request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.174 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed provisional service in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed service which the Postal Service has identified in accordance with § 3001.172(a)(3). The purpose of this subpart is to allow for consideration of proposed provisional services within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.175 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a provisional service of limited duration requested by the Postal Service, and the Board of Governors has put the provisional service recommended by the Commission into effect, the Postal Service shall collect and report data pertaining to the provisional service during the period in which it is in effect in accordance with the periodic reporting requirements specified in § 3001.102. If the Postal Service's regular data reporting systems are not revised to include the provisional service during the period of its effectiveness, the Postal Service shall perform, and provide to the Commission on a schedule corresponding to § 3001.102 reports, special studies to provide equivalent information to the extent reasonably practicable.

§ 3001.176 Continuation or termination of provisional service.

At any time during the period in which a provisional service recommended by the Commission and implemented by the Board of Governors is in effect, the Postal Service may submit a formal request that the provisional service be terminated, or that it be established, either as originally recommended by the Commission or in modified form, as a permanent mail classification. Following the conclusion of the period in which the provisional service was effective, the Postal Service may submit a request to establish the service as a mail classification under any applicable subpart of the Commission's rules.

5. Sections 3001.181 and 3001.182 are added as Subpart K, to read as follows:

Subpart K—Rules for Use of Multi-Year Test Periods

Sec.
3001.181 Use of multi-year test period for proposed new services.
3001.182 Filing of formal request and prepared direct evidence.

Subpart K—Rules for Use of Multi-Year Test Periods

§ 3001.181 Use of multi-year test period for proposed new services.

(a) The rules in §§ 3001.181 and 3001.182 apply to Postal Service requests pursuant to section 3623 for the establishment of a new postal service, with attendant rates, which in the estimation of the Postal Service cannot generate sufficient volumes and revenues to recover all costs associated with the new service in the first full fiscal year of its operation. In administering these rules, it shall be the Commission's policy to adopt test periods of up to 5 fiscal years for the purpose of determining breakeven for newly introduced postal services where the Postal Service has presented substantial evidence in support of the test period proposed.

(b) This section and § 3001.182 are effective May 15, 1996 through May 15, 2001.

§ 3001.182 Filing of formal request and prepared direct evidence.

In filing a request for establishment of a new postal service pursuant to section 3623, the Postal Service may request that its proposal be considered for a test period of longer duration than the test period prescribed in § 3001.54(f)(2). Each such request shall be supported by the following information:

(a) The testimony of a witness on behalf of the Postal Service, who shall provide:

(1) A complete definition of the multi-year test period requested for the proposed new service;

(2) A detailed explanation of the Postal Service's preference of a multi-year test period, including the bases of the Service's determination that the test period prescribed in § 3001.54(f)(2) would be inappropriate; and

(3) A complete description of the Postal Service's plan for achieving an appropriate contribution to institutional costs from the new service by the end of the requested test period.

(b) Complete documentary support for, and detail underlying, the test period requested by the Postal Service, including:

(1) Estimated costs, revenues, and volumes of the proposed new service for the entire requested test period;

(2) Return on Investment projections and all other financial analyses prepared in connection with determining the cost and revenue impact of the proposed new service; and

(3) Any other analyses prepared by the Postal Service that bear on the overall effects of introducing the proposed new service during the requested test period.

Issued by the Commission on May 7, 1996.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 96–12130 Filed 5–14–96; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH16–3–7264a; FRL–5439–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On August 23, 1994, the United States Environmental Protection Agency (USEPA) granted conditional approval of revisions to the emission limitations, compliance methodologies, and compliance time schedules in Ohio's State Implementation Plan (SIP) for sulfur dioxide (SO_2) as it applies to Hamilton County. The outstanding condition has been addressed, and USEPA is now fully approving the Hamilton County, Ohio, SO_2 SIP. Submitted by Ohio in response to modeling analyses which predicted violations of the SO_2 National Ambient Air Quality Standards (NAAQS) due to Hamilton County sources, this SIP has been demonstrated to provide for attainment and maintenance of the SO_2 NAAQS in Hamilton County.

DATES: This action will be effective on July 15, 1996 unless adverse or critical comments not previously addressed by the State or USEPA are received by June 14, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief,

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

Copies of the State's submittal and USEPA's analysis (Technical Support Document) are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mary Onischak at (312) 353–5954 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Mary Onischak at (312) 353–5954.

SUPPLEMENTARY INFORMATION:

I. Background

On October 16, 1991, Ohio submitted SO_2 SIP revisions to USEPA for Hamilton County, Ohio. The State submitted a package on March 17, 1993, which further amended these SIP revisions. The SIP revisions were intended to provide for attainment of the National Ambient Air Quality Standards (NAAQS) for SO_2, in response to a December 22, 1988, letter in which USEPA notified the Governor of Ohio that the SO_2 SIP was substantially inadequate to maintain the SO_2 NAAQS in Hamilton County. USEPA's notification was based on predicted violations of the SO_2 standards due to SO_2 sources located in Hamilton County, Ohio. Ohio's SIP package included revisions to Ohio Administrative Code (OAC) 3745–18–03 *Attainment Dates and Compliance Time Schedules,* OAC 3745–18–04 *Measurement Methods and Procedures,* and OAC 3745–18–37 *Hamilton County Emission Limits,* supplemented by an administrative order for Cincinnati Gas and Electric's Miami Fort facility. Ohio's submittal, including the background information, attainment demonstration, and compliance methodologies, is discussed in detail in the January 27, 1994, proposed conditional approval (59 FR 3809). Comments on the proposed conditional approval were addressed in the August 23, 1994, final conditional approval (59 FR 43287).

II. Conditional Approval Issue

The Hamilton County SO_2 SIP was conditionally approved by USEPA because of an issue related to the air dispersion modeling analysis submitted by Ohio to demonstrate that the revised SO_2 SIP limits would ensure attainment of the SO_2 NAAQS in the Hamilton County area. The State's modeled attainment demonstration is discussed in detail in USEPA's 1994 proposed and final rulemaking actions. The techniques used in the attainment demonstration were set forth in a modeling protocol approved by USEPA. Because Hamilton County borders Indiana and Kentucky, the attainment demonstration considered the air quality impacts of SO_2 sources in those States, as well as SO_2 sources in Ohio. During the development of the attainment demonstration, a modeled violation was predicted near the Joseph E. Seagram and Sons, Inc., (Seagram) facility in adjacent Dearborn County, Indiana. The Seagram facility was determined to be the main contributor to the modeled violation, but facilities located in Hamilton County also contributed to the violation. Since the Ohio sources were partially implicated in the Indiana violation, USEPA could not accept Ohio's attainment demonstration until the predicted violation had been addressed.

A solution to the attainment problem involved a restriction on the usage of sulfur-bearing fuels at the Seagram facility. Preliminary modeling showed that when Seagram's Boilers 5 and 6 were not simultaneously burning such sulfur-bearing fuels as coal or fuel oil, the SO_2 standards would not be violated. Seagram had, in fact, been operating in this manner for several years. Seagram agreed, in a September 1, 1992 letter to Ohio and Indiana, that it would not operate the two boilers simultaneously on sulfur-bearing fuels without written approval from both State Agencies (the Ohio Environmental Protection Agency and the Indiana Department of Environmental Management). However, because Seagram's letter did not create a federally enforceable limitation, USEPA required that the State of Indiana adopt the Seagram restriction and submit it to USEPA as a revision to the Indiana SO_2 SIP.

On the basis of Seagram's September 1, 1992 commitment, Ohio submitted supplementary modeling data to USEPA which demonstrated that if the Seagram facility did not operate the two boilers simultaneously on coal or fuel oil, the predicted SO_2 NAAQS violation in Dearborn County would be eliminated. USEPA has reviewed this modeling and determined that it is acceptable. Because USEPA had determined that the emission limits and control measures in the SO_2 SIP revision for Hamilton County would be enforceable and would provide for attainment of the SO_2 NAAQS, USEPA proposed to conditionally approve the Hamilton County SO_2 SIP while the State of Indiana proceeded with the Seagram rulemaking.

USEPA's proposal to conditionally approve the Hamilton County, Ohio SIP revisions was published on January 27, 1994 (59 FR 3809). USEPA finalized the conditional approval action on August 23, 1994 (59 FR 43287). USEPA indicated in the final conditional approval that the Hamilton County, Ohio SIP revisions would be approved in full if Indiana submitted a federally approvable SIP revision for Seagram by September 23, 1995. It was anticipated that an approvable Indiana limit would be formalized in the allotted time and as a result, the Ohio revised rules would remain a part of the SIP.

The USEPA notified the State of Indiana in a January 5, 1994, letter that the Seagram limits must be incorporated into the Indiana SO_2 SIP. On August 25, 1995, Indiana submitted to USEPA a site-specific SO_2 SIP revision request which provided that when Seagram's Boilers 5 and 6 were being operated simultaneously, only one boiler would use coal or fuel oil. USEPA published a direct final approval of Indiana's SIP revision for Seagram on February 9, 1996 (61 FR 4897). Therefore, USEPA is now able to fully accept Ohio's modeled attainment demonstration and finalize the Hamilton County SO_2 SIP approval. (Adverse or critical comments received on the Seagram SIP revision may affect the effective date of approval of the Hamilton County, Ohio SO_2 SIP.)

III. Final Rulemaking Action

The USEPA is approving Ohio's October 16, 1991, and March 17, 1993, Hamilton County SO_2 SIP revisions because the approval condition cited in the Federal Register on August 23, 1994 (59 FR 43287) has been satisfied. The State of Indiana submitted acceptable SO_2 SIP revisions, as required, and USEPA approved them in a direct final action on February 9, 1996 (61 FR 4897). As indicated in the August 23, 1994, conditional approval, the USEPA has determined that the Ohio SO_2 SIP revisions for Hamilton County satisfy section 110(A)(2) of the Clean Air Act and are fully approvable at this time. It is important to note that if USEPA receives adverse or critical comments on the SO_2 SIP revision for Seagram, the receipt of such comments may affect the effective date of USEPA's approval of the Hamilton County, Ohio SO_2 SIP.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, the rulemaking will not be deemed final if timely unaddressed adverse or critical

comments are filed. The ''direct final'' approval shall be effective on July 15, 1996, unless USEPA receives such adverse or critical comments by June 14, 1996. The USEPA is now soliciting public comments on this action. Any parties interested in commenting on this action should do so at this time. In the proposed rules section of this Federal Register, USEPA is publishing a separate document which constitutes a ''proposed approval'' of the requested SIP revision. If warranted by comments adverse to or critical of the approval discussed above, which have not been addressed by the State or USEPA, USEPA will publish a Federal Register document which withdraws the final action. The USEPA will then address public comments received in a subsequent rulemaking document based on the proposed approval.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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 impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds.*Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements. Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less then $100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments.

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 July 15, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 14, 1996.

David A. Ullrich,

Acting Regional Administrator.

For the reasons set forth in the preamble 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(92) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(92) On October 16, 1991, and March 17, 1993, the Ohio Environmental Protection Agency (OEPA) submitted revisions to the State Implementation Plan for sulfur dioxide for sources in Hamilton County, Ohio.

(i) Incorporation by reference.

(A) Ohio Administrative Code (OAC) Rule 3745–18–03 Attainment dates and compliance time schedules, Sections (A)(2)(c); (B)(7)(a); (B)(7)(b); (C)(8)(a); (C)(8)(b); (C)(9)(a); (C)(9)(b); (D)(1); (D)(2); dated October 11, 1991, and effective on October 31, 1991.

(B) Ohio Administrative Code (OAC) Rule 3745–18–04 Measurement methods and procedures, Sections (D)(7); (D)(8)(a) to (D)(8)(e); (E)(5); (E)(6)(a); (E)(6)(b); (F); (G)(1) to (G)(4); (I); dated October 11, 1991, and effective on October 31, 1991.

(C) Ohio Administrative Code (OAC) Rule 3745–18–37, Hamilton county emission limits, dated February 22, 1993, and effective on March 10, 1993.

(D) Director's Final Findings and Order for Cincinnati Gas and Electric Company, Miami Fort Station, dated February 22, 1993.

* * * * *

3. Section 52.1919 is revised to read as follows.

§ 52.1919 Identification of plan-conditional approval.

(a) The plan commitments listed below were submitted on the dates specified.

(1) [Reserved]

(2) On April 20, 1994, Ohio submitted Rule 3745–35–07, entitled ''Federally Enforceable Limitations on Potential to Emit,'' and requested authority to issue such limitations as conditions in State operating permits. On June 16, 1994, Ohio submitted a commitment to revise Rule 3745–35–07 to clarify that the rule provides for USEPA objection to permits after issuance. The revisions are approved provided Ohio fulfills this commitment by October 25, 1995.

(i) Incorporation by reference.

(A) Rule 3745–35–07, adopted April 4, 1994, effective April 20, 1994.

(b) (Reserved)

[FR Doc. 96–12119 Filed 5–14–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD-FRL–5461–6]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 2, 1996, the Environmental Protection Agency published a proposed and direct final rule promulgating interim approval of the Operating Permits Program submitted by the Commonwealth of Massachusetts for the purpose of complying with the Federal requirements of an approved program to issue operating permits to all major stationary sources, and to certain other sources, with the exception of Indian Lands. This submittal for the operating permits program was made by the Commonwealth of Massachusetts on April 28, 1995. The 30-day comment period for these documents concluded on March 4, 1996. Also in this document, EPA is correcting the date for the interim approval of the Operating Permits Program for the Commonwealth of Massachusetts.

EFFECTIVE DATE: This final rule is effective on May 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits Program, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–3500.

SUPPLEMENTARY INFORMATION: On February 2, 1996, EPA published a direct final rule (61 FR 3827) which announced that this rule would take effect in 60 days, or April 2, 1996, unless EPA received adverse comment on the rule within 30 days of publication in response to a notice of proposed rulemaking published on the same day (61 FR 3893). EPA also committed to withdraw the direct final rule in the event it received adverse comment, and to respond to any adverse comments in a subsequent final rulemaking action. EPA did receive a timely adverse comment on this rule. EPA failed, however, to withdraw the final rule within the 60 days given in the direct final rule, and the rule took effect on April 2, 1996.

In this document, EPA is responding to the comment it received, but for the reasons stated below, EPA is not changing the final rule in response to that comment. For reasons unrelated to the comment, EPA is correcting a clerical error in the effective date of the rule, as explained below. Had EPA withdrawn the direct final rule prior to its going into effect, EPA would have taken final action based on the proposal to promulgate a rule identical to the direct final rule that went into effect. Rather than now take the action of withdrawing the direct final rule only to repromulgate simultaneously an identical rule, however, EPA in this action is deciding to maintain the rule unchanged. EPA believes that withdrawal and repromulgation are unnecessary since the results would be identical to that obtained simply by leaving the rule unchanged and responding to the comments in this document. This document provides interested parties an opportunity to review how EPA addressed the comment, and to petition for review of EPA's action in this final rulemaking within 60 days of publication of this document, as provided in section 307(b)(1) of the Act.

I. Summary of Comments and Responses

EPA received two comments from the National Environmental Development Association's Clean Air Regulatory Project (NEDA/CARP). First, NEDA/CARP disagrees with EPA's statement that ''prompt reporting [of deviations] must be more frequent than the semi-annual reporting requirement, given this is a distinct reporting obligation under Section 70.6(a)(3)(iii)(A).'' NEDA/CARP believes there is no legal basis for such a statement. Therefore, NEDA/CARP asserts EPA has no basis for expecting deviations to be reported more often than every 6 months.

EPA disagrees that there is no legal basis for this statement. Section 503(b)(2) of the Act requires a permittee ''to promptly report any deviations from permit requirements to the permitting authority.'' This requirement to report deviations promptly is distinct from section 504(a) of the Act which requires the results of all monitoring to be submitted no less often than every six months. The Act clearly distinguishes between the routine semi-annual reporting of all monitoring, whether or not deviations have occurred, from the requirements to report deviations that may be violations of the Act and that at least provide an indication of potential compliance problems. It makes sense that Congress would expect permittees to report potential Act violations more quickly than routine monitoring that confirms compliance. Additionally, the statute has a clear requirement for prompt reporting of deviations and EPA believes that six months is not prompt when dealing with information that may document a violation of the Clean Air Act.

Second, in the February 2, 1996 rulemaking, EPA proposes interim approval of the program regulation unless the Commonwealth changes its rule to ensure that all ''significant'' monitoring changes, not just ''relaxations'' are processed as significant changes. NEDA/CARP points out that this change may not be required when the proposed changes to Part 70 are finalized and requests EPA take this issue into consideration before the state revises its procedures.

EPA understands the concerns of NEDA/CARP, but EPA is obligated to evaluate the Commonwealth's program based on Part 70 rules promulgated on July 21, 1992. Once the proposed changes to Part 70 are finalized, EPA and the Commonwealth will revisit this matter and address it consistent with the program transition provisions of the revised Part 70 regulations.

II. Final Rulemaking Action

Except for the effective date, as explained below, EPA is not modifying the interim approval to the operating permits program associated with the February 2, 1996 direct final rulemaking in response to the comments EPA received. The State must make the changes specified in the proposed rulemaking, under II.A.2., Regulations and Program Implementation, in order to be granted full approval.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the Commonwealth is protected from sanctions for failure to have a