C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 18, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–28216 Filed 10–27–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–102–1–7395; FRL–6465–2]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides for the Houston/Galveston and Beaumont/Port Arthur Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: The EPA is proposing conditional approval of rules into the Texas State Implementation Plan (SIP). These rules require Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO_X) in the Houston/Galveston (H/G), and the Beaumont/Port Arthur (B/PA) ozone nonattainment areas. Texas originally submitted these rules on June 15, 1993. Texas has made nine revisions to the rules since the original Submittal. In this document we propose conditional approval of Texas' SIP submittals concerning control of NO_X emissions dating from June 15, 1993 to May 20, 1998, as meeting the NO_X RACT requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action including the Technical Support Document, are available for public inspection during normal business hours at the above and following location. Persons interested in examining these documents should

make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

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Administrative Requirements

Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

I. What Are We Proposing To Approve?

We are proposing conditional approval of revisions to the Texas Rule 30 TAC Chapter 117 for the control of air pollution from nitrogen compounds. These measures will reduce NO_X emissions in H/G and B/PA ozone nonattainment areas. By this approval we are agreeing that the State of Texas will be implementing the RACT on sources listed in Section XIII of this notice. Specifically, we are proposing to conditionally approve revisions submitted on June 15, 1993, August 31, 1993, June 9, 1994, August 3, 1994, September 21, 1994, December 29, 1994, March 6, 1996, August 9, 1996, May 21, 1997, and May 20, 1998. The approval is conditioned on Texas revising Regulation 117.570 to remove the ability to add one standard deviation to the emissions baseline for trading purposes. Furthermore, the Texas Accelerated Vehicle Retirement (AVR) program is not a part of the approved SIP (see 62 FR 66576, December 19, 1997, and 63 FR 41756, August 5, 1998); consequently, if a source plans to rely upon any emission reduction credits generated or claimed through the AVR program, for interim compliance with Chapter 117, the State will have to submit a separate source specific SIP revision to us for approval.

Texas must submit the approvals of the alternative case-specific specifications under sections 117.121, 117.221, 117.321 and 117.426, by the Executive Director or the Commissioners, to the EPA for approval as source-specific SIP revisions. Texas must submit approvals of a petition for phased RACT under Section 117.540, by the Executive Director or the Commissioners, to the EPA for approval as source-specific SIP revision. Otherwise, a source operating under such a State approval is subject to Federal enforcement action for violation of the required specifications and/or compliance deadline.

II. What Are Nitrogen Oxides?

Nitrogen oxides (NO_X) belong to the group of criteria air pollutants. The NO_X are produced from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

III. What Is Reasonably Available Control Technology?

Reasonably Available Control Technology is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. This requirement is established by sections 182(b)(2) and 182(f) of the Act. These sections, taken together, establish the requirements for Texas to submit a NO_X RACT regulation for all major stationary sources of NO_X in ozone nonattainment areas classified as moderate and above. A State may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source.

IV. What Are the Clean Air Act's RACT Requirements for NO_X Emissions?

Section 182(b)(2) requires States located in areas classified as moderate ozone nonattainment areas to require implementation of RACT with respect to all major sources of VOCs. Section 182(f) states that, ''The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen.'' This NO_X RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications.

On November 25, 1992, (57 FR 55620), we published a notice of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement). The NO_X Supplement describes and provides preliminary guidance on the requirements of section 182(f) of the Act. You should refer to the NO_X supplement for further information on the NO_X requirements. The EPA's mandatory Economic Incentive Program (EIP) rules for criteria pollutants appear in 40 CFR part 51, subpart U (59 FR 16710). The EPA's discretionary EIP rules concerning emission trading appear in the 1994 EIP guidance document (59 FR 16690). In addition, other EPA guidance memoranda, such as those included in the ''NO_X Policy Document for the Clean Air Act of 1990,'' (EPA–452/R96–005, March 1996), should also be referred to for more information about NO_X requirements.

On August 17, 1994, the Texas Natural Resource Conservation Commission (TNRCC) petitioned us under section 182(b) to temporarily exempt the B/PA and H/G ozone nonattainment areas from the NO_X requirements of the Act. The TNRCC asked for the exemption based on air quality modeling that indicated that the control of NO_X would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS). We approved the petition on April 19, 1995.

The temporary exemption was to expire on December 31, 1996 with RACT compliance no later than May 31, 1997. On March 6, 1996, the TNRCC asked us to extend the temporary waiver. The TNRCC asked for an extension of the temporary waiver based on section 182(f) of the Act. Section 182(f) allows for a waiver of certain federally required NO_X control measures, if the State demonstrates that NO_X reductions do not contribute to ozone attainment in moderate or above areas. The State submitted modeling information with a petition predicting that the NO_X reductions would be

counterproductive to ozone attainment in portions of H/G and B/PA areas. The EPA approved the petition and granted an extension until December 31, 1997, to allow time for carrying out further modeling. The NO_X RACT compliance date was as expeditious as practicable, but no later than May 31, 1999. Based on this further modeling, TNRCC allowed the waiver to expire. We provided notice that the waiver had expired in the **Federal Register** on February 12, 1998 (63 FR 7071). The NO_X RACT compliance date was extended to no later than November 15, 1999.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions not covered by either a pre-enactment or post-enactment control techniques guideline (CTG) document. There were no NO_X CTGs issued before enactment and we have not issued a CTG document for any NO_X sources since enactment of the Act. States can use the information contained in the Alternative Control Techniques (ACTs) to develop their RACT rules. The Texas rules covering NO_X sources and submitted as SIP revisions require final installation of the actual NO_X controls as expeditiously as practicable, but no later than November 15, 1999.

V. What Are Definitions of Major Sources for NO_X?

Section 302 of the Act generally defines ''major stationary source'' as a facility or source of air pollution which emits, when uncontrolled, 100 tons per year (tpy) or more of air pollution. This general definition applies unless another specific provision of the Act explicitly defines major source differently. Therefore, for NO_X, a major source is one which emits, when uncontrolled, 100 tpy or more of NO_X in marginal and moderate areas. According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X.

According to section 182(d) of the Act, a major source in a severe nonattainment area is a source that emits, when uncontrolled, 25 tpy or more of NO_X.

Houston is a severe ozone nonattainment area, so the major source size for Houston is 25 tpy or more, when uncontrolled. Beaumont is a moderate ozone nonattainment area, so the major source size for Beaumont is 100 tpy or more, when uncontrolled.

VI. What Are Alternative Control Techniques (ACTs)?

Section 183(c) of the Act provides that we will issue technical documents which identify alternative controls for stationary sources of oxides of nitrogen which emit, when uncontrolled, 25 tpy or more of this pollutant. These ACT documents are to be subsequently revised and updated by us. The information in the ACT documents is generated from EPA papers, literature sources and contacts, control equipment vendors, engineering firms, and Federal, State, and local regulatory agencies. States can use information in the ACT to develop their RACT regulations. The following table contains list of ACT documents for various source categories of NO_X with their corresponding EPA publication numbers.

TABLE I.—ACT DOCUMENTS FOR SOURCE CATEGORIES OF NO_X AND THEIR EPA PUBLICATION NUMBERS

Source category	EPA publication number
Nitric/adipic Acid Plants	EPA–450/3–91–026
Gas Turbines	EPA–453/R–93–007
Process Heaters	EPA–453/R–93–034
Internal Combustion Engines	EPA–453/R–93–032
Cement Plants	EPA–453/R–94–004
Non-utility Boilers	EPA–453/R–94–022
Utility Boilers	EPA–453/R–94–023
Glass Manufacturing	EPA–453/R–94–037
Iron and Steel Manufacturing	EPA–453/R–94–065

VII. What is a State Implementation Plan?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS established by the EPA. The NAAQS are established under section 109 of the Act to protect public health, and they address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each state has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

VIII. What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the federally enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State may submit the adopted provisions to us and request that these provisions be included in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek

additional public comment regarding this action. If adverse comments are received, we must address them prior to a final action.

All State regulations and supporting information approved by us under section 110 of the Act are incorporated into the federally approved SIP. Records of these SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations which were approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

IX. What Does Federal Approval of a SIP Mean to me?

Enforcement of the State regulation before and after it is incorporated into federally approved SIP is primarily a state function. However, once the regulation is federally approved, we and the public may take enforcement action against violators of these regulations if the State fails to do so.

X. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. It has been estimated that 60 percent of Americans live in nonattainment areas. The H/G and B/PA are nonattainment areas for ozone.

XI. What Counties in Texas Will This Rule Affect?

This rule affects the H/G and B/PA ozone nonattainment areas. The B/PA area is classified as moderate ozone nonattainment and includes the following counties: Hardin, Jefferson, and Orange. The H/G is classified as severe ozone nonattainment and includes the following counties: Brazoria, Chambers, Fort Bend, Harris, Galveston, Liberty, Montgomery, and Waller. If you are in one of these counties, you should refer to the rules to determine if and how this rule will affect you.

XII. What Are the Specific Rule Revisions EPA is Proposing To Approve?

The State of Texas submitted the NO_X RACT program Chapter 117, ''Control of Air Pollution From Nitrogen Compounds,'' as a number of revisions to the SIP. This rulemaking will address the following SIP revisions:

A. On June 15, 1993, the Governor submitted a major revision that adopted new NO_X regulations, sections 117.10, 117.101–117.601, and repealed the old regulations, Sections 117.1–117.4. Texas submitted this revision to us to comply with the Act's 1990 amendments requirements concerning control of nitrogen oxides emissions at major stationary sources in ozone nonattainment areas. These rules included emission limitations, control technologies, and a RACT averaging program allowing facility-wide averaging with each unit having an enforceable emission limit. The *Texas Register* published these regulations on May 28, 1993 (18TR3409) and effective June 9, 1993.

B. On August 30, 1993, Texas adopted amendments to sections 117.105 and 117.205, repealed sections 117.540, 117.550, and added new sections 117.540, 117.550, and 117.580. Texas added section 117.540, phased RACT, to allow affected sources to petition TNRCC for a later compliance date. A source may receive the later compliance date, if it shows there were unforseen and unavoidable delays in delivery, construction and installation of control equipment. The new section 117.550 provided an avenue for a general permit approach for collateral criteria pollutant increases. The new section 117.580 provided for a NO_X source cap program. Instead of unit emission rates, a facility could comply with an overall facility mass emissions cap. The cap was based upon the average actual activity level, using the lower of actual or allowable for previously permitted sources; restricted how shutdown units may be incorporated; restricted how units exempt from NO_X RACT can be incorporated; and required that the area's offset ratio be used for exempt units brought into the plant cap. The proposed changes were part of a series of proposed revisions to Chapter 117 being developed in response to requirements by the Act and EPA comments. The *Texas Register* published the amendments to these sections on December 3, 1993 (18TR8956) and effective December 15, 1993.

C. On May 25, 1994, Texas adopted amendments to sections 117.10, 117.103–117.121, 117.203–117.221, 117.311–117.321, 117.411–117.421, 117.510–117.560, added section 117.223, and repealed section 117.580. The new section 117.580 provided for a NO_X source cap program. Section 117.580 (source cap) was moved to Section 117.223. A new subsection 117.540(c) allowed the use of MERCs from scrappage for interim compliance with Chapter 117, if the source followed the procedures of section 117.570 (Trading). The life of these vehicle scrappage MERCs was three years. The *Texas Register* published the adopted revisions on June 10, 1994 (19TR4523) and effective June 23, 1994.

D. On July 27, 1994, Texas adopted the new section 117.570 and repealed the old section 117.570. The new 117.570 established a NO_X RACT trading program to provide a cost-effective alternative method of complying with the NO_X emission specifications of this chapter. Under the new trading program, an owner or operator may reduce the required amount of NO_X emissions by using an approved Emission Reduction Credit (ERC). The ERC may be generated by another company in the same ozone nonattainment area. Shutdown credits can be generated and used only by sources participating in a source cap. The source cap provisions in section 117.223 did not allow for generation of paper credits. The *Texas Register* published these changes on August 9, 1994 (19TR6223) and effective August 23, 1994.

E. On August 31, 1994, Texas adopted amendments to sections 117.451, 117.510, 117.520, 117.530, and 117.601. The purpose of the adopted changes was to extend the final compliance date of the Chapter 117 rule from May 31, 1995, to May 31, 1997. The *Texas Register* published these revisions on September 9, 1994 (19TR7128) and effective September 22, 1994.

F. On December 7, 1994, Texas adopted amendments to section 117.510. The amendment extends the Federal acid rain January 1, 1995 compliance date under section 117.510(2)(A), concerning certification of continuous emissions monitoring systems for Phase II oil-fired and Phase II gas-fired units at electric utility sources, to May 31, 1997. The *Texas Register* published these revisions on December 16, 1994 (19TR10005) and effective January 2, 1995.

G. On January 10, 1996, Texas adopted amendments to sections 117.451, 117.510, 117.520, 117.530, and 117.601. The purpose of adopted amendments was to extend the final compliance date of the Chapter 117 rule

from May 31, 1997, to May 31, 1999. The *Texas Register* published these revisions on January 19, 1996 (21TR516) and effective February 1, 1996.

H. On July 24, 1996, Texas adopted revisions to section 117.540. The amendments to section 117.540, regarding Phased RACT, extended applicable dates to be consistent with the May 31, 1999 final compliance date. This revision extended the final compliance date for an approved phased RACT request to August 31, 2000. In addition, Texas added new subsection 117.540(c), allowing the use of clean-fueled vehicle MERCs to meet chapter 117 requirements on an interim basis. Texas moved the scrappage MERCs to subsection 117.540(b). The life of the clean fuel vehicle MERCs is two years for MERCs generated prior to September 1, 2002, and there after, the estimated remaining useful vehicle life. The Texas Register published these revisions on August 9, 1996 (21TR7560) and effective August 16, 1996.

I. On April 30, 1997, Texas adopted the repeal of section 117.550. Texas moved the collateral emission increases associated with installation of NO_X control measures into the permitting requirements of Chapter 116. The EPA is acting on the repeal of section 117.550, but is not acting on Chapter 116 in this action. The *Texas Register* published this adoption on May 13, 1997 (22TR4248) and effective May 22, 1997.

J. On May 20, 1998, Texas adopted revisions to subsections 117.451, 117.510, 117.520, 117.530, 117.540, and 117.601 extending the final NO_X RACT compliance date, for certain major source nitrogen oxides control measures in the H/G and B/PA ozone nonattainment areas, to November 15, 1999, and made emission monitoring requirements more flexible. Texas extended the final phased RACT compliance date to no later than February 15, 2001. Texas revised the compliance period for carbon mooxide emissions, in subsection 117.105(j), from a twenty-four hour period to an hourly period for any electric utility unit which does not use a Continuous Emission Monitoring System (CEMS) or Presumptive Emission Monitoring System (PEMS) for CO, stating that twenty-four hours of manual stack sampling is impractical. The *Texas Register* published this adoption on June 5, 1998 (23TR5973) and effective June 10, 1998.

XIII. What Kind of Major Source Categories Will This Rule Affect?

This rule will affect NO_X emissions from the following existing source categories in Texas: (a) Utility boilers, steam generators, auxiliary steam boilers, and gas turbines used to generate electricity in H/G and B/PA ozone nonattainment areas (see section 117.101 of this rule); (b) commercial, institutional, or industrial boiler (non-utility boiler) and process heaters in H/G and B/PA with a maximum rated capacity of 40 million Btu per hour or greater, stationary gas turbines in H/G and B/PA with a megawatt (mW) rating of 1.0 mW or higher; (c) stationary rich burn internal combustion engines of 150 horsepower (hp) or greater for stationary rich burn internal combustion engines in H/G ozone nonattainment area, and stationary internal combustion engines of 300 hp or greater for stationary internal combustion engines in B/PA ozone nonattainment area (see section 117.210 of this rule); and (d) nitric acid manufacturing (see section 117.401 of this rule) and adipic acid manufacturing (see section 117.301 of this rule) plants in H/G and B/PA ozone nonattainment areas.

XIV. Are NO_X Emissions Specifications in Texas Rule Comparable With Federal Guidelines?

The emission specifications in pounds NO_X per million Btu (lb NO_X /MMBtu) from utility boilers are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Utility Boilers,'' EPA–453/R–94–023, March 1994, and 57 FR 55620 (the NO_X supplement).

The emission specifications in pounds NO_X per million Btu (lb NO_X/MMBtu) from non-utility boilers are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional Boilers,'' EPA–453/R–94–022, March 1994.

The emission specifications in pound nitrogen dioxide (NO_2) per ton of acid produced (lb NO_2/ton acid) from Nitric and Adipic acid manufacturing plants are in agreement with the ''Alternative Control Techniques Document—Nitric and Adipic Acid Manufacturing Plants,'' EPA–450/3–91–026, December 1991.

The emission specifications in pounds NO_X per million Btu (lb NO_X/MMBtu) from process heaters are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Process Heaters (Revised),'' EPA–453/R–93–034, September 1993.

The emission specifications in gram NO_X per horsepower-hour (g/hp-hr) from internal combustion engines are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Stationary Reciprocating Internal Combustion Engines,'' EPA–453/R–93–032, July 1993.

The emission specifications in parts per million (ppm) NO_X from stationary gas turbines are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Stationary Gas Turbines,'' EPA–453/R–93–007, January 1993.

The NO_X emissions specifications in this rule are comparable with our guidelines for RACT and ACT documents. A listing of our ACT documents is in Table I of this proposed action. For a complete review and evaluation of this rule please refer to the Technical Support Document (TSD) developed for this proposed action. The following table contains a summary of the type of affected sources, their corresponding emission limit, and relevant applicability information for these sources in the H/G and B/PA nonattainment areas.

TABLE II.—SUMMARY OF THE TEXAS NO_X RACT RULE FOR SOURCES IN THE H/G AND B/PA NON-ATTAINMENT AREAS

Source	NO_X limit	Additional information
Utility Boilers	0.26 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 24-hour rolling average.
Utility Boilers	0.20 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 30-day rolling average.
Utility Boilers	0.38 lb/MMBtu	Coal, tangentially-fired, 24-hour rolling average.
Utility Boilers	0.43 lb/MMBtu	Coal, wall-fired, 24-hour rolling average.
Utility Boilers	0.30 lb/MMBtu	Fuel oil only, 24-hour rolling average.
Utility Boilers	[a(0.26) + b(0.30)]/(a + b)	Oil and gas mixture, 24-hour rolling average, where. a = percent natural gas heat input. b = percent fuel oil heat input.

TABLE II.—SUMMARY OF THE TEXAS NO_X RACT RULE FOR SOURCES IN THE H/G AND B/PA NON-ATTAINMENT AREAS—Continued

Source	NO_X limit	Additional information
Stationary Gas Turbines	42 parts per million (ppmvd)	@ 15% O2, natural gas, ≥ 30 Mega Watt (mW) annual electric output ≥ 2500 hour mW rating.
Stationary Gas Turbines	65 parts per million (ppmvd)	@ 15% O2, fuel oil/
Stationary Gas Turbines	0.20 lb/MMBtu	Natural gas, peaking units, annual electric output <2500 hour mW rating.
Stationary Gas Turbines	0.30 lb/MMBtu	Fuel oil, peaking units, annual electric output <2500 hour mW rating.
Non-utility Boilers	0.10 lb/MMBtu	Natural gas, low heat release and T < 200 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.15 lb/MMBtu	Natural gas, low heat release, preheated air 200 ≤ T < 400 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boiler	0.20 lb/MMBtu	Natural gas, low heat release, preheated air T ≥ 400 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.20 lb/MMBtu	Natural gas, high heat release, without air or preheated air T < 250 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.24 lb/MMBtu	Natural gas, high heat release, preheated air 250 ≤T < 500 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.28 lb/MMBtu	Natural gas, high heat release, preheated air T ≥ 500 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, preheated air T ,< 200 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.13 lb/MMBtu	Natural gas, preheated air 200 ≤T < 400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.18 lb/MMBtu	Natural gas, low heat release, preheated air T ≥ 400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, firebox T < 1400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.125 lb/MMBtu	Natural gas, firebox 1400 ≤T < 1800 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.15 lb/MMBtu	Natural gas, firebox T ≥ 1800 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters and Non-utility Boilers.	0.30 lb/MMBtu	Liquid fuel, capacity ≥ 100 MMBtu/hr.
Process Heaters and Non-utility Boilers.	0.30 lb/MMBtu	Wood fuel, capacity ≥ 100 MMBtu/hr.
Stationary Gas Turbines	42 parts per million (ppmvd)	@ 15% O2, rating ≥ 10 mW.
Reciprocating Internal Combustion Engines.	2.0 gram/hp-hr	Natural gas, rich burn, stationary, capacity ≥ 150 hp in H/G, capacity ≥ 300 hp in B/PA.
Absorbers of Adipic Acid Production Units.	2.5 lb/ton of acid produced	24-hr rolling average.
Absorbers of Nitric Acid Production Units.	2.0 lb/ton of acid produced	24-hr rolling average.

XV. Why Is This a Conditional Approval?

The allowable NO_X emission rates are calculated based on a rolling 30-day average method (see equation 117.223(b)(1) of this rule) and based on a maximum daily cap method (see equation 117.223(b)(2) of this rule). The definition of actual daily heat input in 117.570(b)(2), and the definition of actual historical average of the daily heat input in 117.223(b)(1) allow sources to add one standard deviation to their baseline heat input or emission rate to establish the baseline for generating emission credits. Adding one standard deviation to the baseline could generate ''paper credits.''

We understand from Texas that this allowance was an inadvertent oversight and they have committed in the July 19, 1999, letter to change the rule and submit it as a SIP revision to our office by November 15, 1999. We are conditionally approving the rule based on their commitment.

XVI. What Are the Monitoring Requirements?

The Act requires that SIP rules be enforceable. To insure continuous compliance, SIP rules must have monitoring requirements. The Texas NO_X Rules require either a CEMS or PEMS to ensure compliance.

It is very important to use proper Quality Assurance/Quality Control (QA/QC) techniques to insure the monitors read correctly. One issue we are concerned with is that the Texas rules allow a Cylinder Gas Audit (CGA) to replace the Relative Accuracy Test Audit (RATA) for ongoing QA/QC of the monitors.

Our rules under 40 CFR part 60, New Source Performance Standards for new sources prohibit the use of CGA for more than 3 consecutive calender quarters. The CGA outlined in 40 CFR part 60, appendix F is the test which demonstrates that the analyzer reads correctly over its range. For example, in a CGA test you might compare the protocol gases of 0 ppm, 50 ppm, and 100 ppm to what the analyzer reads. If the analyzer's readings match the concentration of the corresponding protocol gas, then the analyzer passes the CGA test. The CGA or linearity test however, is only a means of verifying performance of the analyzer and not a means of verifying performance of the total monitoring system.

The RATA determines if the CEMS reads correctly during actual operation by testing the entire system. The RATA compares the readings of the CEMS to an independent ''reference method'' when both the CEMS and RATA are

measuring the pollutant concentration in the stack simultaneously. The reference method is designed to be as accurate as possible and verifies that the CEMS will perform correctly in normal operation.

Texas has stated that economic reasons, i.e., higher cost of performing a RATA vs. cost of performing a CGA and ease of scheduling a CGA as opposed to scheduling a RATA, as the reasons for substituting a CGA with RATA for ongoing quality assurance of CEMS. Texas believes, if performed correctly, a CGA test provides adequate assurance of monitor operation and that additional cost of RATA is not justified.

We are proposing to agree with Texas in substituting a CGA with RATA for ongoing quality assurance of CEMS. As indicated at the outset of this notice, we will be collecting comments and consider any comments received on this subject by November 29, 1999.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create a mandate on State, local, or tribal governments. The proposed rule does not impose any enforceable rules on any of these entities. This proposed action does not create any new requirements but simply approves the requirements the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this proposed rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132, (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on 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 E.O. 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because it proposes to approve a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed action does not involve or impose any new requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP proposes approval does not create any new requirements, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State Submittal does not affect State-enforceability. Moreover, EPA's disapproval of the Submittal does not impose any new requirements. Therefore, I certify that this proposal

action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this proposed action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 6, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–28215 Filed 10–27–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 103–1a; FRL–6464–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate Coshocton, Gallia, and Lorain Counties to the status of areas in attainment of the National Ambient Air Quality Standards (NAAQS)for sulfur dioxide (SO_2). Ohio requested this action on October 26, 1995, and provided supplemental supporting material to EPA in a letter dated September 14, 1999.

EPA is also proposing to approve the maintenance plans for Coshocton, Gallia, and Lorain Counties. The plans are intended to ensure maintenance of the NAAQS, and were submitted with the redesignation requests.

In conjunction with these actions, EPA is proposing to approve State-adopted emission limits for the following facilities: in Coshocton County: Columbus and Southern Ohio Electric—Conesville plant; in Gallia County: Ohio Valley Electric Company—Kyger Creek plant and Ohio Power—Gavin Plant; and in Lorain County: CEI—Avon Lake plant, Ohio Edison—Edgewater Plant, U.S. Steel—Lorain plant, and B.F. Goodrich Company—Lorain County plant. These limits would replace equivalent limits in the Federal Implementation Plan (FIP) for these three Counties.

EPA is ''parallel processing'' Ohio's request to redesignate the three counties to attainment while Ohio finalizes its rule revisions. If Ohio's final submittal is the same as the submittal on which this proposal is made and EPA receives no persuasive adverse comments then EPA will take final action to approve the redesignation requests. Otherwise, EPA will repropose this action.

DATES: Comments on this proposed action must be received by November 29, 1999.

ADDRESSES: You may send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Program Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Phuong Nguyen, Environmental Scientist, at (312) 886–6701 before visiting the region 5 office.)

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886–6701.

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

I. General Information:

1. What action is EPA proposing to take today?
2. Why is EPA proposing to take this action?
3. What is the background for this action?

II. Background on Ohio Submittal

1. What information did Ohio submit, and what were its requests?
2. What guidance documents did EPA use in this rulemaking to evaluate Ohio's request?

III. State Implementation Plan (SIP)

1. How do these emission limits compare to the FIP limits?
2. What are the sources and emission limits that will be affected by EPA's action?

IV. Maintenance Plan

1. How does the maintenance plan apply in these three counties?
2. What are the reduction requirements?

V. Redesignation Evaluation

1. What five criteria did EPA use to review the redesignation request?
2. Are these criteria satisfied for Coshocton, Gallia, and Lorain counties?

I. General Information

1. What Action Is EPA Proposing To Take Today?

In this action, EPA proposes to approve three SO_2 redesignation requests submitted by the State of Ohio for Coshocton, Gallia, and Lorain Counties. EPA also proposes to approve the maintenance plans for these counties. Finally, EPA proposes to approve State-adopted emission limits for the remaining sources in these three counties.

This action applies parallel processing, in which EPA proposes action on proposed State rules based on the expectation that the State will finalize its rules as proposed. If the State's final rules differs significantly from the proposed rules, then EPA will repropose action.

2. Why Is EPA Proposing To Take This Action?

EPA is proposing to take this action because the redesignation requests meet the five criteria all redesignation requests must meet. The emission limits