

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[CGD13-04-007]

RIN 1625-AA00

**Security Zone: Portland Rose Festival on Willamette River**

AGENCY: Coast Guard, DHS.

ACTION: Implementation of regulation.

**SUMMARY:** The Captain of the Port Portland will enforce the Portland Rose Festival Security Zone from June 9, 2004, until June 13, 2004.

**DATES:** 33 CFR 165.1312 will be enforced commencing June 9, 2004, until June 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR, 97217 at (503) 240-9370 to obtain information concerning enforcement of this rule.

**SUPPLEMENTARY INFORMATION:** On May 29, 2003, the Coast Guard published a final rule (68 FR 31979) establishing a security zone, in 33 CFR 165.1312, for the security of naval vessels on a portion of the Willamette River during the fleet week of the Rose Festival. This security zone provides for the regulation of vessel traffic in the vicinity of the moored naval vessels. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce the Rose Festival Security Zone established by 33 CFR 165.1312 from Wednesday, June 9, 2004, until Sunday, June 13, 2004. The Captain of the Port may be assisted by other Federal, state, or local agencies in enforcing this security zone.

Dated: March 1, 2004.

**Paul D. Jewell,***Captain, U.S. Coast Guard, Captain of the Port, Portland.*

[FR Doc. 04-6743 Filed 3-25-04; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[TX-164-1-7622; FRL-7638-5]

**Approval and Promulgation of Implementation Plans; Texas; Control of Emission of Oxides of Nitrogen (NO<sub>x</sub>) From Cement Kilns**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The EPA is approving revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Nitrogen Compounds—Cement Kilns. The affected sources are major cement kilns that were in service before December 31, 1999. The EPA is approving these SIP revisions for cement kilns as they will contribute to attainment of the 1-hour ozone National Ambient Air quality Standards (NAAQS). Today's action does not intend to address any aspect(s) of the implementation of the 8-hour ozone NAAQS. The EPA is approving control of emissions of NO<sub>x</sub> from cement kilns in accordance with the requirements of the Federal Clean Air Act (the Act).

**DATES:** This rule is effective on April 26, 2004.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6691, and shar.alan@epa.gov.

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**Statutory and Executive Order Reviews**

In this document “we,” “us,” and “our” refer to EPA.

**1. What Actions Are We Taking in This Document?**

On April 30, 2000, the Governor of Texas submitted to us rule revisions to 30 TAC, Chapter 117, Control of Air Pollution From Nitrogen Compounds concerning cement kilns operations (April 30, 2000 SIP submittal). The

April 30, 2000 SIP submittal specifically addressed revisions to the following sections of Chapter 117.

TABLE I.—AFFECTED SECTIONS OF THE RULE UNDER APRIL 30, 2000 SIP SUBMITTAL

Section	Title
117.260 .....	Cement Kiln Definitions.
117.261 .....	Applicability.
117.265 .....	Emissions Specifications.
117.273 .....	Continuous Demonstration of Compliance.
117.279 .....	Notification, Recordkeeping, and Reporting Requirements.
117.283 .....	Source Cap.
117.524 .....	Compliance Schedule for Cement Kilns.

In CEMEX USA (CEMEX) and TXI Operations, LP (TXI) v. TCEQ, Case No. GN001480 (Travis Co. Dist. Ct. April 30, 2003), CEMEX and TXI challenged the State for adopting the above revision to Chapter 117. As a part of a negotiated settlement of the case, TCEQ issued a re-proposal to revise 30 TAC, Chapter 117, on October 24, 2002.

On December 9, 2002, EPA submitted comments to TCEQ concerning re-proposed revisions to Chapter 117.

On April 2, 2003, TCEQ submitted a revised Chapter 117, Control of Air Pollution from Nitrogen Compounds rule concerning cement kilns operations as a revision to the SIP (April 2, 2003 SIP submittal). The April 2, 2003 SIP submittal specifically addressed revisions to the following sections of Chapter 117.

TABLE II.—AFFECTED SECTIONS OF THE RULE UNDER APRIL 2, 2003 SIP SUBMITTAL

Section	Title
117.260 .....	Cement Kiln Definitions.
117.265 .....	Emissions Specifications.
117.279 .....	Notification, Recordkeeping, and Reporting Requirements.
117.283 .....	Source Cap.
117.524 .....	Compliance Schedule for Cement Kilns.
117.570 .....	Use of Credits for Compliance.

On July 30, 2003 (68 FR 44631), we published a direct final rulemaking action on these two submittals. In 68 FR 44631 we stated that if EPA receives relevant adverse comments, EPA would publish a timely withdrawal in the **Federal Register** informing the public that this Texas SIP revision would not take effect. The EPA received relevant adverse comments on the July 30, 2003 (68 FR 44631), rulemaking action during the public comment period.

On September 15, 2003 (68 FR 53891), we published a withdrawal in the **Federal Register** stating that we will be summarizing and responding to comments received on this Texas SIP revision. Today, we are summarizing and responding to comments received on our July 30, 2003 (68 FR 44631), Texas SIP revision.

## 2. Who Submitted Comments to Us?

We received written comments on our July 30, 2003 (68 FR 44631), Texas SIP revision from a private citizen, Blue Skies Alliance, Downwinders At Risk, and Lone Star Chapter of Sierra Club (the Commenters).

## 3. How Do We Respond to the Submitted Written Comments?

Our responses to the written comments concerning July 30, 2003 (68 FR 44631), Texas SIP revision are as follows:

*Comment #1:* The Commenters state the proposed NO<sub>x</sub> rules are insufficient to allow the Dallas/Fort Worth (D/FW) area to move effectively toward attainment.

*Response to Comment #1:* The primary purpose of the proposed rule was to reduce emissions of NO<sub>x</sub> from this specific industrial sector. The State's development of this rule for cement industry was part of its air quality planning effort to not only achieve controls in the nonattainment area, but also to reduce ozone precursor emissions on a regional basis. Our proposed July 30, 2003 rulemaking (68 FR 44631), in and by itself, was not intended to serve as an attainment demonstration plan for the D/FW area. The controls for the cement kilns was one part of the larger attainment demonstration SIP which was adopted by the State of Texas and submitted to EPA in April 2000. Our action today will make the existing Texas rule for each cement kiln that was placed into service before December 31, 1999, in 5 Texas Counties of Bexar, Comal, Ellis, Hays, and McLennan, federally enforceable. We want to make it clear that our approval of this Texas SIP revision is independent of any future NO<sub>x</sub> reduction measures that could be required of the cement industry, if such reduction measures are determined necessary for attainment of the 8-hour ozone NAAQS and are considered to be feasible and practicable.

*Comment #2:* The Commenters state that a local air committee recommended reductions of fifty percent as opposed to the proposed thirty percent for NO<sub>x</sub> from cement kilns in Ellis County.

*Response to Comment #2:* The proposed rule was submitted to EPA in

accordance with section 110(a)(2) of the Act. The proposed emissions reduction level of at least thirty percent from the 1996 baseline level is in agreement with those found in our reference document "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Cement Manufacturing" EPA-453/R-94-004 (ACT Document). The TCEQ's emissions level of NO<sub>x</sub> control (at minimum thirty percent reduction) is in agreement with the "Federal Implementation Plans to Reduce Regional Transport of Ozone" of October 21, 1998 (63 FR 56394). Also see our response to Comment #1 in this document.

*Comment #3:* The Commenters state that Selective Catalytic Reduction (SCR) and Selective Non-Catalytic Reduction (SNCR) have been found to make reductions up to eighty percent depending on the fuel source and type of kiln.

*Response to Comment #3:* The analysis for the approvability of this Texas SIP revision was evaluated against our ACT Document, and against the limitations and requirements of other federally approved SIPs for existing cement kilns. Our Technical Support Document (TSD) did not identify any EPA-approved SIP rules in other parts of the country that have mandated SCR or SNCR as a required control strategy for controlling NO<sub>x</sub> from existing cement kilns. We provided a copy of our TSD to the Commenters at their request during the public comment period. Our rulemaking action today will make existing Texas rule federally enforceable, and is consistent with EPA's past approvals. Our approval today is not intended to preclude additional control requirements being applied to the cement industry, if such control requirements are determined necessary for attainment of the 8-hour ozone NAAQS and the application of such control requirements is determined feasible and practicable.

*Comment #4:* The Commenters state that SCR/SNCR should be included as acceptable means of control technology for NO<sub>x</sub> reductions.

*Response to Comment #4:* The proposed rule offers several means of control to a source in order to comply with the emission limitations. Also see our response to Comment #3 in this document. Absent information on or examples of SCR or SNCR cases used as a required technique for controlling NO<sub>x</sub> from existing cement kilns in any other federally approved-SIPs from the Commenters, we disagree with the Commenters at this time. However, should these or other similar

technologies demonstrate success for cement manufacturing sector, EPA will then re-examine its RACT or ACT determinations.

*Comment #5:* The Commenters state that low-NO<sub>x</sub> burner is an ambiguous term unless associated with a manufacturer of this type device or with accompanying specifications. Any facility proposing the use of this type device shall first provide the manufacturers statement describing the product, its capabilities and limitations. In cases where the facility proposes to build their own, that facility shall submit to the proper authority, their design along with evidence they are experienced in this field, sufficient to design and build a product that will achieve the required results, prior to its being approved as part of an emissions reduction plan.

*Response to Comment #5:* Section 5.1.3 of our ACT Document states that low-NO<sub>x</sub> burners are designed to reduce flame turbulence, delay fuel/air mixing, and establish fuel-rich zones for initial combustion. The longer, less intense flames resulting from the staged combustion lower flame temperatures and consequently reduce thermal NO<sub>x</sub> formation. Figure 5-1 on Page 5-7 of that document also illustrates the schematic of a typical low-NO<sub>x</sub> burner. For information concerning low-NO<sub>x</sub> burners we refer the Commenters to section 5.1.3 of our ACT Document. The proposed rulemaking departs from a command and control approach and offers a menu of options to an affected source to comply with the emission limitations. The EPA does not subscribe to advocating a prescribed design, make, model or manufacturer as the only means of controlling emissions. If a source has a different or innovative method of controlling emissions and can successfully demonstrate that its method is effective in both pilot plant and large scale operations, then EPA sees no reason to disapprove the implementation of the source's method of control. Furthermore, the effectiveness of the control technology will be determined by continuous monitoring and through compliance testing.

*Comment #6:* The Commenters propose to delete any reference to rolling average of NO<sub>x</sub> emissions. They further state that rolling averages allow facilities to exceed emissions during periods of increased production, increasing the air pollution for those days. The Commenters contend that by shutting down one or two days within the month, the facility could avoid exceeding their allowable.

*Response to Comment #6:* We disagree. Rolling average is a commonly accepted averaging method in regulations governing emissions from cement manufacturing. The TSD for our proposal (68 FR 44631) refers to rules from various parts of the country that have adopted a similar averaging window (30-day) or language (rolling average) in their rules. While EPA is endorsing a 30-day rolling average as the basis for NO<sub>x</sub> emission specifications in section 117.265 of the rule, we do not approve of a 365-day rolling average or an annual average for NO<sub>x</sub> emission specifications in section 117.265. We consider annual averaging of emission specifications to be problematic for permitting and compliance determination purposes. Furthermore, the inherent continuous operational nature of a cement kiln could limit an operator's ability from shutting down one or two days within the month as suggested by the Commenters. The affected sources are required to emit at or below their permitted levels of emissions. Appropriate test methods, recordkeeping, reporting, compliance certification, and Continuous Emissions Monitor System (CEMS) data along with SIP rules constitute proper mechanisms to assure compliance with the terms and conditions of this regulation and air permits issued to an affected source. Contrary to the Commenters' contention, the rule of law does not allow EPA to arbitrarily shut down a business one or two days within the month.

*Comment #7:* The Commenters state that the rule should provide that allowable emissions shall be based upon the actual pounds/hour, pounds/day, tons/year and exceedances in any one-hour or day shall generate enforcement action.

*Response to Comment #7:* We believe that the actual production level in conjunction with the length of operation at an affected source is the proper method to set an emissions limitation for cement manufacturing. We believe that an emission limitation of "pound NO<sub>x</sub> per ton of clinker produced" in conjunction with appropriate test methods, recordkeeping, reporting, compliance certification, and CEMS data built into air permits constitute a proper enforceable mechanism to assure compliance with the terms and conditions of this regulation and air permits issued to an affected source.

*Comment #8:* The Commenters propose to remove reference to percentages of reduction when establishing compliance. Existing permits include a Maximum Allowable

Emission Rate (MAER) table. In complying with this new rule for cement kilns, each facility shall be required to amend or modify their existing permit to reflect the actual NO<sub>x</sub> in pounds/day, tons/year revision in the MAER table which corresponds to the percent reduction required by this rule.

*Response to Comment #8:* Each affected source is required to operate at or below its permitted levels of emissions. The proposed rule requires at least thirty percent reduction in NO<sub>x</sub> emissions when compared with the 1996 baseline inventory data. Section 117.205 lists emission limitations for each type of kiln in a designated County. These requirements combined with appropriate test methods, recordkeeping, reporting, compliance certification, and CEMS data which are built into air permits constitute a proper enforceable mechanism to assure compliance with the terms and conditions of air permits issued to an affected source. The rule is intended to complement, supplement, and strengthen the air contaminants data in the MAER table of air permits, not to replace those limits. Air permit modifications or amendments of affected facilities are handled according to the applicable State's title V or New Source Review program. For above reasons we disagree with the Commenters.

*Comment #9:* The Commenters state that all Ellis County cement kilns including both wet and dry process kilns should reduce their emissions by fifty percent, as recommended by a local committee, instead of the proposed thirty percent using the 1996 emissions as the baseline year. The Commenters state that the reduction in this rule, will not achieve the necessary ozone reduction required to meet the D/FW SIP deadline.

*Response to Comment #9:* The proposed rule was submitted to EPA in accordance to section 110(a)(2) of the Act. The emissions reduction level of at least thirty percent from the 1996 baseline levels is in agreement with those found in our ACT Document. The reductions are in agreement with EPA's October 21, 1998, Federal Implementation Plans to Reduce Regional Transport of Ozone. See 63 FR 56394. As an example, the NO<sub>x</sub> emissions specifications of 4.0 lb NO<sub>x</sub>/ton of clinker produced for a long wet kiln operating in Ellis County is comparable to or more stringent than the NO<sub>x</sub> emissions specifications from similar cement kilns in many other parts of country. The proposed July 30, 2003 rulemaking (68 FR 44631), in and by itself, was not intended to serve as an

attainment demonstration plan for the D/FW area. However, as noted previously, we want to make it clear that our approval of this Texas SIP revision is independent of any future NO<sub>x</sub> reduction measures that could be required of the cement industry, if such reduction measures are determined necessary for attainment of the 8-hour ozone NAAQS and are considered to be feasible and practicable.

*Comment #10:* The Commenters state that in applying mid-kiln firing/secondary combustion as a method of NO<sub>x</sub> reduction, no new types of chemical or chemical compounds, not previously emitted, should be resulted in the emission inventory.

*Response to Comment #10:* 40 CFR 63, Subpart LLL—National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry (64 FR 31925, June 14, 1999) applies to each new and existing portland cement plant which is a major source or an area source. Subpart LLL regulates emissions of Dioxin, Furan, Particulate Matter, Opacity, and Total Hydrocarbon Carbon. The NO<sub>x</sub> emissions are not regulated under Subpart LLL. Elsewhere the Commenters suggest imposition of post combustion control devices such as SCR on the affected sources. Use of SCR as a control device has the potential to cause emission of chemical reagents such as ammonia or urea in the form of particulate matter which were not previously emitted. All affected facilities are required to emit at or below their permitted levels. For these reasons we disagree with the Commenters.

*Comment #11:* The Commenters state that subsection 117.265(c) should be removed in its entirety. No cement facility shall be exempt from complying with required emission reductions as stipulated in this section.

*Response to Comment #11:* Subsection 117.265 (c) will allow a source to choose from a menu of options to achieve at least a thirty percent reduction in NO<sub>x</sub> emissions. These options range from complying with the specified emissions limitations, installing and operating a low NO<sub>x</sub> burner, mid-kiln firing, a secondary combustion control, or other changes to the kiln that would achieve at least thirty percent reduction in NO<sub>x</sub> emissions. These options are consistent with the type of controls in NO<sub>x</sub> rules for cement manufacturing in other parts of country. Our TSD for the 68 FR 44631 rulemaking detailed a number of federally-approved NO<sub>x</sub> rules for cement manufacturing. We provided the Blue Skies Alliance with a copy of our TSD. The EPA considers subsection

117.265(c) as an appropriate means of extending operational flexibility to a source to achieve compliance. For these reasons we disagree with the Commenters.

*Comment #12:* The Commenters state that the rule shall remove any and all authority from the executive director and/or commissioners to exempt any kiln or facility from those required reductions regardless of the reason.

*Response to Comment #12:* A source will need to comply with all applicable provisions of the SIP. The notification, recordkeeping, and reporting requirements in section 117.279, and the compliance schedule for cement kilns in section 117.524 serve as mechanisms for achieving and maintaining compliance with the rule. Therefore, we do not interpret this SIP revision as authorizing the executive director and/or commissioners to exempt cement manufacturing sector from emissions reductions required under Chapter 117.

*Comment #13:* The Commenters state that subsection 117.265(e) (Use of Emissions Credits for Compliance) should be removed in its entirety. Using emission credits to achieve compliance with the control of NO<sub>x</sub> requirements does not satisfy the overall purpose of this rule, that being to reduce the total NO<sub>x</sub> emissions that prevent conformance with the SIP. This provision only serves to allow a facility to manipulate their operation to avoid the cost of proper control technology.

*Response to Comment #13:* We disagree with the Commenters. Title IV—Acidic Deposition Control (Acid Rain Program) of the Act is a prime example of the regulatory use of emissions banking and trading for compliance purposes. Other federally-approved SIP revisions of Texas' Chapter 117 rule, affecting many other types of facilities, contain provisions allowing use of emissions credits for compliance. Singling out the cement manufacturing sector from use of emissions credits for compliance by deleting any provisions that would allow use of emissions credits for compliance would increase the bar of compliance and extend unfair advantage to other sectors.

*Comment #14:* The Commenters state that the rule should provide access by citizens to the actual CEMS data for review.

*Response to Comment #14:* The Act requires that emission data and information be open and available to the public. The State is also required to comply with the sections 110(a)(2)(F)(i) through (iii) of the Act. As applicable, the air permits issued to the affected

sources contain special conditions for recording, reporting, and recordkeeping information concerning CEMS. Reports of inspection of these affected sources are also open and available to the public. For these reasons no further change to the text of proposed rule is warranted.

*Comment #15:* The Commenters state that any provisions for the use or application of Predictive Emissions Monitoring System (PEMS) should be deleted.

*Response to Comment #15:* A PEMS is the total equipment necessary for the determination of a gas concentration or emission rate using processor control device operating parameter measurements and a conversion equation, a graph, or computer program to produce results in units of the applicable emission limitation or standard. Historically, other federally-approved SIP revisions of Texas' Chapter 117 rule, affecting many other types of facilities, contain provisions allowing use of PEMS. Singling out the cement manufacturing sector from use of PEMS by deleting any provisions that would allow use of PEMS would increase the bar of compliance and extend unfair advantage to other sectors. Therefore, no further change to the text of proposed rule is warranted.

*Comment #16:* The Commenters state that subsection 117.273(b)(1)(C) should be deleted. Performance under 40 CFR 60, Appendix F, Sections 5.1 and 5.1.1 shall apply and deviations or exceptions shall not be allowed under this rule.

*Response to Comment #16:* Section 117.273 requires installation, calibration, maintenance, and operation of CEMS. Subsection 117.273(b) requires use of 40 CFR 60.13 and Appendix B, Performance Specification 2 for NO<sub>x</sub>. Subsection 117.273(b)(1)(C) requires use of 40 CFR 60 Appendix F Section 5.1 for quality assurance purposes. As applicable, the air permits issued to the affected sources contain special conditions for recording, reporting, and recordkeeping information concerning CEMS. Affected monitors will need to comply with all applicable monitoring requirements. Such provisions have been already incorporated in the proposed rule.

*Comment #17:* The Commenters state that section 117.283 in its entirety should be deleted. The purpose of this proposed rule is the reduction of NO<sub>x</sub>. Manipulating numbers to achieve emission reductions does not satisfy such a requirement. Reductions can and should be achieved through adequate control technology.

*Response to Comment #17:* Section 117.283 concerns the source cap. The

proposed rule will result in an annual overall reduction of 5,913.3 tons of NO<sub>x</sub> from affected sources. The EPA considers this amount to be a significant reduction in NO<sub>x</sub> emissions. We do not agree with the Commenters' characterization that requiring at least thirty percent reduction in NO<sub>x</sub> emissions as manipulating numbers to achieve emission reductions. With regard to adequate control technology we refer the Commenters to our response to Comment #2 of this document.

*Comment #18:* The Commenters state that the rule should include an operation requirement that all cement kilns that exceed permitted NO<sub>x</sub> emission rates in excess of 2.8 lbs NO<sub>x</sub>/ton clinker shall cease operation between March 1st and September 30th, the ozone season, to ease the burden of harmful ozone levels on the D/FW area.

*Response to Comment #18:* Absent significant information substantiating the Commenters' position, EPA is unable to adopt a provision in its regulation which requires all cement kilns in Ellis County cease operations between March 1st and September 30th, if the 2.8 lbs NO<sub>x</sub>/ton clinker emissions limitation has been exceeded. However, the State is in the process of developing a future revision to the D/FW ozone SIP. Consideration of impact of the cement plants and the potential for additional control measures will be a part of this regulatory process. Also see our response to Comment #1 in this document.

*Comment #19:* The Commenters state that this rule demonstrates a greater effort toward relieving facilities from emissions reduction than it does to actually reduce emissions required to satisfy compliance with the SIP and protect the health of citizens.

*Response to Comment #19:* As stated in section 5 of our proposal (68 FR 44631), "currently Texas SIP contains no federally-approved requirements for controlling NO<sub>x</sub> emissions from cement kilns." The proposed rule will result in an annual overall reduction of 5,913.3 tons of NO<sub>x</sub> from affected sources in these Counties. The EPA considers this amount to be a significant reduction in NO<sub>x</sub> emissions. We do not agree with the Commenters' characterization that requiring at least thirty percent reduction in NO<sub>x</sub> emissions as an effort toward relieving facilities from emissions reduction.

*Comment #20:* The Commenters state that the economics and financial condition of an industry is not the concern of the EPA or the TCEQ, that responsibility belongs to the Commerce Department.

*Response to Comment #20:* All EPA and TCEQ's revisions to the SIP will need to comply with and adhere to applicable provisions of the Act. We believe that our July 30, 2003 (68 FR 44631), rulemaking action is in accord with the requirements of the Act and EPA's policies.

*Comment #21:* A private citizen stated that in his opinion this rule ranks among the worst proposals offered by EPA since the exodus of Administrator Browner.

*Response to Comment #21:* The proposed rule was submitted to EPA in accordance to section 110(a)(2) of the Act. The proposed emissions reduction level of at least thirty percent from the 1996 baseline levels is in agreement with those found in our ACT Document.

The proposed reductions are in agreement with the 63 FR 56394, October 21, 1998, the Federal Implementation Plans to Reduce Regional Transport of Ozone. For example, the NO<sub>x</sub> emissions specifications of 4.0 lb NO<sub>x</sub>/ton of clinker produced for a long wet kiln operating in Ellis County (designated as attainment for 1-hour ozone NAAQS), is comparable to or more stringent than the NO<sub>x</sub> emissions specifications from similar cement kilns in many other parts of country. The proposed rule will result in an annual overall reduction of 5,913.3 tons of NO<sub>x</sub> from affected sources in these Counties. For these reasons we disagree with the commenter's characterization of the proposed rule.

This concludes our responses to the written comments we received concerning the July 30, 2003 (68 FR 44631), Texas SIP revision.

**4. What do these Rule Revisions for Cement Kilns that we are Approving Provide?**

These rule revisions require at least thirty percent reductions of NO<sub>x</sub> compared with the 1996 baseline emission inventory from each cement kiln that is major source in Bexar, Comal, Ellis, Hays, and McLennan Counties, and was placed into service before December 31, 1999. The following 2 tables contain a summary of these SIP revisions for cement kilns in these 5 Texas Counties.

TABLE III.—AFFECTED SOURCES, LOCATIONS, AND NO<sub>x</sub> EMISSIONS SPECIFICATIONS FOR CEMENT KILNS

Source	County	NO <sub>x</sub> emission specification
Long wet kiln .....	Bexar, Comal, Hays, McLennan .....	6.0 lb NO <sub>x</sub> /ton of clinker produced.
Long wet kiln .....	Ellis .....	4.0 lb NO <sub>x</sub> /ton of clinker produced.
Long dry kiln .....	Bexar, Comal, Hays, McLennan, Ellis .....	5.1 lb NO <sub>x</sub> /ton of clinker produced.
Preheater kiln .....	Bexar, Comal, Hays, McLennan, Ellis .....	3.8 lb NO <sub>x</sub> /ton of clinker produced.
Precalciner or preheater-precaciner kiln .....	Bexar, Comal, Hays, McLennan, Ellis .....	2.8 lb NO <sub>x</sub> /ton of clinker produced.

TABLE IV.—AFFECTED SOURCES AND THEIR COMPLIANCE SCHEDULES

Source	Compliance schedule
Cement kilns in Ellis County Cement kilns in Bexar, Comal, Hays, and McLennan.	May 1, 2003. May 1, 2005.

These emissions specifications meet and are in agreement with those found in our ACT Document, and are comparable to or more stringent than emission specifications for cement kilns in a number of other federally approved State rules.

**5. What Areas in Texas Will These Rule Revisions Affect?**

The following table contains a list of Counties affected by today's rulemaking action.

TABLE V.—AFFECTED TEXAS COUNTIES BY THE CEMENT KILN PROVISIONS OF CHAPTER 117

Rule/source	Affected counties
Chapter 117/Cement Kilns.	Bexar, Comal, Ellis, Hays, and McLennan.

If you are in one of these Texas counties, you should refer to the Chapter 117 rules to determine if and how today's action will affect you.

**Statutory and Executive Order Reviews**

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. 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). 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.*). 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).

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). 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. 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.

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. 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.*).

The Congressional Review Act, 5 U.S.C. section 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. section 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 May 25, 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, Cement kiln, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 12, 2004.

**Richard E. Greene,**  
*Regional Administrator, Region 6.*

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart SS—Texas**

■ 2. In § 52.2270 the table in paragraph (c) is amended under Chapter 117, Subchapter B, by adding a new entry heading as “Division 4—Cement Kilns”, adding new individual entries for sections “117.260, 117.261, 117.265, 117.273, 117.279, and 117.283”; Subchapter E, by adding a new individual entry for section 117.524 and revising the entry for section 117.570.

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter 117 (Reg 7)—Control of Air Pollution From Nitrogen Compounds</b>				
*	*	*	*	*
<b>Subchapter B—Division 4—Cement Kilns</b>				
Section 117.260 .....	Cement Kiln Definitions .....	04/19/00, 03/05/03 .....	03/26/04 and [FR page number]	
Section 117.261 .....	Applicability .....	04/19/00 .....	03/26/04 and [FR page number]	Also finalizes 65 FR 64914
Section 117.265 .....	Emission Specifications .....	04/19/00, 03/05/03 .....	03/26/04 and [FR page number]	
Section 117.273 .....	Continuous Demonstration of Compliance.	04/19/00 .....	03/26/04 and [FR page number]	Also finalizes 65 FR 64914
Section 117.279 .....	Notification, Recordkeeping, and Reporting Requirements.	04/19/00, 03/05/03 .....	03/26/04 and [FR page number]	
Section 117.283 .....	Source Cap .....	04/19/00, 03/05/03 .....	03/26/04 and [FR page number]	
*	*	*	*	*
<b>Subchapter E—Administrative Provisions</b>				
*	*	*	*	*
Section 117.524 .....	Compliance Schedule for Cement Kilns.	04/19/00, 03/05/03 .....	03/26/04 and [FR page number]	
117.570 .....	Use of Emissions Credits for Compliance.	3/05/03 .....	03/26/04 and [FR page number]	
*	*	*	*	*

[FR Doc. 04-6309 Filed 3-25-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 63

[LA-69-2-7617a; FRL-7638-7]

#### New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Louisiana

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

**ACTION:** Direct final rule; delegation of authority.

**SUMMARY:** The Louisiana Department of Environmental Quality (LDEQ) has submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). These regulations apply to certain NSPS promulgated by EPA at 40 CFR part 60, as amended through July 1, 2002; and certain NESHAPs promulgated by EPA, as amended through July 1, 2002, for both 40 CFR part 61 and 63 standards. The delegation of authority under this notice does not apply to sources located in Indian Country. EPA is providing notice that it has approved delegation of certain NSPS to LDEQ, and taking direct final action to approve the delegation of certain NESHAPs to LDEQ.

**DATES:** This rule is effective on May 25, 2004, without further notice, unless EPA receives adverse comment by April 26, 2004. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffery Robinson, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-6435; or electronic mail at [robinson.jeffrey@epa.gov](mailto:robinson.jeffrey@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. General Information

##### A. What Is the Public Rulemaking File?

EPA is committed to ensuring public access to the information that is used to inform the public of the Agency's decisions regarding the environment and human health and to ensuring that the public has an opportunity to participate in the Agency's decision process. The official public rulemaking file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The public rulemaking file does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute, although such information is a part of the administrative record for this action. The public rulemaking file is the collection of materials that is available for public viewing at the Regional Office. The administrative record is the collection of material used to inform the public of the Agency's decision on this rulemaking action.

##### B. How Can I Get Copies of This Document and Other Related Information?

1. An official public rulemaking file is available for inspection at the Regional Office. The Regional Office has established an official public rulemaking file for this action under LA-69-2-7617a. The public rulemaking file is available for viewing at the Air Permits Section, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section two working days in advance to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 a.m. to 4 p.m. excluding Federal holidays.

##### 2. Copies of the State Submittal.

Copies of the State submittal are also available for public inspection during official business hours, by appointment at the Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, LA 70802.

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

The E Government Act of 2002 states that to "to the extent practicable" agencies shall accept electronic comments and establish electronic dockets. Also, President Bush's management plan for government includes a government-wide electronic rulemaking system. The first phase of the e-Rulemaking initiative was the development of a Federal portal that displays all **Federal Register** notices and proposed rules open for comment. The URL for this site is <http://www.regulations.gov>. The site also provides the public with the ability to submit electronic comments that can then be transferred to the Agency responsible for the rule.

EPA's policy is to make all comments it receives, whether submitted electronically or on paper, available for public viewing at the Regional Office as EPA receives them and without change. However, those portions of a comment that contain properly identified and claimed CBI or other information for which disclosure is restricted by statute will be excluded from the public rulemaking file. The entire comment, including publicly restricted information, will be included in the administrative record for this action.

##### C. 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 docket identification number 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section I.D, below. Do not use e-mail