governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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).

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 *April 14, 2008.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

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

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

Dated: January 15, 2008.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(112) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(112) On August 3, 2007, the Governor of Colorado submitted revisions to the Colorado's Regulation No. 7 ''Emissions of Volatile Organic Compounds'' that made several changes and additions to Section XII, ''Volatile Organic Compound Emissions From Oil and Gas Operations.''

(i) Incorporation by reference.

(A) Regulation No. 7 ''Emissions of Volatile Organic Compounds,'' 5 CCR 1001–9, Section XII, ''Volatile Organic Compound Emissions From Oil and Gas Operations,'' effective on March 4, 2007.

[FR Doc. E8–2512 Filed 2–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0976; FRL–8526–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting final approval to Ohio's request for the retirement and withdrawal of 240 oxides of nitrogen (NO_X) allowances from the State's 2005 new source set aside. Retiring 240 new source set aside allowances will provide surplus emission reductions to help compensate for the discontinuation of Ohio's motor vehicle inspection and maintenance program (known as ''E-Check'') in the Cincinnati and Dayton areas for the year 2006. (Ohio is in the process of seeking approval of the removal of E-Check as an active program from the State Implementation Plan (SIP), which will be addressed in a separate action.) EPA received adverse comments and one positive comment on our proposed rulemaking on the allowance retirement. These comments are addressed in this notice. As a result of this action, 240 NO_X allowances from the State's 2005 new source set aside will be withheld and permanently retired.

DATES: This final rule is effective on March 14, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0976. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago,

Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Life Scientist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What did EPA propose?

On October 6, 2006, Ohio submitted revisions to Ohio Administrative Code (OAC) Chapters 3745–72–01 and 3745–14–05. These rules provide a revised start date for the use of low-volatility gasoline and provide the necessary quantity of interim, surplus NO_X emission reductions through the permanent retirement of new source set aside allowances from the State's NO_X budget trading program. Revisions to OAC 3745–72–01 were addressed in a separate rulemaking published on May 25, 2007, at 72 FR 29269.

On September 13, 2007 (at 72 FR 52320), EPA proposed to approve the revisions to OAC 3745–14–05. The revision to OAC 3745–14–05 permanently withholds and retires 240 NO_X allowances from Ohio's 2005 new source set aside.

By retiring these new source set aside allowances, Ohio guarantees that these allowances will not be reallocated to participating Ohio NO_X SIP Call utilities and boilers the following year. This action allows EPA to consider the corresponding reduction of 240 tons of emissions of NO_X to be surplus. These 240 tons of surplus NO_X emission reductions, corresponding to reductions resulting from emission control devices installed on electrical generation units in the Cincinnati and Dayton areas before 2006, can be considered to provide 240 tons of NO_X emission reduction in compensation for the equivalent emission increase resulting from discontinuation of the E-Check program in those areas in 2006.

II. What is EPA's response to comments?

EPA received both supportive and adverse comments in response to our proposed rulemaking on OAC 3745–14–05. EPA received comments from the Regional Air Pollution Control Agency (RAPCA) in support of our proposed action on October 18, 2007.

Adverse comments were sent dated January 12, February 15, March 13, and October 15, 2007, from Shumaker, Loop, and Kendrick, LLP, a law firm representing the Ohio Electric Utility Institute as well as various utilities in the State (hereafter described as ''the Utilities''). Despite some comments being sent even before EPA had published the proposed rulemaking, we are treating the early comments as pertaining to today's action, and we address them in this action.

Comment: The Utilities believe that withholding and permanently retiring 240 NO_X allowances has not and will not create emissions reductions in the Cincinnati and Dayton areas, specifically because:

(a) NO_X allowances are not emissions reductions;

(b) If an Ohio source wanted to emit more, it could purchase allowances from outside the state, or it could transfer allowances from a facility it owns in another state;

(c) If no Ohio sources needed the withheld allowances for the purposes of compliance, then withholding and retiring the 240 allowances will not result in decreased emissions in the Ohio or Cincinnati/Dayton areas; and,

(d) No evidence exists to support that withholding these allowances resulted in reductions in the Cincinnati/Dayton areas.

Response: Under the cap and trade program known as the NO_X SIP Call, EPA issues a finite number of allowances and allows each subject source an amount of emissions based on the quantity of allowances the source holds. The quantity of allowances thus corresponds to the total emissions allowed across the area covered by the NO_X SIP Call. Consequently, by retiring 240 allowances, Ohio has unquestionably reduced the total allowable emissions across the NO_X SIP Call area by 240 tons of NO_X emissions. Ohio may use utility NO_X emission reductions to compensate for discontinuing E-Check only if the reductions are surplus relative to existing requirements, and the retirement of 240 allowances provides 240 tons of NO_X emission reductions that are surplus to the reductions mandated by the existing NO_X SIP Call.

EPA further believes that Ohio can reasonably claim that the 240 tons of surplus NO_X emission reduction that they have mandated compensates for 240 tons of NO_X emission increase (or the equivalent quantity of increase in volatile organic compound emissions) resulting from discontinuation of E-Check. As stated in our notice of proposed rulemaking, ''substantial emission reductions have occurred in the Cincinnati/Dayton area,'' and ''EPA believes that Ohio has latitude to attribute 240 tons of the 2006 NO_X emission reductions in the Cincinnati/Dayton area to its retirement of 240 allowances.''

The comments do not directly address the rationale for these views that EPA provided in its notice of proposed rulemaking. The following responds more directly to the submitted comments:

(a) Retirement of NO_X allowances does mandate a net emission reduction.

(b) Purchasing or transferring allowances from another location reduces allowable emissions at that other location, retaining the net emission reduction.

(c) EPA is concluding that 240 tons of the emission reductions that are known to have occurred in the Cincinnati and Dayton areas can be attributed to Ohio's retirement of 240 allowances. Ohio sources will not need these allowances precisely because they have implemented emission reductions mandated by the limited availability of allowances.

(d) Ohio provided for 240 tons of emission reduction, and Ohio can reasonably attribute this reduction to a small fraction of the over 10,000 tons of NO_X reductions that have occurred in the Cincinnati and Dayton areas.[1] The commenter seeks evidence of a causal link between the allowance retirement and specific emission reductions, which would presumably require that Ohio or EPA examine the motivations underlying utility control decisions. EPA believes that such a survey is unnecessary, and believes that Ohio has adequate basis for associating the surplus reductions created by the rule revision with 240 tons of reductions that

[1] In a letter dated February 23, 2007, Ohio supplemented its submittal with information regarding NO_X emission reductions that have occurred in the Cincinnati/Dayton area. This letter identifies several actions that substantially reduced NO_X emissions starting from before the 2006 ozone season, which include installation of selective catalytic reduction controls at 3 units and installation of low NO_X burners at 9 other units. Ohio estimates that the total emission reduction from these actions is over 10,000 tons per ozone season.

have occurred in the Cincinnati and Dayton areas.

Comment: The Utilities commented that Ohio's October 6, 2006, submittal should be considered 'incomplete' because it does not meet the requirements of 40 CFR part 51, Appendix V, section 2.2, paragraphs (c), (d), and (e). For each section, the Utilities comment that statements by Ohio EPA personnel (provided in an appendix to the comments) support their view.

40 CFR part 51, Appendix V section 2.2(c) requires ''Quantification of the changes to the plan of allowable emissions from the affected sources, estimates of changes in current actual emissions from affected sources, or, where appropriate, quantification of changes in actual emissions from affected sources through calculations of the differences between certain baseline levels and allowable emissions anticipated as a result of the revision.'' The Utilities comment that Ohio only submitted the number of NO_X allowances it plans to retire (240). Further, the Utilities state that Ohio's submittal does not quantify the ''allowable emissions'' from the Utilities under OAC 5745–14–05(C)(7) because the retired allowances do not limit utilities' allowable emissions. The Utilities in fact believe that it is impossible for Ohio to calculate the allowable emissions from Ohio utilities.

40 CFR part 51, Appendix V 2.2(d) requires ''The State's demonstration that the National Ambient Air Quality Standards (NAAQS), prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented.'' The Utilities comment that Ohio's calculation of 240 allowances cannot, by itself, show that the NAAQS are protected by OAC 3745–14–05(C)(7), despite anti-backsliding being the impetus for Ohio's submittal.

40 CFR part 51, Appendix V 2.2(e) requires ''Modeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis.'' The Utilities comment that Ohio's submittal does not contain an equivalency demonstration or a modeling demonstration, and that modeling is necessary when reductions are made from sources outside the area. The Utilities believe Ohio EPA should have conducted modeling to support their submittal yet did not.

Response: EPA disagrees with the Utilities' comments on both substantive and process grounds. For the substance of 40 CFR part 51, Appendix V section 2.2(c), Ohio has specified that the rule provides 240 tons of NO_X emission reduction. This number is completely specific and is precisely the type of information that EPA seeks under this section of Appendix V. EPA believes that sections 2.2(d) and 2.2(e) are not relevant to this submittal. EPA uses Appendix V to judge the completeness of a variety of submittals, and EPA must apply only those criteria that are germane to EPA's ultimate decision regarding approvability of the submittal. States routinely submit rules that address control requirements (e.g., to provide reasonably available control technology or, as here, to provide emission reductions to avoid backsliding) which are judged independently of whether the applicable areas are progressing satisfactorily toward attainment or whether modeling has been done to estimate the ambient impact. The factual statements by Ohio EPA personnel that were attached to the Utilities' comments (e.g., that no modeling was performed in support of the submittal) do not alter EPA's views that the submittal was complete.

Furthermore, in absence of a completeness determination by EPA within 6 months of receiving the submittal, Ohio's October 6, 2006, submittal became complete 6 months thereafter, pursuant to section 110(k)(1)(B) of the Clean Air Act. EPA does not have the discretion now to find the submittal incomplete.

Comment: The Utilities comment that Ohio's proposed revision to OAC 3745–14–05 does not meet the anti-backsliding requirements of 40 CFR 51.900–51.905. The Utilities state that Ohio did not provide photochemical modeling. They also state that Ohio did not sufficiently demonstrate a benefit to the Cincinnati and Dayton areas, nor can Ohio demonstrate actual reductions in those areas. The Utilities state that EPA Region 5 sent a letter to Ohio on September 20, 2005, in which EPA said that Ohio could claim reductions outside the Cincinnati and Dayton areas so long as they ''demonstrate'' that the reductions benefit the Cincinnati and Dayton areas.

Response: EPA is satisfied with Ohio's demonstration that retiring 240 NO_X allowances will make surplus 240 of the roughly 10,000 tons of NO_X reductions made from Cincinnati and Dayton area utilities by 2006, which clearly provides benefit to the Cincinnati and Dayton areas. EPA does not require modeling to know that creating 240 surplus allowances will allow the State to credit 240 of the more than 10,000 tons of NO_X emission reductions toward compensation for loss of E-Check in 2006. Based on the information that Ohio EPA has provided, EPA is satisfied that the retirement of 240 NO_X allowances from the 2005 control period will benefit the Cincinnati and Dayton areas.

Comment: The Utilities comment that today's action will undermine the Utilities' pollution control strategies and confidence in the NO_X SIP Call rule. The Utilities state that ''random confiscation'' of allowances undermines the market system in a way similar to counterfeiting money.

Response: EPA believes that removing 240 allowances out of a pool of about half a million allowances will not have an appreciable negative effect on the functioning of the NO_X SIP Call. The deliberate process that Ohio and EPA have followed in retiring allowances that had been set aside and not issued to any source provided utilities ample opportunity to plan for not receiving any of these allowances.

III. What action is EPA taking today?

EPA is approving OAC 3745–14–05(C) as submitted by Ohio on October 6, 2006. EPA is approving the withdrawal and permanent retirement of 240 NO_X new source set aside allowances from the 2005 control period. This action adds a new paragraph (C)(7) to OAC 3745–14–05, and re-orders the existing paragraphs from (C)(7) through (C)(9) to (C)(8) through (C)(10).

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' 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 rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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).

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 April 14, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Oxides of nitrogen budget trading program.

Dated: January 30, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(141) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(142) On October 6, 2006, Ohio submitted revisions to Ohio Administrative Code (OAC) Chapter 3745–14–05 to permanently retire 240 new source set aside allowances from the State's oxides of nitrogen budget trading program.

(i) *Incorporation by reference.*

(A) Ohio Administrative Code Rule 3745–14–05 ''NO_X Allowance Allocations,'' effective July 17, 2006.

[FR Doc. E8–2506 Filed 2–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2006–0920, FRL–8522–3]

Approval and Promulgation of Implementation Plans; New Jersey; Zero-Emission Vehicle Component of the Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving, through model year 2011, the portion of New Jersey's low emission vehicle program related to the manufacture and sale of zero-emission vehicles, consistent with California's current low emission vehicle regulations. EPA previously approved New Jersey's low emission vehicle program, but did not take action on the zero-emission vehicle provisions. The intended effect of this action is to approve, as consistent with section