



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2024-0034; FRL-11775-02-R5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to Ohio's particulate matter rules into the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). The revisions to Ohio's particulate matter rules 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. EPA proposed to approve this action on April 15, 2024, and received two comments.

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-2024-0034. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI), Proprietary Business Information (PBI), 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 <https://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 Emily Crispell, Environmental Scientist, at (312) 353-8512 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Emily Crispell, Air and Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353-8512, crispell.emily@epa.gov.

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

I. Background Information

On January 18, 2024, the Ohio Environmental Protection Agency (Ohio) requested SIP approval of a variety of amendments to its regulations in Ohio Administrative Code (OAC) Chapter 3745-17, entitled "Particulate Matter Standards." The amended rules include administrative revisions such as 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 wishes to rephrase. Ohio amended its request on February 21, 2024, to request EPA not act on the alternate set

of opacity limits mentioned in OAC Rule 3745-17-03.

Accordingly, EPA is not acting on those provisions.

EPA proposed to approve the requested revisions to OAC Chapter 3745-17 on April 15, 2024, at 89 FR 26115. The notice of proposed rulemaking (NPRM) provides a more complete discussion of the revisions that Ohio requested be approved and EPA's evaluation of these revisions.

The public comment period for this proposed rule ended on May 15, 2024. EPA received two comments on the proposal. All of the comments received are included in the docket for this action.

The first comment came from an anonymous commenter and pertained to environmental spills that have occurred in Ohio. The second comment came from an anonymous commenter and requested that Executive Order 12898 be reviewed, and that Environmental Justice (EJ) be included in the Ohio SIP process.

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that Federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs Federal agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive

Order 14008 (86 FR 7619, February 1, 2021) directs Federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

As the commentor acknowledged, EPA reviewed Ohio's requested rule revisions and determined that due to the editorial nature of the action being taken this action is expected to have a neutral to positive impact on the air quality of the affected area. Since the action is expected to have a neutral to positive impact, 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. Additionally, EPA sets the National Ambient Air Quality Standards at a level to protect the public health, with an adequate margin of safety, including the health of at-risk populations, and protect the public welfare from adverse effects. While EPA recognizes the importance of assessing impacts of our actions on potentially overburdened communities, we believe that our approval of Ohio's request for the revision of OAC Chapter 3745-17 would not exacerbate existing pollution exposure or burdens for populations in Ohio.

We do not consider these comments to be germane or relevant to this action and therefore not adverse to this action. The comments lack the required specificity to the proposed SIP revision and the relevant requirements of CAA section 110.

Moreover, none of the comments address a specific regulation or provision in question or recommend a different action on the SIP submission from what EPA proposed. Therefore, we are finalizing our action as proposed. EPA encourages the commenters to remain engaged with stakeholders in the effort to protect human health and the environment.

II. What Action is EPA Taking?

In response to the NPRM, EPA received two comments which were not relevant to the proposed rulemaking. EPA continues to find that the requested revisions warrant approval for the reasons given in the NPRM. Therefore, EPA is approving the revisions to OAC 3745-17 that Ohio submitted on January 18, 2024, with the exception of selected sections of OAC 3745-17-03 as clarified by Ohio on February 21, 2024. Specifically, EPA is approving Ohio 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.

III. 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 section II of this preamble and set forth in the amendments to 40 CFR part 52

below. EPA has made, and will continue to make, these documents generally available through <https://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 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 rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

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

¹ 62 FR 27968 (May 22, 1997).

- 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 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 did not evaluate EJ 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 editorial 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.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 10, 2024.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 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, amend the table in paragraph (c) under “Chapter 3745-17 Particulate Matter Standards” by revising entries “3745-17-01” through “3745-17-14” 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 3745-17 Particulate Matter Standards				
3745-17-01	Definitions and referenced materials.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-17-03	Measurement methods and procedures.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	Except for paragraph (B) (1) (b) and the phrase in paragraph (B) (1) (a) reading “Except as provided in paragraph (B) (1) (b) of this rule”.
3745-17-04	Compliance time schedules.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-17-07	Control of visible particulate	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL	

	emissions from stationary sources.		REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-17-08	Restriction of emission of fugitive dust.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-17-09	Restrictions on particulate emissions and odors from incinerators.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-17-10	Restrictions on particulate emissions from fuel burning equipment.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-17-11	Restrictions on particulate emissions from industrial processes.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-17-12	Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga county.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-17-13	Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson county.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-17-14	Contingency plan requirements for Cuyahoga and Jefferson counties.	8/25/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
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[FR Doc. 2024-15573 Filed: 7/17/2024 8:45 am; Publication Date: 7/18/2024]