ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[TX–155–1–7591b; FRL–7564–6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Control of Air Pollution by Permits for New Sources and Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Texas State Implementation Plan (SIP). This includes revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA on January 3, 2003, to require that equipment associated with a new or relocated concrete crushing facility be located or operated at least 440 yards from any building used as a single or multi-family residence, school, or place of worship. This action is being taken under section 110 of the Federal Clean Air Act, as amended (the Act, or CAA).

In the ''Rules and Regulations'' section of the **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency considers this as a noncontroversial revision and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based upon this proposed action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not subject of an adverse comment.

DATES: Written comments must be received on or before October 30, 2003.

ADDRESSES: Comments may be submitted to Mr. Guy Donaldson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions (Part (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section) described in the direct final rule which is located in the ''Rules and Regulations'' section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell of the Air Permits Section at (214) 665–7212, or *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: September 15, 2003.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 03–24554 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[OH 157–1 FRL –7566–5]

Clean Air Act Proposed Approval of Revisions to Operating Permits Program in Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as revisions to Ohio's operating permits program, proposed revisions to Ohio's regulations for insignificant emissions units (IEUs), Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations, and other provisions of Ohio's Title V regulations. In an April 18, 2002, Notice of Deficiency published in the **Federal Register**, EPA notified Ohio of EPA's finding that Ohio's provisions for IEUs and Ohio's monitoring and deviation reporting regulations did not meet minimum Federal requirements. These program revisions would resolve the deficiencies identified in the Notice of Deficiency.

Ohio published proposed revisions on June 18, 2003, for public comment through July 29, 2003. On July 17, 2003, Ohio submitted the proposed revisions to EPA for approval as revisions to Ohio's Title V program. EPA is proposing to approve Ohio's revisions at the same time that Ohio is completing the process of adopting final revisions to its regulations. EPA will only finalize its approval of Ohio's revisions after Ohio adopts final regulations consistent with the changes described in this action.

DATES: Written comments must be received on or before October 30, 2003.

ADDRESSES: Comments may be submitted by mail to Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in Part (I)(B)(1)(i) through (iii) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–4761, *damico.genevieve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under Air Docket Number OH157. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. EPA requests that if at all possible, you contact the contact listed in the ''For Further Information Contact'' section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:45 to 4:45 excluding federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. Ohio Environmental Protection Agency, Division of Air Pollution Control,

Lazarus Government Center, 122 South Front Street, Columbus, Ohio, 43215.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Air docket Number OH157'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *blakley.pamela@epa.gov*, please include the text ''Public comment on proposed rulemaking Air Docket Number OH157'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through regulations.gov , EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please include the text ''Public comment on proposed rulemaking Air Docket Number OH157'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Such deliveries are only accepted during the Regional Office's official hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:45 to 4:45 excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. Approval of Ohio's Title V Program

The Clean Air Act (CAA or Act) requires all State and local permitting authorities to develop operating permits programs that meet the requirements of Title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70 (Part 70). Ohio submitted its operating permits program in response to this directive. EPA granted full approval to Ohio's Title V operating permits program on August 15, 1995 (60 FR 42045).

Ohio's Title V operating permits program is implemented by the Ohio Environmental Protection Agency (OEPA) and local air pollution control agencies.

B. Notice of Deficiency

Under section 502(i) of the Act and 40 CFR 70.10(b)(1), whenever the EPA Administrator makes a determination that a Title V permitting authority is not adequately administering and enforcing a program, or a portion thereof, in accordance with Title V's requirements, the Administrator shall notify the State by publishing a notice in the **Federal Register**. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after issuance of a notice of deficiency, EPA may withdraw approval of the State program or a portion thereof, apply any of the sanctions specified in section 179(b) of the Act (*i.e.*, loss of federal highway funds or application of strict emissions offset requirements for new sources in certain areas), or promulgate, administer, and enforce a Federal Title V program. 40 CFR 70.10(b)(2). If a State has not corrected the deficiency within 18 months of the notice of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. CAA 502(i)(2), 42 U.S.C. 7661a(i)(2); 40 CFR 70.10(b)(3). In addition, if the State has not corrected the deficiency with 18 months, EPA must promulgate, administer, and enforce a whole or partial federal Title V program within 2 years after the date of the finding of deficiency. CAA 502(i)(4), 42 U.S.C. 7661a(i)(4); 40 CFR 70.10(b)(4).

Pursuant to section 502(i) of the Act and 40 CFR 70.10(b)(1), EPA notified Ohio of EPA's finding that Ohio's regulations for IEUs and Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations do not meet minimum Federal requirements in a Notice of Deficiency published in the **Federal Register** on April 18, 2002 (67 FR 19175).

C. Exemption of IEUs From Permit Content Requirements

1. Background

Part 70 authorizes EPA to approve as part of a State program a list of IEUs which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. *See* 40 CFR 70.5(c). Nothing in Part 70, however, authorizes a state to exempt IEUs from the permit content requirements of 40 CFR 70.6.

Ohio's regulations contain criteria for identifying IEUs. *See* OAC 3745–77–01(U). Ohio's regulations require that permit applications contain information necessary to determine the applicability of, or to impose, any applicable requirement. *See* OAC 3745–77–03(A). The Ohio program, however, specifically exempts from the federally enforceable section of its Title V permits federally enforceable applicable requirements to which IEUs are subject. *See* OAC 3745–77–02(E). Although the Part 70 regulations provide states some opportunity to exempt or limit the amount of information on IEUs required in a Title V application, the July 21, 1992, preamble to EPA's Title V regulations (57 FR 32250, 32273), 40 CFR part 70, makes it clear that this exemption does not apply to the permit content. Therefore, Ohio's regulations at OAC 3745–77–02(E) are inconsistent with part 70. For additional discussion on this issue, please see 67 FR 19175 (April 18, 2002) (Notice of Deficiency).

2. Proposed Changes to IEU Provisions

In response to the Notice of Deficiency, Ohio has proposed to revise its regulations so that applicable requirements for IEUs are included in the federally enforceable section of its Title V permits. Specifically, Ohio has proposed six regulatory changes relating to IEUs. First, proposed revisions to OAC 3745–77–02(E)(1), which provide in part that the ''federally enforceable portion of the [Title V] permit shall include all applicable requirements for all relevant emissions units at the major source,'' would remove language in the current rule which defines ''relevant emissions units'' to exclude IEUs. Thus, under the proposed revisions, applicable requirements for IEUs would need to be included in the federally enforceable portion of Ohio's Title V permits.

Second, a proposed new provision, OAC 3745–77–07(A)(13)(a), would require IEUs that are subject to one or more applicable requirements to be listed in the federally enforceable portion of Title V permits along with the applicable requirements or the identification number of each permit to install that establishes one or more applicable requirements for the IEUs.

Third, another proposed new provision, OAC 3745–77–07(A)(13)(B), would create a presumption that monitoring, recordkeeping, and reporting requirements established for IEUs in a permit to install or under applicable rules are presumed adequate to satisfy the Title V monitoring, recordkeeping and reporting requirements of OAC 3745–77–07(A)(3). Under proposed OAC 3745–77–07(A)(13)(B), however, that presumption could be overcome if OEPA determines that additional monitoring, recordkeeping or reporting requirements are necessary to assure compliance. This proposed provision is consistent with EPA's long-standing position that the permitting authority in general has broad discretion in determining the nature of any required monitoring and that the requirement to include in a permit testing, monitoring, recordkeeping, and reporting sufficient to assure compliance does not require the permit to impose the same level of rigor with respect to all emission units. For example, it does not require extensive testing or monitoring to assure compliance with the applicable requirements for emissions units that do not have significant potential to violate emissions limitations or other requirements under normal operating conditions. Because IEUs are typically associated with lesser environmental impacts than other emission units and present little or no potential for violations of generally applicable requirements, EPA has stated that the permitting authority can provide in some cases that the status quo (*i.e.*, no monitoring) meets the requirements of Part 70.

Fourth, Ohio has proposed to add language to OAC 3745–77–08(C)(2) to indicate that group processing procedures may be used for changes to requirements for IEUs. Fifth, Ohio has proposed to revise OAC 3745–77–07(I)(2) to clarify that no contemporaneous written notification is required for ''off-permit'' changes involving IEUs that are not subject to one or more applicable requirements. (Contemporaneous written notification

would continue to be required for ''off-permit'' changes involving non-IEUs.)

Finally, Ohio proposed to revise OAC 3745–77–08(C)(3)(a) to clarify that significant permit modification procedures do not apply to IEUs. In particular, proposed OAC 3745–77–08(C)(3)(a) would provide that the minor permit modification procedures of OAC 3745–77–08(C)(1), rather than the significant permit modification procedures of OAC 3745–77–08(C)(3), would apply to the relaxation of reporting or recordkeeping permit terms or conditions relating to best available technology emission limitations, operational restrictions or other standards for IEUs.

Under Ohio's proposed regulations, any change to an IEU may use the minor permit modification procedures of OAC 3745–77–08(C)(1) if it meets the criteria applicable to all permit modifications. OAC 3745–77–08(C)(1)(a); *see* 40 CFR 70.7(e)(2)(i)(A). OEPA expressed concern that allowing changes to IEU's to utilize the minor permit modification procedures only if they meet the minor permit modification criteria set out in subparagraphs (i) through (vi) of OAC 3745–77–08(C) could mean that some changes to IEU's would be required to use the significant permit modification process. Specifically, Ohio is concerned that a change to the monitoring, recordkeeping or reporting for an IEU could be considered ''significant'' and therefore would require use of the significant permit modification process. Ohio is also concerned that a change to a best available technology (BAT) emission limit for an IEU created in a permit to install could require use of the significant permit modification process. Ohio has requested clarification from EPA on both of these outcomes. EPA believes that these two outcomes are not required under the revised Ohio rule that EPA is proposing to approve in this action.

EPA believes that 40 CFR part 70 does not require that all changes to the monitoring, recordkeeping or reporting for an IEU use the significant permit modification process for two reasons. First, while Part 70 does require ''significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit'' to use the significant modification process, it also gives Ohio flexibility to determine its own criteria governing which changes to monitoring are significant. *See* 40 CFR 70.7(e)(2)(i)(A)(2), 70.7(e)(4)(i). Section 70.7(e)(4)(i) provides that a ''State program shall contain criteria for determining whether a change is significant. At a minimum, every significant change in existing monitoring permit terms or conditions * * * shall be considered significant.'' Accordingly, Ohio has determined that the environmental consequences of monitoring changes is an important criterion and that monitoring changes to units smaller than 5 tons per year would not have significant environmental consequences. Therefore, Ohio has submitted proposed changes to its part 70 program providing that all changes to monitoring at IEUs are not significant because IEUs are limited to units less than 5 tons per year. Because of the size limitation, EPA believes that Part 70 allows Ohio to conclude that the environmental consequences of a change to monitoring at an IEU would be quite small, and to determine that such changes are not significant and therefore are eligible for minor modification procedures.

Second, EPA believes that Ohio may interpret its rules such that changes to recordkeeping and reporting for IEUs do not require use of the significant modification process, because under that interpretation, Ohio's permit modification procedures for IEUs would be ''substantially equivalent'' to those in section 70.7(e).[1] Section 70.7(e)(4)(i) provides that ''[a]t a minimum, * * * every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant.'' Unlike § 70.7(e)(4)(i)'s reference to changes in existing monitoring (discussed above), this phrase is not modified by the word ''significant'' and § 70.7(e)(4)(i) contains no express authority for permitting authorities to exempt relaxations of recordkeeping and reporting permit terms or conditions from use of the significant permit modification process based on their significance or any other grounds. Nonetheless, EPA believes that Ohio's rules, as interpreted by the State, are substantially equivalent to the permit revision process set forth in § 70.7(e). First, the relaxations allowed to use minor permit modification procedures are limited to the smallest units, and given their small size, EPA believes that a full, significant permit modification process is not warranted or practical. Ohio's rules define IEUs as units with a potential to emit no larger than 5 tons per year for nonhazardous air pollutants and no larger than 2 tons per year for hazardous air pollutants. Second, Ohio's rules allow minor permit modification procedures only for relaxations of recordkeeping or reporting permit terms for Ohio's BAT emission limits issued under the state minor new source review program. Relaxations of recordkeeping and reporting for other applicable requirements would require use of the significant permit modification process. EPA believes these limitations mean that any relaxations would be environmentally inconsequential. An example of a relaxation of recordkeeping or reporting provided by Ohio would be a change in the frequency of reporting for a BAT limit from semi-annual to annual. EPA is also relying on Ohio, as the creator of the BAT limits, to be in the best position to determine whether relaxations to recordkeeping or reporting for those limits would affect its ability to determine a source's compliance with the BAT limit. Accordingly, EPA finds the procedures under Ohio's rules, as interpreted by the State so as not to require relaxations in existing recordkeeping or reporting for IEUs to use the significant permit modification process, to be substantially equivalent to those required by Part 70. Ohio also sought clarification that changes to BAT emission limits that apply to IEUs will not require use of the significant permit modification process. EPA concurs that under Ohio's revised rules, for IEUs that are subject to BAT emission limits, changes to such limits that are accomplished through revisions to permits to install will not require use of the significant permit modification process.

EPA believes that the proposed revisions to OAC 3745–77–02(E), 3745–77–07(A)(13), 3745–77–07(I)(2), and 3745–77–08(C) meet the requirements of the CAA and Part 70. *See White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program,* pp. 30–31 (March 5, 1996). Therefore, EPA proposes to approve these changes as revisions to Ohio's Title V program if Ohio adopts the proposed changes as final regulations consistent with this notice. Final adoption of these changes by Ohio would adequately address the deficiencies identified in the Notice of Deficiency regarding Ohio's regulations for IEUs.

[1] Section 70.7(e)(1) authorizes EPA to approve Part 70 programs that include permit modification procedures that are ''substantially equivalent'' to those in § 70.7(e). Specifically, Section 70.7(e)(1) provides: ''The State shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. The State may meet this obligation by adopting the procedures set forth below or ones *substantially equivalent*'' (emphasis added).

D. Limitation of Deviation Reports to Deviations Detected by Compliance Methods Required by Permits

1. Background

OAC 3745–77–07(A)(3)(c)(ii) and (iii) limits the reporting of deviations to those which can be detected by the compliance method required by the permit. This limitation is contrary to the requirements of the Act and 40 CFR part 70. Specifically, section 70.6(a)(3)(iii)(A) requires that permittees submit reports of required monitoring at least every 6 months and that all instances of deviations from permit requirements be identified in these reports. Section 70.6(a)(3)(iii)(B) requires that permittees promptly report deviations from permitting requirements to the permitting authority. Section 70.6 does not provide for any exceptions to these requirements. Section 113(c)(2) of the Act, among other things, prohibits any person from knowingly making a false certification or omitting material information from any reports. Finally, 40 CFR 70.5(d) and 70.6(a)(3) require responsible officials to certify that all reports are true, accurate and complete. *See also* 62 FR 8314 (February 24, 1997) (final rule promulgating credible evidence revisions). Together these statutory and regulatory requirements obligate sources to consider all available material information in evaluating and reporting deviations for purposes of promptly reporting deviations and submitting reports of any required monitoring at least semi-annually. Because Ohio's rule, OAC 3745–77–07(A)(3)(c)(ii)-(iii), only requires permittees to consider compliance method test data when reporting deviations from permit requirements, Ohio's Title V program does not meet the minimum requirements of part 70.

2. Proposed Changes to Deviation Provisions

Ohio has proposed a number of changes to OAC 3745–77–07(A)(3)(c)(ii) and (iii). Under the proposal, the language in OAC 3745–77–07(A)(3)(c)(ii) requiring the permittee to include in its six-month monitoring reports only those deviations ''that have been detected by the compliance method required under the permit'' would be deleted. Clarifying language would be added requiring that the reports ''clearly identify'' deviations from ''the permit requirements that have occurred since the previous report has been submitted.''

Under the proposal, OAC 3745–77–07(A)(3)(c)(iii) would be changed to reflect that prompt reports of deviations required under this provision will include the written and verbal malfunction reports required by OAC 3745–15–06. Prompt reporting would be further defined by the proposed OAC 3745–77–07(A)(3)(c)(iii) to be quarterly for all deviations from emission limitations, operational restrictions, and control device operating parameter limitations (except as prescribed in OAC 3745–15–06) and semi-annually for all deviations from monitoring, recordkeeping, and reporting requirements unless otherwise stated in the permit. The requirement that only deviations detected by the compliance method required under the permit would be removed along with the requirements for verbal reports. The verbal report requirements are also included in OAC 3745–15–06 and would, therefore, be duplicative here.

EPA believes that the proposed revisions to OAC 3745–77–07(A)(3)(c)(ii) and (iii) meet the requirements of the CAA and Part 70 for reports of required monitoring at least every six months and prompt reports of deviations. Therefore, EPA proposes to approve these changes as revisions to Ohio's Title V program if Ohio adopts in final regulations the proposed changes consistent with this notice. Final adoption of these changes by Ohio would adequately address the deficiencies in OAC 3745–77–07(A)(3)(c)(ii) and (iii) identified in the Notice of Deficiency.

D. Other Proposed Changes to Ohio's Title V Regulations

Ohio has also proposed other minor changes to its Title V operating permits program regulations, which EPA also proposes to approve.

1. Change to the Definition of Major Source

On November 29, 2002, Ohio changed its definition of major source in OAC 3754–77–01(W)(2)(aa) to make it consistent with the changes EPA made to Part 70 on November 27, 2001 (66FR 59161). As revised, the rule requires sources to consider all pollutants when counting fugitive emissions from facilities subject to Section 111 or 112 standards promulgated on or before August 7, 1980. Therefore, EPA proposes to approve these changes as revisions to Ohio's Title V program.

2. Addition of the Definition of Incorporation by Reference

Ohio proposes to add the definition of incorporation by reference in OAC 3745–77–01(NN), clarifying that referenced materials are made a part of the regulations. This definition is not required by part 70 but by Ohio law. EPA proposes to approve this language as part of Ohio's Title V program.

3. Addition of the Definition of Uncontrolled Potential Emissions

On November 30, 2001, Ohio added the definition of ''uncontrolled potential emissions'' to OAC 3745–77–01(MM). Ohio defined uncontrolled potential emissions as the calculated annual emissions rate without any air pollution controls assuming 24 hours per day and 365 days per year of operation. If the emission unit has an inherent physical limitation, then the number of hours per day and days per year can be restricted to the maximum possible under the inherent physical limitation. The term ''uncontrolled potential emissions'' is used in the definition of insignificant activities and emissions levels (OAC 3745–77–01(U)(3)). Ohio has changed OAC 3745–77–01(U)(3) to clarify that insignificant activities and emissions levels, in part, are emission units with uncontrolled potential emissions of five tons or less per year of any regulated air pollutant other than a hazardous air pollutant as opposed to emissions units with the potential to emit five tons or less per year. Potential to emit includes any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Uncontrolled potential emissions only considers inherent physical limitation. EPA proposes to approve this language as part of Ohio's Title V program.

III. Final Action

EPA is proposing to approve as revisions to Ohio's CAA Title V operating permits program proposed revisions to Ohio's regulations for IEUs, specifically, revisions to OAC 3745–77–02(E), 3745–77–07(A)(13), 3745–77–07(A)(3)(c)(ii) and (iii), 3745–77–07(I), and 3745–77–08(C). EPA has determined that the proposed changes meet the requirements of Title V and Part 70 relating to IEUs and reporting and adequately address the deficiencies identified in the Notice of Deficiency published in the **Federal Register** on April 18, 2002 (67 FR 19175). EPA is also proposing to approve Ohio's new provisions at 3745–77–01(U), 3745–77–01(W)(2)(aa), 3745–77–01(MM) and 3745–77–01(NN). Because the proposed revisions apply throughout the State of Ohio, this proposed approval applies to all State and local agencies that implement Ohio's operating permits program.

IV. Statutory and Executive Order Requirements

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this action 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This 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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (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 Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This proposed approval 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 a significant regulatory action under executive order 12866.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 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 impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program 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 Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Governmental Interference With Constitutionally Protected Property Rights

EPA 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, and has determined that the rule's requirements do not constitute a taking.

Paperwork Reduction Act

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

Congressional Review Act

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

In reviewing State operating permit programs submitted pursuant to Title V of the Act, EPA will approve State programs provided that they meet the requirements of the Act and EPA's regulations codified at Part 70. 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 State operating permit program for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the 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.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 17, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

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