has issued a ''General Preamble'' describing its preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements. [*See* 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 part D advanced in this proposal and the supporting rationale regarding the approvability of the submittals. Prior to USEPA's approval of a State's NSR SIP submittal, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, USEPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period, or apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3 memorandum also addressed the situation where States did not submit the part D NSR SIP requirements or revisions by the applicable statutory deadline. For permit applications found complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, USEPA will consider the source to be in compliance with the CAA only where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the CAA. USEPA believes this guidance continues to apply to permitting pending final action on NSR SIP submittals.

In this rulemaking action on the Ohio nonattainment NSR SIP revisions, USEPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, USEPA will consider any timely submitted comments before taking final action on this proposed rule.

II. Review of the Ohio Submittal

Section 110(k) of the Act sets out provisions governing USEPA's review of SIP submittals [see 57 FR 13565–66 (April 16, 1992)].

A. Analysis of State Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action. [See section 110(k)(1) and 57 FR 13565 (April 16, 1992).] The USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The USEPA attempts to make completeness determinations within 60 days of receiving a submittal. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) of the CAA if a completeness determination is not made by USEPA within 6 months after receipt of the submission.

It should be noted that Ohio's initial NSR SIP submittal was submitted in response to the part D requirements in 1977 Amendments to the CAA. USEPA approved these provisions on October 31, 1980 (45 FR 72119). The State SIP submittal that is the subject of this proposed rule concerns amendments to the earlier rules to satisfy the requirements of the 1990 Amendments to the CAA. Ohio's previous attempt at satisfying these additional with a submittal to USEPA on August 20, 1993 ended in final disapproval by USEPA on September 21, 1994 (59 FR 48392). This final rule initiated the sanctions process as discussed below.

The State of Ohio submitted draft NSR rules to USEPA for parallel processing on March 1, 1996. Parallel processing is a mechanism developed to expedite USEPA action and a State SIP revision request. Under parallel processing, the State submits its rules to USEPA when their substance has been finalized but before they become finally adopted by the State. The USEPA then initiates its analysis and rule adoption process on the draft State rules. Although final action on the requested SIP revision cannot occur until the rules are adopted and effective, the time between final adoption by the State and approval by USEPA is shortened because USEPA begins its review and approval process before the State completes its rule adoption process.

The State of Ohio held a public hearing on January 6, 1996, to provide the public an opportunity to present oral comments on the NSR implementation plan revisions. After the public hearing the rules were filed with the legislative rules committee. They were adopted by the State and became effective on April 12, 1996, and submitted to USEPA on April 12, 1996 as a requested revision to the SIP. Although the requested SIP revision includes both NSR rules and attainment area rules intended to provide for Prevention of Significant Deterioration (PSD), at this time USEPA is only rulemaking on the Ohio NSR rules. The PSD rules will be the subject of a separate action.

[1] Section 172(c)(7) of the CAA provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2) of the CAA.

2. General Nonattainment NSR Requirements

The statutory requirements for nonattainment new source review SIPs and permitting are found at sections 172 and 173 of the CAA. Part D of title I of the CAA requires States to address a number of nonattainment NSR provisions in a SIP revision submittal. These statutory requirements have been supplemented with more detailed regulations which have been codified at section 51.165 of title 40 of the Code of Federal Regulations (40 CFR 51.165). What follows is a summary of how the Ohio submittal addresses and satisfies each of the requirements for an approvable NSR plan. A more detailed presentation is provided in this proposed rule only in those areas where the Ohio submittal has not clearly satisfied the requirements for approval. USEPA's complete evaluation of the Ohio NSR Plan is contained in a technical support document which is available at the Region 5 office listed in the address section of this proposed rule.

a. Ohio has established provisions in response to section 173(a)(1) of the CAA to assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of Reasonable Further Progress (RFP). These provisions satisfy USEPA's requirements for approval.

b. Ohio has established provisions in response to section 173(c)(1) of the CAA to allow offsets to be obtained in another nonattainment area if the area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a NAAQS violation in the area in which the source would construct. These provisions satisfy USEPA's requirements for approval.

c. Ohio has established provisions in response to section 173(c)(1) of the CAA which requires that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation. These provisions satisfy USEPA's requirements for approval.

d. Ohio has established provisions in response to section 173(c)(1) of the CAA to assure that emissions increases from new or modified sources are offset by real reductions in actual emissions. These provisions satisfy USEPA's requirements for approval.

e. Section 173(c)(2) of the CAA prevents emission offsets from being taken from reductions that are otherwise required by the CAA. Such prohibitions are not expressly identified in Ohio Rule 3745–31–22(A)(3) Emission Offsets. However, in the general provisions covering all installation permits, Rule 3745–31–05(A)(2), a permit must not violate any applicable laws. The term ''applicable laws'' is defined in Rule 3745–31–01(f) as including provisions of the CAA. The USEPA views this provision as effectively preventing the State from using emission offsets from reductions otherwise required by the CAA. Ohio has confirmed that USEPA's interpretation of the term ''applicable laws'', is the same interpretation that the State uses in a April 12, 1996 letter; therefore, USEPA believes that this provision of the State rule satisfies the approval requirements of section 173(c)(2) of the CAA.

f. Ohio has established provisions in response to sections 172(c)(4) and 173(a)(1)(B) of the CAA that reflect changes in growth allowances; specifically, (1) the elimination of existing growth allowances in any nonattainment area that received a notice prior to the amended CAA that the SIP was substantially inadequate or receives such a notice in the future; and (2) the restriction of growth allowances to only those portions of nonattainment areas formally targeted as special zones for economic development. These provisions satisfy USEPA's requirements for approval.

g. Ohio has provided for the supplying of information from nonattainment new source review permits to USEPA's Reasonably Available Control Technology, Best Available Control Technology, Lowest Achievable Emissions Reduction (RACT/BACT/LAER) clearinghouse in response to the requirement in section 173(d) of the CAA. This provision which is contained in the State's workplan of its NSR grant satisfies USEPA's requirement for approval.

h. Ohio has established provisions in response to section 819 of the CAA that effectively exempt activities related to stripper wells from the new additional NSR requirements of subparts 2, 3, and 4 for Particulate Matter of 10 microns or less (PM–10), Ozone, or Carbon Monoxide (CO) nonattainment areas classified as serious or less and having a population of less than 350,000. Although Ohio does not intend to issue permits to stripper wells, Ohio's rules are consistent with the requirements of the CAA and satisfy USEPA's requirements for approval.

i. Ohio has established a definition of ''stationary source'' which includes internal combustion engines other than the newly defined category of ''nonroad engines''. This provision is consistent with the requirements in sections 302(z) and 111(a)(3) of the CAA and, therefore, approvable.

j. Ohio has established provisions in response to section 173(a)(3) of the CAA to assure that owners or operators of each proposed new or modified major stationary source demonstrate, as a condition of permit issuance, the compliance of all other major stationary sources under the same ownership in the State. These provisions satisfy USEPA's requirements for approval.

k. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(A) to ensure that emissions offset credit will be allowed only for control below an emission limitation under an applicable SIP that allows greater emissions than the potential to emit of a source. These provisions satisfy USEPA's requirements for approval.

l. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(B) for existing fuel combustion sources which assure that emissions credit is based on the allowable emissions under the applicable SIP for the type of fuel being burned at the time the application to construct is being filed. The provisions require that should a source commit to switching to a cleaner fuel in the future, the permit must be conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel. Adequate supplies of the new fuel must also be available. These provisions satisfy USEPA's requirements for approval.

m. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(C) that detail the criteria which must be met in order for a source to receive credit for emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels. These provisions satisfy USEPA's requirements for approval.

n. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(D) that assure that no emissions credit may be allowed for replacing one hydrocarbon compound with another with lesser reactivity. These provisions satisfy USEPA requirements for approval.

o. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(F) for procedures relating to the permissible location of offsetting emissions. These provisions satisfy USEPA requirements for approval.

p. Ohio has established provisions in response to 40 CFR 51.165(a)(3)(ii)(G) to assure that credit for an emission

reduction can be claimed to the extent that the State has not relied on it in issuing a permit, preparing an attainment demonstration, or demonstration of further reasonable progress.

q. Ohio has established provisions in response to 40 CFR 51.165(a)(4) which allow that fugitive emissions may be excluded from the calculation of the potential of a stationary source or modification to emit if the source does not belong to any of the source categories listed in 40 CFR 51.165(a)(4). These provisions satisfy USEPA's requirements for approval.

r. Ohio has established provisions in response to 40 CFR 51.165(a)(5)(i) to assure that being granted an approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and under any other requirements under local, State or Federal law. These provisions satisfy USEPA's requirements for approval.

s. Ohio has established provisions in response to 40 CFR 51.165(a)(5)(ii) to assure that a source or modification that becomes a major stationary source or major modification by virtue of a relaxation in any enforceable limitation would be required to apply the applicable State rules to the source or modification as though construction had not yet commenced. These provisions satisfy USEPA's requirements for approval.

t. Ohio has established provisions in response to 40 CFR 51.165(b) to assure that the Ohio nonattainment rules would apply to any new major stationary source or major modification locating in areas designated as attainment or unclassifiable when it would cause or contribute to a violation of any national ambient air quality standard. The new source or modification could alternatively choose to obtain sufficient emission reductions to compensate for its adverse impact on ambient air quality. These provisions satisfy USEPA's requirements for approval.

u. Ohio has made some changes to the existing and previously approved Rule 3745–3103 (Permit to Install Exemptions). This rule addresses the cases in which exemptions from the requirement to obtain a permit to install would be considered by Ohio. These changes are in four sections: permanent exemptions, federal based exemptions, discretionary exemptions, and permit-by-rule exemptions. USEPA's analysis of these provisions is as follows.

A. The introductory paragraph to the permanent exemption section states that the exemptions ''do not apply to a combination of common emissions units that are a major stationary source or major modification.'' USEPA interprets this language to mean that no sources or modifications that are major under the federal rules would be excused from the obligation to obtain a permit to install by this section of the rule.

B. The federal based exemptions section excludes cleanup activities associated with the Comprehensive Environmental Response, Compensation, and Liability Act from the requirement to obtain a permit to install. USEPA considers this approvable.

C. The discretionary exemptions section has been approved in a previous rulemaking (45 FR 72119).

D. The permit-by-rule exemption section currently applies to one exemption, emergency electrical generators or emergency fire fighting water pumps. The equipment size constraints and recordkeeping conditions of this exemption are consistent with the September 6, 1995 memo from John Seitz to Air Division Directors regarding calculating potential to emit for emergency generators, and is therefore approvable.

3. Ozone

According to section 172(c)(5) of the CAA, SIPs must require permits for the construction and operation of new or modified major stationary sources. The statutory permit requirements in ozone nonattainment areas are generally contained in section 173, and in subpart 2 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For all classifications of ozone nonattainment areas and for ozone transport regions, States must adopt the appropriate major source thresholds and offset ratios, and must adopt provisions to ensure that any new or modified major stationary source of Oxides of Nitrogen (NO_X) satisfies the requirements applicable to any major source of Volatile Organic Compounds (VOC), unless a special NO_X exemption is granted by the Administrator under the provision of section 182(f) of the CAA. For serious and severe ozone nonattainment areas, State plans must implement sections 182(c)(6), (7) and (8) of the CAA with regard to modifications.

For emissions of VOC and NO_X in ozone nonattainment areas, Ohio has established the following major source thresholds in Rule 3745–31–01 (Definitions) under the definition of ''Major Stationary Source'' and offset ratios in Rule 3745–31–26 (Offset Ratio Requirements) as follows:

Area classification	Major source threshold	Offset ratios	NO_X provisions [2]
Marginal	100 tpy ...	1.1:1	1.1:1
Moderate.	100 tpy ...	1.15:1	1.15:1

[2] It should be noted that Rule 3745–31–26(B) provides that NOx emissions from stationary sources shall be treated as a nonattainment air pollutant in each county that is designated nonattainment for ozone. The offset requirements for ozone apply to NO_X as well except in areas that have been granted a waiver under section 182(f) of the CAA. It should be noted that Ohio petitioned for and was granted a NO_X control waiver pursuant to the provisions of section 182(f)(1)(B) of the CAA because additional NO_X reductions would not produce net ozone air quality benefits. See 60 FR 36051 (July 13, 1995). Since the ozone nonattainment areas have been granted a NOx waiver under section 182(f), no NO_X offsets will be required as long as this waiver remains in effect.

Ohio does not have any serious, severe, or extreme ozone nonattainment areas. Butler, Warren, Hamilton, and Clermont are all designated as moderate ozone nonattainment areas.

Rule 3745–31–01 (Definitions) details that a net emissions increase for VOC and NO_X is significant under the definition of ''significant'' when the increase is greater than 40 tons per year. In order to establish whether an increase in emissions is significant, the net emissions increase must be calculated by comparing the average of the most recent actual emissions of two consecutive years within the past five year period that is representative of actual emissions unit operation to the potential emissions of the modification. These provisions satisfy USEPA's requirements for approval.

4. Carbon Monoxide Nonattainment NSR Requirements

The statutory permit requirements for carbon monoxide (CO) nonattainment areas are generally contained in section 173, and in subpart 3 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. States must also adopt the appropriate major source threshold and offset ratio.

Rule 3745–31–01 (Definitions) under the definition of ''significant'' adopts a significance level of 100 tpy for CO. Rule 3745–31–01 (Definitions), under the definition of ''Major Stationary Source'', adopts a major source threshold level of 100 tpy in a nonattainment area. The offset requirement of an amount equal to the amount of emissions increase for CO nonattainment areas would fall under Rule 3745–31–26. Ohio does not currently have any CO nonattainment areas. Even though these provisions

were not required they satisfy USEPA's approval requirements.

5. Particulate Matter Nonattainment NSR Requirements

The statutory permit requirements for PM–10 nonattainment areas are generally contained in section 173, and in subpart 4 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For both the moderate and severe classifications of PM–10 nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, significance level for modifications, and provisions for PM–10 precursors.

Ohio has established major source thresholds, offset ratios, modification significance levels, and PM–10 precursor provisions as follows:

A. In Rule 3745–31–01 (Definitions), under the definition of ''Major Stationary Source'', a major source threshold level of 100 tpy in areas classified as nonattainment has been established.

B. A general offset requirement of an amount equal to the amount of emissions increase is established in Rule 3745–31–26.

C. Rule 3745–31–01 (Definitions) adopts a significance level of 15 tpy for PM–10 under the definition of ''significant''.

D. In accordance with the requirements of section 189 of the CAA, Rule 3745–31–21 states that major stationary sources of PM–10 precursors shall be subject to the applicable control requirements except where the Director determines that such sources do not contribute significantly to the PM–10 levels that exceed the standard in the area. It should be noted that on May 27, 1994 (59 FR 27464), USEPA made a finding that PM–10 precursors do not contribute significantly to PM–10 levels that exceed the standard.

PM precursors are pollutants emitted as gases that undergo chemical transformations to become particulate, and principally include sulfates and nitrates. Cuyahoga and a portion of Jefferson County are designated as a moderate nonattainment area for particulate matter. No area has been designated as a severe nonattainment area for particulate matter. These provisions are consistent with USEPA approval requirements.

6. Sulfur Dioxide Nonattainment NSR Requirements

The statutory permit requirements for sulfur dioxide (SO_2) nonattainment areas are generally contained in section 173, and in subpart 5 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For SO_2 nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

The State of Ohio has established a major source threshold level of 100 tpy in Rule 3745–31–01 (Definitions), under the definition of Major Stationary Source. A general offset requirement of an amount equal to the amount of emissions increase is established in Rule 3745–31–26. Rule 3745–31–01 (Definitions) under the definition of ''significant'' adopts a significance level of 40 tpy for SO_2. Currently, portions of Coshocton, Cuyahoga, Gallia, Jefferson, Lake, Lorain, and Lucas Counties are designated as nonattainment for SO_2. Summit County has no designation pending USEPA action on a remand. These provisions are sufficient for USEPA approval.

7. Lead Nonattainment NSR Requirements

The statutory permit requirements for lead nonattainment areas are generally contained in section 173 and in subpart 5 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For lead nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Ohio established a major source threshold level for stationary sources which emit or have the potential to emit 100 tpy of any pollutant for which the area is designated as nonattainment in Rule 3745–31–01 under the definition of ''Major Stationary Source''. The offset requirement of an amount equal to the amount of emission increases would fall under the general definition of Rule 3745–31–26 and is acceptable to USEPA. Under the definition of Significant, Rule 3745–31–01 includes a significance level of 0.6 tpy for lead. There are no areas of Ohio currently designated as not attaining the lead standard.

8. Nitrogen Dioxide Nonattainment NSR Requirements

The statutory permit requirements for nitrogen dioxide (NO_2) nonattainment areas are generally contained in section 173, and in subpart 5 of part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For nonattainment areas, States must adopt the appropriate major source threshold, offset ratio and significance level for modifications. Although Ohio has no NO_2 nonattainment areas it has complied with these requirements.

The State of Ohio has established a major source threshold level of 100 tpy in Rule 3745–31–01 (Definitions), under the definition of ''Major Stationary Source'' for nonattainment areas. Rule 3745–31–01 (Definitions), under the definition of ''significant'', adopts a significance level of 40 tpy for nitrogen oxide (NO_X). The NO_X offset requirement established in Rule 3745–31–26 states that the offset requirements for ozone shall also apply to NO_X unless a NO_X waiver is granted under section 182(f) of the CAA. NO_2 is considered a NO_X so these provisions are also applicable to NO_2. As discussed in footnote 2, a NO_X waiver has been granted for all Ohio ozone nonattainment areas and the waiver effectively suspends enforcement of these requirements as long as the waiver remains in effect. These provisions satisfy USEPA's approval requirements.

9. Miscellaneous Definition Changes

Any definitional changes under Rule 3745–31–01 as compared to the definitions under 40 CFR 51.165 not specifically mentioned in this proposed rule are not significant.

The definition of ''Building, Structure, Facility, or Installation'' and ''Stationary Source'' in 40 CFR 51.165 have been combined under the definition of ''Stationary Source'' under Rule 3745–31–01. This combination of definitions satisfies USEPA's requirements for approval.

The definition of ''Major Modification'' under Rule 3745–31–01 does not provide for the exemptions allowed under 51.165 (a)(1)(v)(C) (8) and (9) pertaining to pollution control projects and clean coal technology demonstration projects. USEPA considers the absence of these exemptions to be more stringent than the Federal definition and is, therefore, approvable.

Ohio has chosen to omit the definition of ''electric utility steam generating unit'' and the related definition of ''Representative Actual Annual Emissions'' from 40 CFR 51.165 (a)(1) (xx) and (xxi) since those terms are not used within the Ohio NSR rules. Electric utility steam generating units under the Federal definition would be required by Ohio rules to follow the same permitting process and applicable baseline calculations as other source categories. In other words, Ohio has not given electric utility steam generating units the additional flexibility that the Federal rules would otherwise allow. On this point the State rule is more

stringent than the Federal requirement and, therefore, approvable.

Under the definition of ''Actual Emissions'' in Rule 3745–31–01, Ohio has not provided for a separate interpretation of actual emissions for electric steam generating units provided for in 40 CFR 51.165(a)(1)(xii)(E). This omission is acceptable to USEPA and approvable.

The definitions of ''Temporary Clean Coal Technology Demonstration Project'' and ''Clean Coal Technology Demonstration Project'' are contained in Rule 3745–31–21 as opposed to Ohio's Rule which holds the definitions (3745–31–01). The placement of these definitions is acceptable to USEPA and approvable.

The definition of ''Pollution Control Project'' from 40 CFR 51.165 (a)(1)(xxv) has been omitted from the Ohio rules although the term is utilized in the definitions of ''modify'' and ''modification''. Inclusion of the Federal definition of this term is a mandatory requirement for Federal approval of the Ohio NSR requested SIP revision unless the State demonstrates that the definition used in the State rule is more or equally stringent as the Federal definition. Because Ohio has not used this term in its NSR rule, it has not satisfied this requirement. In an April 12, 1996 transmittal letter of Ohio's finally adopted NSR rules to USEPA, Ohio has committed to modify its NSR rules to incorporate the definition of ''Pollution Control Project'' not later than September 21, 1997. Based on this commitment, USEPA proposes approval of the Ohio NSR rules.

Each time Ohio used the term regulated pollutant in their rules, such as the definitions of ''Major Stationary Source'' and ''Significant,'' the term is qualified with the statement ''including lead compounds but excluding other air pollutants regulated due to being listed under section 112 of the CAA''.

This statement is consistent with section 112(b)(6) of the CAA and is, therefore, approvable.

III. Proposed Rulemaking Action

As stated above, the Ohio NSR submittal contains one deficiency which is sufficient to serve as a basis for USEPA disapproval of the State's requested SIP revision. Furthermore, two interpretations listed in e. and u. of II(A)(1) could be a disapproval item in the absence of State concurrence with USEPA's interpretation. Because, however, the State has committed to remedy the deficiency identified not later than September 21, 1997 and agreed that USEPA's interpretations of the State rules are consistent with the State's own interpretations, USEPA proposes to conditionally approve the requested SIP revision. Conditional approval would allow the State one year from final rulemaking to remedy the deficiencies identified above. If the State remedies the deficiencies prior to the one year deadline, USEPA will rulemake to convert the conditional approval to an approval. If the State does not remedy the deficiencies within the allowed one year period, the conditional approval will become a disapproval.

The rules proposed for conditional approval in this rulemaking action are OAC 3745–31–01(A)(B)(C)(D)(E)(F)(G)(H)(I)(J)(K)(L)(M)(N)(O)(Q)(R)(S)(V)(W)(X)(Y)(Z)(AA)(BB)(CC)(DD)(EE)(FF)(GG)(HH)(II)(JJ)(KK)(LL)(MM)(NN)(OO)(PP)(SS)(TT)(WW)(XX)(YY)(ZZ)(BBB)(DDD), 3745–31–02(A)(2)(C)(D), 3745–31–03(A)(1)(2)(a)(3)(4), 3745–31–05(A)(2)(d)(f)(D)(F), 3745–31–09, 3745–31–10, 3745–31–21, 3745–31–22, 3745–31–23, 3745–31–24, 3745–31–25, 3745–31–26, 3745–31–27.

IV. Impact on Sanctions

In a final rule published on September 21, 1994 (59 FR 48392), USEPA disapproved Ohio's August 20, 1993 submittal of a requested SIP revision for NSR. That final rule initiated USEPA's sanction process as discussed in USEPA's August 4, 1994 (59 FR 39832) Final Rule and Notice on CAA Sanctions. This August 4, 1994 final rule finalized USEPA's selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the CAA. *See* 59 FR 39832. This rulemaking states that the section 179(b)(2) of the CAA offset sanction applies in an area 18 months from the date when the USEPA makes a finding under section 179(a) of the CAA with regard to that area. Furthermore, the section 179(b)(1) of the CAA highway funding restrictions apply in an area 6 months following application of the offset sanction. Because the effective date of USEPA's disapproval of Ohio's earlier NSR SIP revision request is October 21, 1994, the requirement for-two-for one offsets of sources receiving permits for major new sources or modifications located in Ohio nonattainment areas is scheduled to begin April 21, 1996. Similarly the start date for imposing highway funding sanctions is October 21, 1996. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance.

Because USEPA is proposing to conditionally approve Ohio's requested NSR SIP submittal, in the rules section of this Federal Register the USEPA is issuing an interim final determination that the Ohio has corrected the deficiency created when the USEPA disapproved the Ohio requested SIP revision for NSR. This interim determination is intended to defer the application of the two-for-one offset and highway funding sanctions until USEPA makes a final determination on the Ohio's NSR submittal.

V. Request for Public Comments

The USEPA is requesting comments on all aspects of the requested SIP revision and USEPA's proposed rulemaking action. Comments received by the date indicated above will be considered in the development of USEPA's final rulemaking action.

VI. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

VII. Regulatory Flexibility

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.

USEPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the

Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

VIII. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 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 a State, local and/or tribal government(s) in the aggregate. The USEPA must also develop a plan with regard to small governments that would be significantly or uniquely affected by the rule.

Because this proposed rule if finally adopted is estimated to result in the expenditure by State, local and tribal governments or the private sector of less than $100 million in any one year, USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost effective, or least burdensome alternative and because small governments will not be significantly or uniquely affected by this rule, USEPA is not required to develop a plan for small governments. Further, this proposed rule if finally adopted only approves existing State regulations; it imposes no new requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Lead, Carbon monoxide, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 15, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–9914 Filed 4–19–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 157–0007; FRL–5460–7]

Clean Air Act Approval and Promulgation of New Source Review and Prevention of Significant Deterioration Implementation Plan for Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve with a contingency, and disapprove in the alternative Monterey Bay Unified Air Pollution Control District (District) Rules 207 and 215 for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). Rules 207 (Review of New and Modified Sources) and 215 (Banking of Emission Reductions) were submitted by the State of California on behalf of the District as a requested State Implementation Plan (SIP) revision to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This submittal also satisfies the requirements for a Prevention of Significant Deterioration (PSD) program. This proposed approval is contingent upon the District correcting existing deficiencies in its NSR and PSD submittal before EPA promulgates a final rulemaking on this submittal. Should the District fail to correct all deficiencies in this submittal, then this notice will serve as a proposed disapproval of the submittal.

DATES: Comments on this proposed action must be received in writing by May 22, 1996.

ADDRESSES: To submit comments or receive further information, please contact Steve Ringer, Environmental Engineer, New Source Section, Air & Toxics Division (A–5–1), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; (2) Air Resources Board, 2020 L Street, Sacramento, CA 95814; (3) Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey CA 93940.

FOR FURTHER INFORMATION CONTACT: Steve Ringer (415) 744–1260.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

The District held a public hearing on May 17, 1995 to entertain public comment on rules 207 and 215. On May 17, 1995, the rules were adopted by the District Board of Directors and submitted to the State. On August 10, 1995 the rules were submitted to EPA as a proposed revision to the California SIP.

EPA deemed the submittal complete on October 4, 1995. The submittal has since been reviewed and found to be complete but lacking certain requirements that would make it fully approvable. The District has, however, committed to correct the deficiencies described below and submit a rule with these changes for inclusion into the SIP. Therefore, contingent on the submittal of a fully approvable SIP revision, as described below, EPA proposes to approve the District's nonattainment NSR and attainment PSD SIP submittal. If the District fails to correct the deficiencies in this submittal, then EPA's final action will be a disapproval.

Summary of Rule Contents

The Monterey Bay Unified Air Pollution Control District submitted to EPA for adoption into the applicable NSR SIP Rules 207 (Review of New or Modified Sources) and 215 (Banking of Emissions Reductions). Rule 207 is intended to replace existing NSR SIP Rule 207 (Review of New or Modified Source); and Rule 215 is a new addition to the existing SIP.

These submitted rules constitute the District's new source permitting