

adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we would be establishing a safety zone. A preliminary “Environmental Analysis Check List” and a draft “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11–178 to read as follows:

§ 165.T11–178 Safety Zone; Independence Day Fireworks, Lower Colorado River, Laughlin, NV.

(a) *Location.* The limits of this temporary safety zone include all areas within 980 feet of the anchored firing barge. The firing barge will be anchored adjacent to the AVI Resort and Casino, centered in the navigational channel between Laughlin Bridge and the northwest point of the AVI Resort and

Casino Cove, Lower Colorado River, Laughlin, NV in position 35[deg]00'45" N, 114[deg]38'16" W.

(b) *Effective Period.* This safety zone will be in effect from 8 p.m. until the end of the fireworks show on July 7, 2007. The event is scheduled to conclude no later than 9:45 p.m. However, if the display concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the U.S. Coast Guard Patrol Commander. The U.S. Coast Guard Patrol Commander may be contacted via VHF–FM Channel 16.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: April 5, 2007.

C.V. Strangfeld,

Captain, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. E7–8317 Filed 4–30–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0546; FRL–8308–1]

Approval and Promulgation of Ohio SO₂ Air Quality Implementation Plans and Designation of Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve an assortment of rules, submitted by

Ohio on May 16, 2006, setting limits on sulfur dioxide (SO₂) emissions. Most significantly, EPA is proposing to approve rules for Franklin, Stark and Summit Counties and for one source in Sandusky County that are currently regulated under limits that EPA promulgated in 1976 as a Federal Implementation Plan (FIP). If finalized, this action would provide that the entire FIP for SO₂ in Ohio would be superseded by approved State limits. Consequently, EPA is proposing to rescind the entire FIP. EPA is also proposing to approve several substantive rule revisions and to approve numerous Ohio rules that update various company names and unit identifications. Finally, since this rulemaking resolves the issues which led a court to remand the designation for a portion of Summit County to EPA for reconsideration, EPA is proposing to promulgate a designation of attainment for the presently undesignated portion of this county.

DATES: Comments must be received on or before May 31, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0546, 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–2006–0546. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 John Summerhays at (312) 886-6067 before visiting the Region 5 office.

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

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

- I. Background
- II. Review of Ohio's Submittal
 - A. General Rules
 - B. Rules To Replace FIP Rules
 - C. Additional Substantive Rule Revisions

- D. Rules With Only Name Changes or Other Administrative Changes
- E. Designation of Summit County
- III. What Action Is EPA Taking?
- IV. What Should I Consider as I Prepare My Comments for EPA?
- V. Statutory and Executive Order Reviews

I. Background

Ohio submitted its original State Implementation Plan on January 30, 1972, which EPA partially approved on May 31, 1972, and fully approved on September 22, 1972. After a court remanded this approval for EPA to solicit public comments on the rulemaking, Ohio withdrew its submittal of rules for SO₂. In the absence of State rules for SO₂, EPA promulgated a Federal Implementation Plan (FIP) for SO₂ on August 27, 1976, with numerous subsequent amendments. The FIP provided limits for 55 Ohio counties.

On September 12, 1979, Ohio submitted a plan with limits for SO₂ in all 88 Ohio counties. This plan relied on a set of rules that included 6 rules governing general provisions such as test methods and compliance schedules, plus one rule for each of the 88 counties setting emission limits for sources in the county. On January 27, 1981, at 46 FR 8481, EPA approved most of the 6 general rules and approved rules for parts of 13 counties and all of 61 counties. That rulemaking action also disapproved rules for Summit County because EPA concluded that the limits did not provide for attainment. That rulemaking notice provided further history of regulation of SO₂ emissions in Ohio as of that date.

On April 20, 1982, at 47 FR 16784, EPA approved rules for parts of 3 additional counties and all of another three additional counties. EPA approved rules for an additional county on June 30, 1982, at 47 FR 28377. EPA approved subsequently submitted Ohio SO₂ rules on May 20, 1988 (at 53 FR 18087), August 23, 1994 (at 59 FR 43290), October 9, 1996 (at 61 FR 52882), March 30, 1998 (at 63 FR 15091), June 5, 2000 (at 65 FR 35577), January 31, 2002 (at 67 FR 4669), February 2, 2004 (at 69 FR 4856), and January 28, 2005 (at 70 FR 4023).

As a result of these prior rulemakings, EPA has approved State rules for all sources in 84 of Ohio's 88 counties and for all but one source in an 85th county. Counties for which sources remain subject to the FIP include Franklin County (full county), Stark County (full county), Summit County (full county), and Sandusky County (only for Martin Marietta). Ohio submitted further rules on May 16, 2006, most significantly

including State rules to replace these Federal rules.

In 1978, EPA designated numerous areas in Ohio as nonattainment for the SO₂ air quality standard. EPA interprets section 107(d)(3)(E)(ii) of the Clean Air Act, as amended in 1990, to require approval of state regulations rather than promulgation of a FIP as a prerequisite for redesignation of areas from nonattainment to attainment. Thus, some of Ohio's prior submittals of state rules to replace federal rules served in part to satisfy this prerequisite for redesignation from nonattainment to attainment.

As stated in 40 CFR 52.1881(a), "[w]here USEPA has approved the State's sulfur dioxide plan, those regulations supersede the federal sulfur dioxide plan contained in [40 CFR 52.1881(b)] and 40 CFR 52.1882." On June 29, 1995, at 60 FR 33915, EPA rescinded numerous federally promulgated Ohio SO₂ rules, observing that the "superseded rules have no effect and are unenforceable, and thus no longer need be retained in the CFR." On January 28, 2005, at 70 FR 4023, in conjunction with approving State rules for several counties, EPA rescinded the corresponding federally promulgated rules (where applicable) that were superseded by these State rules. As a result, what remains of the federally promulgated rules are the following:

- 40 CFR 52.1881 paragraphs (b)(1) through (b)(6), providing definitions and other general provisions,
- 40 CFR 52.1881 paragraphs (b)(7) through (b)(10), providing limits for sources in Franklin, Sandusky (Martin-Marietta only), Stark, and Summit Counties, respectively, and
- 40 CFR 52.1882, providing schedules for compliance with the federally promulgated limits.

Ohio law requires that the State review its regulations every five years. Ohio conducted this review and concluded that amendments were warranted for 4 of its 6 general rules and 40 of its county-specific rules. Since the regulations remain necessary for the State to continue to attain the SO₂ air quality standards, and since only in a few cases did information become available warranting a revision to emission limits, most of the revisions reflect administrative changes such as updating company names and correcting unit identifications. Ohio adopted these rules effective January 13, 2006, and submitted them to USEPA on May 16, 2006.

Ohio currently has no areas designated nonattainment for SO₂. The final area redesignated from

nonattainment to attainment was in Cuyahoga County, which was redesignated on January 28, 2005, at 70 FR 4023.

However, a portion of one county, Summit County, has no designation. As the result of a 1980 remand by the Court of Appeals for the 6th Circuit, in *PPG Industries, Inc. v. Costle* (630 F.2d 462), this area has been undesignated pending EPA's review of modeling analyses for the area. Such a review is an inherent part of EPA's review of the adequacy of the rules Ohio submitted regulating SO₂ emissions in Summit County. Consequently, in conjunction with submitting a rule for SO₂ emissions in Summit County, Ohio also requested that EPA reestablish a designation for this area, requesting that EPA designate this area as attaining the SO₂ standard.

In 1981, EPA published multiple rulemaking notices that led to EPA taking no action on provisions of Ohio SO₂ regulations that provided for compliance on a 30-day average basis. EPA has approved only a stack test method (reflecting a 3-hour average) and other tests reflecting averaging times of generally 24 hours or less. On February 11, 1980, at 45 FR 9101, EPA published notice that EPA would nevertheless give priority to cases in which companies were violating SO₂ limits on a 30-day average basis or exceeding the limit on any day by more than 50 percent. This policy remains in effect, and today's rulemaking makes no change with respect to this issue.

II. Review of Ohio's Submittal

On May 16, 2006, Ohio EPA submitted 4 amended general SO₂ rules and 40 county-specific SO₂ rules. The county-specific rules include 4 rules that were submitted to supersede remaining FIP rules, 4 rules that include substantive revisions to the limits, and 32 rules which only change company names or unit identifications or make other such administrative changes. Ohio supplemented this submittal with an email from William Spires to John Summerhays dated February 22, 2007, providing supplemental information regarding a source in Sandusky County and requesting that EPA establish a designation of attainment for Summit County.

A. General Rules

Ohio submitted revisions to four of its six general SO₂ rules: Ohio Administrative Code (OAC) 3745-18-01, 3745-18-02, 3745-18-03, and 3745-18-06. Rule 3745-18-01, entitled "Definitions," was modified to update the referencing of test methods in the Code of Federal Regulations, to retain

only a general referencing of methods adopted by the American Society for Testing and Materials, to update the Web site from which the Code of Federal Regulations may be obtained, and to make editorial changes in the referencing of relevant material. Rule 3745-18-02, entitled "Ambient air quality standards—sulfur dioxide," was modified only to add a preliminary note referring readers to Rule 3745-18-01 to find dates for applicable reference material and to specify which location of 40 CFR part 50 (namely, Appendix A) contains the test method to be used in assessing ambient air quality. Rule 3745-18-03, entitled "Attainment dates and compliance time schedules," was revised to correct several facility identification numbers and to correct other referencing errors. The updated Web site in Rule 3745-18-01 is incorrect: Instead of ending "ecfr", the Web site ends in "cfr," to read <http://www.access.gpo.gov/cfr> (or <http://www.access.gpo.gov/cfr>). However, this error does not change the stringency of any limits. Indeed, all of the changes to Rules 3745-18-01, 3745-18-02, and 3745-18-03 may be considered administrative changes that do not change the substance of the SIP. EPA believes that all of these revisions are approvable.

Rule 3745-18-06 was revised to add jet engine test stands to a list of source types that are exempt from the emission limits given in Ohio's rules for any day that the equipment burns only natural gas. EPA has approved this exemption as previously worded, on January 28, 2005, at 70 FR 4023 (see also 69 FR 41336, dated July 8, 2004). The first listed source type is fuel burning equipment. Thus, this rule revision may be considered simply a clarification that jet engine test stands shall have the exemption that fuel burning equipment has. In any case, the SO₂ emissions from burning natural gas from jet engine test stands is sufficiently low that this combustion need not be subject to any specific emission regulation. The rule was also subject to a minor rearrangement. EPA believes this rule is approvable.

B. Rules To Replace FIP Rules

As noted above, FIP rules remain in 4 counties: Franklin, Sandusky (applicable only to Martin Marietta), Stark, and Summit Counties. Ohio submitted rules for each of these counties to replace the FIP rules.

For Franklin and Summit Counties, Ohio amended its rules to assure that all sources with emission limits in the FIP have the same limits in the State rules. Criteria for EPA's review of these rules

are described in guidance issued from the Director of the Air Quality Management Division to the Director of Region 5's Air and Radiation Division on September 28, 1994. This memorandum recommended approving State rules in place of FIP rules if three criteria are met:

1. That the FIP demonstrated the limits were adequately protective at the time of promulgation.

2. There is no evidence now that the FIP and associated emission limits are inadequate to protect the SO₂ national ambient air quality standards.

3. The rules do not relax existing emission limits. EPA believes that these criteria are satisfied, i.e., that limits were appropriately demonstrated at the time of FIP promulgation to provide for attainment, that no subsequent evidence suggests otherwise, and that the State's rules provide limits that are fully as stringent as the existing FIP limits. The State rules also establish limits for sources that are not included either in the FIP rules or in the modeling that demonstrated that the FIP limits provide for attainment. Therefore, EPA believes that the rules for Franklin and Summit County may be approved and may supersede the existing FIP rules.

As noted above, EPA disapproved the State's rules for Summit County in 1981, stating that modeling evidence indicated that the limits did not assure attainment. Those rules differed substantially from the FIP limits and relied on a separate modeling analysis. The prior disapproval did not in any way indicate inadequacy of the FIP limits to assure attainment. EPA continues to believe that the FIP limits for Summit County provide for attainment. Thus, since the State rules have been modified to reflect the FIP limits, EPA believes the rules now provide for attainment, and the prior disapproval is moot.

For Stark County, as with Franklin and Summit Counties, the State amended its rules as necessary for sources regulated under the FIP to have limits that match those of the FIP. The Stark County rules also tighten the limits for one source not regulated under the FIP, namely Canton Drop Forge. Modeling was conducted to assess impacts of this source and other nearby sources. This modeling used AERMOD, which is EPA's recommended model for this application. The modeling included emissions from all significant sources in this portion of Stark County. The modeling used 1988 to 1992 meteorological data for Akron, and the modeling considered the potential downwash effects of the buildings of

Canton Drop Forge and reflected the terrain elevations of the ambient receptor locations analyzed. Based on its review, EPA finds that this modeling was properly conducted and finds that the modeling demonstrates that the State's limits provide for attainment in this part of Stark County. For the rest of the County, EPA believes that modeling conducted in support of the FIP continues to represent a suitable demonstration that the remainder of the County will attain the standard.

For Sandusky County, only one source, Martin Marietta, remains subject to FIP rules. The FIP imposes a limit of 15.42 pounds of SO₂ per ton of material input into the lime kiln. Ohio's Rule 3745-18-78 (E) imposes a limit of 25 pounds per ton of product. A comparison of these limits requires a comparison of the quantity of material input to the quantity of lime produced. Ohio notes in its supplemental submittal that the weight ratio of limestone input to lime produced is commonly about two to one, and the ratio of total material input including fuel (coke and/or coal) is significantly higher than that. Since the FIP limit involves dividing emissions from each kiln by the larger quantity of input material, the corresponding limit on a per ton of product basis (i.e. the limit that would allow the same total emissions from the plant) would be a substantially higher number. In particular, the FIP limit corresponds to a limit on a per ton of product basis that is well over two times the number of pounds allowed on a per ton of input material basis, i.e. well over 30 pounds per ton of product. Thus, EPA believes that Ohio's limit is significantly more stringent. Furthermore, the Federal limit sets a limit on the emissions "from any stack." The facility has multiple stacks, and the federal limit arguably allows 15.42 pounds per ton of material input from each stack, which would allow several times that much emissions in total. The state rule avoids this potential confusion by clearly imposing a limit on total emissions per ton of product. For these reasons, EPA believes that Ohio's limit may be approved as a replacement for the FIP limit.

EPA has previously approved Ohio's rule for other sources in Sandusky County. The amended rule updates the names of three companies and deletes one source from the rule but makes no substantive changes in the limits. EPA believes that the full rule is approvable.

C. Additional Substantive Rule Revisions

Two additional rules include substantive revisions to applicable

limits. The first is for Auglaize County. The applicable attainment demonstration, approved on January 27, 1981 at 46 FR 8481, provides for emissions above the county's generic limit of 2.6 pounds per million BTU for several emission points at the Saint Mary's municipal power plant, but the previously approved rules only authorize emissions above that generic limit for one unit. Ohio amended its rules to replace a limit of 6.5 t/MM Btu just for boiler number 6 with a limit of 5.9 t/MM Btu applicable to both the number 6 and the number 5 boilers. The previously approved attainment demonstration demonstrates that these limits will provide for attainment, so these amendments are approvable.

For Cuyahoga County, Ohio amended its rules to incorporate an additional general emission limit. In the Cuyahoga County rules that EPA approved in January 2005, Ohio had generally amended the rules to match the federally promulgated rules for this county. In particular, Ohio adopted the federally promulgated generic limit for coal-fired boilers with greater than 350 MM Btu per hour heat input. However, the State had failed to adopt the federally promulgated generic limit for coal-fired boilers with heat input between 10 MM Btu and 350 MM Btu per hour. The rule submitted on May 16, 2006 adds this second generic limit that applies to smaller boilers. This limit is part of the plan that has been demonstrated to provide for attainment, and so the addition of this limit is approvable.

D. Rules With Only Name Changes or Other Administrative Changes

As a result of its periodic rule review, Ohio amended numerous rules to update company names, to correct various unit identifications, and to correct typographical errors. In addition to making these types of amendments in the rules discussed above, Ohio made these types of revisions to the rules for 34 additional counties. The counties for which Ohio submitted such rules are Allen, Ashtabula, Athens, Butler, Champaign, Clark, Erie, Fairfield, Geauga, Greene, Hamilton, Hancock, Lake Lawrence, Lorain, Lucas, Marion, Miami, Montgomery, Muskingum, Ottawa, Paulding, Pike, Richland, Ross, Scioto, Seneca, Shelby, Trumbull, Tuscarawas, Van Wert, Washington, Wayne, and Wood Counties.

Ohio amended two rules because a source had been addressed in an incorrect county's rules. Specifically, a facility owned by Archer Daniels Midland (formerly A.E. Staley) is located in Hancock County, not Seneca

County, and so Ohio removed this facility's limits from the Seneca County rule (Rule 3745-18-80) and inserted the identical limits in the Hancock County rule (Rule 3745-18-38).

These various revisions do not affect the stringency of the SIP but do enhance the clarity of the applicability of these limits. Therefore, these revised rules are approvable.

E. Designation of Summit County

EPA published its initial designations on October 5, 1978, at 43 FR 46011. The designation for SO₂ for a portion of Summit County, Ohio, was litigated, with the result that the Court of Appeals for the Sixth Circuit remanded the designation to EPA for reconsideration. See *PPG Industries, Inc. v. Costle* 630 F2d 462 (6th Cir. 1980). EPA's original nonattainment designation was based in large part on dispersion modeling analyses indicating that attainment could not be assured without reductions in allowable emissions from sources in the county. Thus, the remand was accompanied by an injunction to reassess the modeling analyses and the adequacy of the emission limits to assure attainment. Although EPA has subsequently reestablished designations for some portions of the county, an important part of the county remains undesignated. Since this rulemaking addresses the court's request for EPA to reconsider the modeling analysis of limits necessary to assure attainment, Ohio requested that EPA also reestablish a designation for this area, in particular requesting that EPA designate the area attainment.

As discussed above, Ohio has requested approval of emission limits that match the limits of the FIP, i.e. limits which modeling underlying the FIP have demonstrated to provide for attainment. Therefore, no further review of the modeling underlying the State limits of 1979 is necessary, and EPA may proceed to establish a designation for the portion of Summit County that is presently undesignated.

Air quality monitoring data from 2003 to 2006 indicate that SO₂ concentrations in Summit County are well below the standards, generally about a third the level of the standards or less. For the 24-hour standard of 365 ug/m³ (commonly the controlling standard), the high second high value (i.e., after computing the second high value for each monitoring site for each year, the highest of these second high values) is 141 ug/m³. Compared to the annual standard of 80 ug/m³, the highest value is 24 ug/m³. Compared to the 3-hour standard of 1300 ug/m³, the high second high value is 382 ug/m³.

Modeling evidence also indicates that the relevant portion of Summit County is attaining the standard. EPA believes there are no companies within the undesignated area significantly violating their SO₂ emission limits. EPA has identified one facility elsewhere in Summit County as a high priority violator with excess SO₂ emissions. However, this facility is approximately 5 kilometers from the nearest edge of the undesignated area. Furthermore, whereas the attainment modeling for the undesignated part of Summit County reflects emissions from several significant sources, including Firestone Rubber (a Barberton facility of a division called Seiberling Tire and Rubber Company), Midwest Rubber Company, and Ohio Brass, these facilities have now shut down. Therefore, if the modeling underlying the attainment demonstration were redone with current actual emission rates replacing maximum allowable emissions, the results of this modeling would show that SO₂ concentrations in the undesignated area are well below the standard. Therefore, EPA believes that this area should be designated attainment. While EPA has not analyzed whether the excess emissions noted above might be causing violations of the air quality standards elsewhere in the county, EPA believes that any such violations will be resolved by its current enforcement action, so that no change in the attainment designation of the remainder of the county is warranted. Thus, in combination, EPA believes that all of Summit County should be designated as attaining the SO₂ standards.

Section 107(d)(3)(E) of the Clean Air Act describes several prerequisites for redesignation of areas from nonattainment to attainment. Because the relevant portion of Summit County is not designated nonattainment and in fact has no designation, these provisions of Section 107(d)(3)(E) are not germane here.

III. What Action Is EPA Taking?

EPA is proposing to approve 44 rules for SO₂ in Ohio, including 4 general rules, 4 county-specific rules that replace FIP rules, 2 county-specific rules that incorporate substantive changes in limits, and 34 county-specific rules that reflect only administrative changes such as updating company names. EPA is also proposing to establish an attainment designation for the portion of Summit County that is presently undesignated. For simplicity, EPA is proposing to combine the designations into a single designation for the entire county rather

than have separate designations for four subdivisions of the county.

By this action, EPA is proposing that state rules would supersede the last remaining portions of the FIP that was promulgated in 1976 *et seq.* Therefore, the FIP may be removed from the CFR if and when EPA makes final the action proposed today. Even after the FIP is removed, EPA may continue to take enforcement action against violations of the FIP limits discovered to have occurred during the time the FIP was in effect.

Today's notice provides proposed revisions to the CFR to implement the actions proposed here. EPA is proposing to rescind the entirety of 40 CFR 52.1881(b) (including general provisions and county-specific limits) and of 40 CFR 52.1882 (providing FIP compliance schedules). Since EPA is proposing that Ohio has approvable rules for the entire State, EPA is proposing to rescind the sections of 40 CFR 52.1881(a) that identify counties for which EPA has taken no action or has disapproved the state's plan. EPA is proposing to replace the listing of counties having approved rules with a rule-by-rule listing of approved rules. EPA is proposing that the action concerning the designation of Summit County would establish a simplified, county-wide designation of attainment. Since EPA is proposing to address the court remand that has affected the designations for Summit County, EPA is proposing to rescind the footnotes that identify the effects of the remand. (EPA is also proposing to rescind the footnote that was inadvertently applied to the designation of Trumbull County.)

IV. 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.

V. 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 NTTAA do not apply.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Sulfur dioxide, Wilderness areas.

Dated: April 19, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, parts 52 and 81, chapter I, of title 40 of the Code of Federal Regulations are proposed to be 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)(136) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(136) On May 16, 2006, Ohio submitted numerous regulations for sulfur dioxide. These regulations were submitted to replace the remaining federally promulgated regulations, to make selected revisions to applicable limits, and to update company names and make other similar administrative changes.

(i) *Incorporation by reference.* Ohio Administrative Code Rules 3745-18-01, 3745-18-02, 3745-18-03, 3745-18-06, 3745-18-08, 3745-18-10, 3745-18-11, 3745-18-12, 3745-18-15, 3745-18-17, 3745-18-18, 3745-18-24, 3745-18-28, 3745-18-29, 3745-18-31, 3745-18-34, 3745-18-35, 3745-18-37, 3745-18-38, 3745-18-49, 3745-18-50, 3745-18-53, 3745-18-54, 3745-18-57, 3745-18-61, 3745-18-63, 3745-18-66, 3745-18-68, 3745-18-69, 3745-18-72, 3745-18-76, 3745-18-77, 3745-18-78, 3745-18-79, 3745-18-80, 3745-18-81, 3745-18-82, 3745-18-83, 3745-18-84, 3745-18-85, 3745-18-87, 3745-18-90, 3745-18-91, and 3745-18-93, adopted on January 13, 2006, effective January 23, 2006.

(ii) *Additional material.* Letter from Joseph P. Koncelik, Director, Ohio EPA, to Bharat Mathur, EPA Region 5, dated May 16, 2006, with attachments providing supporting material.

3. Section 52.1881 is amended as follows:

- a. By revising paragraph (a)(4).
- b. By removing and reserving paragraphs (a)(7), (a)(8), and (b).

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) * * *

(4) Notwithstanding the portions of Ohio's sulfur dioxide rules identified in this section that EPA has either disapproved or taken no action on, EPA has approved a complete plan addressing all counties in the State of Ohio. EPA has approved the following rules, supplemented by any additional approved rules specified in 40 CFR 52.1870:

(i) Rules as effective in Ohio on December 28, 1979: OAC 3745-18-04 (measurement methods)—except for five disapproved paragraphs ((D)(2), (D)(3), (E)(2), (E)(3), and (E)(4)) and three paragraphs approved later ((D)(8), (D)(9), and (E)(7)), OAC 3745-18-05 (ambient monitoring), OAC 3745-18-08 (Allen)—except for one paragraph approved later (Cairo Chemical), OAC 3745-18-09 (Ashland County), OAC 3745-18-13 (Belmont), OAC 3745-18-14 (Brown), OAC 3745-18-16 (Carroll), OAC 3745-18-19 (Clermont)—except for one paragraph approved later (CG&E Beckjord), OAC 3745-18-20 (Clinton), OAC 3745-18-21 (Columbiana), OAC 3745-18-23 (Crawford), OAC 3745-18-25 (Darke), OAC 3745-18-26 (Defiance), OAC 3745-18-27 (Delaware), OAC 3745-18-30 (Fayette), OAC 3745-18-32 (Fulton), OAC 3745-18-36 (Guernsey), OAC 3745-18-39 (Hardin), OAC 3745-18-40 (Harrison), OAC 3745-18-41 (Henry), OAC 3745-18-42 (Highland), OAC 3745-18-43 (Hocking), OAC 3745-18-44 (Holmes), OAC 3745-18-45 (Huron), OAC 3745-18-46 (Jackson), OAC 3745-18-48 (Knox), OAC 3745-18-51 (Licking), OAC 3745-18-52 (Logan), OAC 3745-18-55 (Madison), OAC 3745-18-58 (Medina), OAC 3745-18-59 (Meigs), OAC 3745-18-60 (Mercer), OAC 3745-18-62 (Monroe), OAC 3745-18-64 (Morgan)—except for one paragraph approved later (OP Muskingum River), OAC 3745-18-65 (Morrow), OAC 3745-18-67 (Noble), OAC 3745-18-70 (Perry), OAC 3745-18-73 (Portage), OAC 3745-18-74 (Preble), OAC 3745-18-75 (Putnam), OAC 3745-18-86 (Union), OAC 3745-18-88 (Vinton), OAC 3745-18-89 (Warren), OAC 3745-18-92 (Williams), and OAC 3745-18-94 (Wyandot);

(ii) Rules as effective in Ohio on October 1, 1982: OAC 3745-18-64 (B) (OP Muskingum River in Morgan County);

(iii) Rules as effective in Ohio on October 31, 1991: OAC 3745-18-04 (D)(7), (D)(8)(a) to (D)(8)(e), (E)(5),

(E)(6)(a), (E)(6)(b), (F), (G)(1) to (G)(4), and (I);

(iv) Rules as effective in Ohio on July 25, 1996: OAC 3745-18-47 (Jefferson);

(v) Rules as effective in Ohio on March 21, 2006: OAC 3745-18-22 (Coshocton), OAC 3745-18-33 (Gallia), and OAC 3745-18-71 (Pickaway);

(vi) Rules as effective in Ohio on September 1, 2003: OAC 3745-18-56 (Mahoning); and

(vii) Rules as effective in Ohio on January 23, 2006: OAC 3745-18-01 (definitions), OAC 3745-18-02 (air quality standards), OAC 3745-18-03 (compliance dates), OAC 3745-18-06 (general provisions), OAC 3745-18-07 (Adams), OAC 3745-18-10 (Ashtabula), OAC 3745-18-11 (Athens), OAC 3745-18-12 (Auglaize), OAC 3745-18-15 (Butler), OAC 3745-18-17 (Champaign), OAC 3745-18-18 (Clark), OAC 3745-18-24 (Cuyahoga), OAC 3745-18-28 (Erie), OAC 3745-18-29 (Fairfield),

OAC 3745-18-31 (Franklin), OAC 3745-18-34 (Geauga), OAC 3745-18-35 (Greene), OAC 3745-18-37 (Hamilton), OAC 3745-18-38 (Hancock), OAC 3745-18-49 (Lake), OAC 3745-18-50 (Lawrence), OAC 3745-18-53 (Lorain), OAC 3745-18-54 (Lucas), OAC 3745-18-57 (Marion), OAC 3745-18-61 (Miami), OAC 3745-18-63 (Montgomery), OAC 3745-18-66 (Muskingum), OAC 3745-18-68 (Ottawa), OAC 3745-18-69 (Paulding), OAC 3745-18-72 (Pike), OAC 3745-18-76 (Richland), OAC 3745-18-77 (Ross), OAC 3745-18-78 (Sandusky), OAC 3745-18-79 (Scioto), OAC 3745-18-80 (Seneca), OAC 3745-18-81 (Shelby), OAC 3745-18-82 (Stark), OAC 3745-18-83 (Summit), OAC 3745-18-84 (Trumbull), OAC 3745-18-85 (Tuscarawas), OAC 3745-18-87 (Van Wert), OAC 3745-18-90 (Washington),

OAC 3745-18-91 (Wayne), and OAC 3745-18-93 (Wood).

* * * * *

§ 52.1882 [Removed]

4. Section 52.1882 is removed and reserved.

PART 81—[AMENDED]

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

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

Subpart C—Section 107 Attainment Status Designations

6. The table in § 81.336 entitled “Ohio—SO₂” is amended by removing the three footnotes and revising the entries for Summit and Trumbull Counties to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—SO₂

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards

Summit County				X
Trumbull County				X

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