

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov).

3. *Fax*: 404-562-9019.

4. *Mail*: "EPA-R04-OAR-2006-0650," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. 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 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9074. Ms. LeSane can also be reached via electronic mail at [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: August 27, 2007.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E7-17630 Filed 9-12-07; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2007-0293; FRL-8464-5]

**Approval and Promulgation of Air Quality Implementation Plans; Indiana; VOC Emissions From Fuel Grade Ethanol Production Operations**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a March 30, 2007, request from the

Indiana Department of Environmental Management (IDEM) to revise the Indiana State Implementation Plan (SIP) by adding a volatile organic compound (VOC) rule for fuel grade ethanol production at dry mills. This rule revision creates an industry-specific Best Available Control Technology (BACT) standard for new fuel grade ethanol production dry mills that replaces the otherwise required case-by-case BACT determination for new facilities with the potential to emit 25 tons or more of VOC per year. The benefit of this rule is that establishing specific standards in place of a case-by-case analysis improves the clarity, predictability, and timeliness of permit decisions.

**DATES:** Comments must be received on or before October 15, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-0293, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax*: (312)886-5824.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052, [rosenthal.steven@epa.gov](mailto:rosenthal.steven@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial

submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 24, 2007.

**Richard C. Karl,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E7-17880 Filed 9-12-07; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2006-0976; FRL-8467-4]

**Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Budget Trading Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve Ohio's request to permanently retire 240 oxides of nitrogen (NO<sub>x</sub>) allowances from the State's 2005 new source set aside, which would otherwise have been distributed to existing sources that are required participants in the State of Ohio's NO<sub>x</sub> budget. Under the Federal NO<sub>x</sub> Budget Trading Program, each participating state receives a main pool of 'allowances', which are credits that permit a source to emit one ton of NO<sub>x</sub> per allowance. Allowances are apportioned state-wide to electricity generating units and other large NO<sub>x</sub> sources which are subject to the budget trading program. Each year, a certain number of allowances are set aside from the main pool by the State, specifically for use by any new sources subject to the trading program which may come

on-line during that year. If no new sources are created, and no new source set aside allowances are used, the new source set aside allowances are returned to the main pool of allowances for use the following year.

Retiring 240 new source set aside allowances will provide surplus emission reductions to help compensate for the discontinuation of Ohio's 'E-Check' motor vehicle inspection and maintenance (I/M) program in the Cincinnati and Dayton areas for the year 2006 (Ohio is in the process of seeking approval of the removal of E-Check from the State Implementation Plan (SIP), which will be addressed in a separate action). Withholding and permanently retiring 240 new source set aside allowances from the year 2006 control period will provide 240 tons of surplus NO<sub>x</sub> emission reductions that are creditable for replacing reductions that otherwise would have occurred from the E-Check program during the 2006 ozone season.

**DATES:** Comments must be received on or before October 15, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0976, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov*.

3. *Fax: (312) 886-5824*.

4. *Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604*.

5. *Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604*. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office 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 Docket ID No. EPA-R05-OAR-2006-0976. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, 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 *www.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 this document.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *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 legal holidays. We recommend that you telephone Anthony Maietta, Life Scientist, at (312) 353-8777 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Anthony Maietta, Life Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, *maietta.anthony@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

II. Does this proposed rule apply to me?

III. Background

A. Why has the State requested revisions to this rule?

B. When did the State submit the requested rule revisions to EPA?

C. When did the State adopt these rule revisions, and have they become effective?

D. When were public hearings held?

E. What comments did the State receive, and how did the State respond?

IV. Review of the State's Submittal

V. What action is EPA taking?

VI. Statutory and Executive Order Reviews

**I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

**II. Does this proposed rule apply to me?**

This proposed rule affects electrical generation units (EGUs) as well as large boilers which are subject to Ohio's NO<sub>x</sub> budget trading program and are not considered to be "new" units under the guidelines of the trading program. Affected units will not receive certain excess new unit set aside allowances for the year 2006.

**III. Background**

A. *Why has the State requested revisions to this rule?*

On December 31, 2005, Ohio discontinued the motor vehicle inspection and maintenance (I/M) programs, otherwise known as E-Check, in the Cincinnati and Dayton areas. According to section 110(l) of the Clean Air Act, EPA may not approve the

discontinuation of this program unless the State can demonstrate that the revision will not interfere with attainment of the health-based National Ambient Air Quality Standards. For this purpose, Ohio is providing emission reductions that compensate for the emission increase expected to result from discontinuation of E-Check. It should be noted that Ohio is currently seeking approval of the removal of E-Check from the SIP, which will be addressed in a separate rulemaking.

As compensation for the emissions reductions lost through the discontinuation of E-Check, Ohio adopted requirements for low-volatility gasoline and requirements for lower emissions from gas cans, solvent degreasing, and automobile refinishing. EPA approved the gas can, solvent degreasing, and automobile refinishing measures in a rulemaking action published on March 30, 2007, (72 FR 15045). The lower-volatility gasoline requirement was originally intended to be implemented in 2006, but was delayed until June 2008. (For more information see rulemaking published on May 25, 2007, at 72 FR 29269).

Without the low-volatility gasoline program to compensate for emissions in 2006 resulting from discontinuation of E-Check, Ohio asked EPA, in a May 6, 2005, letter, if emission control devices that were installed on various power plants around the Cincinnati-Dayton area could provide the compensatory NO<sub>x</sub> emissions reduction. In our response, dated September 20, 2005, EPA noted that, while the reductions clearly occurred and clearly provide both local and regional air quality benefits, these actions would not be considered surplus emission reductions because these reductions would have occurred anyway through regular implementation of the Regional NO<sub>x</sub> Budget Trading Program, otherwise known as the NO<sub>x</sub> SIP Call.

The NO<sub>x</sub> SIP Call created a market-based cap and trade program to reduce NO<sub>x</sub> emissions from power plants and other large sources across the Eastern half of the United States. The program is designed to allow states to have greater flexibility to achieve state-wide emission reductions with local as well as regional benefits. Because the NO<sub>x</sub> SIP Call garners reductions which are not source-specific, Ohio does not have the ability to decide exactly where reductions will take place.

However, we noted that if Ohio were to withdraw and retire new source set aside allowances, this action would yield surplus reductions. By retiring new source set aside allowances that would otherwise have been

redistributed the following year for use by existing sources subject to the trading program, Ohio has mandated a reduction in emissions that EPA considers surplus reductions beyond the reductions of the existing NO<sub>x</sub> SIP Call.

Ohio adopted changes to Ohio Administrative Code (OAC) Chapters 3745-72-01 and 3745-14-05, and submitted them for approval on October 11, 2006. These rules provide a revised start date for the use of low-volatility gasoline and provide the necessary quantity of interim, surplus NO<sub>x</sub> emission reductions through the permanent retirement of new source set aside allowances from the State's NO<sub>x</sub> budget trading program.

Withholding and retiring new source set aside allowances from the year 2005 ensured that these allowances would not return to existing NO<sub>x</sub> budget trading program sources in 2006, therefore providing surplus emission reductions for 2006. As indicated above, the portion of the submittal concerning low-volatility gasoline has been addressed by EPA in a separate rulemaking action.

*B. When did the State submit the requested rule revisions to EPA?*

The Director of the Ohio Environmental Protection Agency (Ohio EPA) submitted a request for EPA to approve revisions to OAC 3745-14-05 (NO<sub>x</sub> allowance allocations) in a letter dated October 11, 2006.

*C. When did the State adopt these rule revisions, and have they become effective?*

The proposed rule language was filed as an emergency rule on April 24, 2006. A proposed permanent adoption package for this rule was filed the same day. The Director of the Ohio Environmental Protection Agency issued an order of adoption for permanent revisions to OAC 3745-14-05 on July 10, 2006. The effective date of this order was July 17, 2006. EPA is rulemaking on the permanent rule revisions and is not acting on the emergency rules.

*D. When were public hearings held?*

A public hearing on revisions to OAC 3745-14-05 was held on June 2, 2006, in Columbus, Ohio.

*E. What comments did the State receive, and how did the State respond?*

A commenter questioned the necessity of amending OAC rule 3745-14-05; the commenter stated that the Cincinnati/Dayton area had already monitored attainment, so meeting anti-backsliding regulations is not necessary.

Ohio EPA disagreed with the commenter, noting that the Cincinnati area may still be monitoring nonattainment air quality at four sites. Also, OEPA noted that the anti-backsliding elements of the areas' 1-hour ozone nonattainment requirements cannot be removed; therefore the State's proposed rule revisions are, in fact, necessary.

A commenter representing Buckeye Power, Inc., Columbus Southern Power Company, Dayton Power & Light Company, Duke Energy, Ohio Power Company, and Ohio Valley Electric Corporation (hereafter described as the 'Utilities') objected to the proposed rule revisions because local reductions were being realized by applying regional reductions to NO<sub>x</sub> budgets, which wouldn't necessarily have local benefit to the Cincinnati/Dayton areas. Ohio EPA responded by noting that air quality modeling indicates that the optimum scenario for reducing ozone in the Cincinnati/Dayton areas is a combination of regional NO<sub>x</sub> reductions coupled with local VOC reductions. Ohio EPA also noted that EPA had commented on the regionalism of the retired new source set aside allowances.

The 'Utilities' believe that withdrawal and retirement of 240 new source set aside allowances undermines the stability of the regional NO<sub>x</sub> trading program. Ohio EPA disagreed, and noted that the retired allowances were set aside, and unused, by new sources in the specified time period, and that such a small amount of retired new source set aside allowances would not have an impact on the budget trading program.

The 'Utilities' commented that they believe the retirement of NO<sub>x</sub> allowances is unlawful under Ohio statute, and that the Ohio EPA has no authority to retire or otherwise remove allowances from the pool. Ohio EPA disagreed, noting that they have indeed had the authority to retire or remove allowances since the program's inception in 2002. Additionally, Ohio EPA found it important to make clear that a NO<sub>x</sub> budget allowance does not constitute a property right.

The 'Utilities' commented that they believe retiring allowances will not create emission reductions because sources can simply purchase more allowances from anywhere in the U.S. at the end of the ozone season. Ohio EPA responded by noting that the point of the NO<sub>x</sub> Budget Trading Program is not to limit individual sources, but to limit regional emissions, which-as they had already stated-will benefit Cincinnati and Dayton.

The 'Utilities' comment that they had provided Ohio EPA with an alternative proposal for emission reductions in 2005, but Ohio EPA chose not to adopt the proposal. Ohio EPA responded by noting that the utilities' proposal to reduce emissions through compliance with the NO<sub>x</sub> Budget Trading Program could not be considered to garner surplus emissions unless allowances were retired to make those reductions surplus. Ohio EPA noted that the utilities did not appear to be willing to retire the associated allowances.

A commenter representing American Municipal Power (AMP) Ohio stated that Ohio EPA had not demonstrated that low-RVP gasoline was not available for the 2006 ozone season. Ohio EPA responded by noting the multitude of issues which caused it to conclude that institution of 7.8 RVP fuel was not an option for the 2006 ozone season. The reasons included a U.S. EPA survey indicating that refinery production capabilities for 7.8 RVP gasoline would fall short for the Cincinnati and Dayton areas, as well as lack of a preemption waiver from U.S. EPA allowing the adoption of low-RVP fuel. Additionally, Ohio EPA noted that if it were to allow noncompliant fuel into the area, compliant suppliers providing low-RVP fuel would be at a disadvantage.

A commenter representing AMP Ohio stated that the Ohio EPA targeted NO<sub>x</sub> budget sources for NO<sub>x</sub> reductions without fully evaluating other appropriate reduction sources. Ohio EPA disagreed, noting that prior to establishing the RVP fuel program for Cincinnati and Dayton, they fully evaluated numerous control strategies to offset the emissions reduction shortfall that resulted from closing the E-Check program.

A commenter representing the Ohio Manufacturers' Association (OMA) stated that Ohio's manufacturing sector only represents 7% of the state's total NO<sub>x</sub> emissions, yet the manufacturing sector is being called on to, in their own words, "solve the problem". Ohio EPA noted that the effect of retiring 240 allowances on non-EGU's would be very small for a one-time allocation adjustment. Ohio EPA noted that 15 non-EGU's are participating in Ohio's NO<sub>x</sub> trading program, and two of those units are shut down. Furthermore, of the 240 allowances being retired, non-EGU's represent 19 of the 240 allowances spread across the 15 non-EGU facilities whether still in operation or not.

#### IV. Review of the State's Submittal

The State of Ohio has adopted revisions to its NO<sub>x</sub> budget trading program regulations. On October 11,

2006, the State requested that EPA approve these rule revisions for incorporation into Ohio's SIP. Specifically, Ohio's revisions to this rule are:

*OAC 3745-14-05 (C)(7):*

Ohio inserted this new paragraph which withholds and permanently retires 240 new source set aside allowances from the 2005 control period to offset emission increases associated with the termination of the E-Check program in Cincinnati and Dayton. These withheld and retired allowances would normally have been allocated to existing Ohio NO<sub>x</sub> budget sources in 2006.

On February 23, 2007, Ohio supplemented its submittal with information regarding NO<sub>x</sub> emission reductions that have occurred in the Cincinnati/Dayton area. This letter identifies several actions that substantially reduced NO<sub>x</sub> emissions starting from before the 2006 ozone season, which include installation of selective catalytic reduction controls at 3 units and installation of low NO<sub>x</sub> burners at 9 other units. Ohio estimates that the total emission reduction from these actions is over 10,000 tons per ozone season.

In ordinary circumstances, an emission limit can be imposed on a specific source, and the surplus emission reduction clearly occurs at the location of that source. However, a different relationship between regulatory action and resulting emission reductions applies to power plants and other sources regulated under the NO<sub>x</sub> SIP Call. The NO<sub>x</sub> SIP Call provides a restricted set of allowances that allow a reduced quantity of NO<sub>x</sub> emissions across the entire NO<sub>x</sub> SIP Call region, while maximizing the flexibility of participants in the program to decide where these reductions will occur. In particular, allowances may be bought and sold and used anywhere in the NO<sub>x</sub> SIP Call region. Since the allowances are not assigned to particular locations, Ohio posed the question to EPA of how best to pursue utility emission reductions in the Cincinnati/Dayton area to obtain creditable reductions. EPA responded that reductions at utilities could not be considered surplus to the NO<sub>x</sub> SIP Call unless Ohio provided for retirement of allowances, but EPA added that Ohio had substantial flexibility in what allowances to retire.

Ohio's action creates a surplus reduction of 240 tons of NO<sub>x</sub> emissions. This action fully conforms with EPA regulations concerning the NO<sub>x</sub> SIP Call and other relevant regulations, and so this action is fully approvable. More at

issue is whether this action may be treated as fully offsetting the loss of 240 tons of NO<sub>x</sub> emission reductions (or its VOC equivalent) from the discontinuation of E-Check in the Cincinnati and Dayton areas.

An important underpinning of the NO<sub>x</sub> SIP Call is the interchangeability of emission reductions, *i.e.* a finding that the impacts of the emissions are sufficiently regional in nature and sufficiently insensitive to the spatial distribution of the emission reductions that EPA need not restrict where allowances are used. This finding underlying the NO<sub>x</sub> SIP Call has important implications for Ohio's action in retiring allowances. EPA believes that Ohio's retirement of 240 allowances may be credited to make 240 tons of the actual emission reductions occurring in the Cincinnati/Dayton area surplus. We find that the retirement benefits Cincinnati/Dayton air quality, and is reasonable under the circumstances, including the actual emissions reductions in the area.

EPA believes that Ohio may reasonably assign the surplus reductions it has mandated to actual emission reductions that have occurred in the Cincinnati/Dayton area. Allowances have no inherent geographic location. That is, the allowances have no inherent properties that dictate the location of the emission reduction that is attributed to a particular retirement of a particular allowance. Substantial emission reductions have occurred in the Cincinnati/Dayton area. While most of the reductions would be attributable to the NO<sub>x</sub> SIP Call, EPA believes that Ohio has latitude to attribute 240 tons of the 2006 NO<sub>x</sub> emission reductions in the Cincinnati/Dayton area to its retirement of 240 allowances. Furthermore, even if Ohio or EPA were to associate the allowance retirement with emission reductions in a geographically broader area, EPA believes that the corresponding air quality benefit in the Cincinnati/Dayton area would be similar to the benefit of 240 tons of NO<sub>x</sub> emission reductions within the Cincinnati/Dayton area. Indeed, the regional influence of NO<sub>x</sub> emissions is the fundamental basis for EPA to establish the NO<sub>x</sub> trading program as a regional program without restriction on where (within the trading area) allowances may be used.

EPA views Ohio as having made surplus 240 tons of the emission reductions in 2006. The surplus reductions that result from this retirement provide significant benefit to the Cincinnati/Dayton area, and it is reasonable to assign 240 tons of NO<sub>x</sub> emission reductions credit to the

Cincinnati/Dayton area, and to count 240 tons of the area's actual reductions as attributable to the retirement of 240 allowances. Therefore, EPA proposes to approve this rule change, and to conclude that Ohio has provided compensatory emissions decreases for discontinuing the E-Check program in this area in the amount of 240 tons of NO<sub>x</sub> emission reduction for the year 2006.

EPA received a January 12, 2007, letter commenting on this issue from a law firm on behalf of the Environmental Committee of the Ohio Electric Utility Institute. This law firm submitted additional comments on February 15, 2007, and on March 13, 2007. EPA views these letters as commenting on the action being proposed here. EPA will review these comments, and address any comments it receives during the comment period, as we prepare final rulemaking on Ohio's submittal.

*OAC 3745-14-05 (C)(8) through (C)(10):*

Ohio renumbered the existing paragraphs (C)(7) through (C)(9) to (C)(8) through (C)(10), in order to accommodate the inclusion of the new paragraph (C)(7). As the addition of a new paragraph (C)(7) necessitates renumbering the existing paragraphs, we find this rule change to be acceptable and approvable.

#### V. What action is EPA taking?

EPA is proposing to approve the addition of paragraph (C)(7) to OAC 3745-14-05, and its incorporation into the Ohio SIP, as adopted by the State of Ohio, as defined in Ohio's October 11, 2006, submittal. EPA is also proposing to approve the renumbering of the original OAC 3745-14-05 paragraphs (C)(7) through (C)(9) to (C)(8) through (C)(10), respectively. If EPA takes final action as proposed here, EPA would then retire 240 allowances from Ohio's new source set aside as instructed in this rule. EPA proposes to conclude that Ohio has thereby provided compensatory emissions decreases for discontinuing the E-Check program in this area in the amount of 240 tons of NO<sub>x</sub> emission reduction for the year 2006.

#### VI. Statutory and Executive Order Reviews

##### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review

by the Office of Management and Budget.

##### *Paperwork Reduction Act*

This proposed 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.*).

##### *Regulatory Flexibility Act*

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 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 proposes to approve 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 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed 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 13045: Protection of Children From Environmental Health and Safety Risks*

This proposed 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.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant regulatory 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).

##### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

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

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

Dated: September 4, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E7-18061 Filed 9-12-07; 8:45 am]

**BILLING CODE 6560-50-P**