ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–OAR–R05–2005–OH–0005; FRL–8228–2]

Approval and Promulgation of Implementation Plans; Ohio Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action on a variety of revisions to particulate matter regulations submitted by Ohio on July 18, 2000. EPA is approving revisions to the form of opacity limits for utility and steel mill storage piles and roadways. EPA is approving a modest realignment of emission limits in the Cleveland area within the constraints of a revised modeled attainment demonstration. EPA is approving formalization of existing requirements for continuous emission monitoring for certain types of facilities, criteria for the state to issue equivalent visible emission limits, and revised limits for stationary internal combustion engines. However, EPA is disapproving authority for revising emission limits for Ford Motor's Cleveland Casting Plant via Title V permit modifications. Also, EPA is deferring action on equivalent visible emission limit rules to solicit comment on certain ramifications of its proposed approval.

DATES: This final rule is effective on December 8, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2005–OH–0005. All documents in the docket are listed on the *www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION: This document is organized as follows:

I. Does This Action Apply to Me?

This action applies to you if you are interested in the emission limitations applicable to airborne particulate matter in the State of Ohio. This action especially applies to you if you are interested in the emission limitations applicable to utility and iron and steel manufacturing sources in Ohio and to Ford Motor Company's Cleveland Casting Plant, to which most of the limit revisions addressed in this notice apply.

II. Summary of State Submittal and Proposed Rulemakings

Ohio adopted major revisions to its particulate matter regulations in 1991, addressing requirements of the Clean Air Act amendments of 1977 and 1990. Ohio has submitted and EPA has approved those regulations (see 59 FR 27464, May 27, 1994, and 61 FR 29662, June 12, 1996). However, several companies appealed those regulations to the State's Environmental Review Board. As a result of lengthy discussions aimed at resolving these appeals, Ohio adopted an assortment of revisions to its particulate matter regulations on December 17, 1997. Ohio submitted the revised regulations to EPA on July 18, 2000.

EPA proposed action in two parts, published respectively on December 2, 2002, at 67 FR 71515, and on August 9, 2005, at 70 FR 46127. The first notice addressed most of the State's submittal. That notice proposed to approve: (1) A redesign of the limits on visible emissions from roadways and storage pile operations at utility storage piles; (2) a similar redesign of the visible emission limits for roadways and storage piles at iron and steel facilities; (3) criteria for determining the appropriate visible emissions limit for cases where a source meets its mass emission limit but cannot comply with the standard visible emissions limit, with provision that the State may establish alternate visible emission limits according to these criteria without need for review by EPA; (4) requirements for continuous emission monitoring systems for a range of sources, and (5) miscellaneous other revisions. This notice proposed to disapprove provisions by which Ford could modify its emission limits via amendments to its Title V permit prior to EPA approval of a State Implementation Plan (SIP) revision.

The second notice of proposed rulemaking proposed to approve modification of the limits for several facilities in Cuyahoga County (the Cleveland area), including Ford, LTV, and General Chemical. Further description of the State submittal and EPA's evaluation of the submittal and its proposed action are provided in the respective notices.

The rules addressed in this rulemaking are rules that were effective in Ohio on January 31, 1998. Ohio subsequently adopted and submitted further revisions to their particulate matter regulations, effective April 14, 2003, which modify the opacity limitations for large coal-fired boilers and which make miscellaneous minor revisions. Those further revisions are being addressed in separate rulemaking, including proposed rulemaking published on June 27, 2005, and are not addressed here.

III. Response to Comments

EPA received one set of comments, from Ford Motor Company dated January 31, 2003. These comments objected to EPA's proposed action, published on December 2, 2002, proposing to disapprove a provision for Ford Motor Company to obtain revised emission limits for its Cleveland Casting Plant by means of Title V permit revisions or by new source permit. EPA received no other comments on either notice of proposed rulemaking. The following paragraphs describe Ford Motor Company's comments and provide EPA's response to those comments. For convenience, the remainder of this notice will refer to the commenter as Ford and will refer to the pertinent facility as the Cleveland Casting Plant.

Comment: Ford described its Cleveland Casting Plant at length. Later in its comment letter, Ford described the plant and its pollution control systems as complex and subject to frequent changes as production demands change. These descriptions support comments that Ford must have an expeditious process to obtain reconfigured emission limits to accommodate periodic plant reconfigurations.

Response: EPA understands the complexity of the Cleveland Casting Plant. A more detailed discussion of Ford's comments and EPA views on the need for expeditious changes in limits is provided below.

Comment: Ford delineates a history of State and federal rulemaking on Ohio particulate matter issues relevant to the Cleveland Casting Plant.

Response: In most respects the history is an accurate chronology of the identified rulemakings. One factual inaccuracy in the chronology is the statement that Ohio adopted the rules adopted in December 1996 and submitted them to EPA ''shortly thereafter''; in fact, the rules were adopted in December 1997 and were not submitted until July 2000.

A few additional elements of the chronology in the comment also warrant note. EPA proposed rulemaking on a portion of Ohio's July 2000 submittal on December 2, 2002. As stated in that notice of proposed rulemaking, at 67 FR 71516, ''[b]ased on discussions with USEPA, Ohio is conducting a further assessment of whether the revised limits in Cuyahoga County suffice to assure attainment of the annual particulate matter standard. USEPA is deferring action on these revisions pending receipt of this further assessment.'' Ohio provided further materials on February 12, 2003, January 7, 2004, February 1, 2005, and April 21, 2005. EPA then proposed to approve the Cuyahoga County limits on August 9, 2005.

This expanded chronology illustrates several points. First, attainment demonstrations can raise significant issues, such that in this case Ohio was providing supplemental material over a period of more than two years. Second, this chronology is directly relevant to the Cleveland Casting Plant, since some of the supplemental material directly pertains to this facility. Third, had EPA taken earlier action, that action presumably would have been to disapprove the limits due to inadequate support, including the limits being sought by Ford.

Comment: Section III.A of Ford's comments states, ''The flexibility in OAC 3745–17–12(I)(50) and (51) is critical to the ongoing viability of the Casting Plant.'' Ford highlights the complexity of its Cleveland Casting Plant. Ford provides a conceptual example involving two processes (labeled Process A and Process B) and two emission control systems (labeled Collector C and Collector D), noting in the example that emissions from Process A may go mostly to Collector C but may also in part to Collector D, and similarly the emissions from Process B may go partly to both collectors. Ford states as part of this example that the emission limits in the SIP reflect the existing configuration of the distribution of emissions from various processes to the various control devices. Ford states that even if, for example, Process B shut down, such that it would be more efficient to shut Collector D down and route all Process A emissions to Collector C, the SIP would prohibit that, and Ford would be required to continue operating Collector D until a SIP revision was completed.

Ford makes a few additional comments in this section of its comment letter. Ford mentions its participation in EPA's Energy Star program for energy efficiency and its commitment to pollution prevention as an implementer of the ISO 14001 program. Ford highlights its view that the revisions made under this process have no detrimental environmental effect, because the revised limits must provide for attainment just as the existing SIP does. Ford further notes that the process in Rule 3745–17–12(I)(50) and (51) do in fact provide for the opportunity for EPA, Ohio EPA, and the public to review and comment on potential revisions, and the process is simply more streamlined than ''traditional SIP revisions.''

Response: EPA does not dispute Ford's statements that the Cleveland Casting Plant is a complex facility with numerous emitting processes connected in a complex array to numerous control systems. EPA also does not dispute Ford's statements that shifts in production demands require periodic reconfigurations in plant processes. However, EPA disagrees with Ford's view that the SIP requires and can only be written in a manner that requires a specific plant configuration, and EPA disagrees with Ford's conclusion that these circumstances warrant a process that circumvents standard SIP review.

The limits for the Cleveland Casting Plant in the Ohio SIP have various formats; some limits regulate pounds per hour for a specific emission unit, some limits regulate pounds per hour for a group of emission units, a few limits regulate mass per cubic foot of exhaust gas for one or multiple emission units, and certain limits regulate the hours per day that selected units may operate. In a handful of cases, the rules specify the control system that shall be used for the identified emission unit(s). As is discussed below, EPA approved these limits but did not and does not mandate the use of any particular format so long as the limit is enforceable and helps provide for attainment.

Ford does not provide a rationale for its statement that the SIP requires a specific mode of operation. In particular, Ford's presentation of its example does not support the claim that the SIP mandates continued operation of Collector D even after shutdown of the Process A that is the principal source of emissions controlled by Collector D. This is a critical shortcoming in Ford's comments, since this statement is a fundamental basis for Ford's argument that an expeditious process for altering SIP limits is needed to accommodate changes in operations at the Cleveland Casting Plant.

Despite Ford's failure to justify its statement that the SIP requires a specific mode of operation, EPA analyzed this statement further. First, EPA examined this statement conceptually in the context of Ford's illustrative example. In the example, Ford claims that the SIP would require continued operation of Collector D even after the shutdown of Process B, and that routing all of Process A emissions to Collector C would violate the SIP. EPA examined the rules it proposed to approve and found no cases in which the rules require operation of a control device that is not receiving emissions. Also, while EPA identified cases in which the rules direct Ford to route emissions from a process to a particular collector, EPA finds no cases in which the rules direct Ford to route emissions from a process to multiple control devices, and EPA found no rules prohibiting Ford from routing zero emissions to a particular collector. Thus, EPA finds no cases in which the rules prohibit routing all emissions from a process to a single collector but instead mandate that a portion of the emissions be routed to a second collector that might otherwise be shut down.

In a few cases, the rules do require that all emissions from identified processes be routed to a particular collector. These cases are discussed below.

Continuing its examination of Ford's example, EPA assessed whether continued operation of Collector D might be indirectly required in order to achieve emission reduction requirements. Two scenarios warrant consideration: (1) Collector C has the capacity to control successfully all of Process A's emissions, and (2) Collector C does not have the capacity to control successfully all of Process A's emissions. (''Control successfully'' here means satisfying the emission limits that apply to Collector C.) In the first scenario, routing all of Process A's emissions to Collector C would create no violation of the SIP. In the second scenario, Ford would be violating the SIP. Ford has several options for remedying such a violation. Ford could improve Collector C so that it can successfully control all of Process A's emissions. Ford could reroute the requisite fraction of Process A's emissions to some other collector with the capacity to control that fraction of Process A's emissions. (Such rerouting is permissible under the SIP in virtually all cases.) Over the longer run, Ford

could propose a control strategy based on highly effective control devices that maximize the company's flexibility to increase operations at individual processes and still remain within emission limits needed to assure attainment. Similarly, unlike prior State rulemakings, Ford could recommend rules that would eliminate those few cases in which emissions from specified processes are directed to be controlled by specified control equipment.

Ford has not addressed these options for increasing its flexibility for operating the Cleveland Casting Plant in compliance with SIP limits. Therefore, Ford has not demonstrated that the desired flexibility in plant operations while complying with SIP limits can only be achieved by being granted an expedited process for revising SIP limits.

In observing that SIP revisions can be time consuming, Ford makes reference to the length of time involved in the present rulemaking completed by today's notice. EPA has several responses. First, as noted previously, and contrary to Ford's chronology, Ohio did not submit the rule package until July 2000. EPA assumes that Ohio used the time between rule adoption and package submittal to prepare materials to support the submittal and justify EPA approval. In fact, EPA's December 2002 rulemaking deferred action on the portion of the submittal addressing Cleveland area limits for the express purpose of soliciting further information regarding these limits. The limits at issue included limits for the Cleveland Casting Plant, and the supporting information that Ohio provided in January 2004 for the Cleveland Casting Plant (along with information for other facilities that Ohio provided in February 2005) provided critical justification for the August 2005 proposed action and today's final action to approve the revisions to emission limits at the Cleveland Casting Plant that are included in Ohio's submittal.

EPA commends Ford for implementing the ISO 14001 program and participating in EPA's Energy Star program. However, these actions by Ford do not support allowing changes to applicable limits without proper SIP review. Regarding the brief comments here on the review process, a later section of this notice reviews these comments together with the more elaborate comments on the subject that Ford made elsewhere in its letter.

Comment: Ford provides several comments under the heading ''US EPA's rationale for the proposed disapproval is unsupported by the text of the preamble.'' Ford characterizes EPA's concern as being ''based almost exclusively on two interrelated points: (1) A concern that authorizing revisions to the applicable emission limitations by the mechanism specified in OAC 3745–17–12(I)(50) and (51) would not satisfy the criteria in section 110 of the Act, and (2) a belief that issuing a Title V permit with an alternative emission limit would somehow revise the SIP.'' Ford states, ''Both of these concerns are unfounded.''

As a subheading under the above heading, Ford states ''Both OAC 3745–17–12(I)(50) and (51) meet the criteria of section 110 of the Clean Air Act for inclusion in the SIP. If OAC 3745–17–12(I)(50) is approved as part of the SIP, the establishment of alternative emission limits pursuant to that rule does not modify the SIP.''

Ford summarizes the SIP requirements under Clean Air Act section 110(a)(2). Ford states, ''The language in OAC 3745–17–12(I)(50) and (51) satisfies all of these requirements.'' Ford finds that EPA's notice of proposed rulemaking does not disagree; Ford observes that ''Instead, the preamble focuses on permits to be issued under OAC 3745–17–12(I)(50) * * * [and] expresses a concern that [such a permit] would somehow impermissibly revise the SIP.''

Ford continues, ''Nothing in the regulations at issue allows Ohio EPA or Ford to deviate from the Section 110 requirements concerning SIP revisions * * *. [I]f OAC 3745–17–12(I)(50) is approved as part of the SIP, the SIP would expressly permit the creation of alternative emission limits. Establishing alternative emission limits * * * pursuant to the requirements of OAC 3745–17–12(I)(50) *would not be a revision of the SIP.*'' [emphasis in original]

Response: Possibly the most important requirement of section 110 is the requirement that the SIP provide for attainment of the air quality standards. This action approves a set of specific limits for the Cleveland Casting Plant and other Cleveland area facilities that EPA is satisfied will assure attainment of the applicable particulate matter standards (specifically the standards for particles nominally 10 micrometers and smaller, known as PM_{10}). The provisions of OAC 3745–17–12(I)(50) that Ford supports state, ''Compliance with an alternative emission limitation or control requirement in effect pursuant to this paragraph shall not constitute a violation of paragraph (I) of this rule * * *.'' That is, the rule supported by Ford would allow the facility to violate limits that help assure that Cleveland will attain the air quality standards. Although the rule dictates that the alternative limits must have been demonstrated to provide for attainment, the rule provides a process that shortchanges EPA's statutory role in reviewing whether the alternate limits in fact assure attainment. Indeed, this rule must be considered to authorize establishment of alternative limits that EPA after proper review would find inadequate to assure attainment. Consequently, approval of this rule would result in a SIP that no longer assures attainment of the air quality standards, in clear contravention of section 110 of the Clean Air Act.

Ford argues at length that upon approval of OAC 3745–17–12(I)(50), the establishment of alternative limits in accordance with that paragraph would not revise the SIP. This argument is not germane, because it disputes a mischaracterized, transformed version of EPA's rationale. EPA's notice of proposed rulemaking focuses on the changes to emission limitations that would be involved in use of the rule which Ford supports. In substantive terms, OAC 3745–17–12(I)(50) would authorize Ohio to permit Ford to violate some of the limits in the SIP, so long as Ford is complying with alternate limits established by permit. In Title V terms, the emission limits are quintessential ''applicable requirements'' that must be identified in the Title V permit. EPA's notice of proposed rulemaking in a few places uses a shorthand description of the problem, describing the Ohio rule as in effect revising the SIP through use of Title V permits. Ford's objection to this shorthand description of the problem overlooks the substantive point that Ohio's rule would impermissibly use Title V permits to alter SIP emission limits, or more precisely would use Title V permits to render moot some of the emission limits in the SIP and to establish alternative limits that effectively replace the SIP limits. Under the Clean Air Act, this is not allowable.

Ford is addressing a hypothetical question, i.e., with a hypothesized SIP that contains the provisions of OAC 3745–17–12(I)(50), whether use of those provisions to establish new limitations and render moot some of the existing SIP emission limitations would constitute a revision to the SIP. Ford's question is tantamount to asking, ''If provisions in the SIP authorized revision of core SIP elements (i.e. emission limitations), would it constitute a SIP revision to implement those provisions to revise those SIP elements?'' EPA need not resolve this hypothetical question, because EPA may not approve provisions that would authorize Ohio to make unenforceable

some of the limitations established to help assure attainment.

By extension, Ford's rationale could be interpreted to suggest that rules approved into the SIP need not contain any specific emission limitations, and that it should suffice for all of the specific emission limitations to be established as part of a Title V permit, so long as a requirement exists for such limits to be demonstrated to provide for attainment. EPA clearly objects to such an approach. The Clean Air Act requires SIPs to contain specific, enforceable emission limits providing for attainment, and EPA may not approve a plan that mandates but does not specify such limits. Furthermore, the Clean Air Act clearly delineates the process by which such limits are to be established and revised, a process that OAC 3745–17–12(I)(50) would shortchange.

Comment: Ford states, ''US EPA has recognized the need for 'SIP Flexibility.' '' Ford attached a letter from EPA to Ohio that addresses negotiations regarding SIP flexibility that ultimately led to Ohio's adoption of OAC 3745–17–12(I)(50). Ford quotes from this letter to demonstrate that EPA acknowledges the need for flexibility for Ford to obtain alternative limits ''following relatively expeditious U.S. EPA review.'' Ford states, ''While U.S. EPA indicated that the Ford-Ohio EPA approach to providing flexibility deviated slightly from U.S. EPA's 'traditional policy' on 'director's discretion,' U.S. EPA never indicated that the approach did not meet the criteria of Section 110.'' Ford notes that EPA anticipated issuing a SIP Flexibility Policy offering such expeditious limit revisions, observes that the policy was apparently never issued, but nevertheless urges EPA to approve OAC 3745–17–12(I)(50) for purposes of providing such flexibility.

Response: As Ford suspects, EPA has not issued the revised policy on SIP flexibility that the quoted letter anticipated. Thus, EPA reviewed OAC 3745–17–12(I)(50) in light of existing policy, including ''traditional policy'' on ''director's discretion.'' The term ''director's discretion'' denotes state rule provisions which authorize state agencies to establish or revise source requirements in the SIP without needing approval from EPA. This term is generally applied in cases where the source requirements are significant, and EPA policy states that such provisions shortchange necessary EPA review and cannot be approved.

Ford mischaracterizes EPA's statements regarding director's discretion. Far from indicating that the deviations from director's discretion policy are ''slight,'' EPA's letter stated: ''Ford's proposal deviates from USEPA's traditional policy on 'director's discretion' in several important respects.'' EPA then identified three specific deficiencies, in brief that the proposal allows revisions without affirmative EPA concurrence, allows only a short review period, and does not address various identified issues regarding enforcement of revised limits. Since OAC 3745–17–12(I)(50) fundamentally retains the same pertinent features as the proposal (with only a modest lengthening of the still brief EPA review period), OAC 3745–17–12(I)(50) contains these same deficiencies. Ford does not comment on these identified deficiencies, and EPA continues to believe that these deficiencies warrant disapproval of OAC 3745–17–12(I)(50).

The history of the limits in OAC 3745–17–12(I) provides perspective on the degree of operational flexibility inherent in these limits. OAC 3745–17–12(I), as adopted in May 1991, included three options recommended by Ford. One of these options was labeled ''the cupola dust collection upgrade plan'' and involved improvements in pollution control equipment which would accommodate expanded production by the Cleveland Casting Plant. The other two options involved less production and less aggressive efforts at emissions control. The option ultimately recommended by Ford, and adopted by Ohio in November 1991, reflects one of these latter options. All three options involve numerous limits on the number of hours of operation of major processes at the Cleveland Casting Plant, presumably designed to match the alternate projections of plant operations. Since EPA's guidance for PM_{10} attainment demonstrations mandates assuring attainment even with full allowable emissions, limits on operating hours serve as an alternative to tighter limits on emissions as a means of requiring attainment level daily emission rates. Thus, the attainment plan that Ford recommended may be viewed as reflecting Ford's preferences as to the mix of limits on emission control levels and limits on operations.

EPA's letter identifies various means by which Ford could obtain the desired flexibility without bypassing EPA's statutory SIP review process. The letter states:

> For example, Ford should investigate strategies that apply a more uniform set of limitations that would address a broader range of operational configurations. Similarly, Ford should investigate strategies that mix further controls with less restrictive sets of operation limitations. Such approaches should be fully investigated as means of allowing Ford the flexibility to make modest operational changes while still providing adequate review of changes that could significantly affect air quality.

Ford does not comment on these approaches. EPA remains convinced that Ford has multiple options for obtaining the flexibility it desires without bypassing EPA's statutory process for reviewing revisions to limits established to assure attainment.

Comment: Ford makes a series of comments under the heading ''US EPA's White Paper Number 2 Supports the Creation of Alternative Emission Limits.'' Ford observes that this white paper provides for inclusion of alternative emission limits in Title V operating permits. Ford quotes from the white paper:

> States may revise their SIP's to provide for establishing equally stringent alternatives to specific requirements set forth in the SIP without the need for additional source-specific SIP revisions. To allow alternatives to the otherwise-applicable SIP requirements (*i.e.*, emissions limitations, test methods, monitoring, and recordkeeping) the State would include language in SIP's to provide substantive criteria governing the State's exercise of the alternative requirement authority.

Ford further quotes language from the white paper that describes a sample set of SIP language that would provide the process for implementing such a provision. Ford observes that the process in OAC 3745–17–12(I)(50) parallels this approach suggested in EPA's white paper.

Ford notes that EPA's Title V permit rules, specifically at 40 CFR 70.6(a)(1)(iii), ''provide a mechanism for states to establish alternative emission limits.'' Ford quotes language in Ohio's Title V rules (at OAC 3745–77–0(A)(1)(c)) that it believes ''tracks 40 CFR 70.6(a)'' and authorizes Ohio to establish alternative emission limits ''[i]f the applicable implementation plan so provides''. Given that EPA approved these Ohio Title V rules, and given that EPA ''advocated alternative emission limits in White Paper 2,'' Ford finds EPA's proposed disapproval of OAC 3745–17–12(I)(50) and (51) to be ''arbitrary and unreasonable.''

Response: White Paper Number 2 indeed provides the options for states to use Title V permits to ''establish *equally stringent alternatives to specific requirements set forth in the SIP*'' (emphasis added). However, Ford is seeking for Ohio to have broader authority to make more revisions than is contemplated in the white paper. If Ford were merely seeking the option to establish replacement limits that for each emission point were equally

stringent to the existing SIP limit, then there would be no need for OAC 3745–17–12(I)(50) to require modeling to demonstrate that the alternatives provide for attainment. Instead, Ford is clearly seeking for Ohio to have the authority to use Title V permits to set less stringent limits for some emission points and more stringent limits on other sources. Indeed, OAC 3745–17–12(I)(50) expressly provides that Ford need not meet the existing SIP limits so long as it is meeting the alternative limits in a permit, a provision that clearly anticipates some replacement limits being less stringent than the corresponding specific requirements of the current SIP. Thus, the language of White Paper Number 2 as quoted by Ford does not provide for the types of revisions to limits that Ford is contemplating.

Ford may believe that White Paper Number 2 may be construed to encourage use of Title V permits to establish sets of limits that collectively are equivalent to a set of limits in the SIP. Ford would presumably argue that any combination of limits for the Cleveland Casting Plant that suitable modeling shows to provide for attainment may be considered equivalent to the attainment plan limits in the SIP. However, the language of the white paper as quoted by Ford makes clear that revisions that may arguably be collectively equivalent but do not provide equivalence for each individual limit are outside the scope of this white paper.

Conceptually, the Clean Air Act provides complementary but distinct roles and processes for establishing limits under Title I and compiling limits under Title V. Title I establishes a variety of requirements, including the requirement for emission limits and other limitations sufficient to provide for attainment. Title I further provides a process by which states must submit such limitations to EPA, EPA is to evaluate the completeness of submittals, and then EPA is granted 12 months to review and rulemaking on complete submittals. Title V, by contrast, provides for permits that tabulate the existing SIP requirements that apply to an existing source, following a more expedited process based on the statutory presumption that these permits will not be altering the limitations or other provisions by which the state has met Title I requirements. EPA believes that Title V permits provide a suitable mechanism for certain limited housekeeping operations such as clarification of existing limits or recordkeeping requirements for a specific site, and establishing periodic compliance monitoring. OAC 3745–17–12(I)(50) is fundamentally contrary to the Clean Air Act in seeking to authorize potentially sweeping revisions in the limitations Ford is subject to for Title I purposes based on a process designed for the far more narrow purposes of Title V.

Ford's comments focus on the timetable for review of SIP revisions versus for review of Title V and new source permits, and so this was a focus of EPA's review of Ford's comments. However, another important distinction between these two review processes is the consequences of EPA inaction. In permit review, if EPA chooses not to review a permit, the state may issue the permit. However, under Section 110(k), if EPA takes no action on a SIP revision request, the SIP is not revised. This contrast reflects a statutory distinction between the level of review needed to compile applicable requirements (or, for new sources, to set specific limitations in accordance with established rule requirements) and the level of review needed to establish or revise those requirements. Thus, the fact that OAC 3745–17–12(I)(50) would provide for revisions to take effect unless EPA acts to object is a serious deficiency of this rule.

Comment: Ford states that it undertakes frequent alterations of the Cleveland Casting Plant that, if OAC 3745–17–12(I)(50) is disapproved, would require SIP revisions. To illustrate this point, Ford provided as an attachment to its comments an annotated copy of OAC 3745–17–12(I) that delineates relevant revisions to the facility.

Response: An examination of the alterations identified by Ford shows that a majority of the identified changes are shutdowns of specific emission units. Clearly, emission units that are shut down and have zero emissions are complying with the applicable emission limits. Thus, Ford has no need of a SIP revision to accommodate these plant alterations.

The next most common type of alteration identified by Ford in this comment is a change in the description of an emission unit. For example, the emission unit identified in the rule as P909 is apparently now identified as P413, with no change and no apparent request for a change in the emission limit. For other examples as well, Ford provides no evidence that changes in the unit description signify any increase in emissions or any kind of violation of any emissions limit or other limitation.

Some of the noted alterations are modifications of sources, which presumably were subject to the new source review process. New source review provides its own process for assuring that plant modifications do not cause violations of air quality standards, a process that maintains or if necessary lowers the limit on other sources to provide continued attainment. Ford does not need a separate process to address such source modifications. Furthermore, Ford's descriptions suggest that even in these cases there was no increase in emissions or emission limits at any emission point.

Ford identifies a handful of additional plant alterations in the comment. Some alterations involve control of previously uncontrolled emissions, which as expected apparently does not result in Ford exceeding any emission limits or otherwise emitting more at any emission point. Other alterations involve rerouting of emissions, again with no apparent increase in allowable emissions at any emission point or violation of any limitations.

In summary, none of the plant changes identified by Ford appears to result in any emission increase at any location or to make compliance with any limit any more difficult. Also, Ford has not identified any other plant alterations that they have foregone due to concerns about complying with existing limits. Thus, Ford's information on plant alterations indicated no need for revisions of the SIP limits that are being approved today. Therefore, it appears the information on plant alterations does not support Ford's claim that frequent modifications of the Cleveland Casting Plant require an expedited process for revising applicable emission limits.

Comment: Ford makes a series of comments under a heading ''US EPA's proposed disapproval would create significant practical difficulties for all involved.'' First, Ford states, ''Since Ohio EPA adopted OAC 3745–17–12(I)(50) and (51) in 1996, Ford has availed itself of the flexibility provisions in that rule many times.'' Ford asserts that ''[d]isapproving this rule results in the need to revise the SIP to address these changes [in operations at the Cleveland Casting Plant].'' Ford comments that it ''prepared its Title V permit application based on the revised emissions limits that have resulted * * *.'' Finally, Ford expresses the view that ''site-specific SIP requirements, such as the ones applicable to Ford, should not require more scrutiny than is given to a typical new source construction permit or a facility-wide Title V operating permit.'' Ford recommends instead that EPA accept use of these permitting approaches that would apply the ''same

level scrutiny'' to revisions of limits for the Cleveland Casting Plant.

Response: As discussed above, although Ford provided an extensive delineation of plant alterations that do not require limit revisions, Ford has not identified any specific SIP limits that the Cleveland Casting Plant, operated as Ford would like to operate it, would violate in the absence of a SIP revision. Thus, even if EPA were to accept Ford's view that an intended operational mode that violates SIP limits translates into a need for a SIP revision, it appears that operation in such a mode has not occurred in the last several years.

Ford presumably understands that in the absence of a SIP revision, EPA judges compliance with the existing SIP. By claiming to have availed itself of ''flexibility'' in the State rule, Ford would appear to be claiming that it is violating the SIP. However, given the nature of the plant alterations described by Ford, it is not clear that such violations have occurred.

Ford makes an interesting recommendation, for EPA to address site-specific SIP revisions according to the same process as new source permits or Title V permits. However, this recommendation overlooks the distinctions in the nature of the issues that arise in these varying contexts. Title V permits are intended primarily simply to compile existing applicable requirements, so that these permits are expected not to raise fundamental issues about how the state is assuring attainment. While new source permits occasionally raise issues about assurance of attainment, these permits generally focus on other requirements, notably including control technology requirements and offset requirements (in nonattainment areas), that minimize the potential for attainment planning issues to arise. It is for this reason that the Clean Air Act and EPA's implementing regulations identify distinct review processes for existing source and new source permits versus for attainment plans, allowing permit review under an expedited timetable and allowing issuance in the absence of EPA objection but authorizing much longer review of attainment plans and providing that such revisions occur only with affirmative EPA action.

Comment: Ford concludes that establishment of a streamlined mechanism for establishing alternate emission limits ''is what White Paper 2 anticipated.'' Further, ''[i]t is what the Title V rules provide for. It is logical and reasonable, and is supported by both science and law.'' Ford continues: ''Conservative modeling analyses and available ambient air quality monitoring data confirm that the PM–10 emission limits applicable to Ford's operations will ensure ongoing attainment.'' Under these circumstances, Ford urges that EPA approve OAC 3745–17–12(I) in its entirety.

Response: EPA concludes that actions that alter the emission limits must be subject to the full SIP review provided for in Clean Air Act section 110(k). The existence of a requirement for a modeled attainment demonstration does not lessen the need for EPA to review each attainment demonstration on a case by case basis. EPA may not shortchange this review by allowing alteration of the applicable limits by a Title V or a new source permitting process.

IV. Final EPA Action

EPA is approving most elements of Ohio's particulate matter SIP revisions submitted July 18, 2000. EPA is approving revisions in Rule 3745–17–01 and 3745–17–11 that revise limits for stationary internal combustion engines. EPA is approving revisions to Rule 3745–17–03, which include revisions to test methods associated with various rules identified in the paragraphs that follow. This rule, in particular Rule 3745–17–03(C), also requires that sources subject to Appendix P of 40 CFR 51 install, satisfactorily operate, and report results from continuous emission monitoring systems. In conjunction with this action, EPA is removing from the SIP the now-expired permits that Ohio previously submitted to satisfy Appendix P.

EPA is approving revisions to Rule 3745–17–04, requiring immediate compliance with the newly adopted limitations in other rules being approved. EPA is approving revisions to Rule 3745–17–07 which, in combination with test method revisions in Rule 3745–17–03, provide a reformulated but equivalent set of limitations on fugitive dust from iron and steel and from utility facilities. EPA is also approving revisions in Rule 3745–17–07(B)(9) and (B)(10), related provisions in Rule 3745–17–08 (providing revised limits on fugitive dust at the Ford facility), and Rule 3745–17–11(B)(6) that specify emission limits for the Cleveland Casting Plant and for the ISG facility. EPA is approving most of the revisions in Rule 3745–17–12, including all of the Cuyahoga County emission limits contained in this rule. EPA is approving revisions to Rule 3745–17–13, which replace fugitive emission limitations for the Wheeling-Pittsburgh Steel Company facility with requirements that the facility follow specified practices to limit fugitive emissions. EPA is approving revisions to Rule 3745–17–14 that bring this rule into conformance with the approved contingency plan. (The approved rule also excludes a guidance statement that was not previously part of the SIP.)

EPA is disapproving Rule 3745–17–12(I)(50) and 3745–17–12(I)(51), which would allow Ohio to incorporate a revised set of emission limits for Ford Motor Company's Cleveland Casting Plant into either a Title V permit or a new source permit. EPA has concluded that this type of revision to applicable limitations must be subject to the review process under section 110 of the Clean Air Act for revisions to state implementation plans. Final disapproval of these paragraphs does not start any sanctions clock. This submittal was not needed to meet any provision of the Clean Air Act. Disapproval of these paragraphs simply prevents the addition of these paragraphs to Ohio's state implementation plan and does not constitute a plan deficiency that under section 179 of the Clean Air Act would need to be remedied to avoid sanctions.

EPA is deferring action on revisions in Rule 3745–17–07 relating to equivalent visible emissions limits. These revisions provide detailed criteria for issuance of such limits, and provide that limits that Ohio issues in accordance with these criteria need not be subject to formal EPA review to alter the federally enforceable limits. EPA intends to publish a separate proposed rulemaking notice soliciting comment on the ramifications of these revisions for previously approved equivalent visible emission limits.

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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' 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 Risks 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 January 8, 2007. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 19, 2006.

Gary Gulezian,

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)(134) and removing and reserving paragraph (c)(88) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(134) On July 18, 2000, the Ohio Environmental Protection Agency submitted revised rules for particulate matter. Ohio adopted these revisions to address State-level appeals by various industry groups of rules that the State adopted in 1995 that EPA approved in 1996. The revisions provide reformulated limitations on fugitive emissions from storage piles and plant roadways, selected revisions to emission limits in the Cleveland area, provisions for Ohio to follow specified criteria to issue replicable equivalent visible emission limits, the correction of limits for stationary combustion engines, and requirements for continuous emissions monitoring as mandated by 40 CFR part 51, Appendix P. The State's submittal also included modeling to demonstrate that the revised Cleveland area emission limits continue to provide for attainment of the PM_{10} standards. EPA is disapproving two paragraphs that would allow revision of limits applicable to Ford Motor Company's Cleveland Casting Plant through permit revisions without the full EPA review provided in the Clean Air Act. EPA is also deferring action on revisions relating to equivalent visible emission limits.

(i) Incorporation by reference.

(A) The following rules in Ohio Administrative Code Chapter 3745–17 as effective January 31, 1998: Rule OAC 3745–17–01, entitled Definitions, Rule OAC 3745–17–03, entitled Measurement methods and procedures, Rule OAC 3745–17–04, entitled Compliance time schedules, Rule OAC 3745–17–07, entitled Control of visible particulate emissions from stationary sources (except for revisions to paragraphs C and D), Rule OAC 3745–17–08, entitled

Restriction of emission of fugitive dust, Rule OAC 3745–17–11, entitled Restrictions on particulate emissions from industrial processes, Rule OAC 3745–17–13, entitled Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson county, and OAC 3745–17–14, entitled Contingency plan requirements for Cuyahoga and Jefferson counties.

(B) Rule OAC 3745–17–12, entitled Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga county, as effective on January 31, 1998, except for paragraphs (I)(50) and (I)(51).

(ii) Additional material.

(A) Letter from Robert Hodanbosi, Chief of Ohio EPA's Division of Air Pollution Control, to EPA, dated February 12, 2003.

(B) Telefax from Tom Kalman, Ohio EPA, to EPA, dated January 7, 2004, providing supplemental documentation of emissions estimates for Ford's Cleveland Casting Plant.

(C) Memorandum from Tom Kalman, Ohio EPA to EPA, dated February 1, 2005, providing further supplemental documentation of emission estimates.

(D) E-mail from Bill Spires, Ohio EPA to EPA, dated April 21, 2005, providing further modeling analyses.

[FR Doc. E6–18788 Filed 11–7–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 06–132, FCC 06–132]

Petition of Mid-Rivers Telephone Cooperative, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission concludes that Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) should be treated as an incumbent local exchange carrier (LEC) in the Terry, Montana local exchange (Terry exchange). The Commission also concludes that Mid-Rivers' operations in the Terry exchange should remain subject to existing competitive LEC regulation for interstate purposes pending further Commission action. In addition, the Commission concludes that Qwest, the legacy incumbent LEC in the Terry exchange, should be subject to non-dominant regulation for its interstate telecommunications services in that exchange pending further action.

DATES: Effective October 11, 2006.

FOR FURTHER INFORMATION CONTACT: Adam Kirschenbaum, (202) 418–7280, Competition Policy Division, Wireline Competition Bureau. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in WC Docket No. 02–78, adopted August 31, 2006, and released October 11, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

People with Disabilities: Contact the FCC to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Synopsis of the Report and Order

The Commission concludes that Mid-Rivers satisfies the three-part test in section 251(h)(2) and should be treated as an incumbent LEC for purposes of section 251. Specifically, the Commission finds that the Terry exchange is the appropriate area for consideration under section 251(h)(2)(A), that Mid-Rivers occupies a market position comparable to that of a traditional legacy incumbent LEC in the Terry exchange, that Mid-Rivers has ''substantially replaced'' Qwest in the Terry exchange, and that treating Mid-Rivers as an incumbent LEC for purposes of section 251 in the Terry exchange is consistent with the public interest. The Commission expects that the treatment of Mid-Rivers as an incumbent LEC for purposes of access charges, universal service support and other purposes will be addressed, as appropriate, in conjunction with the study area boundary waiver request that Mid-Rivers has stated it plans to file. Thus, Mid-Rivers remains subject to existing competitive LEC non-dominant regulation for its interstate telecommunications services pending further Commission action.

Further, the Commission reduces the extent of regulation applicable to Qwest's interstate services in the Terry exchange. In the Notice of Proposed Rulemaking, 69 FR 69573, November 30, 2004, the Commission sought comment on the appropriate regulatory treatment of Qwest if the Commission found Mid-Rivers to be an incumbent LEC under section 251(h)(2). In light of the record in the proceeding, the Commission concludes that Qwest should be treated as a non-dominant carrier in the Terry exchange for purposes of its interstate service offerings. If Qwest chooses, however, it may continue to operate pursuant to dominant carrier regulation since this might be more convenient for administrative purposes given the very small number of lines involved. If Qwest operates under non-dominant carrier regulation in the Terry exchange, to preserve the status quo pending further agency action, the Commission caps Qwest's carrier-to-carrier interstate switched exchange access rates in the Terry exchange at their level on the date the Commission adopted this Order. Qwest may, however, lower these rates subject to compliance with non-dominant carrier regulatory requirements. Additionally, Qwest may request additional deregulation in the Terry exchange by filing a formal petition for forbearance consistent with the relevant Commission rules, although it has not yet done so.

Paperwork Reduction Act

This document does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking, 69 FR 69573, November 30, 2004. The Commission received no comments regarding the IRFA.

In conformance with the RFA, we certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b). Our rule treating Mid-Rivers as an incumbent LEC pursuant to section 251(h)(2) will