



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2012-0990 FRL-10005-04-Region 5]

**Air Plan Approval; Ohio; Prevention of Significant Deterioration
Greenhouse Gas Tailoring Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), a revision to Ohio's State Implementation Plan (SIP) as requested by the Ohio Environmental Protection Agency (OEPA) on March 30, 2011, and amended on August 22, 2019 and December 10, 2019. The revision to Ohio's SIP modifies Ohio's Prevention of Significant Deterioration (PSD) program to establish emission thresholds for determining when stationary source projects are potentially subject to Ohio's PSD permitting requirements for greenhouse gas (GHG) emissions. Consistent with Ohio's requests, EPA is taking no action on paragraphs (B), (C), and (D) of Ohio's GHG rule.

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2012-0990. 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 through www.regulations.gov or 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 Richard Angelbeck, Environmental Scientist, at (312) 886-9698 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Richard Angelbeck, Environmental Scientist, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9698, angelbeck.richard@epa.gov.

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

I. Background Information.

On November 18, 2019, EPA proposed to approve a revision to Ohio's PSD rules contained in Ohio Administrative Code (OAC) 3745-31 to include Ohio's 3745-31-34 GHG rule. See 84 FR 63601,

November 18, 2019. An explanation of the CAA requirements, a detailed analysis of the proposed revision, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM), and will not be restated here. The public comment period for this proposed rule ended on December 18, 2019. EPA received four comments on the proposal.

II. Response to Comments.

During the comment period, EPA received four comments on the November 18, 2019 NPRM. None of the four comments were adverse to the proposed action.

The first comment was anonymous and was in support of the proposed approval of Ohio's GHG rule, and also asked why the rule was only being implemented in Ohio. The second comment was Ohio's December 10, 2019 request that EPA not act on the OAC 3745-31-34(B) paragraph in the submittal. The third comment was from the Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association and was in support of Ohio's December 10, 2019 request that EPA not act on paragraph (B) of Ohio's OAC 3745-31-34 GHG rule. The last comment was anonymous and not germane or relevant to this action because it lacks the required specificity to the proposed SIP revision and relevant requirements of CAA section 110(1). Moreover, the comment does not recommend a different action on the SIP submission from what EPA proposed. All of the comments

received are included in the docket for this action. A summary of the comments and EPA's responses are provided below.

Comment 1: The anonymous commenter was in support of the proposed approval of Ohio's GHG rule, but also asked why this GHG rule was only being implemented in Ohio seeing that there are plenty of other states with stationary source projects.

Response 1: OEPA is the air permitting authority for the State of Ohio and can only regulate emissions from permitted sources in Ohio. Other states have developed GHG rules to regulate GHG emissions from their own respective state.

Comment 2: On December 10, 2019, Ohio submitted a comment on the proposed approval of their GHG rule. This comment requested that EPA not act on OAC 3745-31-34(B), thus, this request amends the March 30, 2011 SIP revision submittal. Ohio is considering changes to OAC 3745-31-34 (B), (C), and (D), as well as the OAC 3745-77-11 GHG title V rule, thus, requested that EPA not act on those sections.

Response 2: EPA will grant Ohio's request to not act on paragraph (B) of their OAC 3745-31-34 GHG rule. Paragraph (B) is the portion of Ohio's submittal that would have allowed GHG sources with actual emissions of GHGs less than 100,000 tons per year (tpy) to have their potential to emit of GHGs be considered to be less than the 100,000 tpy GHG threshold if they submitted a permit application prior to July 1, 2011. EPA agrees that

paragraph (B) is not needed in the Ohio SIP because it is moot due to the fact that Ohio doesn't have any pending permit applications for which might be affected by this rule section which dealt with permit applications submitted prior to July 1, 2011.

Comment 3: The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce and the Ohio Manufacturers' Association expressed support of Ohio's request (see comment 2 above) for EPA to not act on OAC 3744-31-34(B). They explained their concern that paragraph (B) is mooted by time because Ohio doesn't have any pending permit applications prior to July 1, 2011, and that paragraph (B) deals with GHG Tailoring Rule Step 2 sources which are no longer regulated by EPA. The comment further states that approval of paragraph (B) would serve no purpose and would only create confusion over the proper mechanisms for avoiding GHG PSD requirements for sources covered by GHG Tailoring Rule Step 1 sources.

Response 3: EPA agrees with the commenter and will not act on OAC 3745-31-34(B).

III. Final Action.

EPA is approving Ohio's March 30, 2011 SIP submittal, as amended on August 22, 2019 and December 10, 2019, relating to PSD requirements for GHG-emitting sources in OAC 3745-31-34. Specifically, Ohio's SIP revision establishes appropriate

emissions thresholds for determining PSD applicability for new and modified GHG-emitting sources in accordance with EPA's GHG Tailoring Rule and the 2014 *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427 decision. Per Ohio's August 22, 2019 and December 10, 2019 amended SIP requests, EPA is not acting on OAC 3745-31-34 (B), (C), and (D), or OAC 3745-77-11, which is Ohio's GHG title V rule. In the November 18, 2019 NPRM, EPA proposed to approve OAC 3745-31-34(B), but EPA is not acting on that paragraph due to Ohio's December 10, 2019 request.

As a result of EPA's approval of Ohio's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into Ohio's SIP, paragraph (b) in 40 CFR 52.1873, as included in EPA's PSD Narrowing Rule, is no longer necessary. In this final action, EPA is also amending 40 CFR 52.1873 to remove this unnecessary regulatory language.

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. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION**

CONTACT section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, 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 in the next update to the SIP compilation.¹

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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

¹ 62 FR 27968 (May 22, 1997).

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 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, and Reporting and recordkeeping requirements.

Dated: January 23, 2020.

Kurt A. Thiede,
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 by adding an entry in numerical order under "Chapter 3745-31 Permit-to Install New Sources and Permit-to-Install and Operate Program" for "3745-31-34" to read as follows:

§ 52.1870 Identification of plan.

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(c) * * *

EPA--APPROVED OHIO REGULATIONS

| Ohio Citation | Subject | Ohio Effective Date | EPA approval date | Comments |
|--|--|---------------------|---|------------------------------|
| * * * * * | | | | |
| Chapter 3745-31 Permit-to Install New Sources and Permit-to-Install and Operate Program | | | | |
| * * * * * | | | | |
| 3745-31-34 | Permits to install for major stationary sources and major modifications of sources emitting greenhouse gases | 3/31/2011 | <u>[insert date of publication in the Federal Register]</u> , [insert Federal Register citation] | Except for (B), (C) and (D). |
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§52.1873 [Amended]

3. Section 52.1873 is amended by removing and reserving paragraph (b).