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**Summary of Comments**

The Postal Service received three comments on the September 2, 2004, proposal (69 FR 53664). Two commenters strongly supported the proposal, but requested that the Postal Service expand the rule to include merchandise sent at Standard Mail rates. This request is outside the scope of this rulemaking. The Postal Rate Commission case authorized only a limited exception to the prohibition against entering Periodicals at Package Service rates. The prohibition against enclosing Periodicals in Standard Mail pieces remains in place at this time. The third commenter expressed concerns as to why the Postal Service provides discounts to any mailer at any mail class. This comment is also outside the scope of this rulemaking, and postal policies in this area are consistent with the ratemaking provisions established by statute.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

**PART 111—[AMENDED]**

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

**E Eligibility**

\* \* \* \* \*

**E700 Package Services**

*E710 Basic Standards*

**1.0 BASIC INFORMATION**

**1.1 Definition**

[Amend 1.1 by revising the first sentence to read as follows:]

Package Services mail consists of mailable matter that is neither mailed or required to be mailed as First-Class Mail nor entered as Periodicals (except as permitted under 1.7) unless permitted or required by standard or as

Customized MarketMail under E660.

\* \* \*

[Add new section 1.7 to read as follows:]

**1.7 Attachments or Enclosures of Periodicals Sample Copies**

Sample copies of authorized and pending Periodicals publications may be enclosed or attached with merchandise sent at Parcel Post or Bound Printed Matter rates. Postage at the Parcel Post or Bound Printed Matter rates is based on the combined weight of the host piece and the sample copies enclosed.

\* \* \* \* \*

An appropriate amendment to 39 CFR part 111 will be published to reflect these changes.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. 05–975 Filed 1–18–05; 8:45 am]

**BILLING CODE 7710–12–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[R05–OAR–2004–OH–0003; FRL–7850–4]**

**Approval and Promulgation of State Implementation Plans; Ohio; Revised Oxides of Nitrogen (NO<sub>x</sub>) Regulation and Revised NO<sub>x</sub> Trading Rule**

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

**ACTION:** Direct final rule.

**SUMMARY:** On June 28, 2004, Ohio submitted an oxides of nitrogen (NO<sub>x</sub>) State Implementation Plan (SIP) revision request to EPA which included amended rules in Ohio Administrative Code (OAC). The purpose of the SIP revision is to exclude from the NO<sub>x</sub> trading program carbon monoxide boilers associated with fluidized catalytic cracking units (FCCU). The revision also allocates additional NO<sub>x</sub> allowances to the overall budget and to the trading budget to correct a typographical error made in the original rule. Removal of the FCCU boilers from the NO<sub>x</sub> trading program is an option Ohio has elected to incorporate in its NO<sub>x</sub> SIP. The Ohio SIP revision addresses some minor corrections in the rules and also incorporates by reference specific elements of the NO<sub>x</sub> SIP Call. EPA is approving the Ohio request because the changes conform to EPA policy under the Clean Air Act. The collective emissions from these sources are small and the administrative burden,

to the states and regulated entities, of controlling such sources is likely to be considerable. Inclusion of these small NO<sub>x</sub> sources in the NO<sub>x</sub> SIP Call control program would not be cost effective.

**DATES:** This “direct final” rule is effective on March 21, 2005 unless EPA receives adverse written comments by February 18, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit comments, identified by Regional Material in eDocket (RME) ID No. R05–OAR–2004–OH–0003 by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments. Agency Web site: <http://docket.epa.gov/rmepub/>. RME, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Once in the system, select “quick search” then key in the instructions for submitting comments.

*E-mail:* [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

*Fax:* (312) 886–5824.

*Mail:* You may send written comments to:

J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

*Hand delivery:* Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), 18th floor, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 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.

*Instructions:* Direct your comments to RME ID No. R05–OAR–2004–OH–0003. EPA’s policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the federal [regulations.gov](http://regulations.gov) Web site are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through RME or *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

*Docket:* All documents in the electronic docket are listed in the RME index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Paskevicz, Engineer, at (312) 886-6084, before visiting the Region 5 office.) This EPA office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6084.

*Paskevicz.john@epa.gov*

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. General Information**

On August 5, 2002, at 67 FR 50600, EPA published a completeness determination that the Ohio NO<sub>x</sub> SIP submittal contained all of the elements of a NO<sub>x</sub> plan required for review. On January 16, 2003, 68 FR 2211, we published a direct final rule approving Ohio's submittal. This rule was withdrawn on March 17, 2003, 68 FR 12590, before it became effective because EPA received an adverse comment on the flow control issue. On August 5, 2003, 68 FR 46089, having resolved flow control, EPA approved Ohio's NO<sub>x</sub> State Implementation Plan (SIP), designed to reduce NO<sub>x</sub> emissions from major fuel burning sources during the ozone season. The Ohio SIP specifically addressed emissions from sources named in Ohio Administrative Code (OAC) rules 3745-14 appendices A and B. These 2 appendices identify sources by location and plant identification number and list NO<sub>x</sub> allocations for each plant. Appendix B lists NO<sub>x</sub> allowance allocations for the ozone season for regulated non-electrical generating units (non-EGUs).

Following the August 5, 2003 approval, EPA issued an NO<sub>x</sub> SIP Call applicability statement which clarifies inclusion of a specific NO<sub>x</sub> source category [carbon monoxide (CO) boilers] and gives States the option to include or exclude this source category of boilers in the trading program. These CO boilers are associated with fluidized catalytic cracking units (FCCU) found in oil refineries and used to combust, and thereby control, CO emissions and to produce steam for use at the refinery. NO<sub>x</sub> is produced by the FCCU and by the CO boiler and the total vents through the boiler stack. As fuel burning sources, these units could be included in the NO<sub>x</sub> trading program if the State so desired. The EPA applicability statement gives this option to the States.

The Ohio NO<sub>x</sub> SIP Call inventory for non-EGUs includes some, but not all, FCCU-CO boilers. Some boilers were listed in the Ohio NO<sub>x</sub> inventory as CO control equipment and some were listed as energy recovery units. These inventory inconsistencies also occurred in other state inventories in NO<sub>x</sub> SIP Call states. Because of these

inconsistencies from state to state, EPA developed its applicability statement to allow each state with one or more FCCU-CO boiler the option of determining whether all of its large FCCU-CO boilers are covered, or all of its large FCCU-CO boilers are not covered by the NO<sub>x</sub> SIP trading program. However, in this option, EPA does not intend to allow states to split this category of sources by including some, but not all, large FCCU-CO boilers in the trading program. To prevent splitting the category, EPA needed to provide an explanation as to how allowances would be addressed for states like Ohio with some but not all FCCU-CO sources in the rule.

#### **II. Background**

##### *A. What Is the Intent of Today's Final Rule?*

Today's final rule resolves the significant issue of applicability of this rule to certain fuel burning units. It is intended to give affected sources in Ohio a clear indication that CO boilers associated with fluidized catalytic cracking units (FCCU) at oil refineries are not subject to Ohio's NO<sub>x</sub> budget rule. This action excludes these units from the NO<sub>x</sub> budget trading program and the monitoring requirements of the State rule, and clears up for owners of these sources the question of whether or not monitoring, record-keeping and reporting requirements are required for these sources.

##### *B. Who Is Affected by Today's Rule?*

This rule revision affects all refineries in Ohio which have carbon monoxide boilers associated with fluidized catalytic cracking units. There are three refineries in Ohio which are affected by this rule change. However, since the beginning of the NO<sub>x</sub> trading program, all three refineries have been granted an exemption from the monitoring, recordkeeping and reporting requirements of the Ohio NO<sub>x</sub> budget rule and the requirements of the NO<sub>x</sub> SIP Call. The exemption was granted in writing by EPA. Ohio had already completed the change to its rules and there was no need for the refiners to request an exemption from Ohio.

##### *C. What Changes Did Ohio Make to Its NO<sub>x</sub> SIP?*

Ohio made a number of changes to the NO<sub>x</sub> rules as noted in Table I, below.

TABLE I

Reference	Description of change
3745-14-01(B)(2)(h) .....	Changed the definition of "boiler" to exclude CO boilers associated with combusting CO from fluidized catalytic crackers at petroleum refineries.
3745-14-01(B)(2)(q) .....	Changed the definition of "continuous emission monitoring system" to coincide with the definition in 40 CFR Part 97.
3745-14-01(B)(2)(z) .....	Corrected a typographical error, changed the word "combination" with the word "combustion."
3745-14-01(C)(1) .....	Changed the applicability of the rules for cogeneration units.
3745-14-01(D)(2)(c) .....	Made minor corrections to references within this section of the rule.
3745-14-01(G) .....	This chapter was amended to add significant amounts of State EPA and Federal EPA materials through incorporation by reference (IBR). The text of the incorporated material is not included but the specific materials incorporated as they exist on the effective date of the State rule are made part of the regulations and are listed in detail in the revised rule. Items included as part of the IBR are: the Clean Air Act and specific sections of Title IV; specific elements of part 51, part 52, part 60, part 72, and part 75 of the Code of Federal Regulations, and the Ohio EPA Weekly Review.
3745-14-03(B)(3)(a) .....	Made a minor correction to reference within this section of the rule.
3745-14-05(A) .....	This is the section of the Ohio rule which identifies the total number of allowances in the State's trading budget. The exclusion of FCCU-CO boilers from the requirements of the NO <sub>x</sub> program changes both the total number of allowances and the number of allowances for regulated non-electric generating units listed in appendix B of the State's plan. Details regarding this change are found in the State's revised budget demonstration. The revised total trading program budget includes 49,460 NO <sub>x</sub> allowances. The revised number of NO <sub>x</sub> allowances, for non-electric generating units, is 4,028.
3745-14 Appendix B .....	Appendix B is the list of regulated non-electric generating units subject to the 3745-14 NO <sub>x</sub> budget program. This revised appendix reflects the exclusion of FCCU-CO boilers from the trading program. And it also incorporates the 16 NO <sub>x</sub> allowances for Premcor's unit B026.

The Ohio NO<sub>x</sub> plan revision was reviewed based on the elements set forth in Appendix V, 40 CFR part 51.

The State's submittal included: A formal letter requesting approval of the rule revision; evidence of legal authority; evidence that the rules were adopted in the Ohio Code; a copy of the rule; evidence that Ohio followed the requirements of the State's administrative procedures act; copy of the public notice; evidence that a public hearing was held; and copy of public comments.

The submittal included a revised budget demonstration, describing the changes to the Ohio NO<sub>x</sub> emission budget and the NO<sub>x</sub> trading budget. Following original EPA approval of the Ohio NO<sub>x</sub> plan, the State discovered that an existing unit at the Premcor Refinery in Lima, Ohio should have been included in the rules as a regulated unit but was not. It also discovered that the rules regulated two CO boilers associated with FCCU boilers at the Sunoco Refinery in Ohio and did not regulate two similar FCCU-CO boilers,

one belonging to Premcor Refinery and one at BP Toledo Refinery. These corrections are made in the Ohio rule revision. The impact of these changes on the trading budget is noted in Table II. Ohio also learned that EPA had given other States the option of regulating or not regulating similar FCCU-CO boilers, and moved to make the changes to its rules. On the basis of this information, Ohio initiated a change to its trading rules which were made effective on May 5, 2004.

TABLE II

Company	Unit	NO <sub>x</sub> emission budget			NO <sub>x</sub> allowance allocations	
		Uncontrolled 2002 rule & 2004 revision	Controlled		2002 rule	2004 revision
			2002 rule	2004 revision		
Premcor .....	B026 .....	40	40	16	0	16
Sunoco .....	B044 .....	78	31	78	36	0
	B046 .....	56	22	56	19	0
Total for all non-EGUs .....	.....	50,001	49,194	40,251	4,067	4,028

*D. How Does This Change Affect NO<sub>x</sub> Sources?*

CO boilers associated with fluidized catalytic cracking units at oil refineries are not required to be part of the NO<sub>x</sub> trading program. This has significant meaning for owners of these boilers regarding annual operating costs for monitoring and reporting. Allowances are no longer available for these sources, and potential income from the sale of

emission reduction credits no longer exists. More importantly for the owners of the sources, because these units are not part of the trading program, there is no longer a requirement for these sources to monitor, record and report emissions of NO<sub>x</sub> for these units under 40 Code of Federal Regulations part 75. This relieves the owners of these small sources from the substantial burden and expenses associated with the monitoring requirements of the Ohio trading rule.

*E. What Opportunities Were Provided by Ohio for Public Input Into This Rule Change?*

The Clean Air Act (Act) requires States to allow the public an opportunity to review and comment on any State's plan to implement provisions of the Act. Section 110(a)(1) of the Act states, "Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator

\* \* \* a plan \* \* \* Ohio provided reasonable notice and public input.

Ohio's Revised Administrative Code states that the Director of the Ohio Environmental Protection Agency " \* \* \* may conduct public hearings on any plan 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 protection.)

On October 21, 2003, Ohio advised the affected community of a proposed rulemaking and public hearing concerning Rules 3745-14-01, 3745-14-03, and 3745-14-05 of the Ohio Administrative Code. Notice was made available to the public and affected industries via Ohio EPA's web site and by direct electronic mail to the State's list of interested parties. This notice announced a thirty-day comment period beginning October 21, 2003. Comments were received and the rule was revised in response to the comments and again made available on the State's website. A public hearing was held in Columbus on March 11, 2004, at which no comments were made, and no comments were received via either U.S. Mail or electronic mail.

Ohio published a notice of adoption of amended rules, and in the notice offered its citizens, and affected industry, an opportunity to appeal the Ohio EPA Director's findings and orders, and again sent an announcement of this opportunity to the list of interested parties. No appeals were made. The revision was approved by the Director and became effective on May 5, 2004.

#### F. Why Is EPA Approving This Revision?

EPA is approving this revision because it conforms with the intent of EPA's applicability statement regarding boilers associated with fluidized catalytic cracking units located at oil refineries. This applicability statement or policy is available from the EPA Clean Air Markets Division (CAMD.) A copy of this policy is available at the following Web link: <http://www.epa.gov/airmarkets/fednox/boilerpolicy.pdf>. The intent of the policy has been articulated in letters to all three sources in Ohio which are affected by the Ohio NO<sub>x</sub> rule.<sup>1</sup> In anticipation of the pending changes to the Ohio

trading rule, these sources petitioned EPA and Ohio to exempt specific units from the requirements of OAC 3745-14-01, the monitoring, recordkeeping and reporting requirement of the Ohio NO<sub>x</sub> trading rule.

Prior to the May 31, 2004 start of the trading program, EPA had already exempted these sources from the monitoring requirements. The exemptions were based on requests from the sources, and were made with the understanding that Ohio, with guidance from EPA, would amend its rules to exempt these sources from monitoring, and submit the rules to EPA to formalize the revision to the Ohio NO<sub>x</sub> plan. EPA agreed with the exemptions because the units at these sources are considered small emitters and were not factored into the cost-effectiveness determination in the development of the original EPA rule. 63 FR 57356, October 27, 1998. Also, many of these units which are classified as CO emission control equipment in some state inventories are not significant emitters of NO<sub>x</sub>. EPA did not intend these units to be included in the NO<sub>x</sub> trading program because the emissions from this category were relatively small (less than 1 ton per day) 63 FR 57356, October 27, 1998. Ohio corrected this applicability issue by revising the State rule to exempt these units from the requirements of the NO<sub>x</sub> program. EPA agrees with the State's revision.

#### III. Final Action

We are approving Ohio's revision to the State's NO<sub>x</sub> plan because it continues to meet the requirements of the EPA NO<sub>x</sub> trading program. The State's revision makes a minor adjustment in the overall trading budget which EPA had confirmed was approvable. EPA agreed with Ohio prior to the start of the 2004 ozone season that this change would be approved and that affected FCCU-CO boilers would not be required to implement NO<sub>x</sub> rule requirements as long as Ohio continued to make progress to change the rules. The rule changes affecting the definition of boiler and adjusting the budget became effective in the State on May 5, 2004. This adjustment in the budget was recognized by EPA as a necessary change to accommodate Ohio's change in the definition of "boiler" in the State rule. EPA is publishing this action as a final rule because it serves to implement the intent of the NO<sub>x</sub> SIP Call and EPA policy and improves operation of Ohio's NO<sub>x</sub> plan.

In the event we receive substantive adverse comment, this direct final rule will be withdrawn and all public comments received will be addressed in

a subsequent final rule based on a proposed rule published elsewhere in today's **Federal Register**.

#### IV. Supplementary Information—Electronic Filing

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

1. The Regional Office has established an electronic public rulemaking file available for inspection on RME and a hard copy file which is available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under RME ID No. R05-OAR-2004-OH-0003. 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 person 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](http://www.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

<sup>1</sup> Letter dated June 28, 2004, from Sam Napolitano, Director, Clean Air Markets Division, EPA to Mr. Allen R. Ellet, Air Quality Team Leader, BP Oil Company, Toledo Refinery, Toledo, Ohio. In this letter, EPA approves an extension to the deadline for compliance by the CO boiler with the monitoring, recordkeeping and reporting requirements of the Ohio NO<sub>x</sub> budget trading program.

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 RME "R05-OAR-2004-OH-0003" 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.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

#### **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*

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 plan 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 plan 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. 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 March 21, 2005. 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, Oxides of nitrogen, Reporting and recordkeeping requirements.

Dated: December 3, 2004.

**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)(132) to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(132) On June 28, 2004, the Ohio Environmental Protection Agency submitted revisions to OAC rule 3745–14–01. These revisions change the definition of “boiler” by excluding from the trading program carbon monoxide (CO) boilers associated with combusting CO from fluidized catalytic cracking units at petroleum refineries, change the definition of continuous emission monitoring system to coincide with the definition in 40 CFR part 97, and change the applicability of the rules for cogeneration units. The submittal also includes revisions to OAC rule 3745–14–03 (A housekeeping correction to reference OAC Chapter 3745–77 concerning Title V operating permit) and 3745–14–05 (Revising the number of trading program budget allowances and source identification for the ozone seasons 2004 through 2007).

(i) Incorporation by reference.

(A) Ohio Administrative Code rules 3745–14–01, 3745–14–03, and 3745–14–05, effective May 25, 2004.

[FR Doc. 05–1032 Filed 1–18–05; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency****44 CFR Part 65****Changes in Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**DATES:** *Effective Dates:* The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:**

Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also

used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and record keeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

**PART 65—[AMENDED]**

■ 1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

■ 2. The tables published under the authority of § 65.4 are amended as follows: