



BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2024-0034; FRL-11775-01-R5]**

**Air Plan Approval; Ohio; OAC Chapter 3745-17 Particulate Matter**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve assorted revisions to Ohio's particulate matter rules that the state requested EPA approve into the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). The updates to Ohio's particulate matter rules include revisions to remove provisions for facilities or emissions units that have permanently shut down, update facility names and addresses, and make nonsubstantive revisions to the language of the rules.

**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-2024-0034 at <https://www.regulations.gov>, or via email to [langman.michael@epa.gov](mailto:langman.michael@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 <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Emily Crispell, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson

Boulevard, Chicago, Illinois 60604, (312) 353-8512, *crispell.emily@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.

### **I. History of Submittal.**

The Ohio Environmental Protection Agency (Ohio EPA<sup>1</sup>) is subject to requirements to review each of its regulations every five years, to assess whether any updates to the regulations are warranted and for other purposes. Accordingly, Ohio EPA reviewed its regulations in Ohio Administrative Code (OAC) Chapter 3745-17, entitled "Particulate Matter Standards," and adopted various revisions amending and updating these rules. Ohio EPA then requested that EPA approve these revisions into the SIP, in a submittal dated January 18, 2024.

As a result of its review, Ohio EPA concluded that rule revisions were needed to remove provisions that are no longer necessary because the affected facility has permanently shut down. A second set of revisions Ohio EPA

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<sup>1</sup> To avoid confusion, this action uses the term "Ohio EPA" as shorthand for the Ohio Environmental Protection Agency and the term "EPA" as shorthand for the United States Environmental Protection Agency.

made to its rules renumbered emissions units and updated addresses for facilities that have combined operations. A final set of revisions modified the wording of selected text to reflect new semantic preferences, reordered definitions alphabetically, and updated test method, publication and referenced material titles, effective dates, addresses and web sites.

Previous revisions to the rules in OAC 3745-17 included providing a category of power plants operating continuous opacity monitoring systems the option to demonstrate compliance with an alternate set of opacity limits. Ohio EPA requested approval of those revisions on June 4, 2003, but EPA proposed to disapprove those revisions on June 27, 2005, at 70 FR 36901. Subsequently, on September 5, 2014, Ohio EPA withdrew its submittal of these revisions. On June 1, 2018, Ohio EPA submitted revisions to OAC 3745-17 and requested that EPA not act on the alternate set of opacity limits. On February 21, 2024, Ohio EPA clarified that the state was not requesting EPA action on these provisions in its January 18, 2024, submittal.

## **II. Review of Other Rule Revisions.**

As summarized above, Ohio EPA's revisions to OAC 3745-17 include the removal of provisions that pertain to

facilities that have permanently shut down, renumbering of emissions units for facilities that have combined operations, and modification of wording for phrases that Ohio EPA wishes to rephrase. Chapter 3745-17 includes 11 rules, extending from 3745-17-01 to 3745-17-14 but not including the adopted but now rescinded rules numbered 3745-17-02, 3745-17-05, or 3745-17-06. Ohio EPA revised all 11 of these remaining rules. The following discussion reviews each rule revision individually.

*3745-17-01 "Definitions"*

The primary revisions to OAC 3745-17-01 include the addition of a section to the introduction explaining that the definitions in 3745-15-01 "General Provisions on Air Pollution Control" apply to the rules in chapter 3745-17, the renumbering of the referenced materials section to paragraph AA, the alphabetical reordering of definitions throughout the rule, and updates to publication dates and website URLs of referenced materials. No terms or definitions were added or removed from this section.

*3745-17-03 "Measurement Methods and Procedures"*

The primary revisions in this rule are editorial, for example the revision of references to terms defined in 3745-17-01 to reflect the new location of those terms that were reordered, the revision of the introduction paragraph

to show the Referenced Materials section is located under paragraph (AA), cleaning up sections 3745-17-03(B)(3), 3745-17-03(B)(4), 3745-17-03(B)(9) and 3745-17-03(B)(10) to renumber or remove references to rules that had been removed in previous rulemakings, and the removal of provisions that apply to facilities or emissions units that have permanently shut down. Additional editorial changes include removal of the use of "shall" in some instances, removing pronouns such as "his/her" and in instead referring to "the observer". EPA finds that these editorial revisions yield an equally acceptable regulation. While Ohio EPA requested approval of most of OAC 3745-17-03, Ohio EPA expressly excluded two elements of OAC 3745-17-03 from this request. One of these elements, in OAC 3745-17-03(B)(1)(b), offers an alternate opacity limit (in brief, authorizing 1.1 percent of nonexempt 6-minute opacity values to exceed 20 percent opacity) for power plants operating continuous opacity monitoring systems. The second, associated element is the phrase in OAC 3745-17-03(B)(1)(a) stating "Except as provided in paragraph (B)(1)(b) of this rule". These are provisions that Ohio EPA submitted on June 4, 2003, that EPA proposed to disapprove on June 27, 2005, and that Ohio EPA withdrew from consideration on September 5, 2014. Accordingly, EPA

is proposing to act on most of OAC 3745-17-03 but EPA is proposing not to act on subparagraph 3745-17-03(B) (1) (b) and the specified phrase in 3745-17-03(B) (1) (a) .

*3745-17-04 "Compliance Time Schedules"*

The primary revisions in this rule are the removal of provisions that apply to facilities or emissions units that have permanently shut down and the removal of references to paragraphs that were removed in previous rulemakings. EPA finds that these revisions are approvable.

*3745-17-07 "Control of Visible Particulate Emissions from Stationary Sources"*

The primary revisions in this rule include modifications to the introduction paragraph to show the information for referenced materials are located under paragraph (AA), and the removal of references to 3745-17-07(B) (9) and 3745-17-07(B) (10) as those paragraphs were removed in previous rulemakings. EPA finds that these revisions result in an equally protective set of rules and are approvable.

*3745-17-08 "Restriction of Emission of Fugitive Dust"*

The primary revisions in this rule are modifications to the terms defined in 3745-17-01 to reflect the new location of those terms that were reordered, changes to the introduction paragraph to show the information for

referenced materials is located under paragraph (AA), the removal of references to 3745-17-08(E) and 3745-17-08(F) as those paragraphs had been removed in previous rulemakings, and revising the facility name and address associated with Ohio EPA premise number 0641090010 in 3745-17-08(A)(3)(e) to reflect the facility name change from "Mingo Junction Steel Works LLC" to "JSW Steel USA Ohio" and the removal of the address for the north plant that has permanently shut down. EPA finds that these revisions are approvable.

*3745-17-09 "Restrictions on Particulate Emissions and Odors from Incinerators"*

The primary revisions in this rule are minor and editorial, for example changing the language from "shall apply" to "applies". EPA finds that these revisions are approvable.

*3745-17-10 "Restrictions on Particulate Emissions from Fuel-burning Equipment"*

Ohio EPA removed provisions that are moot due to the permanent shut down of an affected facility, and Ohio EPA made editorial revisions to remove references to paragraphs that were removed in previous rulemakings. EPA finds that these revisions are approvable.

*3745-17-11 "Restrictions on Particulate Emissions from Industrial Processes"*

The primary revisions in this rule are changes to terms defined in 3745-17-01 to reflect the new location of those terms that were reordered, removal of the use of "shall" in some instances, and the revision of the facility name associated with Ohio EPA premise number 1318001613 in 3745-17-11(B)(6) to reflect the facility name change from "ArcelorMittal Cleveland LLC" to "Cleveland-Cliffs Cleveland Works LLC". EPA finds that these revisions are approvable.

*3745-17-12 "Additional Restrictions on Particulate Emissions from Specific Air Contaminant Sources in Cuyahoga County"*

Most of the revisions to this rule are to remove provisions that are moot due to the permanent shut down of the affected source. Ohio EPA also updated the names of companies and emissions units in applicable cases. Additional editorial changes include the revision of the introduction paragraph to show the information for referenced materials is located under paragraph (AA). EPA finds that these revisions have no substantive effect on the requirements of the rule and are approvable.

*3745-17-13 "Additional Restrictions on Particulate Emissions from Specific Air Contaminant Sources in Jefferson County"*

As with OAC 3745-17-12, the revisions to OAC 3745-17-13 remove the provisions that apply to sources that have permanently shut down and update the names of affected companies where appropriate. EPA finds that these revisions have no substantive effect on the requirements of the rule and are approvable.

*3745-17-14 "Contingency Plan Requirements for Cuyahoga and Jefferson Counties"*

The primary revisions to this rule are to remove the provisions that apply to sources that have permanently shut down. Ohio EPA also made editorial revisions similar to those discussed above. EPA finds that these revisions are approvable.

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

EPA is proposing to approve the revisions to OAC 3745-17 that Ohio EPA submitted on January 18, 2024, with the exception of selected sections of OAC 3745-17-03 as clarified by Ohio EPA on February 21, 2024.

### **IV. Incorporation by Reference.**

In this rulemaking, EPA is proposing to include, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements set forth in 1 CFR 51.5, EPA is proposing to incorporate by reference Ohio EPA rules 3745-17-01, 3745-17-03 [with the exception

of the phrase in 3745-17-03(B)(1)(a) reading "Except as provided in paragraph (B)(1)(b) of this rule" and 3745-17-03(B)(1)(b)], 3745-17-04, 3745-17-07, 3745-17-08, 3745-17-09, 3745-17-10, 3745-17-11, 3745-17-12, 3745-17-13, and 3745-17-14, effective August 25, 2023, discussed in section II of this preamble. 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).

#### **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 14094 (88 FR 21879, April 11, 2023);

- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial,

governmental, and commercial operations or programs and policies.”

The Ohio EPA did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Particulate matter, Reporting and recordkeeping  
requirements.

Dated: March 27, 2024.

**Debra Shore,**

*Regional Administrator, Region 5.*

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