



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2024-0529; FRL-12471-01-R5]

Air Plan Approval; Ohio; Nitrogen Oxide Standards Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Ohio State Implementation Plan (SIP) submitted by the Ohio Environmental Protection Agency (Ohio EPA) on November 4, 2024. Ohio EPA requested that EPA approve the revised rules for nitrogen oxide standards in the Ohio Administrative Code (OAC) into Ohio's SIP. The revised rules include non-substantive updates to rule language and updates to referenced material. The revisions will assist with Ohio's efforts to attain and maintain the National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO₂).

DATES: This direct final rule will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2024-0529 at <https://www.regulations.gov> or via

email to 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 the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), 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, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Delaney Kilgour, Air and Radiation Division (AR-1-8J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1106, kilgour.delaney@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.

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

I. What is the Background for these Actions?

Ohio EPA is subject to requirements in Ohio Revised Code 106.03 and 106.031 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 OAC Chapter 3745-23, entitled "Nitrogen Oxide Standards." OAC Chapter 3745-23 is part of Ohio's strategy for attainment and maintenance of the NAAQS for NO₂.

As a result of its review, Ohio EPA concluded that rule revisions were needed to modify the wording of selected text to correct typos and reflect new formatting guidelines, and to update publication and referenced material titles, effective dates, addresses, and websites. Ohio EPA adopted these various minor revisions and updated their rules on August 15, 2024, and then requested that EPA approve these revisions into the Ohio SIP in a submittal dated November 4, 2024.

II. What is EPA's Analysis of Ohio's SIP Revision?

Ohio EPA has requested that EPA approve revised rules under Chapter 3745-23 of the OAC. These rules include 3745-23-01 (Definitions) and 3745-23-02 (Methods of measurement). These revised rules are intended to assist in maintaining the NO₂ NAAQS. The revisions are described in detail below. EPA is determining that these revisions are approvable since they are

primarily administrative in nature and serve to strengthen the SIP.

A. 3745-23-01 Definitions

This rule contains the applicable definitions and referenced material for OAC Chapter 3745-23. The rule is being revised to include updates to the publication dates and website URLs of referenced material, and to adopt minor changes in rule language to correct typos and meet updated style and formatting guidelines. No terms or definitions were added or removed from this section. Since the revised definitions do not make this rule less stringent, EPA finds that 3745-23-01 is approvable.

B. 3745-23-02 Methods of measurement

This rule contains methods for measuring and determining the concentration of NO₂ in ambient air. The rule is being revised to adopt minor language adjustments, including removal of the word "shall" and rearrangement of sentences. Since the revisions to the rule language are minor in nature and do not affect the scope or intent of the rules, EPA finds that 3745-23-02 is approvable.

III. What Action is EPA Taking?

EPA is approving the November 4, 2024, submission by Ohio EPA as a revision to the Ohio SIP. Specifically, EPA is approving updates to OAC Chapter 3745-23.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules

section of this *Federal Register* publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** without further notice unless we receive relevant adverse written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

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 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 *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 Clean Air Act (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 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, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

Ohio EPA 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 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. 12898/14096 of achieving EJ for communities with EJ concerns.

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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this *Federal Register*, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Reporting and recordkeeping requirements.

Dated: December 19, 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, the table in paragraph (c) is amended by revising entries “3745-23-01” and “3745-23-02” under “Chapter 3745-23 Nitrogen Oxide Standards” 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 3745-23 Nitrogen Oxide Standards				
3745-23-01	Definitions	8/15/2024	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
3745-23-02	Methods of Measurement	8/15/2024	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION]	
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