

that the rule's requirements do not constitute a taking.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability. Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 2004. 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, Carbon monoxide, Intergovernmental relations.

Dated: January 14, 2005.

Norman Neidergang,

Acting Regional Administrator, Region 5.

■ 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 X—Michigan

■ 2. Section 52.1179 is revised to read as follows:

§ 52.1179 Control strategy: Carbon monoxide.

(a) Approval—On March 18, 1999, the Michigan Department of Environmental Quality submitted a request to redesignate the Detroit CO nonattainment area (consisting of portions of Wayne, Oakland and Macomb Counties) to attainment for CO. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1996 attainment year) emission inventory for CO, a demonstration of maintenance of the ozone NAAQS with projected emission inventories to the year 2010, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the CO NAAQS (which must be confirmed by the State), Michigan will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measures includes enforceable emission limitations for stationary sources, transportation control measures, or a vehicle inspection and maintenance program. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990.

(b) Approval—On December 19, 2003, Michigan submitted a request to revise its plan for the Southeast Michigan CO maintenance area (consisting of portions of Wayne, Oakland and Macomb Counties). The submittal contains updated emission inventories for 1996 and 2010, and an update to the 2010 motor vehicle emissions budget (MVEB). The 2010 MVEB is 3,842.9 tons of CO per day.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 159-2; FRL-7862-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 27, 2003, Ohio requested revisions to the State

Implementation Plan (SIP) for sulfur dioxide (SO₂) for several counties in Ohio, along with a request for redesignation of Cuyahoga County to attainment for SO₂. On July 8, 2004, at 69 FR 41344, EPA proposed to approve the requested revisions and to redesignate Cuyahoga County as requested. EPA also published a corresponding direct final rule on the same date, at 69 FR 41336, but EPA withdrew this direct final rule because it received an adverse comment. A citizen from New Jersey expressed concern about air pollution coming east from Ohio and urged EPA to require Ohio power plants to upgrade their pollution controls. EPA is satisfied that the SO₂ emission limits submitted by Ohio suffice to assure attainment of the SO₂ air quality standard. EPA notes further that a separate action proposed on January 30, 2004, at 69 FR 4566, known as the Clean Air Interstate Rule, would require significant reduction in the emissions of SO₂ and nitrogen oxides (NO_x) of power plants in Ohio and elsewhere for purposes of reducing their long-range transported contributions to fine particulate matter and ozone exposures. EPA also received a comment from an affected company clarifying the operational status of boilers affected by the relevant rule. EPA affirms this clarification. Thus, as proposed, EPA is approving the SO₂ rules Ohio submitted, removing the Federal Implementation Plan rules that these State rules supersede, and redesignating Cuyahoga County to attainment for SO₂.

DATES: This final rule is effective on February 28, 2005.

ADDRESSES: Copies of the Ohio's submittals and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886-6067, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR-18J), Criteria Pollutant Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays at (312) 886-6067.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

- I. Synopsis of Ohio's Submittal
- II. Review of Comments
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Synopsis of Ohio's Submittal

On September 27, 2003, Ohio requested numerous revisions to its

State Implementation Plan (SIP) for sulfur dioxide (SO₂). These revisions principally relate to the nature of the federally enforceable emission limits for SO₂ in several Ohio counties. For most of the sources affected by this request, the current limits are the federally promulgated Federal Implementation Plan (FIP) limits that EPA promulgated in 1976 (with selected subsequent amendments). Ohio requested that EPA approve numerous State-adopted emission limits as federally enforceable, which would allow EPA to delete the corresponding FIP limits.

Ohio's submittal addresses SO₂ limits for the following counties: Adams, Allen, Clermont, Cuyahoga, Lake, Lawrence, Mahoning, Monroe, Montgomery, Muskingum, Pike, Ross, Washington, and Wood Counties. For Cuyahoga, Mahoning, Monroe, and Washington Counties, the submitted limits differ from the current federally enforceable limits. Ohio provided evidence from modeling that the submitted limits would provide for attainment of the SO₂ standards. For the other counties, the submitted limits are largely equivalent to current federally enforceable limits. Finally, Ohio submitted selected revisions to generic rules with statewide applicability.

The second Ohio request is for EPA to redesignate the Cleveland area (Cuyahoga County) from a nonattainment area to an attainment area for SO₂. Among the prerequisites to redesignation is that EPA has approved State adopted rules sufficient to provide for attainment and to satisfy other planning requirements. Ohio's submittal and EPA's approval of State limits for Cuyahoga County for replacing FIP limits addresses this prerequisite. A related, third Ohio request is that EPA approve Ohio's plan for continuing to attain the SO₂ air quality standard in Cuyahoga County.

EPA published a direct final rule approving Ohio's requests and redesignating Cuyahoga County to attainment for SO₂ on July 8, 2004, at 69 FR 41336. EPA subsequently withdrew this action due to receipt of a relevant adverse comment. Nevertheless, readers seeking a more thorough description of Ohio's submittal, EPA's criteria for reviewing this submittal, and EPA's review of the submittal, may consult this notice of direct final rulemaking.

II. Review of Comments

In conjunction with its direct final rule, EPA simultaneously published a proposed rule proposing the same actions, published at 69 FR 41344. EPA received two comment letters in response to this proposed rule.

Comment: A citizen from New Jersey commented: "This agency must examine this with a view to any Ohio poisonous air that comes east, impacting New Jersey, New York, and Connecticut. EPA has a duty and responsibility to guarantee clean air to those east of Ohio, as well as Ohio residents. We need the highest standards for Ohio."

Power plants have had at least fifty years to upgrade their plants. There is absolutely no reason if they have failed to upgrade, other than a desire to pollute. It is time to clean up our air."

Response: In this action, EPA is evaluating the adequacy of Ohio's limits for assuring attainment of the SO₂ air quality standards. In general, the highest concentrations of SO₂ arise within a few kilometers of a source or sources that emit SO₂; nevertheless, EPA has examined evidence related to the longer range impacts and believes that Ohio sources are not causing violations of the SO₂ standards or interfering with attainment of the SO₂ standards in the cited eastern states. At the same time, EPA is taking separate actions to address the impacts of SO₂ emitted from power plants in Ohio and elsewhere on concentrations of other air pollutants. In particular, in order to address long-range impacts of power plant emissions on concentrations of fine particulate matter and ozone, EPA has proposed to require significant reductions of emissions of SO₂ and NO_x from power plants throughout the Eastern United States, including Ohio. This proposal was published on January 30, 2004, at 69 FR 4566, and EPA intends to publish final action on this proposal later this year.

Comment: MW Custom Papers commented to clarify the operational status of the boilers at a mill, formerly known as a Mead Corporation facility, which it operates in Ross County, Ohio. The commenter highlighted a statement in the preamble section of the direct final rulemaking discussing Ross County rules, stating "The FIP limit for boilers at this source is 0.00#/MMBTU, based on anticipation that these boilers would be shut down; however, these boilers did not in fact shut down." The commenter explains that four boilers, corresponding to stacks 1, 2, 3, and 4, were in fact shut down as anticipated, but three other boilers (boilers 5, 7 and 8) were not shut down and were never intended to be shut down. Indeed, the commenter notes, while the FIP expressly requires zero emissions from stacks 1 through 4, the attainment analysis assumes nonzero emissions for the other three boilers. The commenter requests that EPA provide this explanation in its final rulemaking.

Response: The preamble to the direct final rulemaking reflected a confusion between boilers slated for shutdown and boilers (not mentioned in the FIP regulations but given explicit limits in Ohio's rules) that were slated for continued operation. EPA acknowledges its error and appreciates the clarification. Thus, Ohio's rules reflect the same operations as the FIP, *i.e.*, boilers for stacks 1 through 4 shut down and boilers 5, 7, and 8 operating with nonzero limits, and the company in fact shut down the boilers it intended to shut down. This explanation provides a clarified basis for approving Ohio's Ross County limits.

III. EPA Action

This rulemaking approves numerous SO₂ limits adopted and submitted by Ohio, many of which replace limits that EPA promulgated as part of a FIP. EPA is approving rules for Adams County (limits for Dayton Power & Light-Stuart Station), Allen County (limits for the Marsulex facility), Clermont County (limits for Cincinnati Gas & Electric-Beckjord Station), Cuyahoga County (full rule), Lake County (full rule), Lawrence County (limits for the Allied Chemical facility), Mahoning County (full rule), Monroe County (full rule), Montgomery County (limits for the Glatfelter and Miami Paper facilities), Muskingum County (Armco Steel), Pike County (limits for the Portsmouth Diffusion Plant), Ross County (limits for the MW Custom Papers facility), Washington County (full rule), and Wood County (Libby-Owens-Ford Plants 4 & 8 and Plant 6).

In those cases where the affected plants are subject to FIP limits, the approved State rules supersede the FIP limits. In today's action, EPA is removing the FIP rules that have thus been superseded.

EPA is redesignating Cuyahoga County to attainment for SO₂. EPA is also approving Ohio's plan for maintenance of the SO₂ air quality standard in Cuyahoga County.

IV. Statutory and Executive Order Reviews

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 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves state rules 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 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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.*).

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 29, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: January 13, 2005.

Michael O. Leavitt,
Administrator.

■ 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)(129) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(129) On September 27, 2003, the Ohio Environmental Protection Agency submitted revised rules for sulfur dioxide. The submittal includes revised provisions in Rules 3745-18-01, 3745-18-04, and 3745-18-06, relating to natural gas use, as well as special provisions in Rule 3745-18-04 for compliance testing for Lubrizol in Lake County. The submittal includes recently revised Ohio limits in Cuyahoga, Lake, Mahoning, Monroe, and Washington Counties, as well as previously adopted source-specific limits in Adams, Allen, Clermont, Lawrence, Montgomery, Muskingum, Pike, Ross, and Wood Counties that had not previously been subject to EPA rulemaking.

(i) *Incorporation by reference.*

(A) Rules OAC 3745-18-01; OAC 3745-18-04(F); OAC 3745-18-04(J); OAC 3745-18-06; OAC 3745-18-24; OAC 3745-18-49; OAC 3745-18-56; OAC 3745-18-62; and OAC 3745-18-90. Adopted August 19, 2003, effective September 1, 2003.

(B) Rules OAC 3745-18-07(B); OAC 3745-18-08(H); OAC 3745-18-19(B); OAC 3745-18-66(C); OAC 3745-18-72(B);, effective May 11, 1987.

(C) OAC 3745-18-50(C); OAC 3745-18-77(B); effective December 28, 1979.

(D) OAC 3745-18-63(K) and (L); and OAC 3745-18-93(B) and (C); effective December 1, 1984.

(ii) *Additional material*—Letter from Robert Hodanbosi, Chief of the Division of Air Pollution Control of the Ohio EPA, to Thomas Skinner, Regional Administrator for Region 5 of USEPA, dated September 27, 2003.

* * * * *

■ 3. Section 52.1881 is amended as follows:

■ a. By revising paragraphs (a)(4) and (a)(8) and adding paragraph (a)(15).

■ b. By removing paragraphs (b)(7) through (b)(15), redesignating paragraph (b)(16) as (b)(7), removing paragraphs (b)(17) through (b)(25), redesignating paragraphs (b)(26), (b)(27) and (b)(28) as (b)(8), (b)(9), and (b)(10), respectively, and removing paragraphs (b)(29) and (b)(30).

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

(a) * * *

(4) Approval—EPA approves the sulfur dioxide emission limits for the following counties: Adams County, Allen County, Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Butler County, Carroll County, Champaign County, Clark County, Clermont County, Clinton County, Columbiana County, Coshocton County, Crawford County, Cuyahoga County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County, Lawrence County, Licking County, Logan County, Lorain County, Lucas County, Madison County, Mahoning County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Montgomery County, Morgan County, Morrow County, Muskingum County,

Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County, Portage County, Preble County, Putnam County, Richland County, Ross County, Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County, Wayne County,

Williams County, Wood County, and Wyandot County.

* * * * *

(8) No Action—EPA is neither approving nor disapproving the emission limitations for the following counties/sources pending further review: Franklin County, Sandusky County (Martin Marietta Chemicals), and Stark County.

* * * * *

(15) On September 27, 2003, Ohio submitted maintenance plans for sulfur

dioxide in Cuyahoga County and Lucas County.

* * * * *

PART 81—[AMENDED]

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

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

■ 2. In § 81.336 the Ohio-SO₂ table is amended by revising the entry for Cuyahoga County 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
* * * * *	*	*	*	*
Cuyahoga County				X
* * * * *	*	*	*	*

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[FR Doc. 05-1441 Filed 1-27-05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2005-0009; FRL-7695-3]

Quinoxifen; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of quinoxifen in or on vegetable, cucurbit, subgroup 9A; pumpkin; and squash, winter. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on melons, winter squash, and pumpkins. This regulation establishes a maximum permissible level for residues of quinoxifen in these food commodities. These tolerances will expire and are revoked on December 31, 2007.

DATES: This regulation is effective January 28, 2005. Objections and requests for hearings must be received on or before March 29, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY**

INFORMATION. EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0009. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a,