

(c) *Special local regulations.* Non-participant vessels are prohibited from entering the regulated area unless authorized by the Coast Guard Patrol Commander. Spectator craft may remain in the designated viewing area.

(d) *Dates:* This section is effective from 11 a.m. to 4 p.m. on September 21, 2003.

Dated: July 28, 2003.

F.M. Rosa,

*Captain, U.S. Coast Guard, Acting
Commander, Seventh Coast Guard District.*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH155-3; FRL-7539-4]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Regulations

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: This action is the conditional approval of the Ohio oxides of nitrogen (NO_x) State Implementation Plan (SIP). This document also contains USEPA's response to the adverse comment from American Electric Power Services Corporation (AEP) sent to USEPA following publication of the original direct final approval of the Ohio NO_x plan on January 16, 2003, which was subsequently withdrawn because of receipt of an adverse comment. USEPA is conditionally approving the Ohio NO_x plan following the receipt of a commitment from the Director of Ohio EPA to change the flow control date in the State plan from 2006 to 2005. On June 25, 2003, Ohio sent a letter to USEPA containing a commitment to take specific enforceable measures by which the flow control date will be changed. These enforceable measures include: timing by which Ohio will begin the public process; timing when the amended rule will be filed with the Joint Committee on Administrative Rule Review; timing of the public hearing; and time span when the amended rule process will be complete. Ohio EPA expects the flow control date in the rule to be changed approximately six months from the date of the commitment letter. USEPA found that the commitment is acceptable and, therefore, USEPA is taking action to conditionally approve the Ohio plan based on the commitment from Ohio to submit the revised rule by

December 26, 2003. We will populate the compliance accounts of units listed in the State's rule after September 4, 2003, so that respective Ohio sources can participate in the NO_x trading program.

DATES: This rule is effective on September 4, 2003.

ADDRESSES: You may obtain a copy of the State Implementation Plan revision request at the address below. Please telephone John Paskevicz at (312) 886-6084 if you intend to visit the Region 5 office.

You may inspect copies of Ohio's NO_x submittal and subsequent commitment letter at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Chicago, Illinois, 60604. E-Mail Address: paskevicz.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, the terms "you" refer to the reader of this rule and/or to sources subject to the State rule, and the terms "we", "us", or "our" refers to USEPA.

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I. Background

A. What Requirements Led to the State's Submittal of the NO_x Emission Control Plan?

On October 27, 1998, the USEPA promulgated a regulation known as the NO_x SIP Call for numerous States, including the State of Ohio. The NO_x SIP Call requires the subject States to develop NO_x emission control regulations sufficient to provide for a prescribed NO_x emission budget in 2007.

Preceding the promulgation of USEPA's NO_x SIP Call, there had been extensive discussions by federal, state, and local environmental agencies, industry, and environmental groups regarding the transport of ozone in the Eastern United States. The Environmental Council of States (ECOS) recommended the formation of a national workgroup to assess the problem and to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to a March 2, 1995 USEPA memorandum, the Ozone Transport Assessment Group (OTAG) was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy. OTAG was a partnership among USEPA, the 37 eastern States and the District of Columbia, and industrial, academic, and environmental groups. OTAG was given the responsibility of conducting the two years of analyses envisioned in the March 2, 1995 USEPA memorandum.

OTAG conducted a number of regional ozone data analyses and regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the USEPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional NO_x emission reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, USEPA issued the NO_x SIP Call rule on October 27, 1998. 63 FR 57356.

In the NO_x SIP Call, USEPA determined that sources and emitting activities in 23 jurisdictions¹ emit NO_x in amounts that "significantly contribute" to ozone nonattainment or

¹ Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

interfere with maintenance of the 1-hour ozone national ambient air quality standards (NAAQS) in one or more downwind areas in violation of Clean Air Act (CAA) section 110(a)(2)(D)(I)(i). USEPA identified NO_x emission reductions by source sector that could be achieved using cost-effective measures and set state-wide NO_x emission budgets for each affected jurisdiction for 2007 based on the possible cost-effective NO_x emission reductions.

The source sectors include nonroad mobile, highway mobile, electricity generating units (EGUs), and major non-EGU stationary point sources. EGUs include stationary boilers and turbines that generate at least some electricity, even if they also generate steam for industrial processes. Non-EGUs include other large stationary boilers and turbines, typically for the purpose of generating steam for industrial processes.

USEPA established recommended NO_x emissions caps for large EGUs (serving a generator whose nameplate capacity exceeds 25 megawatts) and for large non-EGUs (maximum design heat input exceeding 250 mmBTU per hour). USEPA determined that significant NO_x reductions using cost-effective measures could be obtained as follows: application of a 0.15 pounds NO_x/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of NO_x emissions from large non-EGUs; a 30 percent reduction of NO_x emissions from large cement kilns; and a 90 percent reduction of NO_x emissions from large stationary internal combustion engines. The 2007 state-wide NO_x emission budgets established by jurisdiction were based, in part, by assuming these levels of NO_x emission controls coupled with NO_x emissions projected by source sector to 2007.

Although the state-wide NO_x emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the NO_x SIP Call allows each State to determine what measures it will choose to meet the state-wide NO_x emission budgets. It does not require the States to adopt the specific NO_x emission rates assumed by the USEPA in establishing the NO_x emission budgets. The NO_x SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NO_x state-wide emission budget. The NO_x SIP Call encourages the States to adopt a NO_x cap and trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate NO_x trading program that the USEPA will

administer for the States. If States choose to participate in the national trading program, the States must submit SIPs that conform to the trading program requirements in the NO_x SIP Call.

B. What Requirements Must Ohio Meet?

The State of Ohio has the primary responsibility under the Clean Air Act for ensuring that Ohio meets the ozone air quality standards and is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for meeting the NO_x emissions budget. The SIP for ozone must meet the ozone transport SIP Call requirements, must be adopted pursuant to notice and comment rulemaking, and must be submitted to the USEPA for approval.

These NO_x emission reductions will address ozone transport in the area of the country primarily east of the Mississippi River. USEPA promulgated the NO_x SIP Call pursuant to the requirements of CAA section 110(a)(2)(D) and our authority under CAA section 110(k). Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of attainment of a standard by any other State with respect to any NAAQS.

Pursuant to its authority under section 110(k)(5), USEPA concluded that the SIPs for Ohio and other states were substantially inadequate to prohibit NO_x emissions that significantly contribute to ozone nonattainment. As a result, Ohio was required to submit SIP revisions that addressed this inadequacy.

USEPA has published a model rule for control of NO_x emissions from boilers and turbines. This model rule, codified at Title 40 of the Code of Federal Regulations Part 96 (40 CFR part 96), reflects USEPA's recommendations for the general design of the necessary NO_x emission control programs as well as detailed recommendations for specific program features. Similarly, at 63 FR 56393 (October 21, 1998), USEPA has published a proposed Federal implementation plan including rules regulating cement kilns, which serve as sample rules for this source type. USEPA recommends the cost-effective levels of control noted above. The budget that USEPA established for states

reflects these control levels. USEPA further recommends that states take the necessary steps to allow their sources to participate in a multi-state NO_x emissions trading program that USEPA will run. While USEPA offers flexibility to states on various elements of program design, particularly in the distribution of projected emission reductions, USEPA can offer more streamlined approval of programs that more closely follow USEPA's model rule. (See 63 FR 57365)

C. What Have Been the Court Rulings Regarding USEPA's NO_x Emission Control Rule?

When the USEPA published the NO_x SIP Call on October 27, 1998, a number of States and industry groups filed petitions challenging the rulemaking before the United States Court of Appeals for the District of Columbia. The court, on May 25, 1999, stayed the States' obligation to submit SIPs in response to the NO_x SIP Call rule. Subsequently, on March 3, 2000, the court upheld most of USEPA's NO_x SIP Call rule. The court, however, vacated the rule as it applied to Missouri and Georgia, and remanded for further consideration the inclusion of portions of Missouri and Georgia in the rule. The court also vacated the rule as it applied to Wisconsin because the court believed that USEPA had not made a showing that sources in Wisconsin significantly contributed to nonattainment or interfered with maintenance of the ozone NAAQS in any other State. Finally, the court remanded to USEPA two issues concerning a limited portion of the NO_x emission budgets. See *Michigan et al. v. EPA*, 213 F.3d 663 (DC Cir. 2000). On April 11, 2000, based on the remanded issues, USEPA initiated a two phase approach to implement the NO_x SIP Call. Phase I of this approach addressed the portion of the NO_x SIP Call upheld by the court. Phase I will achieve the majority of the reductions in the NO_x SIP Call. The Phase I plan was due from Ohio on October 30, 2000.

Phase II will address the few narrow issues that the DC Circuit court remanded to USEPA, including: how a small subclass of facilities that generate electricity (cogeneration units) should be included in the rule; and what control levels should be assumed for large, stationary internal combustion engines. Phase II of the NO_x SIP Call will not require a submittal from the States until USEPA has proposed and finalized rules in response to the court's remand.

On June 22, 2000, the court removed the stay of the state's obligation to submit SIPs in response to the NO_x SIP

Call and denied petitioner's motions for rehearing and rehearing en banc. In removing the stay, the court provided that USEPA should allow 128 days for States to submit SIPs to the USEPA, *i.e.*, by October 30, 2000. Shortly after removing the stay, petitioners requested that the court adjust the NO_x SIP Call compliance date. In an action related to *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir 2000) the court then determined that the compliance date for the SIP Call would be May 31, 2004. Although the court's action affected only the compliance deadline, other dates in the rule for related requirements (such as flow control) were also extended because they were established relative to the original compliance deadline.

II. Summary of the State Submittal

A. When Was the Ohio EPA NO_x Plan Submitted to the USEPA?

Ohio EPA submitted the NO_x plan on July 11, 2002. USEPA had an opportunity to review and comment on earlier draft versions of the rules during the stakeholder review process. USEPA made both formal and informal comments, and these comments are available in the Docket. The plan was submitted in sufficient time for the USEPA to make a finding of completeness, which terminated the imposition of sanctions which were scheduled to go into effect on July 25,

2002, due to Ohio's failure to submit a plan. The Region 5 Regional Administrator signed the completeness finding on July 24, 2002. (see 67 FR 50600)

B. What Are the Basic Components of the Ohio EPA NO_x Plan?

The Ohio EPA plan includes the following documents: (1) A letter from the Director of Ohio EPA requesting a revision to the Ohio EPA plan; (2) A copy of the rules containing the provisions and requirements to implement a NO_x budget trading program to control and reduce emissions of NO_x in Ohio; (3) A copy of the Ohio code indicating the authority of the Ohio EPA Director to develop and submit the revision; (4) A notice of the proposed rulemaking and public hearing; (5) A transcript of the public hearing on the rules containing comments and testimony; (6) The Ohio Director's Findings and Orders announcing the adoption of rules controlling NO_x from sources in Ohio; (7) A list of Ohio's "interested parties" or stakeholders to whom draft rules were distributed for comment; (8) Summary of comments submitted into Ohio's formal hearing record regarding the proposed rules which establish a NO_x budget trading program in Ohio; and, (9) Ohio's budget demonstration including a list of units (operating or

under construction) subject to the State's NO_x rules.

Ohio's NO_x plan and rules apply to, and establish, a trading program for EGUs, non-EGUs, and portland cement kilns. The rules contained in Chapter 3745-14, establish the provisions and requirements to implement a NO_x budget trading program in Ohio. The net effect of the rules is to cap emissions from major emitters and provide allowances to units to operate within the State's budget during the control period. Allowance allocations are made for five year periods with the exception of the first period, which is for a four-year period.

The State's market-based program which follows the model NO_x budget trading rule is the method selected by Ohio to meet its NO_x emissions reduction obligations under the NO_x SIP Call. The trading program caps total emissions in order to ensure that emissions reductions are achieved and maintained. Also, the flexibility in the State's program allows sources to reduce emissions and where possible, and if desired, generate allowances for trading.

The Ohio EPA plan includes Ohio Rule 3745-14. This trading rule contains eleven separate rule elements, listed in Table 1, which correspond with part 96 model rule of the NO_x SIP Call.

TABLE 1.—COMPARISON OF STATE RULE TO MODEL RULE

Ohio rule 3745-14—	Corresponds with USEPA rule . . .
01, General provisions	Subpart A, Sections 96.1, 96.2, and 96.3 Purpose, Definitions and Abbreviations. 96.4, Applicability. 96.5, Retired unit exemptions. 96.6, Standard requirements. 96.7, Computation of time.
02, NO _x authorized account representative	Subpart B, Section 96.10 . . . the NO _x authorized account representative. 96.11, Alternate NO _x authorized account representative. 96.12, Changing the account representative. 96.13, Account certificate of representation. 96.14, Objections re: NO _x account representative.
03, NO _x budget permit	Subpart C, Section 96.20, NO _x budget permit requirements. 96.21, Submission of NO _x budget permit application. 96.22, Information requirements for NO _x budget permit applications. 96.23, content. 96.25, revisions.
04, Compliance certification	Subpart D, Section 96.30, Compliance certification report. 96.31, State and USEPA's action on compliance certification.
05, NO _x allowance allocations (and Appendix A and B, for EGUs and non-EGUs, for the period from 2004 through 2007).	Subpart E, Section 96.40, NO _x allowance allocations. 96.41, Timing requirements. 96.42 NO _x allowance allocations. 96.55 Banking (Early reduction credit and non-portion of this section).
06, NO _x allowance tracking system	Subpart F, Section 96.50, NO _x allowance tracking system (ATS) accounts. 96.51, Establishment of accounts. 96.52, NO _x ATS responsibilities of NO _x authorized account rep. 96.53, Recordation of NO _x allowance allocations. 96.54, Compliance. 96.55, Banking. 96.56, Account error. 96.57, Closing of general accounts.
07, NO _x allowance transfers	Subpart G, Section 96.60, Submission of NO _x allowance transfers. 96.61, EPA recordation. 96.62, Notification.
08, Monitoring and reporting	Subpart H, Monitoring and Reporting. 96.70, General requirements. 96.71, Initial certification and recertification procedures. 96.72, Out of control periods. 96.73, Notifications. 96.74, Recordkeeping and reporting. 96.75, Petitions. 96.76, Additional requirements to provide heat input data for allocations.

TABLE 1.—COMPARISON OF STATE RULE TO MODEL RULE—Continued

Ohio rule 3745–14—	Corresponds with USEPA rule . . .
09, NO _x budget opt-in units	Subpart I, Individual Unit Opt-ins. Section 96.80, Applicability. 96.81, General. 96.82, NO _x authorized account representative. 96.83, Applying for NO _x budget opt-in permit. 96.84, Opt-in process. 96.85, NO _x budget opt-in permit contents. 96.86, Withdrawal from NO _x budget trading program. 96.87, Change in regulatory status. 96.88, NO _x allowance allocations to opt-in units.
10, Alternative compliance plans	This rule allows a source to participate in alternate multi-pollutant reduction schemes such as the President's Clear Skies proposal.
11, Portland cement kilns	Part 98, subpart B, Emissions from cement manufacturing, proposed rules, October 21, 1998.

Ohio's plan includes opportunities for sources to obtain, beginning in 2006, an allocation for energy efficiency/renewable energy projects. The Ohio rule contains a provision which sets aside one percent of the tons of NO_x emissions in the State trading budget. This set-aside is for units that during the control period reduce end-use demand for electricity or displace electrical energy utilization by use of wind power, solar power, biomass or landfill methane gas generation.

Ohio's plan also sets aside one percent of the trading budget beginning in 2006 for innovative technology projects. This means that an industry can compete for a set-aside, using stationary or mobile source technology

which has not yet been adequately demonstrated in practice but where there is a likelihood that the technology will reduce NO_x emissions and increase energy efficiency.

C. Does the Ohio EPA NO_x Plan Meet the Federal NO_x Statewide Emissions Budget?

Yes, on July 11, 2002, Ohio submitted a plan containing rules in OAC Chapter 3745–14 to respond to USEPA's NO_x SIP Call published in the **Federal Register** on October 27, 1998. We reviewed the plan and found it complete on July 23, 2002. (See 67 FR 50600, dated August 5, 2002)

USEPA's NO_x SIP Call affected sources of NO_x in 22 states (including Ohio) and the District of Columbia. The

NO_x SIP Call rulemaking established statewide budgets for NO_x emissions beginning in the 2003 ozone season (May 1 to September 30). Each state was required to submit a State Implementation Plan (SIP) containing rules necessary to reduce NO_x emissions to the NO_x budget levels.

On March 2, 2000, USEPA published a final rule amending state NO_x budgets (65 FR 11222). Ohio used the information from this final rule to develop its budget. Further, Ohio describes the process it used to develop the budget in the budget demonstration contained in its plan submittal. A summary of the base and budget NO_x emissions contained in this rule for Ohio are provided in table 2.

TABLE 2.—NO_x EMISSIONS BUDGET BY SOURCE CATEGORY
[tons]

2007 Final	Source Category					Total
	EGU	Non-EGU	Area source	Non-Road mobile	Highway mobile	
Base	163,132	50,001	21,860	43,380	94,850	373,223
Budget	48,990	40,194	21,860	43,380	94,850	249,274
Reduction	114,142	9,807	0	0	0	123,949

On November 15, 2000, Ohio informally provided draft rules for preliminary review to stakeholders and USEPA to start the rulemaking process. Ohio received comments on these draft rules from USEPA and twenty-two other interested parties. Ohio's draft rules were revised to take into account the comments received, and the revised draft rules were distributed to interested parties on November 19, 2001. Ohio EPA, again, received comments on these draft rules from USEPA and thirty-eight other interested parties. The rules, to be submitted to Ohio's Joint Committee for Administrative Rule Review (JCARR), were revised again taking into consideration the comments. Ohio believes that these rules will achieve the

NO_x reductions required by USEPA's NO_x SIP Call, and has finalized them for inclusion in its submitted NO_x plan.

The budget projections used to prepare Ohio's submission are the same as the State budget established by USEPA in the final rule published in the **Federal Register** on March 2, 2000 (65 FR 11222). A minor change was made by Ohio EPA and is addressed in the State's submittal. This change corresponds with a technical correction to the Ohio inventory made by USEPA on October 31, 2001 (66 FR 54992).

Ohio's budgets for Area Sources, Mobile Sources and Non-Mobile sources reflect emissions during the ozone control period from May 1 through September 30 for each year. The original

USEPA budgets that Ohio used in its analysis can be found on the electronic file entitled "OH.zip" on USEPA's Web site ftp://ftp.epa.gov/EmisInventory/NOxSIPCall_Mar2_2000. Ohio submitted similar budgets for area, mobile and non-mobile source categories on a compact disk (CD) along with the Budget Demonstration. The CD is available in the Region 5 Docket. Table 3 identifies the 2007 base budgets for these sources and the name of the attached file in which they are found. No NO_x reductions from these source categories (mobile, area, and non-mobile) are projected for Ohio's budget demonstration. Furthermore, Ohio does not believe it is necessary to develop additional NO_x emission reduction

measures to meet the statewide budget during the 5-month ozone season.

TABLE 3.—UNAFFECTED SOURCE CATEGORIES
[tons]

Source category	2007 base budget	File name
Area Sources	21,860	OH_ar.wb3
Mobile Sources	94,850	OH_mb.wb3
Non-Road Mobile Sources	43,380	OH_nr.wb3

Table 4 contains the base and final NO_x budget for EGUs. Ohio obtained these data from USEPA Clean Air Markets Division. The file was not part of the technical amendment to the NO_x SIP Call of March 2, 2000 (see 65 FR

11222). The files for EGUs on USEPA's Web site "ftp://ftp.epa.gov/EmisInventory/NOxSIPCall_Mar2_2000" did not contain 2007 base or budget numbers. This file contains information which includes

the base and final budgets for EGUs. Ohio submitted this file (along with other files referenced here) on a CD with the Budget Demonstration. The CD is available in the Region 5 Docket.

TABLE 4.—BASE AND FINAL BUDGETS
[tons]

Source category	2007 base budget	2007 final budget	File name
EGU	163,132	48,990	UT_budget.wb3

Table 5 contains the original budget that USEPA calculated for large industrial boilers (non-EGUs) located in Ohio. The information in Table 5 can be found on USEPA's Web site at "ftp://ftp.epa.gov/EmisInventory/NOxSIPCall_Mar2_2000," in the file entitled "OH_pt.wb3." USEPA modified the original non-EGU budget

because on October 31, 2001, we made a determination (66 FR 54992) that Marathon Ashland Petroleum LLC's Plant 1576000301, emissions unit B015 was not a NO_x budget unit. USEPA's original non-EGU budget was modified to remove eighteen NO_x allowances initially designated for B015 and to add thirty-six tons of uncontrolled NO_x

emissions from B015 to the total budget for this source category. The budget submitted by Ohio EPA reflects these changes and the electronic file reflecting these changes is located on the CD submitted by Ohio in the file entitled "NonEGU Adjusted.wb3."

TABLE 5.—SOURCES REGULATED BY STATE RULES

Source	2007 base budget	2007 final budget	File name
Non-EGUs	50,001	40,194	OH_pt.wb3

The information in Table 6, presents the components of Ohio's NO_x budget for EGUs and non-EGUs.

TABLE 6.—OHIO NO_x BUDGET
[tons]

	EGU		Non-EGU
	2004, 2005	2006 and after	2004 and after
Total for source categories	48,990	48,990	40,194
Non-Regulated Units	3,558	3,558	36,127
Set-Asides	*2,272	**3,181	*203
Allowances available for existing units	43,160	42,251	3,846

*In each year, 5% of the Regulated Units' budget will be set aside to be allocated to new units.

**After 2005, an additional 2% of the EGU Regulated Units' budget will be set aside to fund two set-asides: 1% for Energy Efficiency/Renewable Energy Projects and 1% for Innovative Technology Projects.

USEPA believes the Ohio NO_x sources addressed here, which includes a cap and an allowance trading program, will be adequately controlled to ensure the sources in the State will meet the statewide NO_x budget established by USEPA.

D. What Public Review Opportunities Were Provided?

The Director of the Ohio Environmental Protection Agency “* * * may conduct public hearings on any plans for the prevention, control, and abatement of air pollution that the director is required to submit to the federal government.” (Ohio Revised Code Chapter 3704.03, Powers of the director of environmental protections.) Ohio’s Director held several meetings early on in the rule development process, shortly after the USEPA promulgated the Finding of Significant Contribution and Rulemaking for the Purpose of Reducing Regional Transportation of Ozone Rule (see 63 FR 57356, dated October 27, 1998). During the course of development, Ohio sent draft rules to stakeholders for review and comment. This process was repeated several times until the State was satisfied it had developed an adequate set of rules and fulfilled the public process. Stakeholders included affected utilities, major heavy industry, environmental groups (both local and national), consultants, industry and manufacturing associations, planning commissions and councils of government, and one university.

A public hearing was held in Columbus, Ohio, on April 11, 2002, and Ohio accepted written comments until April 26, 2002. The transcript of the public hearing is included as part of the State’s submittal and can be found in the Docket at Region 5. On January 16, 2003, USEPA published a direct final rule approving the Ohio NO_x plan. An adverse comment was made regarding that publication and USEPA announced to the public the withdrawal of the rule on March 17, 2003. See 68 FR 12590.

On June 25, 2003, Ohio sent to USEPA a letter committing to revise the flow control date. This letter was prompted by discussions between USEPA and Ohio EPA that we would conditionally approve the Ohio plan if the State made a commitment to change the flow control date from 2006 to 2005. Ohio submitted the letter and, therefore, we are taking action to conditionally approve the Ohio NO_x plan.

E. What Guidance Did USEPA Use To Evaluate Ohio’s NO_x Control Program?

USEPA used the final NO_x SIP Call rule at 40 CFR part 96 for review of

portions of the Ohio submittal. We also used 40 CFR 51.121 and 51.122 to evaluate Ohio’s rules and the plan. The Ohio rules also apply to portland cement kilns. To see USEPA’s current position on these types of sources the public can consult USEPA’s proposed part 98, dated October 21, 1998 (See 63 FR 56394), which USEPA expects to finalize shortly.

F. Does the Ohio Plan Meet Federal NO_x SIP Call Requirements?

USEPA is satisfied that the Ohio plan meets the requirements of the NO_x SIP Call. Ohio’s rules are patterned directly from the USEPA model rule and Ohio EPA included in the rules all of the requirements needed for approval by USEPA. The plan includes a budget trading program, and addresses all of the components of the emissions budget listed in the USEPA technical amendment. Ohio’s analysis indicates that additional NO_x control strategies will not be necessary to meet the NO_x budget for the State. USEPA has previously determined, on August 5, 2002, (67 FR 50600) that Ohio had satisfied the requirements for submittal of a complete plan to address NO_x controls on major sources of emission.

G. What Deficiencies Were Noted in the Ohio EPA NO_x Plan?

USEPA found a deficiency in Ohio’s submittal regarding the flow control date. In reviewing Ohio’s July 11, 2002, NO_x SIP Call submittal, USEPA found that the State’s rule requires flow control to apply in 2006. (See OAC Chapter 3745–14–06(E)(6)) The NO_x SIP Call model rule requires flow control to apply in the second year of the program. This means Ohio’s rule which like the neighboring States implements the NO_x plan in 2004, should require flow control in 2005, the second year of the NO_x program.

Ohio used the model rule (63 FR 57356, dated October 27, 1998) to develop its plan. The State also used language from elements of the Section 126 rule (65 FR 2674, dated January 18, 2000) in place of some of the language from the model rule. An amendment to the Section 126 rule dated April 30, 2002, (see 67 FR 21522) extended the flow control date to 2006. This one year extension corresponds to the extension of the compliance date noted earlier. While the extension by one year of flow control date to 2006 is appropriate for Section 126, it is not appropriate for Ohio’s rule in the NO_x SIP Call. A detailed discussion regarding the difference in the dates for flow control between Section 126 program and the NO_x SIP Call can be found in 65 FR

2674, dated January 18, 2000. We do not expect there will be any States subject to Section 126. All affected States are expected to implement an NO_x SIP Call plan by the compliance date of May 2004. In order for flow control to be universally applied to all sources in the NO_x SIP Call region, the flow control date must be established as no later than 2005 (the second year of the NO_x program) for all of the States in the ozone transport region whose programs begin no later than 2004.

USEPA believes the 2006 date in the Ohio rule is a deficiency which can be addressed by Ohio through the submittal of a letter of commitment to revise the flow control date at the soonest possible time before the NO_x compliance date. Therefore, we are conditioning the approval of the Ohio NO_x plan based on Ohio EPA’s submittal of the June 25, 2003 letter committing to change the flow control date from 2006 to 2005. The letter included a list of steps and approximate schedule by which the change to the flow control date will occur.

USEPA also found a deficiency in OAC Chapter 3745–14–09(G)(7) entitled NO_x Budget Opt-in Units. The Ohio rule states that opt-in units that have withdrawn from the program can re-apply for a permit after 2 years. A previous version of the Ohio rule had this time period as 4 years, which is the time period found in both the NO_x SIP Call model rule and the Section 126 rule. The purpose of the 4 year period in the model rule is to discourage these opt-in sources from coming in and out of the budget trading program at a frequency that would be disruptive to the operation of the trading program. USEPA recommends Ohio change this time period from 2 years to 4 years.

H. What Was USEPA’s Initial Action Regarding the Ohio Plan?

On January 16, 2003, USEPA published a direct final approval of the Ohio NO_x plan. This approval was made with the understanding that Ohio would change the flow control date to 2005. We also noted that if there were no adverse comments received within the 30-day comment period the rule would be effective within 60 days from the date of publication of the **Federal Register** and USEPA would at that time populate the compliance accounts and sources would be able to participate in the trading process.

I. What Comments Were Received on Ohio’s Plan?

AEP submitted a comment which, upon review, USEPA determined to be adverse. We then published a

withdrawal of the January 16, 2003 direct final approval noting that an adverse comment was received and that USEPA would address the concerns and the comments from AEP. The withdrawal was published on March 17, 2003, (68 FR 12590).

The comments from AEP included a letter and an attachment which detailed the following: USEPA's Section 126 rule establishes 2006 as the flow control date for sources subject to that rule and AEP does not believe the change (of the flow control date in the Ohio rule to 2005) is required by any provision of federal law; different flow control dates will exist in different States; and USEPA should make a very limited change to the model budget trading rule to revise the flow control date to 2006. The attachment to the letter addressed the proposed rules for the State of Virginia but, the issue of flow control date is shared by both Virginia and Ohio. The AEP letter also states that it prefers to see the Ohio rule retain the 2006 flow control date in order to retain the value of early reduction credits. AEP noted that it anticipates that the issue can be fully explored in any subsequent rulemaking procedure by Ohio EPA.

III. Response to Public Comment

The NO_x SIP Call includes a limitation (referred to as "flow control") on the use of banked allowances for compliance with the requirement to hold allowances covering emissions from affected units. The NO_x SIP Call requires that second year of the program be the earliest year (referred to as the "flow control date") for which flow control may be triggered. Specifically, the NO_x SIP Call established May 1, 2003, as the commencement date for the NO_x Budget Trading Program and required the flow control provisions to apply starting in the second year (2004). 40 CFR 51.121(b)(1)(i) and (2)(ii)(E). Subsequently, the United States Court of Appeals for the District of Columbia Circuit established May 31, 2004 as the commencement date for the NO_x Budget Trading Program, and so the second year of the program—and the mandated flow control date for state trading programs starting in 2004—became 2005. While § 51.121 and Part 96 were not revised, USEPA has implemented the new flow control date through the notice and comment rulemakings for approval of the SIPs.

Allowing the use of 2006 as the flow control date (as in the version of Ohio's rule reviewed here) would be contrary to the NO_x SIP Call. The SIP Call requires the flow control provisions to apply starting in the second year of the program. USEPA will not approve this

2006 date and is conditioning approval of Ohio's rule on the change of the flow control date to 2005, the second year of the Ohio NO_x trading program. USEPA is taking this position for several reasons.

1. Allowing 2006 to be the flow control date in Ohio could result in an unfair advantage for units in that state over units in other states with an earlier flow control date. USEPA has approved NO_x Budget Trading Program rules under the NO_x SIP Call for 15 other states and the District of Columbia. None of the approved rules provides for a flow control date later than 2005.² The flow control limitation on use of banked allowances is triggered for an upcoming ozone season if the total amount of banked allowances held in allowance accounts as of the allowance transfer deadline (November 30 or, if it is not a business day, the next business day) for the prior ozone season exceeds 10 percent of the total trading budgets for all state programs for the upcoming ozone season. For the 2005 ozone season, banked allowances held for Ohio's units or by Ohio companies as of November 30, 2004 could be a contributing factor for triggering flow control in 2005 for all states with trading programs that are in effect. If Ohio units were to help trigger flow control in 2005 but would not be subject to the flow control limitation on use of banked allowances in 2005, this would give Ohio units an unfair advantage over units in the other states with a flow control date earlier than 2006.³

² In approving trading program rules for Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, and Rhode Island, USEPA approved flow control dates of 2004. The NO_x SIP Call established May 1, 2003 as the commencement date for the NO_x Budget Trading Program and required the flow control provisions to apply starting in the second year. USEPA's approval of the 2004 flow control date was based on the NO_x SIP Call. (USEPA notes that it erroneously approved 2005 as the flow control date for Pennsylvania, whose program also begins in 2003.) When the United States Court of Appeals made May 31, 2004 the commencement date for the NO_x Budget Trading Program, 2005 became the second year for state trading programs beginning in 2004. USEPA approved 2005 as the flow control date for states (*i.e.*, Alabama, Illinois, Indiana, Kentucky, North Carolina, South Carolina, and West Virginia) whose programs begin in 2004. In addressing whether and, if so, how to apply the NO_x SIP Call to the remaining states in the NO_x SIP Call region, USEPA will address how to handle the flow control requirements and will take into account the problems discussed in this section that would result from some states having later flow control dates than other states.

³ Although USEPA approved several state trading programs with a 2004 flow control date (see n.1), those states will not be disadvantaged by the fact that the other states have a 2005 flow control date. This is because 2005 is the earliest year that flow control is likely to be triggered for states with a 2004 flow control date. For 2004, the calculation for

Further, should a 2006 flow control date be approved for Ohio, this would allow some companies to circumvent the earlier flow control dates established by other states. A company with affected units in both Ohio and a state with an earlier flow control date would be particularly advantaged in this regard. Such a company could circumvent the earlier flow control date by exchanging banked allowances held for its units in the state with the earlier flow control date for 2005 allowances held for its units in Ohio. All of these banked allowances could be used in Ohio in 2005 without application of flow control. However, a company with only units in states with earlier flow control dates could also circumvent, to some extent, the flow control provisions of those states. To the extent that the latter company could purchase 2005 allowances and sell banked allowances, it could also avoid the application of the flow control limitation in 2005. In short, allowing a 2006 flow control date for Ohio would allow erosion of the effectiveness of flow control for states with a flow control date before 2006 and would give an unfair advantage to some companies.⁴

2. The fact that Part 97 in the Section 126 program established 2006 as the flow control date does not support allowing 2006 as the flow control date in Ohio's NO_x SIP Call rule. USEPA first notes that, at the time Part 97 was promulgated, there existed the potential for a number of states to have their units subject to the trading program under Section 126 as well as a number of states to have their units governed by trading programs under the NO_x SIP Call. This was due to uncertainty as to whether all states would be able to establish an approved program under the NO_x SIP Call. While the NO_x SIP Call established statewide NO_x emissions budgets, it allowed states the flexibility to adopt whatever NO_x control measures (including the option of participating in the NO_x Budget Trading Program based on the model rule in Part 96) were shown to meet their respective budgets. The states in

triggering flow control is the total number of banked allowances in accounts as of December 1, 2003 (*i.e.*, only the unused allowances allocated for 2003 plus the compliance supplement pool allowances for those states with trading programs beginning in 2003) divided by the total trading budgets for the states with programs in effect in 2004 (*i.e.*, virtually all states in the NO_x SIP Call region). Because, for this calculation for 2004, the number of states reflected in the numerator is so much smaller than the number of states reflected in the denominator, 2005 is effectively the flow control date for all states whose programs begin in 2003.

⁴ Companies in states with a 2004 flow control date are not similarly disadvantaged by the 2005 flow control date for the remaining states. See n. 2.

the NO_x SIP Call region chose to adopt, or are in the process of adopting, trading programs based on Part 96. As long as a state fully meets its obligations under the NO_x SIP Call, USEPA does not intend to apply the Section 126 rule to units in that state. The existing rule provision withdrawing the Section 126 findings for any state is keyed to the NO_x SIP Call compliance date of 2003. USEPA has already withdrawn the Section 126 findings for Connecticut, Maryland, New Jersey, and New York on that basis. USEPA has proposed to revise the Section 126 rule to withdraw the Section 126 findings for states with a May 31, 2004 compliance date. 65 FR 16644 (Apr. 2, 2003). In short, Part 97 (including the later flow control date of 2006) will likely no longer apply to any states in the NO_x SIP Call region. Only the NO_x SIP Call and Part 96 will likely be applicable.

Moreover, in light of this change in circumstances and upon reconsideration of the discussion in the January 18, 2000 and April 30, 2002 preambles (and echoed in the December 1999 response-to-comments document) for Part 97 concerning the flow control date, USEPA concludes that such discussion is not complete and is no longer applicable. In the January 18, 2000 Part 97 preamble, USEPA stated that it was extending the flow control date to 2005 in response to some sources' concern "regarding the feasibility of installing the NO_x control equipment required * * * without any risk to electricity reliability" and their resulting concern that "there would not be enough allowances for compliance in the initial years of the Federal NO_x Budget Trading Program" under Part 97. 65 FR 2674, 2717 (Jan. 18, 2000). That preamble explained that those concerns had been "heightened" by the triggering of an analogous flow control requirement in the second year of Ozone Transport Commission (OTC) NO_x trading program, the predecessor program in the Ozone Transport Region. *Id.*

However, the basis for any potential need for allowances to supplement the trading budget in the initial years of the NO_x SIP Call and Section 126 trading programs is that some units might experience difficulties in installing NO_x emission controls (e.g., selective catalytic reduction (SCR)) before the commencement of the programs and might need to use additional allowances to cover their emissions in the initial years of the programs until the installations are completed. See 63 FR 57356, 57428–32 (Oct. 27, 1998) (explaining that USEPA addressed these concerns in establishing the compliance

deadline, banking as limited by flow control, and the compliance supplement pool of 200,000 additional allowances). The triggering of flow control in the second year (2000) of the OTC program provides no basis for "heightened" concern that units under the Section 126 program or the NO_x SIP Call program might have difficulties in installing NO_x controls and thus in meeting the compliance deadline. OTC flow control was triggered in 2000 because of the presence of extra allowances (in addition to the amount allocated for 1999) awarded in 1999 for early reductions and because OTC units were able to install sufficient NO_x controls to meet the OTC 1999 compliance deadline. This is demonstrated by: the fact that without the 24,635 early reduction allowances, the bank would not have exceeded 10% of the total trading budget and so would not have triggered flow control;⁵ and the fact that, in 1999, total emissions for units participating in the OTC were less than the total number of regular allowances allocated by states participating in the OTC.⁶ Thus, contrary to the January 18, 2000, Part 97 preamble, the triggering of flow control in 2000 in the OTC program does not provide a logical basis for concluding that there will be a greater level of control-installation difficulties than already addressed in the NO_x SIP Call (which has a 2005 flow control date) and that the flow control date should therefore be extended to 2006 in the Section 126 trading program (or for that matter the NO_x SIP Call trading program).

Further, there is an additional factor that was not considered in the January 18, 2000 and April 30, 2002 Part 97 preambles and that affects the applicability of the preamble rationale for the flow-control-date extension to the NO_x SIP Call. The likelihood of there being insufficient allowances in the initial years of the NO_x SIP Call trading program has been reduced because, in addition to the compliance supplement pool (which was considered in the January 18, 2000 Part 97 preamble and represents about 1/3 of the trading

budget), the availability of allowances in those years has been effectively augmented by U.S. Court of Appeal's extension of the commencement of the program from May 1, 2003 to May 31, 2004. See *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), *cert. den.*, 121 S. Ct. 1225 (2001) (August 30, 2000 order amending June 22, 2000 order lifting stay of state's SIP submission deadline). Under the Court's decision, the first year for state trading programs commencing in 2004 includes only 4 months (May 31–September 30, 2004). Despite this, USEPA retained the full ozone season trading budget for 2004 reflecting 5 months of emissions, an effective increase of about 20%.

EPA finds it difficult to see how companies could have reasonably relied on a 2006 flow control date in scheduling installation of controls. First, since 1998, the NO_x SIP Call has called for a 2004 (or 2005, after the Court-mandated compliance date delay) flow control date and every state has been developing, through a public notice and comment procedure, NO_x SIP Call rules aimed at avoiding application of the Section 126 rule with a later flow control date. Second, the January 18, 2000 Part 97 preamble reiterated that the NO_x SIP Call continued to have a 2005 flow control date. See 65 FR 2718. Third, except for Ohio and Virginia, no state's NO_x SIP Call rule used a 2006 flow control date, and the Ohio and Virginia NO_x SIP Call rules with a 2006 flow control date were not promulgated until mid-2002.

Finally, in the January 18, 2000 Part 97 preamble, USEPA stated that a "one-year difference" in flow control dates for sources subject to the NO_x SIP Call and Section 126 trading programs "will not interfere with the trading of NO_x allowances" and that there is "no need to restrict trading between" sources in the two programs. 65 FR 2718; see also 67 FR 21522, 21526 (April 30, 2002). However, neither the January 18, 2000 nor the April 30, 2002, Part 97 preamble considered the problems discussed above that can result from some States having a later flow control date than other States. See discussion in section 1 above. The Part 97 preambles also did not address the issue of consistency with the general objective under the Clean Air Act for expeditious as practicable achievement of attainment. See discussion in section 4, below. In short, the rationale for extending the flow control date stated in the January 18, 2000 Part 97 preamble is not applicable here.

3. Although a 2005 flow control date may have the effect of reducing the value of some allowances in the

⁵ The allowance bank as of November 30, 1999, equaled 43,585 allowances. If the 24,635 early reduction allowances had not been provided, the bank would have been 18,950 allowances, which would have been less than the flow control trigger level of 10% of the 2000 trading budget (*i.e.*, 10% of 195,401 allowances or 19,540 allowances). See 1999 and 2000 OTC NO_x Budget Program Compliance Reports (March 27, 2000 and May 9, 2001).

⁶ Total emissions in 1999 for participating units in the OTC program were 174,843 tons, as compared to a total trading budget in 1999 of 194,103 allowances for participating states. *Id.*

compliance supplement pool if flow control is triggered in 2005, this does not support allowing the Ohio NO_x SIP rule to have 2006 as the flow control date. At the outset, USEPA notes that the compliance supplement pool may be used in the first two years of a state NO_x SIP Call trading program, and the compliance supplement pool allowances are treated as banked allowances for purposes of triggering and applying flow control. 40 CFR 51.121(b)(2)(iii)(D) and (E). While compliance supplement pool allowances in states with trading programs beginning in 2003 or 2004 may be subject to flow control in 2005, a unit has the flexibility to use those allowances for compliance before 2005 in lieu of regular allowances and thereby to avoid application of flow control to the compliance supplement pool allowances. USEPA recognizes, of course, that such a strategy may result in regular allowances (*i.e.*, those allocated for 2003 [in states with programs beginning in 2003] and for 2004) being banked and subject to flow control. However, whether compliance supplement pool or regular allowances are subject to flow control, that result was intended under the NO_x SIP Call.

In the NO_x SIP Call, USEPA noted that banking of allowances may “inhibit or prohibit achievement of the desired emissions budget in a given [ozone] season” since the use of banked allowances for compliance for a specific ozone season may result in total emissions for affected units exceeding the trading budget for that ozone season. 63 FR 25902, 25935 (May 11, 1998). The trading budget reflects the emission reductions mandated, and found to be highly cost effective, under the NO_x SIP Call in order to prevent significant contribution to nonattainment in downwind states. Flow control addresses the potential problem caused by banking by continuing to allow banking but discouraging the “excessive use” of banked allowances for compliance. *Id.*; *see also* 63 FR 57473. Excessive use of banked allowances is discouraged by requiring that banked allowances above a certain amount be used on a 2-allowances-for-1-ton-of-emissions basis. All other allowances are used for compliance on a 1-for-1 basis.

However, the NO_x SIP Call not only required SIPs to include the flow control provisions, but also required that these provisions apply starting in the second year of the program, which was 2004 in the NO_x SIP Call and which became 2005 for many states after the Court’s order delaying the commencement of the trading program.

In short, any reduction in the value of allowances in the compliance supplement pool resulting from a 2005 flow control date results from the intentional curbing under the NO_x SIP Call of excessive use of banked allowances and is not a basis for allowing a 2006 flow control date.⁷

4. USEPA maintains that allowing all states to use 2006 as the flow control date would be inconsistent with the Clean Air Act. The Clean Air Act rests on an “overarching” principle that the national ambient air quality standards (NAAQS) be achieved as expeditiously as possible. 63 FR 57449. For example, under section 181 of the Clean Air Act, the “primary standard attainment date for ozone shall be as expeditiously as practicable but not later than [certain statutorily prescribed attainment dates].” 42 U.S.C. 7511; *see also* 42 U.S.C. 7502(a)(2)(A). As discussed above, the state trading budgets under the NO_x SIP Call reflect the emission reductions mandated under the NO_x SIP Call in order to prevent significant contribution to nonattainment in downwind states. Flow control reduces the likelihood of total emissions in any given ozone season in the NO_x SIP Call region exceeding the total of the state trading budgets by more than 10% and in that way promotes achievement of attainment as expeditiously as practicable. The later the flow control date, the greater the number of ozone seasons that lack this provision preventing, or at least minimizing, excessive use of banked allowances and total emissions in excess of the state budgets. Moreover, emission reductions in 2005 and 2006 may both help some nonattainment areas achieve attainment and help some areas achieve reasonable further progress toward attainment. 63 FR 57449–50.⁸ The NO_x SIP Call balanced various factors, including the potential benefits of banking and the potential problems from excessive banking, and determined that flow

⁷ USEPA notes that, even with the possibility of triggering flow control in 2005, there is still an incentive to make early reductions and obtain compliance supplement pool allowances since, under flow control, the use of banked allowances for compliance is not barred but rather is on a 2-for-1 basis. Further, in establishing flow control in the NO_x SIP Call, USEPA balanced the considerations for and against flow control, including the impact on early reductions, and determined a 2005 flow control date should be established. As discussed above, USEPA maintains that the determination (and the underlying balancing of these considerations and the underlying rationale) in the Section 126 rule to set a later flow control date are not applicable here.

⁸ USEPA notes that the NO_x SIP Call covers a larger number of states, and its emission limitations are aimed at preventing significant contribution to a larger number of states with nonattainment areas, than the Section 126 rule.

control protection should begin in the second year of the trading program. *See* 63 FR 25934–44; and 40 CFR 51.121(b)(2)(iii)(D) and (E).⁹ Allowing a later flow control date would run contrary to the overarching objective of expeditious as practicable attainment.

5. If Ohio provides EPA a written commitment to meet the condition for approval of the state’s NO_x SIP Call rule, *i.e.*, to adopt a 2005 flow control date within one year of issuance of EPA’s conditional approval, EPA will record—as soon as practicable after EPA’s conditional approval becomes effective—the allowance allocations provided under Ohio’s rule. If it becomes necessary to disapprove the state’s rule, EPA will have the options of (1) Applying the Section 126 trading program or (2) adopting a trading program through a federal implementation plan. While the Section 126 trading program currently includes a 2006 flow control date, EPA could establish a 2005 flow control date under a federal implementation plan.

IV. USEPA Action

We are giving conditional approval to the Ohio NO_x SIP because it meets the requirements of the USEPA NO_x trading program by meeting Ohio’s NO_x budget. Ohio’s rule mirrors the USEPA model rule for the NO_x SIP Call and the State adequately responded to all of the concerns of stakeholders during the public process. Ohio’s plan is approved with the condition that Ohio EPA will take action to change the date (the flow control date) in OAC 3745–14–06(E)(6) from 2006 to 2005 and submit the change to USEPA for approval by December 26, 2003. If the flow control date is not changed from 2006 to 2005, and Ohio fails to submit the change as a revision to its plan by December 26, 2003, USEPA will remove the approval of Ohio’s NO_x SIP and take subsequent rulemaking action, as necessary. USEPA is publishing this action as a final rule in response to the comment received as a result of the January 16, 2003 final rule which received one comment and the proposed rule (published as a proposal in the event an adverse

⁹ In the January 18, 2000 Part 97 preamble, USEPA stated that adoption of the third year of the program as the flow control date “strikes an appropriate balance” between concerns over the feasibility of installing controls by May 1, 2003 and the environmental goal of the program. 65 FR 2717. This is echoed in the December 1999 response-to-comments document (at 71), which stated that a 2006 flow control date will not “jeopardize the environmental goal of this program.” As discussed above, USEPA maintains that the determination (and the underlying balancing of these considerations and the underlying rationale) in the Section 126 rule to set a later flow control date are not applicable here. *See, e.g.*, n.7.

comment was filed) published in the **Federal Register**. The public is advised that this action will be effective September 4, 2003.

Ohio EPA submitted a letter to USEPA on June 25, 2003, which commits to revising the State rule (3745-14-06(E)(6)) which addresses the flow control date. The State committed to change this rule to reflect the year 2005 for flow control. USEPA is, therefore, conditionally approving the NO_x SIP for the State of Ohio. As soon as practicable after September 4, 2003, compliance accounts for the sources subject to the rule will be populated and allowance trading may commence. Within one year of the effective date of the conditional approval Ohio must submit an approved State rule which establishes the flow control date as 2005.

If the State fails to submit the required rule and any supporting documents to USEPA by December 26, 2003, the final conditional approval will automatically convert to a disapproval and USEPA will notify the State to this effect. If the SIP is disapproved, this commitment will no longer be a part of the NO_x SIP. The USEPA will subsequently publish a notice in the notice section of the **Federal Register** indicating that the commitment has been disapproved and removed from the SIP. If the State adopts and submits the final rule amendment as a SIP revision to USEPA, within the six-month period it committed to in the commitment letter (and by December 26, 2003, as noted in this rule), the conditionally approved commitments will remain part of the SIP until USEPA takes final action approving or disapproving the new submittal. If USEPA approves the subsequent submittal, the newly approved rule and supporting documentation will become part of the Ohio NO_x SIP.

If after considering the comments on the subsequent submittal, the USEPA issues a final disapproval or if the conditional approval portion is converted to a disapproval, the sanctions clock under section 179(a) will begin. If the State does not submit and USEPA does not approve the rule on which the disapproval is based within 18-months of the disapproval, the USEPA must impose one of the sanctions under 179(b)—highway funding restrictions or the offset sanction. In addition any final disapproval would start the 24-month clock for the imposition of section 110(c) Federal Implementation Plan.

USEPA is making this conditional approval effective September 4, 2003 and source compliance accounts will be

populated shortly thereafter in order to allow sources subject to the Ohio plan to begin to participate in the trading program.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget.

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

This action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175: Coordination With Indian Tribal Governments

This rule also does not have a substantial direct effect on one or more Indian tribes, 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action 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.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer and Advancement Act

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. USEPA 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 4, 2003.

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 October 6, 2003. 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: July 25, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 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)(128) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(128) On July 11, 2002, the Ohio Environmental Protection Agency submitted revisions to Chapter 3745–14–(1 through 11) of the Ohio Administrative Code (OAC), an oxides of nitrogen (NO_x) budget trading program in Ohio, with a request that the Ohio State Implementation Plan be revised to include these NO_x rules.

(i) Incorporation by reference.

(A) Ohio NO_x rules: 3745–14–01, 3745–14–02, 3745–14–03, 3745–14–04, 3745–14–05, 3745–14–06, 3745–14–07, 3745–14–08, 3745–14–09, 3745–14–10, 3745–14–11 in the OAC all with an effective date of July 18, 2002.

(ii) On June 25, 2003, the Ohio Environmental Protection Agency submitted a letter committing to change the flow control date, in rule 3745–14–06(E)(6) from 2006 to 2005, within approximately 6 months of the effective date of the submittal date.

[FR Doc. 03–19925 Filed 8–4–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA206–4212a; FRL–7524–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to Pittsburgh-Beaver Valley Area Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan. The revisions consist of an amendment to the contingency measures portion of the maintenance plan for the Pittsburgh-Beaver Valley ozone maintenance area. EPA is approving these revisions to Pennsylvania SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on October 6, 2003, without further notice, unless EPA receives adverse written comment by September 4, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to morris.makeba@epa.gov or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room B108, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT:

Kathleen Anderson, (215) 814–2173, or

by e-mail at

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SUPPLEMENTARY INFORMATION:

I. Background

On October 19, 2001, the Pittsburgh-Beaver Valley ozone nonattainment area was redesignated to attainment of the ozone National Ambient Air Quality Standard (NAAQS) [66 FR 53094]. Subsequent to the re-classification of the Pittsburgh area to attainment, the Sierra Club and the Group Against Smog and Pollution (GASP) filed suit against EPA's action in the U.S. Court of Appeals for the Third Circuit. On January 22, 2003, the U.S. Department of Justice signed an agreement with the litigants, represented by EarthJustice, which called for additions to the contingency measures portion of the Pittsburgh-Beaver Valley Ozone Maintenance Plan.

To address the conditions of the agreement, the Commonwealth amended the maintenance plan for the Pittsburgh area. Per the terms of the January 22, 2003 agreement, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP) on April 11, 2003, which identifies additional measures the Commonwealth would take in the event of exceedances of the one-hour ozone NAAQS.

II. Summary of SIP Revision

The revised Pittsburgh area maintenance plan identifies additional measures the Commonwealth would take in the event of exceedances of the one-hour ozone NAAQS. These additional measures include incorporating transportation control measures into the SIP if such measures offer a quantifiable ozone reduction benefit; increasing rule effectiveness of Stage II controls at gasoline stations; the convening of a stakeholder group to recommend additional measures; and proposing additional control measures to attain and maintain the ozone NAAQS in the area. The revised plan also includes a detailed schedule for identification and adoption of additional measures if warranted by ozone exceedances or violations.

III. Final Action

EPA is approving the revised Pittsburgh area maintenance plan submitted on April 11, 2003. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment as this revision is a result of an agreement reached among involved parties of the legal action. However, in the "Proposed