

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 April 2, 2004. Filing a petition for reconsideration by

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 20, 2004.

**A. Stanley Meiburg,**  
Acting Regional Administrator, Region 4.  
■ Part 52 of chapter I, title 40, *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 RR—Tennessee**

■ 2. Section 52.2220(e), is amended by adding a new table, "EPA Approved Tennessee Non-Regulatory Provisions," to read as follows:

**§ 52.2220 Identification of plan.**

\* \* \* \* \*

(e) EPA-Approved Tennessee Non-Regulatory Provisions

**EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS**

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
Revision to Maintenance Plan Update for Knox County, Tennessee.	Knox County, TN .....	July 16, 2003 .....	2/4/04 [Insert citation of publication].	

[FR Doc. 04-1970 Filed 1-30-04; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[OH158-1a; FRL-7616-4]

**Redesignation and Approval of Ohio Implementation Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is redesignating Lucas County, Ohio to an attainment area for sulfur dioxide (SO<sub>2</sub>). In addition, EPA is approving Ohio's plan for continuing to attain the SO<sub>2</sub> standards in Lucas County. EPA is further approving selected State emission limits. Ohio requested these actions on March 25, 1999.

**DATES:** This rule is effective on March 18, 2004, unless the EPA receives relevant adverse written comments by March 3, 2004. If EPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Send comments to: J. Elmer Bortzer, Acting Chief, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, according to the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section. Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886-6067 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6067, *summerhays.john@epa.gov*.

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

- I. General Information
- II. Background and Criteria for Review
- III. Review of Emission Limit Revisions
- IV. Review of Redesignation Request

- A. Has the area attained the standards?
- B. Has EPA fully approved the applicable implementation plan?
- C. Is attainment due to permanent and enforceable emission reductions?
- D. Does the maintenance plan assure continued attainment?
- E. Has the State met the requirements of section 110 and part D?
- V. Rulemaking Action
- VI. Statutory and Executive Order Reviews

**I. General Information**

*A. How Can I Get Copies of This Document and Other Related Information?*

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket OH158". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air

and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket OH158" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be

identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov). Please include the text "Public comment on proposed rulemaking Region 5 Air Docket OH158" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulations.gov](http://www.regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of [regulations.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to [regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Jay Bortzer, Acting Chief, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket OH158" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Jay Bortzer,

Acting Chief, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

#### *C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

## **II. Background and Criteria for Review**

On March 25, 1999, Ohio requested SO<sub>2</sub> emission limit revisions for three facilities in Lucas County and requested that EPA redesignate Lucas County to attainment for SO<sub>2</sub>. The requested emission limit revisions include approval of state limits for two facilities and removal of limits for a third facility that has shut down.

The facilities affected by these requested limit revisions are currently subject to federally promulgated limits. In 1976, in response to the absence of federally enforceable SO<sub>2</sub> emission limits in Ohio, EPA promulgated a Federal implementation plan (FIP) including SO<sub>2</sub> emission limits for the State (41 FR 36324, with assorted subsequent amendments). Ohio subsequently submitted statewide SO<sub>2</sub> regulations, most of which EPA approved in 1981 and 1982. Nevertheless, the three facilities here

remain subject to FIP limits. The requested revisions would result in a Lucas County SIP that relies entirely on State-adopted limits.

Criteria for judging these limits are given in a memorandum from the Director of the Air Quality Management Division of the Office of Air Quality Planning and Standards to the Director of the Air and Radiation Division of Region 5, dated September 28, 1994. In brief, EPA may approve state limits to replace the federally promulgated limits provided the state limits are at least as stringent as the federally promulgated limits and provided there is no evidence that the original attainment demonstration underlying the limits is invalid. Further discussion of these criteria is given below.

The criteria for redesignating areas from nonattainment to attainment are given in section 107(d)(3)(E) of the Clean Air Act. This section includes 5 criteria:

1. Has the area attained the standards?
2. Has EPA fully approved the applicable implementation plan?
3. Is attainment due to permanent and enforceable emission reductions?
4. Does the maintenance plan assure continued attainment?
5. Has the State met the requirements of section 110 and part D?

EPA guidance on implementing these criteria is given in a memorandum from the Director of the Air Quality Management Division to the EPA regional air division directors dated September 4, 1992. Lucas County poses complex circumstances, posing special issues in applying these criteria. For clarity, further discussion of these criteria is included as part of the review of Ohio's request.

### III. Review of Emission Limit Revisions

EPA approved the attainment plan and most limits for Lucas County on June 30, 1982 (47 FR 28375). However, at Ohio's request, EPA did not rulemake at that time on limits for facilities owned by Sun Oil Company, Gulf Oil Company, Phillips Chemical, and Coulton Chemical. Consequently, the FIP limits remained in effect for these facilities.

On March 3, 1998, EPA approved State limits for the Sun Oil Company facility (see 63 FR 15091). For the other three facilities, FIP limits remain in effect. Ohio is now requesting EPA rulemaking on State limits for the Gulf Oil facility and for the former Coulton Chemical facility (now owned by Marsulex, Inc.). Ohio requested that EPA delete limits in the FIP for Phillips Petroleum Company's Philblack facility, since that facility no longer exists.

These requested revisions would result in the state implementation plan for SO<sub>2</sub> in Lucas County relying entirely on federally approved state limits.

Criteria for judging these limits are given in a memorandum from the Director of the Air Quality Management Division of the Office of Air Quality Planning and Standards to the Director of the Air and Radiation Division of Region 5, dated September 28, 1994. The criteria are:

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

EPA concludes that these criteria are met. The original FIP limits reflect a modeling analysis that demonstrated that these limits would suffice to attain the standards. EPA has no evidence that these limits are inadequate. For the Gulf Oil and former Coulton Chemical facilities, the state limits are essentially identical to corresponding FIP limits. Since the Philblack facility no longer operates, the FIP limits are irrelevant in assessing whether the State limits provide equal air quality protection as the FIP.

EPA is not revising the FIP in this rulemaking. EPA anticipates removing the FIP limits for the Philblack facility in a future rulemaking that will also address other FIP limits that EPA expects to become moot due to approval of corresponding state limits. Despite the temporary continuance of FIP limits for this shut down facility, today's action provides that Ohio has a fully approved state plan providing for attainment of the SO<sub>2</sub> standards in Lucas County.

### IV. Review of Redesignation Request

#### A. Has the Area Attained the Standards?

The first prerequisite for a redesignation to attainment, given in Clean Air Act section 107(d)(3)(E)(i), is that "[EPA] determines that the area has attained [the standard]". For some pollutants, this determination relies solely on air quality monitoring data. However, for SO<sub>2</sub>, monitoring data alone is generally insufficient to assess an area's attainment status. EPA's guidance memorandum of September 4, 1992, states that for SO<sub>2</sub> and specified other pollutants, "dispersion modeling will generally be necessary to evaluate comprehensively sources' impacts."

Typically, attainment planning for SO<sub>2</sub> involves dispersion modeling used

to demonstrate that the emission limits adopted by the state suffice to assure attainment. With such modeling available, EPA can generally determine an area to be attaining the standard without further modeling, provided monitoring data also support that determination. If all sources are emitting at or below the levels included in the modeling done during attainment planning, then clearly similar modeling using the lower actual emission rates would show the area to be attaining the standard by a larger margin.

The situation in Lucas County was more complicated. At the time of Ohio's request for redesignation, available evidence indicated that an important SO<sub>2</sub> source in Lucas County, owned by Marsulex, was emitting more than the emissions level included for that source in the State's attainment demonstration. This emission increase arose from an expansion in production without a corresponding decrease in emissions per unit of production. This in turn indicated that the County may have been violating the SO<sub>2</sub> air quality standard. More precisely, the normal means of finding an area to be attaining the SO<sub>2</sub> standards, by finding that sources are emitting below the levels found by dispersion modeling to assure attainment, could not be applied here. Since EPA did not have a full assessment of air quality under those circumstances in Lucas County (and, in fact, the criteria for such an assessment are unclear), EPA was unable to determine that the area was attaining the standard.

More recently, Marsulex modified its process and reduced emissions for the facility to levels below those included for it in the State's attainment demonstration for Lucas County. Ohio in its submittal stated that other major SO<sub>2</sub> sources are complying with applicable SIP limits, such that these facilities would also be emitting less than the levels included in the approved attainment demonstration. This fact (and the absence of monitored violations) means that EPA may now determine that the area is attaining the standard on the basis that emissions are lower and therefore air quality is better than with the modeled attainment demonstration.

#### B. Has EPA Fully Approved the Applicable Implementation Plan?

The principal relevant element of the SIP required under part D of Title I of the Clean Air Act for SO<sub>2</sub> in Lucas County is a plan for attaining the standards. As noted in a previous section, EPA approved Ohio's plan for SO<sub>2</sub> in Lucas County on June 30, 1982,

at 47 FR 28375, except that EPA did not act on limits for four sources. Although EPA subsequently approved limits for one of these sources (the Sun Oil facility), the federally promulgated FIP remained in effect for the other three sources.

EPA informed Ohio of its view that a federally promulgated measure does not constitute an "approved plan" as required under section 107(d)(3)(E)(ii). In EPA's view, this section can only be satisfied by EPA approval of rules and related plan elements that the state had submitted. The request by Ohio for EPA to approve limits for the Gulf Oil Company and Coulton Chemical facilities and to remove limits for Phillips Chemical's Philblack plant were intended to provide that all limits needed to ensure attainment in Lucas County are State adopted, EPA approved limits. Today's action to approve the limits for the Gulf Oil Company and Coulton Chemical facilities addresses this need for these two facilities. Since the Philblack plant is shut down, limits for this facility are unnecessary for the State's attainment plan. EPA thus concludes that it has now fully approved the State's attainment plan for this area, including approval of all limits needed to assure attainment in this area.

#### *C. Is Attainment Due to Permanent and Enforceable Emission Reductions?*

For most facilities in Lucas County, including most of the facilities that Ohio's modeling has demonstrated to be the key contributors to prior air quality problems, permanent and enforceable emission reductions are mandated by emission limits in Ohio's SIP. To meet these limits, some facilities switched to burning lower sulfur fuel and some facilities installed air pollution control equipment. These emission limits, adopted in Ohio Administrative Code Chapter 3745-18 and approved by EPA (as compiled at <http://www.epa.gov/region5/air/sips/sips.htm>), assure the permanence of these emission reductions.

EPA pursued additional assurances that the air quality improvement attributable to the recent emission reductions at the Marsulex facility will be permanent and enforceable. These assurances are provided in the Title V permit for Marsulex that Ohio issued on January 9, 2004, clarifying that Marsulex' Lucas County facility must meet the relevant new source performance standard, which reflects a substantially lower emission limit than the SIP limit. With this limit for the Marsulex facility and SIP limits for other facilities, EPA concludes that

permanent and enforceable emission reductions have enabled Lucas County to attain the standards.

#### *D. Does the Maintenance Plan Assure Continued Attainment?*

Under section 175A of the Clean Air Act, maintenance plans must demonstrate continued attainment of the standards for 10 years after the redesignation. For SO<sub>2</sub>, the core of most maintenance plans is the attainment plan. Since the attainment plan generally reflects dispersion modeling based on maximum allowable emissions for major SO<sub>2</sub> emitters, the limits on these sources' emissions adopted to attain the standards also help assure maintenance of the standards.

With the major sources thus limited to attainment level emissions, the only remaining question for maintenance is whether "background" sources can be expected to increase or decrease emissions. Ohio notes that background concentrations can be expected to decline. Ohio attributes this expected decline to requirements for lower sulfur contents for gasoline and diesel fuel and ongoing national sulfur dioxide emission limitations from the acid rain program. EPA concurs with Ohio's expectations. EPA thus concludes that these reductions in background concentrations in conjunction with the permanent limitations on SO<sub>2</sub> emissions from the major sources in Lucas County assure that the area will continue to attain the SO<sub>2</sub> standard.

#### *E. Has the State Met the Requirements of Section 110 and Part D?*

This criterion requires that the state has met the requirements of Clean Air Act section 110 and part D. The principal relevant requirement is for an approved attainment plan, which EPA approved on June 30, 1982 (47 FR 28375).

The discussion above of the second criterion, requiring a fully approved SIP, notes EPA's belief that that criterion is not met with federally promulgated rules, and that that criterion requires approval of a submittal that the state has adopted and submitted pursuant to section 110. Similarly for this fourth criterion, EPA believes that the criterion can be met only by the state adopting and submitting rules and other material that EPA finds to satisfy section 110 and part D. That is, EPA believes that this criterion is not satisfied if some of the rules needed to satisfy section 110 and part D were federally promulgated rather than state adopted and federally approved.

Recognizing this EPA view, Ohio submitted the limits which remained on

a FIP-basis. EPA is approving these limits in today's action. As a result, Ohio now has satisfied the applicable requirements of section 110 and part D.

#### **V. Rulemaking Action**

EPA is approving limits for the Gulf Oil Company and the Marsulex facility (formerly owned by Coulton Chemical Company). EPA is redesignating Lucas County, Ohio, to attainment for SO<sub>2</sub>. Finally, EPA is approving Ohio's maintenance plan for this area.

The approved limits for the Gulf Oil Company and Marsulex facilities supersede the corresponding FIP limits. EPA is not formally removing those FIP limits but anticipates doing so in a future rulemaking.

Clean Air Act section 107(d)(3)(E) identifies five prerequisites for redesignation of areas from nonattainment to attainment. EPA concludes that these criteria are met with respect to SO<sub>2</sub> in Lucas County.

EPA is publishing these actions without a prior proposal because we view these as noncontroversial actions and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the redesignation and maintenance plan if adverse comments are filed. This rule will be effective on March 18, 2004, without further notice unless we receive relevant adverse written comment by March 3, 2004. If the EPA receives adverse comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

#### **VI. 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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

For this reason, 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: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will 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 and Safety Risks*

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

*National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA'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 EPA, 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 April 2, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects***40 CFR Part 52*

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

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

Dated: January 20, 2004.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ Chapter 1, 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 52.1881 is amended by revising paragraphs (a)(4) and (a)(8) to read as follows:

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

(a) \* \* \*

(4) Approval—EPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light-Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Butler County, Carroll County, Champaign County, Clark County, Clermont County, (except Cincinnati Gas & Electric-Beckjord), Clinton County, Columbiana County, Coshocton County, Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County, Lawrence County (except Allied Chemical-South Point), Licking County, Logan County, Lorain County, Lucas County, Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Montgomery County (except Bergstrom Paper, Miami Paper), Morgan County, Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County,

Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical), Wayne County, Williams County, Wood County (except Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

\* \* \* \* \*

(8) No Action—EPA is neither approving nor disapproving the emission limitations for the following counties/sources pending further review: Adams County (Dayton Power & Light-Stuart), Allen County (Cairo Chemical), Clermont County (Cincinnati

Gas & Electric-Beckjord), Cuyahoga County, Franklin County, Lawrence County (Allied Chemical-South Point), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Ross County (Mead corporation), Sandusky County (Martin Marietta Chemicals), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).

\* \* \* \* \*

**PART 81—[AMENDED]**

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

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

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

**§ 81.336 Ohio.**

\* \* \* \* \*

OHIO—SO<sub>2</sub>

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *	*	*	*	*
Lucas County: The area east of Route 23 and west of the eastern boundary of Oregon Township.	.....	.....	.....	X
The remainder of Lucas County:	*	*	*	*

\* \* \* \* \*

[FR Doc. 04-1966 Filed 1-30-04; 8:45 am]  
**BILLING CODE 6560-50-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 031104274-4011-02; I.D. 101603A]

RIN 0648-AQ83

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule, 2004 specifications.

**SUMMARY:** NMFS announces final specifications for the 2004 fishing year for Atlantic mackerel, squid, and butterfish (MSB). This action also specifies an increase in the Illex squid catch limit for squid/butterfish incidental catch permit holders from

5,000 lb (2.27 mt) to 10,000 lb (4.54 mt). In addition, this action corrects the regulations implementing the MSB Fishery Management Plan (FMP) by reinserting regulatory text that was incorrectly removed in the final rule that implemented measures contained in the Atlantic Herring FMP, which was published on December 11, 2000. The intent of this final rule is to promote the development and conservation of the MSB resource.

**DATES:** Effective February 2, 2004.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/ Final Regulatory Flexibility Analysis (FRFA), are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

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**SUPPLEMENTARY INFORMATION:** Regulations implementing the Atlantic

Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of research set-asides (RSA) to be used for research purposes.

Proposed 2004 initial specifications were published on November 14, 2003 (68 FR 64579). Public comments were accepted through December 15, 2003. The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

**2004 Final Initial Specifications**

The following table contains the final initial specifications and RSA for the 2004 MSB fisheries.