



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2019-0522; FRL-10007-21-Region 5]

Air Plan Approval; Ohio; Revisions to NO_x SIP Call Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving under the Clean Air Act (CAA) a request from the Ohio Environmental Protection Agency (Ohio EPA) to revise the Ohio State Implementation Plan (SIP) to incorporate revisions to Ohio Administrative Code (OAC) Chapter 3745-14 regarding the Nitrogen Oxides (NO_x) SIP Call. This SIP revision approves additional monitoring options for certain covered sources for NO_x SIP Call purposes.

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2019-0522. 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 Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, svingen.eric@epa.gov.

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

I. What is the background for this final rule?

On October 27, 1998, EPA published the NO_x SIP Call, which required eastern states, including Ohio, to submit SIPs that prohibit excessive emissions of ozone season NO_x by implementing statewide emissions budgets (63 FR 57356). Under the NO_x SIP Call regulations as originally promulgated, where a state's SIP relies on control measures for Electric Generating Units (EGUs) and large non-EGUs to achieve the required emissions reductions,

the SIP must also require these sources to monitor emissions according to the provisions of 40 CFR part 75, which generally entails the use of continuous emission monitoring systems (CEMS). Ohio triggered this requirement by including control measures in their SIP for these types of sources, and the requirement has remained in effect despite the discontinuation of the NOx Budget Trading Program under the NOx SIP Call after the 2008 ozone season.

On March 8, 2019, EPA finalized updates to the NOx SIP Call regulations that make the inclusion of 40 CFR part 75 monitoring requirements for these sources in SIPs optional rather than mandatory for NOx SIP Call purposes (84 FR 8422). Under the updated provision, a state's SIP would still need to include some form of emissions monitoring requirements for these types of sources, consistent with the NOx SIP Call's general enforceability and monitoring requirements, but states would no longer be required to satisfy these general NOx SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements. In Ohio, the sources potentially affected by this amendment include large non-EGUs covered by the NOx SIP Call that are not required to monitor according to 40 CFR part 75 under other programs such as the Acid Rain Program or a Cross-State Air Pollution Rule (CSAPR) trading program.

On August 26, 2019, Ohio EPA submitted a request that EPA update Ohio's SIP to reflect revised rules at OAC Chapter 3745-14. The revised rules expand the set of allowed monitoring methodologies available to Ohio's large non-EGUs for NOx SIP Call purposes and set forth the process by which an affected source's designated representative may apply to the Ohio EPA director for an installation or operating permit authorizing the source to switch to one of the newly allowed methodologies. The new methodologies include one based on 40 CFR part 60 monitoring procedures and another based on monitoring of heat input combined with the use of an approved source-specific emission factor. On November 4, 2019, EPA published a rulemaking proposing to approve Ohio's request to update the Ohio SIP to reflect these revised rules (84 FR 59327). Public comments on the proposal were due by December 4, 2019. EPA's rationale for approving Ohio's request, including EPA's basis for finding that approval of the request is not prohibited by section 110(1) of the CAA, is set forth in the proposal and is not repeated here except as necessary to respond to comments.

II. What are EPA's responses to comments?

During the comment period, EPA received two comments, both of which are available in the docket for this action. One comment is supportive of EPA's proposed action. The second comment, which was submitted in two parts, questions whether

approval of the revised rules into the Ohio SIP would be consistent with certain EPA guidance documents and requests that the monitoring requirements for individual sources be approved into the SIP. A summary of the second comment and EPA's response is provided below.

Comment: The commenter first cites an EPA guidance document, referred to here as the Blue Book, which discusses SIP approvability considerations for state rules establishing reasonably available control technology (RACT) requirements for volatile organic compounds (VOC).¹ The comment quotes from a section headed "Exemptions, Variances, and Alternative Means of Control" addressing state rules that include what the document calls "generic" provisions. The commenter asks how EPA is "meeting the requirements that pertain to generic regulations" in the Blue Book.

Next, the commenter cites a different EPA guidance document, referred to here as the Generic RACT Rule Guidance,

¹ "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations - Clarification to Appendix D of November 24, 1987 Federal Register," May 25, 1988, revised January 11, 1990 (the "Blue Book"). Though the commenter did not submit a copy of the cited document with its comment, the document is available in the docket for this action and online at https://www.epa.gov/sites/production/files/2016-08/documents/voc_bluebook_25may1988.pdf. The commenter cites to page 238 of a compilation that includes most of the original 1988 version of the Blue Book along with over 40 other EPA guidance documents. EPA has docketed the revised 1990 version of the Blue Book but has not docketed the other documents in the compilation because the comment does not address them. The changes between the 1988 and 1990 versions of the Blue Book are not germane to the comment. The Blue Book section containing the quoted language appears on pages 1-3 to 1-4 of both versions.

which discusses SIP approvability considerations for state rules that do not currently have specific RACT requirements established for sources, but where there is a general regulatory requirement that certain sources meet RACT and that those RACT limits be submitted to EPA for approval.² The commenter quotes from the document's definition of a "generic" rule and asks EPA to "explain how Ohio's generic process-setting rule is allowed when no specific monitoring requirements are being established at this time."

Finally, the commenter asks EPA to "affirmatively state that sources wishing to use alternative monitoring methods under [Ohio's monitoring rule] must be approved by EPA into the Ohio SIP" and that "without this approval the sources must still comply with the normal monitoring methods even if the source is granted approval at the state level."

Response: EPA does not agree that approval of Ohio's rule revisions into the SIP would be inconsistent with the cited EPA guidance documents or that individual sources' specific monitoring requirements for NOx SIP Call purposes must be approved into the SIP.

² "Approval Options for Generic RACT Rules Submitted to Meet the Non-CTG VOC RACT Requirement and Certain NOx RACT Requirements," November 7, 1996 (the "Generic RACT Rule Guidance"). Though the commenter did not submit a copy of the cited document with its comment, the document is available in the docket for this action and online at https://www.epa.gov/sites/production/files/2016-08/documents/shavermemogenericract_7nov1996.pdf.

With respect to the suggestions of inconsistencies with the cited guidance documents, EPA disagrees that the documents apply to this action, for two principal reasons. The first reason is that the focus of both documents is the approvability of state rules establishing emission control requirements to meet certain provisions of the CAA requiring SIPs to include provisions to implement RACT at certain sources in nonattainment areas, see CAA section 182(b)(2), not monitoring requirements. This action does not concern such RACT emission control requirements. The control measure that Ohio's affected non-EGUs are using to meet the underlying emissions reduction requirements under the NOx SIP Call for purposes of addressing the provisions of CAA section 110(a)(2)(D)(i)(I) - specifically, a collective cap on the sources' seasonal NOx mass emissions - has already been approved into the Ohio SIP, see 84 FR 48789 (September 17, 2019), and Ohio has not sought to modify those requirements in this SIP revision. The Ohio rule revisions at issue in this action address only the monitoring methodologies that will be available for use by the affected sources to demonstrate compliance with the approved section 110(a)(2)(D)(i)(I) control measure.

The second reason EPA disagrees that the cited guidance documents apply to this action is that - even assuming that in some situations the considerations raised in the documents with

regard to a "generic" emission control provision might also be relevant to a "generic" monitoring rule - the revised Ohio monitoring rule at issue in this action is not a "generic" rule as defined in either document. Those guidance documents generally define a "generic" rule as one that commits sources to comply with an underlying Federal obligation in the future while deferring establishment of the actual requirements that sources must meet. The commenter does not identify what aspect of the State's monitoring rule would indicate that it is "generic," and EPA believes that the revised Ohio monitoring rule is not "generic" under the definition provided in these guidance documents. Rather, the rule in fact does prescribe the actual monitoring requirements that sources must meet and it does not authorize deviations from these requirements.³ The fact that the rule provides flexibility by allowing sources to choose from a menu of several alternative approved monitoring methodologies does not render the rule "generic." Other monitoring regulations, including the provisions at 40 CFR part 75 which the State's SIP currently applies for purposes of meeting the

³ EPA acknowledges that under the revised Ohio monitoring rule, the State rather than EPA is responsible for approving the source-specific "emission factors" that sources would use to calculate reported NOx mass emissions under one of the allowed monitoring methodologies. However, the rule includes criteria to guide the State's determination for each source and requires periodic verification of the approved emission factors through stack testing. EPA does not view the rule as providing the State a degree of discretion sufficient for the rule to be considered "generic" in the sense discussed in either guidance document, should such documents even apply to such provisions.

NOx SIP Call requirements, similarly offer at least some sources a choice among multiple approved monitoring methodologies. See, e.g., appendices D and E to 40 CFR part 75 and 40 CFR 75.19. Consistent with EPA's 2019 amendments to the NOx SIP Call regulations, Ohio's revised monitoring rule merely expands the menu of approved monitoring methodologies available to its large non-EGUs for NOx SIP Call purposes to include certain additional alternatives (beyond the previously allowed 40 CFR part 75 monitoring methodologies) and sets forth the permit modification process that sources must follow when switching from one approved methodology to another.

With respect to the commenter's request that EPA require the NOx SIP Call monitoring requirements for individual sources to be approved into the SIP (in addition to approval by the State under the rule at issue in this action), EPA does not agree that this is a necessary condition of approving the SIP revision under the NOx SIP Call regulations. In the proposal for this action, EPA explained the proposed rationale for approval of the SIP revision - namely, that the emissions data monitored and reported under Ohio's revised rules using the expanded menu of allowed monitoring approaches would be sufficient to determine whether the State's large non-EGUs are in compliance with their collective emissions cap for NOx SIP Call purposes. See 84 FR at 59330. The commenter has provided

no information suggesting either that the emissions data obtained under Ohio's revised rules as submitted would be insufficient to determine compliance with the collective emissions cap or that approval of individual sources' monitoring requirements into the SIP is needed to ensure that the data would be sufficient. Accordingly, EPA is approving Ohio's revised rules into the SIP for the reasons discussed in the proposal and does not find it necessary for the State to seek SIP approval of the individual sources' monitoring requirements for NOx SIP Call purposes.

III. What Action is EPA Taking?

EPA is approving Ohio EPA's request to modify its SIP to include the revisions at OAC rules 3745-14-01, 3745-14-04, and 3745-14-08.

This action is effective immediately upon publication in the Federal Register. Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), which applies to this action, generally requires that actions covered by the section become effective not less than 30 days after publication but also provides several exceptions. Under section 553(d)(1), a rulemaking action may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction." This action falls within the exception under section 553(d)(1) because the nature of the rule changes

being approved is to relieve a restriction by allowing certain additional types of monitoring instead of allowing only monitoring in accordance with 40 CFR part 75. Additionally, section 553(d) (3) allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period generally prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This action, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this action allows Ohio to authorize the use of approved monitoring methodologies from a menu of alternatives that would be expanded to include options beyond the previously allowed 40 CFR part 75 monitoring methodologies, following a request by the source. Any changes in the specific requirements applicable to a particular affected source will be authorized through state permitting processes that provide additional notice to the source. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) (3) for this action to become effective on the date of publication in the Federal Register.

In addition to approving the State rule revisions discussed above into the Ohio SIP, in this action EPA is also revising the table entry in the regulations at 40 CFR 52.1870(c) for OAC rule

3745-14-03, which was approved into the SIP in a previous action (84 FR 48789, September 17, 2019). The revisions to the table entry have no substantive effect but clarify EPA's regulations by correcting the title and State-effective date shown for Ohio's rule.

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.⁴

⁴ 62 FR 27968 (May 22, 1997).

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);
- 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 27, 2020.

Kurt 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 revising the section entitled “Chapter 3745-14 Nitrogen Oxides - Reasonably Available Control Technology” to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/Subject	Ohio effective date	EPA Approval date	Notes
Chapter 3745-14	Nitrogen Oxides—Reasonably Available Control Technology			
3745-14-01	Definitions and General Provisions	8/22/2019	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal Register citation]	
3745-14-03	Permit Requirements	1/29/2018	9/17/2019, 84 FR 48789	
3745-14-04	Compliance Certification	8/22/2019	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal Register citation]	
3745-14-08	Monitoring and Reporting	8/22/2019	<u>[insert date of publication in the Federal Register]</u> , [Insert Federal	

			Register citation]	
3745-14-11	Portland Cement Kilns	7/18/2002	8/5/2003, 68 FR 46089	
3745-14-12	Stationary Internal Combustion Engines	5/7/2005	2/4/2008, 73 FR 6427	
*	*	*	*	*

* * * * *

[FR Doc. 2020-06819 Filed: 4/7/2020 8:45 am; Publication Date: 4/8/2020]