



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2020-0126; FRL-10020-53-Region 5]**

**Air Plan Approval; Ohio; NSR Program Administrative Rules**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), new and updated administrative rules for the Ohio State Implementation Plan (SIP) for the New Source Review (NSR) permitting program. The new and amended administrative rules in the Ohio Administrative Code (OAC) would replace the currently effective procedural rules in the NSR SIP in their entirety. As part of this action, EPA is also proposing to approve the removal of obsolete language related to Significant Deterioration of Air Quality.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2020-0126 at <http://www.regulations.gov>, or via email to [Damico.Genevieve@epa.gov](mailto:Damico.Genevieve@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **"FOR FURTHER INFORMATION CONTACT"** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Mari González, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6175, [Gonzalez.Mari@epa.gov](mailto:Gonzalez.Mari@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

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

- I. Background.
- II. What Action is EPA Taking?
- III. Incorporation by Reference.

#### IV. Statutory and Executive Order Reviews.

##### **I. Background.**

###### *A. NSR Administrative Rules*

On January 10, 2003 (68 FR 1366), EPA approved Ohio's procedural rules in OAC 3745-47 into the NSR SIP. These rules included processes for public notice procedures for permits in attainment and nonattainment areas.

On April 2, 2012, Ohio EPA adopted the new and amended rules of OAC 3745-47 and OAC 3745-49, which updated administrative and adjudication procedures and moved public notice procedures from OAC 3745-47 to OAC 3745-49.

On July 27, 2019, Ohio EPA adopted amendments to OAC 3745-49 to allow for modern electronic methods to be used for public noticing of SIP related projects and not limiting the process to publication of public notices in a newspaper.

On February 28, 2020, Ohio EPA submitted new and amended rules to EPA for approval which would replace OAC chapter 3745-47. The new and amended rules are located in OAC chapters 3745-49-01 "Administrative Procedures", 3745-49-02 "Administrative procedures - definitions", 3745-49-05 "Draft actions and proposed actions", 3745-49-06 "Issuance of final actions", 3745-49-07 "Public notice", and 3745-49-08 "Contents of public notices".

###### *B. Significant Deterioration of Air Quality*

On June 19, 2020, Ohio EPA submitted a request to remove obsolete language in 40 CFR 52.1884. As explained below, EPA is

proposing to approve the deletion of this section from the SIP because Ohio has a SIP-approved Prevention of Significant Deterioration (PSD) program, and EPA concurs that the provision is obsolete.

## **II. What Action is EPA Taking?**

### *A. NSR Administrative Rules*

EPA is proposing to approve revisions to the Ohio SIP submitted on February 28, 2020. This submittal includes revisions which replace the entire existing SIP-approved procedural rules in OAC 3745-47 with the administrative rules from OAC 3745-49-01, 3745-49-02, 3745-49-05, 3745-49-06, 3745-49-07, and 3745-49-08.

The rules in OAC 3745-49-01, which EPA is proposing to approve, pertain to administrative procedures and are composed of reorganized portions of previously SIP-approved rules from OAC 3745-47-01, 3745-47-02, and 3734-03. These rules detail the applicability and construction of administrative procedures rules. EPA finds that the revisions are consistent with Federal provisions for administrative procedures for SIPs found in 40 CFR 51.163.

The rules in OAC 3745-49-02 contain administrative procedures definitions. This chapter of the rules contains reorganized definitions from previously approved chapter 3745-47-03, as well as new definitions. New definitions include: (C) (1) "claimant" which is added to define a person who claims information submitted to an agency is confidential because it

constitutes a trade secret; (C) (2) "complainant" which defines a person who has filed a verified complaint; (P) (2) "personal knowledge" which is added to define knowledge gained through first hand observation or experience; (P) (4) "proposed public copy" which defines a version of information submitted to the agency which omits trade secret information; (P) (5) "public copy" which defines a version of information maintained by the agency which omits trade secret information; (P) (7) "public record" which is added to clarify that it has the same meaning as in section 149.43 of Ohio's Revised Code; (T) "trade secret" which is added to define information, not including discharge or emissions data, that is reasonable to maintain its secrecy and derives independent economic value from not being generally known; and (U) "unredacted copy" which defines a complete official version of information submitted to an agency from which trade secret information has not been withheld. The definition for (V) "verified complaint" which was previously approved into the SIP was revised and defined as a complaint which meets the requirements of ORC 3745.08 and OAC 3745-49-12. The remaining definitions in this section contain minor word changes and are reformatted versions of previously approved definitions from OAC 3745-47. The definitions in OAC 3745-49-02 are not defined within the Federal rules, and their approval into the SIP would not cause inconsistencies with the application of Federal regulations. EPA finds that the revised language and new definitions are consistent with Federal

requirements for administrative procedures for SIPs found in 40 CFR 51.163.

The rules in OAC 3745-49-05, which EPA is proposing to approve, contain language on draft actions and proposed actions. This chapter contains language which has been reformatted and expanded from previously approved rules in OAC 3745-47-05 and 3745-47-07. EPA finds that the revisions are consistent with Federal requirements.

The rules in OAC 3745-49-06 contain language on the issuance of final actions. This chapter contains language which has been reformatted from previously approved rules in OAC 3745-47-05 and 3745-47-07. EPA finds that non-substantive changes have been made to the previously approved rule language, and the revisions are consistent with Federal requirements.

The rules in OAC 3745-49-07 contain updates to public notice requirements for SIP-related projects. This chapter contains reorganized and amended rules from previously approved chapter 3745-47-07 as well as new changes. The changes update noticing procedures for public notices in subparts (B)(1) and (B)(2) related to Ohio's SIP developed under section 110 of the CAA to allow for more modern electronic methods to be used. EPA anticipates that allowing for electronic methods of providing notice, which is already being practiced by many permitting authorities, will allow permitting authorities to communicate affected actions to the public more quickly and efficiently, expand access, and will provide cost savings over newspaper

publications. States are obligated to provide notice of new and updated SIPs and offer the opportunity to comment through hearings. The remaining changes in this chapter include minor revisions and reorganized rules. EPA has determined that the revised rules regarding public noticing of SIP-related projects comply with Federal definitions and provisions found at 40 CFR 51.102 which detail procedural requirements for public hearings related to the preparation, adoption, and submittal of implementation plans. EPA finds that the remaining minor revisions in this chapter are also consistent with Federal requirements.

The rules in OAC 3745-49-08 contain requirements for contents of public notices. This chapter contains reorganized rules from previously approved chapters 3745-47-08 and 3745-47-05, amended rules, as well as new requirements. New requirements were added in subparts (A) (3) and (D) (3) to require that public notices of actions and public meetings, respectively, include instructions for those desiring to obtain additional information, a copy of any factsheet prepared, or a copy of the action. Similarly, new requirements were also added to subparts (A) (4) and (D) (4) to require public notices of actions and public meetings to include instructions for those desiring to be included in the mailing list. Language in subpart (B) (3) (c) was added to clarify that a draft action or proposed action shall not become final if an adjudication hearing is timely requested. New requirements for public

notices of public meetings in subpart (D) (8) include requirements for providing a statement of issues to be addressed at a public meeting if activities or operations that are the subject of the action are not included in the public notice. The new language in subpart (D) (9) was added to require a statement that the purpose of the public meeting was to obtain additional information which the director will consider prior to taking further action on the matter under consideration. Part (E) was added to OAC 3745-49-08 to include requirements for public notices of verified complaints. Language in part (F) was reorganized from previously approved language in OAC 3745-47-08 and subpart (F) (5) was added to clarify that all other public notices shall also include a statement specifying that written comments regarding the subject of the public notice may be submitted within thirty days or any longer period as specified by the Ohio EPA. Additional new language in this chapter includes subpart (G) which addresses cases where duplicate information is required in multiple notices, subpart (H) which specifies the requirements for notices of any action to modify an action of the director, and subpart (I) which specifies that all notices required by OAC 3745-49-07 may be in summary form. The remaining language in OAC 3745-49-08 includes reorganized rules from previously approved chapters. EPA finds that the minor revisions and new rules in this chapter are consistent with Federal provisions and requirements concerning public availability of information found in 40 CFR 51.161.

EPA has determined that the rules in OAC 3745-49 are consistent with EPA's PSD regulations and that approval of these amendments, revisions, and new rules is consistent with the requirements of CAA section 110(1) and will not adversely impact air quality. For these reasons, EPA is proposing to approve these rules into the Ohio SIP.

*B. Significant Deterioration of Air Quality*

EPA is also proposing to approve the removal of 40 CFR 52.1884 from the CFR. 40 CFR 52.1884 incorporates the provisions of the Federal PSD program into Ohio's state plan and only applies when the requirements of sections 160 through 165 of the CAA are not met. Since Ohio's PSD program was approved into the SIP on January 22, 2003 (68 FR 2909), this language is no longer applicable. The language contained in 40 CFR 52.1884 became obsolete when EPA delegated authority to Ohio EPA to implement the Federal PSD program.

EPA has determined that removal of this obsolete language would not interfere with any applicable requirement concerning attainment and reasonable further progress and that approval of this revision is consistent with the requirements of CAA section 110(1) and will not adversely impact air quality. Therefore, EPA is proposing to approve deletion of the obsolete language from the Ohio SIP.

**III. Incorporation by Reference.**

In this action, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference.

In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following rules in Ohio Administrative Code Chapter 3745-49: Rules 3745-49-01, 3745-49-02, 3745-49-06, and 3745-49-08, effective April 2, 2012 and Rule 3745-49-07, effective July 27, 2019, discussed in Section II of this action. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://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).

#### **IV. 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);
- 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).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 22, 2021

Cheryl Newton,  
Acting Regional Administrator, Region 5.

[FR Doc. 2021-03984 Filed: 2/25/2021 8:45 am; Publication Date: 2/26/2021]