

3. Table Four, Paragraph 5 of § 706.2 is added as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

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Table Four

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5. The masthead light required by Rule 23(a)(i) is not located in the forepart of the vessel on the CSP Class and SLWT Class.

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Dated: September 13, 1996.

Approved:

M. W. Kerns,

LCDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty) Acting.
[FR Doc. 96-25860 Filed 10-8-96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH101-1a; FRL-5631-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Ohio on July 18, 1996, which amends the sulfur dioxide (SO₂) regulations applying to Ohio Edison's Sammis and Toronto Plants in Jefferson County. The revision requested July 18, 1996, involves reverting to an emission limit option presented in the Federal Implementation Plan (FIP) for Jefferson County.

DATES: The "direct final" approval is effective on December 9, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Ryan Bahr at (312) 353-4366 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental

Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr at (312) 353-4366.

SUPPLEMENTARY INFORMATION:

I. Background

The FIP containing SO₂ regulations applying to sources in Ohio was promulgated on August 27, 1976 (41 FR 36323). The relevant portion of the current SIP, Ohio Administrative Code (OAC) Rule 3745-18-47, was approved by the USEPA on January 2, 1981 (46 FR 8481). On September 12, 1979, the Governor of Ohio submitted an SO₂ control plan to USEPA for inclusion in the Ohio SIP. In this control plan, the State based its limits for the Sammis plant on equations specified in the FIP. Thus the limits applying to the Sammis plant were 1.61 pounds per million British thermal units actual heat input (#/mmBtu) for boilers 1 through 4 (stacks 1 and 2), and 4.46 #/mmBtu for boilers 5 through 7 (stacks 3 and 4). These limits were submitted to USEPA as part of OAC Rule 3745-18-47 on February 12, 1980. USEPA approved Rule 3745-18-47 and other relevant provisions of Chapter 3745-18 in the Federal Register on January 27, 1981 (45 FR 12266).

II. Summary of State Submittal

Originally, Ohio Edison chose to use two fuel sources with differing SO₂ content at the Sammis facility by using the equations presented in the FIP to formulate its emission limits. The company now wishes to make the Sammis facility's operation more efficient by using a single fuel source and has petitioned the State for a SIP revision. Ohio's July 18, 1996 submittal to USEPA amends OAC Rule 3745-18-47 by adding an additional paragraph to section (L) relating to the Ohio Edison Sammis facility, and adjusting section (M) for the Toronto facility. The revisions for the Sammis facility provide a limit of 2.91 #/mmBtu actual heat input from each boiler as an alternative to the existing boiler specific regulations. Ohio Edison is keeping both emission limit options for the Sammis facility, and is required to notify the State ninety days prior to the date of conversion. The two emission limit options for the Ohio Edison Sammis plant are the same as those promulgated in the FIP. The provisions in the State's SIP revision request relating to the Toronto plant consist of paragraphs (M)(1) and (M)(2). Paragraph (M)(1) limits the Toronto facility to a maximum SO₂ emission rate of 8.1 #/mmBtu from each boiler. Paragraph

(M)(2) specifies a maximum of 2.0 #/mmBtu which goes into effect with this declaration of Federal approval.

A memorandum from the Director of the USEPA Air Quality Management Division to the Director of the USEPA Region 5 Air and Radiation Division entitled "Response to Request for Guidance on Issues with Ohio Sulfur Dioxide Federal Implementation Plan," dated September 28, 1994, provides guidance on modeling issues associated with the Ohio SO₂ FIP. This memo sets forth three criteria to be met so that FIP limits for the Sammis plant can be reverted to in the SIP without new modeling. These criteria are: (1) That the FIP limits are demonstrated to be adequately protective at the time of promulgation; (2) that there is not evidence now that the FIP and the associated emission limits are inadequate to protect the SO₂ national ambient air quality standards (NAAQS); and (3) that the SIP revision is not a relaxation of existing emission limits.

The modeling presented in the SO₂ Control Strategy Technical Support Document (TSD) from August 1976 showed that no exceedences of the NAAQS would occur under either SO₂ limit option set forth in the FIP for the Sammis facility. Furthermore, there have not been any modeling analysis which show the FIP limits to be inadequate. Finally, since the FIP emission limit options were developed to have equivalent plant impacts, Ohio's July 18, 1996, submittal would neither decrease nor increase the allowable impacts of emissions from the Sammis plant, and would clearly tighten the limits at the Toronto plant. Therefore, pursuant to the guidance presented in the September 28, 1994, memorandum, the revision may be approved without submittal of a new modeling analysis. Additional modeling studies are not required in this instance because this revision merely reverts to the promulgated FIP and does not introduce any less stringent regulations than those approved in the original promulgation on August 27, 1976 (41 FR 36323).

Ohio's July 18, 1996, submittal did not include revisions to or discussion of compliance test methods. The current SIP, which includes Jefferson County limits and selected test methods that were simultaneously approved in 1981, applies the stack test method in OAC Rule 3745-18-04(D)(1) as the reference test method for evaluating compliance with the Jefferson County limits. The State's recent submittal did not request revisions to the applicable test methods. This indicates that the SIP continues to apply the test methodology in OAC Rule 3745-18-04(D)(1) as the applicable

reference test method for all of Jefferson County's sources.

On July 18, 1979, West Virginia requested to revise their SO₂ SIP and identified Ohio Edison's Sammis plant to have a significant impact on the attainment status of Hancock County, West Virginia (44 FR 43298). Portions of Hancock County are currently designated nonattainment, necessitating further revisions to the area's SIP. If the modeling conducted by West Virginia to address this requirement demonstrates that the emission limits for the Sammis Plant do not protect the NAAQS, then USEPA will require further revisions to the emission limits which apply to the Sammis Plant as necessary.

III. Final Rulemaking Action

The USEPA is approving Ohio's July 18, 1996, SO₂ SIP revision submittal, which amends OAC Rule 3745-18-47. The USEPA has found that the emission limits for Ohio Edison's Sammis plant specified in this SIP revision reinstate FIP limits promulgated previously by USEPA that are equivalent to the limit in the existing SIP, and that the emissions limits for Ohio Edison's Toronto plant have been lowered, and concludes that these revisions may be approved without further modeling support.

The USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, USEPA is publishing a proposal to approve the SIP revision should significant adverse or critical comments which have not been previously addressed be filed. This action will be effective December 9, 1996, unless, by November 8, 1996, such adverse or critical comments are received.

If USEPA receives such comments, this action will be withdrawn by publishing a subsequent document that will withdraw the final action. Public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 9, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific

technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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.

SIP approvals under sections 110 and 301, 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA 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).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal

requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. 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 December 9, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur dioxide.

Dated: September 25, 1996.

David A. Ullrich,

Acting Regional 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. 7401-7671q.

2. Section 52.1870 is amended by adding paragraph (c)(111) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(111) On July 18, 1996, the Ohio Environmental Protection Agency submitted a site specific State Implementation Plan revision for Ohio Edison's Sammis and Toronto plants for Sulfur Dioxide. The revisions for the Sammis plant provide "as an alternative" to the existing boiler specific regulations a limit of "2.91 #/mmBtu actual heat input from each boiler". The regulation for the Toronto plant reduces allowable emissions to 2.0 #/mmBtu.

(i) Incorporation by reference.

(A) Ohio Administrative Code (OAC) Rule 3745-18-47, effective July 25, 1996.

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