



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2015-0522; FRL-9954-21-Region 5]**

**Air Plan Approval; Ohio; Removal of Gasoline Vapor Recovery Requirements.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, as a revision under the Clean Air Act (CAA) to the Ohio state implementation plan (SIP), submittals from the Ohio Environmental Protection Agency (Ohio EPA) dated July 15, 2015, and February 29, 2016. The revision addresses the state's Stage II vapor recovery (Stage II) program for the Cleveland, Cincinnati, and Dayton ozone areas in Ohio. The revision removes Stage II requirements for the three areas as a component of the Ohio ozone SIP. The revision also includes a demonstration that addresses emission impacts associated with the removal of the Stage II program. EPA proposed to approve the state's submittal on June 30, 2016, and received no comments.

**DATES:** This final rule is effective on **[insert date 30 days after publication in the federal register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0522. All documents in the docket are listed in the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 through <http://www.regulations.gov>, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061, [acevedo.francisco@epa.gov](mailto:acevedo.francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

**I. What is being addressed by this document?**

On June 30, 2016, at 81 FR 42597, EPA proposed to approve amendments to OAC 3745-21-09 (DDD) that remove Stage II requirements from the Ohio ozone SIP and allow gasoline dispensing facilities currently implementing Stage II in the

Cleveland, Cincinnati and Dayton areas to decommission their systems by 2017. The revision included amended copies of OAC 3745-21-09 (DDD), as adopted on April 29, 2013, and January 17, 2014; a summary of Ohio-specific calculations, based on EPA guidance, used to calculate program benefits and demonstrate widespread use of onboard refueling vapor recovery (ORVR) in Ohio; and a CAA section 110(l) demonstration that includes documentation that analyzes the period, 2013-2017, when Stage II requirements were waived in Ohio but widespread use of ORVR has not yet occurred.

**II. What comments did we receive on the proposed SIP revision?**

EPA provided a 30-day review and comment period on the proposed action. The comment period closed on August 1, 2016. EPA received no comments.

**III. What action is EPA taking?**

EPA is approving revisions to the Ohio ozone SIP submitted by the state dated July 15, 2015, and February 29, 2016, for the state's Stage II program in Ohio. EPA finds that the revisions will not interfere with any applicable requirement concerning attainment, reasonable further progress or any other applicable CAA requirement.

**IV. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with

requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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,  
Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: October 5, 2016.

Robert A. Kaplan,  
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

2. In § 52.1870 the table in paragraph (c) is amended under “Chapter 3745-21 Carbon Monoxide, Ozone, Hydrocarbon Air Quality Standards, and Related Emission Requirements” by revising the entry for 3745-21-09 "Control of Emissions of Volatile Organic Compounds from Stationary Sources and Perchloroethylene from Dry Cleaning Facilities" to read as follows:

**§ 52.1870 Identification of plan.**

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(c) \* \* \*

EPA-APPROVED OHIO REGULATIONS

Ohio Citation	Title/Subject	Ohio Effective Date	EPA Approval Date	Notes
* * * * *	Chapter 3745-21 Carbon Monoxide, Ozone, Hydrocarbon Air Quality Standards, and Related Emission Requirements			
* * * * *				
3745-21-09	Control of Emissions of Volatile Organic Compounds from Stationary Sources and Perchloroethylene from Dry Cleaning Facilities	1/17/2014	<b>[insert date of publication in the Federal Register], [Insert Federal Register citation]</b>	except (U) (1) (h) .
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