

(b) The Administrator hereby extends by six-months the deadline by which Maryland must incorporate mandatory testing of second generation On-board Diagnostics (OBD-II) equipped motor vehicles as part of its inspection and maintenance (I/M) program. As a result of this deadline extension, Maryland must now incorporate mandatory OBD-II checks (for 1996-and-newer OBD-II equipped vehicles) as an element of the Commonwealth's I/M program in all enhanced I/M program areas by July 1, 2002.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OH155-1a; FRL-7425-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Regulations

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** On July 11, 2002, Ohio submitted a plan which contained rules to control emissions of oxides of nitrogen (NO<sub>x</sub>) from electric generating units (EGU), non-EGUs and Portland Cement Kilns. The plan and associated rules represent a strategy submitted by the Ohio Environmental Protection Agency (Ohio EPA) in response to USEPA's October 27, 1998, NO<sub>x</sub> State Implementation Plan (SIP) Call and subsequent technical amendments. This direct final rule addresses the adequacy and acceptability of the Ohio plan, which we believe will have a major impact in reducing NO<sub>x</sub> and ozone in Ohio and in areas downwind from major sources of NO<sub>x</sub> emissions. USEPA believes the State's plan, which includes a NO<sub>x</sub> trading program, an energy efficiency/renewable energy feature and accommodates innovative technology projects, adequately addresses the requirements of the NO<sub>x</sub> SIP Call and meets the budget prescribed for Ohio. USEPA is taking final action today to approve the Ohio EPA plan.

**DATES:** This rule is effective on March 17, 2003, unless USEPA receives relevant adverse written comments by February 18, 2003. If USEPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air and Radiation Division (AR-18J) Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. You may obtain a copy of the State Implementation Plan revision request at the above address. Please telephone John Paskevicz at (312) 886-6084 if you intend to visit the Region 5 office.

You may inspect copies of Ohio's submittal at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Chicago, Illinois, 60604. E-Mail Address: [paskevicz.john@epa.gov](mailto:paskevicz.john@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, the terms "you" refer to the reader of this proposed rule and/or to sources subject to the State rule, and the terms "we", "us", or "our" refers to USEPA.

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#### I. Background

##### *A. What Requirements Led to the State's Submittal of the NO<sub>x</sub> Emission Control Plan?*

On October 27, 1998, the USEPA promulgated a regulation known as the NO<sub>x</sub> SIP Call for numerous States, including the State of Ohio. The NO<sub>x</sub> SIP Call requires the subject States to develop NO<sub>x</sub> emission control regulations sufficient to provide for a prescribed NO<sub>x</sub> emission budget in 2007.

Preceding the promulgation of USEPA's NO<sub>x</sub> SIP Call, there had been extensive discussions by Federal, State, and local environmental agencies, industry, and environmental groups regarding the transport of ozone in the eastern United States. The Environmental Council of States (ECOS) recommended the formation of a national workgroup to assess the problem and to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to a March 2, 1995, USEPA memorandum, the Ozone Transport Assessment Group (OTAG) was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy. OTAG was a partnership among USEPA, the 37 eastern States and the District of Columbia, and industrial, academic, and environmental groups. OTAG was given the responsibility of conducting the two years of analyses envisioned in the March 2, 1995, USEPA memorandum.

OTAG conducted a number of regional ozone data analyses and regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the USEPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional NO<sub>x</sub> emission reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, USEPA issued the NO<sub>x</sub> SIP Call rule on October 27, 1998. 63 FR 57356.

In the NO<sub>x</sub> SIP Call, USEPA determined that sources and emitting activities in 23 jurisdictions<sup>1</sup> emit NO<sub>x</sub> in amounts that "significantly contribute" to ozone nonattainment or interfere with maintenance of the 1-hour ozone national ambient air quality standards (NAAQS) in one or more downwind areas in violation of Clean Air Act (CAA) section 110(a)(2)(D)(I)(i). USEPA identified NO<sub>x</sub> emission reductions by source sector that could be achieved using cost-effective measures and set state-wide NO<sub>x</sub> emission budgets for each affected jurisdiction for 2007 based on the

<sup>1</sup> Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

possible cost-effective NO<sub>x</sub> emission reductions.

The source sectors include nonroad mobile, highway mobile, electricity generating units (EGUs), and major non-EGU stationary point sources. EGUs include stationary boilers and turbines that generate at least some electricity, even if they also generate steam for industrial processes. Non-EGUs include other large stationary boilers and turbines, typically for the purpose of generating steam for industrial processes.

USEPA established recommended NO<sub>x</sub> emissions caps for large EGUs (potentially generating more than 25 megawatts) and for large non-EGUs (minimum design heat input of 250 mmBTU per hour). USEPA determined that significant NO<sub>x</sub> reductions using cost-effective measures could be obtained as follows: Application of a 0.15 pounds NO<sub>x</sub>/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of NO<sub>x</sub> emissions from large non-EGUs; a 30 percent reduction of NO<sub>x</sub> emissions from large cement kilns; and a 90 percent reduction of NO<sub>x</sub> emissions from large stationary internal combustion engines. The 2007 state-wide NO<sub>x</sub> emission budgets established by jurisdiction were based, in part, by assuming these levels of NO<sub>x</sub> emission controls coupled with NO<sub>x</sub> emissions projected by source sector to 2007.

Although the state-wide NO<sub>x</sub> emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the NO<sub>x</sub> SIP Call allows each State to determine what measures it will choose to meet the state-wide NO<sub>x</sub> emission budgets. It does not require the States to adopt the specific NO<sub>x</sub> emission rates assumed by the USEPA in establishing the NO<sub>x</sub> emission budgets. The NO<sub>x</sub> SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NO<sub>x</sub> state-wide emission budget. The NO<sub>x</sub> SIP Call encourages the States to adopt a NO<sub>x</sub> cap and trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate NO<sub>x</sub> trading program that the USEPA will administer for the States. If States choose to participate in the national trading program, the States must submit SIPs that conform to the trading program requirements in the NO<sub>x</sub> SIP Call.

#### B. What Requirements Must Ohio Meet?

The State of Ohio has the primary responsibility under the Clean Air Act for ensuring that Ohio meets the ozone

air quality standards and is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for meeting the NO<sub>x</sub> emissions budget. The SIP for ozone must meet the ozone transport SIP Call requirements, must be adopted pursuant to notice and comment rulemaking, and must be submitted to the USEPA for approval.

These NO<sub>x</sub> emission reductions will address ozone transport in the area of the country primarily east of the Mississippi River. USEPA promulgated the NO<sub>x</sub> SIP Call pursuant to the requirements of CAA section 110(a)(2)(D) and our authority under CAA section 110(k). Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of attainment of a standard by any other State with respect to any NAAQS.

Pursuant to its authority under section 110(k)(5), USEPA concluded that the SIPs for Ohio and other states were substantially inadequate to prohibit NO<sub>x</sub> emissions that significantly contribute to ozone nonattainment. As a result, Ohio was required to submit SIP revisions that addressed this inadequacy.

USEPA has published a model rule for control of NO<sub>x</sub> emissions from boilers and turbines. This model rule, codified at title 40 of the Code of Federal Regulations part 96 (40 CFR part 96), reflects USEPA's recommendations for the general design of the necessary NO<sub>x</sub> emission control programs as well as detailed recommendations for specific program features. Similarly, at 63 FR 56393 (October 21, 1998), USEPA has published a proposed Federal implementation plan including rules regulating cement kilns, which serve as sample rules for this source type. USEPA recommends the cost-effective levels of control noted above. The budget that USEPA established for states reflects these control levels. USEPA further recommends that states take the necessary steps to allow their sources to participate in a multi-state NO<sub>x</sub> emissions trading program that USEPA will run. While USEPA offers flexibility to states on various elements of program design, particularly in the distribution of projected emission reductions, USEPA can offer more streamlined approval of programs that more closely

follow USEPA's model rule. (See 63 FR 57365)

#### C. What Have Been the Court Rulings Regarding USEPA's NO<sub>x</sub> Emission Control Rule?

When the USEPA published the NO<sub>x</sub> SIP Call on October 27, 1998, a number of States and industry groups filed petitions challenging the rulemaking before the United States Court of Appeals for the District of Columbia. The court, on May 25, 1999, stayed the States' obligation to submit SIPs in response to the NO<sub>x</sub> SIP Call rule. Subsequently, on March 3, 2000, the court upheld most of USEPA's NO<sub>x</sub> SIP Call rule. The court, however, vacated the rule as it applied to Missouri and Georgia, and remanded for further consideration the inclusion of portions of Missouri and Georgia in the rule. The court also vacated the rule as it applied to Wisconsin because the court believed that USEPA had not made a showing that sources in Wisconsin significantly contributed to nonattainment or interfered with maintenance of the ozone NAAQS in any other State. Finally, the court remanded to USEPA two issues concerning a limited portion of the NO<sub>x</sub> emission budgets. See *Michigan et al. v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). On April 11, 2000, based on the remanded issues, USEPA initiated a two phase approach to implement the NO<sub>x</sub> SIP Call. Phase I of this approach addressed the portion of the NO<sub>x</sub> SIP Call upheld by the court. Phase I will achieve the majority of the reductions in the NO<sub>x</sub> SIP Call. The Phase I plan was due from Ohio on October 30, 2000.

Phase II will address the few narrow issues that the DC Circuit court remanded to USEPA, including: Whether, and if so, how, a small subclass of facilities that generate electricity should be included in the rule; and what control levels should be assumed for large, stationary internal combustion engines. Phase II of the NO<sub>x</sub> SIP Call will not require a submittal from the States until USEPA has proposed and finalized rules in response to the court's remand.

On June 22, 2000, the court removed the stay of the state's obligation to submit SIPs in response to the NO<sub>x</sub> SIP Call and denied petitioner's motions for rehearing and rehearing *en banc*. In removing the stay, the court provided that USEPA should allow 128 days for States to submit SIPs to the USEPA, *i.e.*, by October 30, 2000. Shortly after removing the stay, petitioners requested that the court adjust the NO<sub>x</sub> SIP Call compliance date. In an action related to *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir

2000) the court then determined that the compliance date for the SIP Call would be May 31, 2004. Although the court's action affected only the compliance deadline, other dates in the rule for related requirements (such as flow control) were also extended because they were established relative to the original compliance deadline.

**II. Summary of the State Submittal**

*A. When Was the Ohio EPA NO<sub>x</sub> Plan Submitted to the USEPA?*

Ohio EPA submitted the NO<sub>x</sub> plan on July 11, 2002. USEPA had an opportunity to review and comment on earlier draft versions of the rules during the stakeholder review process. USEPA made both formal and informal comments, and these comments are available in the Docket. The plan was submitted in sufficient time for the USEPA to make a finding of completeness, which terminated the imposition of sanctions which were scheduled to go into effect on July 25, 2002, due to Ohio's failure to submit a plan. The Region 5 Regional Administrator signed the completeness finding on July 24, 2002. (See 67 FR 50600)

*B. What Are the Basic Components of the Ohio EPA NO<sub>x</sub> Plan?*

The Ohio EPA plan includes the following documents: (1) A letter from the Director of Ohio EPA requesting a revision to the Ohio EPA plan; (2) a copy of the rules containing the provisions and requirements to implement a NO<sub>x</sub> budget trading program to control and reduce emissions of NO<sub>x</sub> in Ohio; (3) a copy of the Ohio code indicating the authority of the Ohio EPA Director to develop and submit the revision; (4) a notice of the proposed rulemaking and public hearing; (5) a transcript of the public hearing on the rules containing comments and testimony; (6) the Ohio Director's Findings and Orders announcing the adoption of rules controlling NO<sub>x</sub> from sources in Ohio; (7) a list of Ohio's "interested parties" or stakeholders to whom draft rules were distributed for comment; (8) summary of comments submitted into Ohio's formal hearing record regarding the proposed rules which establish a NO<sub>x</sub> budget trading program in Ohio; and, (9) Ohio's budget demonstration including a list of units (operating or under construction) subject to the State's NO<sub>x</sub> rules.

Ohio's NO<sub>x</sub> plan and rules apply to, and establish, a trading program for EGUs, non-EGUs, and portland cement kilns. The rules contained in chapter 3745-14, establish the provisions and requirements to implement a NO<sub>x</sub> budget trading program in Ohio. The net effect of the rules is to cap emissions from major emitters and provide allowances to units to operate within the State's budget during the control period. Allowance allocations are made for five year periods with the exception of the first period, which is for a four-year period.

The State's market-based program which follows the model NO<sub>x</sub> budget trading rule is the method selected by Ohio to meet its NO<sub>x</sub> emissions reduction obligations under the NO<sub>x</sub> SIP Call. The trading program caps total emissions in order to ensure that emissions reductions are achieved and maintained. Also, the flexibility in the State's program allows sources to reduce emissions and where possible, and if desired, generate allowances for trading.

The Ohio EPA plan includes Ohio rule 3745-14. This trading rule contains eleven separate rule elements, listed in Table 1, which correspond with part 96 model rule of the NO<sub>x</sub> SIP Call.

TABLE 1.—COMPARISON OF STATE RULE TO MODEL RULE

Ohio Rule 3745-14	Corresponds with USEPA rule . . .
01, General Provisions .....	Subpart A, sections 96.1, 96.2, and 96.3 Purpose, Definitions and Abbreviations. 96.4, Applicability. 96.5, Retired unit exemptions. 96.6, Standard requirements. 96.7, Computation of time.
02, NO <sub>x</sub> authorized account representative.	Subpart B, section 96.10 . . . the NO <sub>x</sub> authorized account representative. 96.11, Alternate NO <sub>x</sub> authorized account representative. 96.12, Changing the account representative. 96.13, Account certificate of representation. 96.14, Objections re: NO <sub>x</sub> account representative.
03, NO <sub>x</sub> budget permit .....	Subpart C, section 96.20, NO <sub>x</sub> budget permit requirements. 96.21, Submission of NO <sub>x</sub> budget permit application. 96.22, Information requirements for NO <sub>x</sub> budget permit applications. 96.23, content. 96.25, revisions.
04, Compliance certification .....	Subpart D, section 96.30, Compliance certification report. 96.31, State and USEPA's action on compliance certification.
05, NO <sub>x</sub> allowance allocations ....	Subpart E, section 96.40, NO <sub>x</sub> allowance allocations. 96.41, Timing requirements. 96.42 NO <sub>x</sub> allowance allocations. 96.55 Banking (Early reduction credit portion of this section).
06, NO <sub>x</sub> allowance tracking system.	Subpart F, section 96.50, NO <sub>x</sub> allowance tracking system (ATS) accounts. 96.51, Establishment of accounts. 96.52, NO <sub>x</sub> ATS responsibilities of NO <sub>x</sub> authorized account rep. 96.53, Recordation of NO <sub>x</sub> allowance allocations. 96.54, Compliance. 96.55, Banking. 96.56, Account error. 96.57, Closing of general accounts.
07, NO <sub>x</sub> allowance transfers .....	Subpart G, section 96.60, Submission of NO <sub>x</sub> allowance transfers transfers. 96.61, EPA recordation. 96.62, Notification.
08, Monitoring and reporting .....	Subpart H, Monitoring and Reporting. 96.70, General requirements. 96.71, Initial certification and recertification procedures. 96.72, Out of control periods. 96.73, Notifications. 96.74, Recordkeeping and reporting. 96.75, Petitions. 96.76, Additional requirements to provide heat input data for allocations.
09, NO <sub>x</sub> budget opt-in units .....	Subpart I, Individual Unit Opt-ins. Section 96.80, Applicability. 96.81, General. 96.82, NO <sub>x</sub> authorized account representative. 96.83, Applying for NO <sub>x</sub> budget opt-in permit. 96.84, Opt-in process. 96.85, NO <sub>x</sub> budget opt-in permit contents. 96.86, Withdrawal from NO <sub>x</sub> budget trading program. 96.87, Change in regulatory status. 96.88, NO <sub>x</sub> allowance allocations to opt-in units.
10, Alternative compliance plans	This rule allows a source to participate in alternate compliance multi-pollutant reduction schemes such as the President's Clear Skies proposal.
11, Portland cement kilns .....	Part 98, subpart B, Emissions from cement manufacturing, proposed rules, October 21, 1998.

Ohio's plan includes opportunities for sources to obtain, beginning in 2006, an allocation for energy efficiency/renewable energy projects. The Ohio

rule contains a provision which sets aside one percent of the tons of NO<sub>x</sub> emissions in the State trading budget. This set-aside is for units that during the

control period reduce end-use demand for electricity or displace electrical energy utilization by use of wind power,

solar power, biomass or landfill methane gas generation.

Ohio's plan also sets aside one percent of the trading budget beginning in 2006 for innovative technology projects. This means that an industry can compete for a set-aside, using stationary or mobile source technology which has not yet been adequately demonstrated in practice but where there is a likelihood that the technology will reduce NO<sub>x</sub> emissions and increase energy efficiency.

*C. Does the Ohio EPA NO<sub>x</sub> Plan Meet the Federal NO<sub>x</sub> Statewide Emissions Budget?*

Yes, on July 11, 2002, Ohio submitted a plan containing rules in OAC Chapter 3745-14 to respond to USEPA's NO<sub>x</sub> SIP Call published in the **Federal Register** on October 27, 1998. We reviewed the plan and found it complete on July 23, 2002. (See 67 FR 50600, dated August 5, 2002)

USEPA's NO<sub>x</sub> SIP Call affected sources of oxides of nitrogen (NO<sub>x</sub>) in 22 states (including Ohio) and the District of Columbia. The NO<sub>x</sub> SIP Call rulemaking established statewide budgets for NO<sub>x</sub> emissions beginning in

the 2003 ozone season (May 1 to September 30). Each state was required to submit a State Implementation Plan (SIP) containing rules necessary to reduce NO<sub>x</sub> emissions to the NO<sub>x</sub> budget levels.

On March 2, 2000, USEPA published a final rule amending state NO<sub>x</sub> budgets (65 FR 11222). Ohio used the information from this final rule to develop its budget. Further, Ohio describes the process it used to develop the budget in the budget demonstration contained in its plan submittal. A summary of the base and budget NO<sub>x</sub> emissions contained in this rule for Ohio are provided in table 2.

TABLE 2.—NO<sub>x</sub> EMISSIONS BUDGET BY SOURCE CATEGORY  
[In tons]

2007 final	Source Category					
	EGU	non-EGU	Area source	non-road mobile	Highway mobile	Total
Base .....	163,132	50,001	21,860	43,380	94,850	373,223
Budget .....	48,990	40,194	21,860	43,380	94,850	249,274
Reduction .....	114,142	9,807	0	0	0	123,949

On November 15, 2000, Ohio informally provided draft rules for preliminary review to stakeholders and USEPA to start the rulemaking process. Ohio received comments on these draft rules from USEPA and 22 other interested parties. Ohio's draft rules were revised to take into account the comments received, and the revised draft rules were distributed to interested parties on November 19, 2001. Ohio EPA, again, received comments on these draft rules from USEPA and 38 other interested parties. The rules, to be submitted to Ohio's Joint Committee for Administrative Rule Review (JCARR), were revised again taking into consideration the comments. Ohio believes that these rules will achieve the NO<sub>x</sub> reductions required by USEPA's

NO<sub>x</sub> SIP Call, and has finalized them for inclusion in its submitted NO<sub>x</sub> plan.

The budget projections used to prepare Ohio's submission are the same as the State budget established by USEPA in the final rule published in the **Federal Register** on March 2, 2000 (65 FR 11222). A minor change was made by Ohio EPA and is addressed in the State's submittal. This change corresponds with a technical correction to the Ohio inventory made by USEPA on October 31, 2001 (66 FR 54992).

Ohio's budgets for Area Sources, Mobile Sources and Non-Mobile sources reflect emissions during the ozone control period from May 1 through September 30 for each year. The original USEPA budgets that Ohio used in its analysis can be found on the electronic

file entitled "OH.zip" on USEPA's web site [ftp://ftp.epa.gov/EmisInventory/NOxSIPCall\\_Mar2\\_2000](ftp://ftp.epa.gov/EmisInventory/NOxSIPCall_Mar2_2000). Ohio submitted similar budgets for area, mobile and non-mobile source categories on a compact disk (CD) along with the Budget Demonstration. The CD is available in the Region 5 Docket. Table 3 identifies the 2007 base budgets for these sources and the name of the attached file in which they are found. No NO<sub>x</sub> reductions from these source categories (mobile, area, and non-mobile) are projected for Ohio's budget demonstration. Furthermore, Ohio does not expect to have to develop additional NO<sub>x</sub> emission reduction measures to meet the statewide budget during the 5-month ozone season.

TABLE 3.—UNAFECTED SOURCE CATEGORIES  
[In tons]

Source category	2007 base budget	File name
Area Sources .....	21,860	OH_ar.wb3
Mobile Sources .....	94,850	OH_mb.wb3
Non-Road Mobile Sources .....	43,380	OH_nr.wb3

Table 4 contains the base and final NO<sub>x</sub> budget for EGUs. Ohio obtained these data from USEPA Clean Air Markets Division. The file was not part of the technical amendment to the NO<sub>x</sub> SIP Call of March 2, 2000 (see 65 FR

11222). The files for EGUs on USEPA's Web site "[ftp://ftp.epa.gov/EmisInventory/NOxSIPCall\\_Mar2\\_2000](ftp://ftp.epa.gov/EmisInventory/NOxSIPCall_Mar2_2000)" did not contain 2007 base or budget numbers. This file contains information which includes

the base and final budgets for EGUs. Ohio submitted this file (along with other files referenced here) on a CD with the Budget Demonstration. The CD is available in the Region 5 Docket.

TABLE 4.—BASE AND FINAL BUDGETS  
[In tons]

Source category	2007 base budget	2007 final budget	File name
EGU .....	163,132	48,990	UT_budget.wb3

Table 5 contains the original budget that USEPA calculated for large industrial boilers (non-EGUs) located in Ohio. The information in Table 5 can be found on USEPA's web-site at "ftp://ftp.epa.gov/EmisInventory/NOxSIPCall\_Mar2\_2000," in the file entitled "OH\_pt.wb3." USEPA modified the original non-EGU budget because on

October 31, 2001, we made a determination (66 FR 54992) that Marathon Ashland Petroleum LLC's Plant 1576000301, emissions unit B015 was not a NO<sub>x</sub> budget unit. USEPA's original non-EGU budget was modified to remove 18 NO<sub>x</sub> allowances initially designated for B015 and to add 36 tons of uncontrolled NO<sub>x</sub> emissions from

B015 to the total budget for this source category. The budget submitted by Ohio EPA reflects these changes and the electronic file reflecting these changes is located on the CD submitted by Ohio in the file entitled "NonEGU Adjusted.wb3."

TABLE 5.—SOURCES REGULATED BY STATE RULES

Source	2007 Base budget	2007 Final budget	File name
non-EGUs .....	50,001	40,194	OH_pt.wb3

The information in Table 6, presents the components of Ohio's NO<sub>x</sub> budget for EGUs and non-EGUs.

TABLE 6.—OHIO NO<sub>x</sub> BUDGET  
[In tons]

	EGU		non-EGU
	2004,2005	2006 and after	2004 and after
Total for source categories .....	48,990	48,990	40,194
non-Regulated Units .....	3,558	3,558	36,127
Set-Asides .....	12,272	23,181	1203
Allowances available for existing units .....	43,160	42,251	3,846

<sup>1</sup> In each year, 5% of the Regulated Units' budget will be set aside to be allocated to new units.

<sup>2</sup> After 2005, an additional 2% of the EGU Regulated Units' budget will be set aside to fund two set-asides: 1% for Energy Efficiency/Renewable Energy Projects and 1% for Innovative Technology Projects.

USEPA believes the Ohio NO<sub>x</sub> sources addressed here, which includes a cap and an allowance trading program, will be adequately controlled to ensure the sources in the State will meet the statewide NO<sub>x</sub> budget established by USEPA.

*D. What Public Review Opportunities Were Provided?*

The Director of the Ohio Environmental Protection Agency " \* \* \* may conduct public hearings on any plans for the prevention, control, and abatement of air pollution that the director is required to submit to the federal government." (Ohio Revised Code chapter 3704.03, Powers of the director of environmental protections.) Ohio's Director held several meetings early on in the rule development process, shortly after the USEPA promulgated the Finding of Significant Contribution and Rulemaking for the

Purpose of Reducing Regional Transportation of Ozone Rule (see 63 FR 57356, dated October 27, 1998). During the course of development, Ohio sent draft rules to stakeholders for review and comment. This process was repeated several times until the State was satisfied it had fulfilled the public process. Stakeholders included affected utilities, major heavy industry, environmental groups (both local and national), consultants, industry and manufacturing associations, planning commissions and councils of government, and one university.

Finally, a public hearing was held in Columbus, Ohio, on April 11, 2002, and Ohio accepted written comments until April 26, 2002. The transcript of the public hearing is included as part of the State's submittal and can be found in the Docket at Region 5.

*E. What Guidance Did USEPA Use To Evaluate Ohio's NO<sub>x</sub> Control Program?*

USEPA used the final NO<sub>x</sub> SIP Call rule at 40 CFR part 96 for review of portions of the Ohio submittal. We also used 40 CFR 51.121 and 51.122 to evaluate Ohio's rules and the plan. The Ohio rules also apply to portland cement kilns. For USEPA's current position on these types of sources the public can consult USEPA's proposed part 98, dated October 21, 1998 (see 63 FR 56394), which USEPA expects to finalize shortly.

*F. Does the Ohio Plan Meet Federal NO<sub>x</sub> SIP Call Requirements?*

USEPA is satisfied that the Ohio plan meets the requirements of the NO<sub>x</sub> SIP

Call. Ohio's rules are patterned directly from the USEPA model rule and Ohio EPA included in the rules all of the requirements needed for approval by USEPA. The plan includes a budget trading program, and addresses all of the components of the emissions budget listed in the USEPA technical amendment. Ohio's analysis indicates that additional NO<sub>x</sub> control strategies will not be necessary to meet the NO<sub>x</sub> budget for the State. USEPA has previously determined, on August 5, 2002 (67 FR 50600), that Ohio had satisfied the requirements for submittal of a complete plan to address NO<sub>x</sub> controls on major sources of emission.

#### *G. What Deficiencies Were Noted in the Ohio EPA NO<sub>x</sub> Plan?*

USEPA found a small deficiency in Ohio's submittal regarding the trigger date for flow control. In reviewing Ohio's July 11, 2002, NO<sub>x</sub> SIP Call submittal, USEPA found that the State's rule triggers flow control in 2006. (See OAC chapter 3745-14-06(E)(6)) The NO<sub>x</sub> SIP Call model rule requires flow control to be triggered in the second year of the program. This means Ohio's rule should require flow control to be triggered in 2005. Flow control is a mechanism to limit the excessive use of banked allowances. It is more of an insurance policy, rather than a provision that is routinely expected to be carried out. Furthermore, we do not believe it is appropriate to delay implementation of flow control beyond 2005.

Ohio used the model rule (63 FR 57356, dated October 27, 1998) to develop its plan. The State also used language from elements of the section 126 rule (65 FR 2674, dated January 18, 2000) in place of some of the language from the model rule. An amendment to the section 126 rule dated April 30, 2002, (see 67 FR 21522) extended the flow control date to 2006. This one year extension corresponds to the extension of the compliance date noted earlier. While the extension by one year of flow control to 2006 is appropriate for section 126, it is not appropriate for Ohio's rule in the NO<sub>x</sub> SIP Call. A detailed discussion regarding the difference in the trigger dates for flow control between section 126 program and the NO<sub>x</sub> SIP Call can be found in 65 FR 2674, dated January 18, 2000. We do not expect there will be any States subject to section 126. All affected States are expected to implement an NO<sub>x</sub> SIP Call plan by the compliance date of May 2004. In order for flow control to be universally applied to all sources in the NO<sub>x</sub> SIP Call region, the flow control trigger date must be the

same for all of the States in the ozone transport region.

USEPA believes the 2006 date in the Ohio rule is a deficiency which can be cured by Ohio via the submittal of a State rule to revise the flow control date at the soonest possible time before the NO<sub>x</sub> compliance date.

USEPA also found a deficiency in OAC chapter 3745-14-09(G)(7) entitled NO<sub>x</sub> Budget Opt-in Units. The Ohio rule states that opt-in units that have withdrawn from the program can reapply for a permit after 2 years. A previous version of the Ohio rule had this time period as 4 years, which is the time period found in both the NO<sub>x</sub> SIP Call model rule and the section 126 rule. The purpose of the 4 year period in the model rule is to discourage these opt-in sources from coming in and out of the budget trading program at a frequency that would be disruptive to the operation of the trading program. USEPA recommends Ohio change this time period from 2 years to 4 years.

#### **III. USEPA Action**

We are approving, in this direct final rule, the Ohio NO<sub>x</sub> SIP because it meets the requirements of the USEPA NO<sub>x</sub> trading program by meeting Ohio's NO<sub>x</sub> budget. Ohio's rule mirrors the USEPA model rule for the NO<sub>x</sub> SIP Call and the State adequately responded to all of the concerns of stakeholders during the public process. Ohio's plan is approved with the understanding that it will take action to change the date (the flow control trigger date) in OAC 3745-14-06(E) (6) from 2006 to 2005. If this date is not changed from 2006 to 2005, and Ohio fails to submit the change as a revision to its plan by May 31, 2004, USEPA will remove the approval of Ohio's NO<sub>x</sub> SIP and take subsequent rulemaking action, as necessary. USEPA is publishing this action without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the State's NO<sub>x</sub> plan should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by February 18, 2003. Should USEPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on March 17, 2003.

#### **IV. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does 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), nor will it 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), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA'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 USEPA, 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, USEPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. USEPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective February 18, 2003.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. 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,

Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: December 13, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(127) to read as follows:

##### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(127) On July 11, 2002, the Ohio Environmental Protection Agency submitted revisions to Chapter 3745-14-(1 through 11 and Appendices A and B) of the Ohio Administrative Code (OAC), an oxides of nitrogen (NO<sub>x</sub>) budget trading program in Ohio, with a request that the Ohio State Implementation Plan be revised to include these NO<sub>x</sub> rules.

(i) Incorporation by reference.

(A) Ohio NO<sub>x</sub> rules: 3745-14-01, 3745-14-02, 3745-14-03, 3745-14-04, 3745-14-05, 3745-14-06, 3745-14-07, 3745-14-08, 3745-14-09, 3745-14-10, 3745-14-11, Appendix A to Chapter 3745-14 Annual NO<sub>x</sub> allowance allocations to regulated electric generating units for each year from 2004 through 2007, Appendix B to Chapter 3745-14 Annual NO<sub>x</sub> allowance allocation for the control period in years 2004 through 2007 for non-electrical generating units, in the OAC all with an effective date of July 18, 2002.

[FR Doc. 03-962 Filed 1-15-03; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[ID-02-002; FRL-7422-3]

#### Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve numerous revisions to the State of Idaho Implementation Plan submitted to EPA by the Director of the Idaho Department of Environmental Quality (IDEQ) on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act). EPA is taking no action in this rulemaking on a number of submitted rule provisions which are unrelated to the purposes of the implementation plan, including the Idaho provisions for implementing the title V operating permit program.

EPA is also taking final action to revoke the total suspended particulates (TSP) area designations for Idaho and to adjust the PM-10 area designations to conform to the requirements of EPA's prevention of significant deterioration (PSD) regulations.

**DATES:** Effective February 18, 2003.

**ADDRESSES:** Copies of the State's request and other supporting information used in developing this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho, Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ-107), Seattle, Washington 98101, (206) 553-4253.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 15, 1990, Congress amended the Clean Air Act to require, among other things, revisions to State implementation plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) in areas which violate those standards (nonattainment areas), including revisions to title I, part D new source review (NSR). IDEQ amended its part D NSR rules on April 8, 1994, and submitted them to EPA on May 17, 1994, as a revision to the Idaho SIP.

Idaho also revised provisions of its SIP to facilitate and improve the relationship between the Idaho SIP and its regulations implementing the