

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R05-OAR-2007-1129; FRL-8941-9]

**Approval and Promulgation of Air Quality Implementation Plans; Ohio; Consumer Products Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a request submitted by the Ohio Environmental Protection Agency (Ohio EPA) on October 5, 2007, to revise the Ohio State Implementation Plan (SIP) under the Clean Air Act. The State has submitted new volatile organic compounds (VOCs) control rules for approval under Chapter 3745-112 of the Ohio Administrative Code (OAC). The rules include OAC 3745-112-01 to OAC 3745-112-08 and are intended to assist the State in achieving and/or maintaining the national 8-hour ground level ozone standard through the regulation of VOCs in consumer products. Ohio followed, with some modifications, the Ozone Transport Commission's "Model Rule for Consumer Products," (Model Rule) in developing the State's submittal.

**DATES:** This direct final rule will be effective October 13, 2009, unless EPA receives adverse comments by September 14, 2009. 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-2007-1129, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
3. *Fax*: (312) 692-2551.
4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of

business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2007-1129. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy 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 Andy Chang, Environmental Engineer, at (312) 886-0258 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Andy Chang, Environmental Engineer, Criteria Pollutant Section, Air Programs

Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, [chang.andy@epa.gov](mailto:chang.andy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

- I. When did the State submit the requested rule revisions to EPA, and did the State satisfy the administrative requirements of 40 CFR Part 51, Appendix V?
- II. What are the revisions that the State is requesting for incorporation into the SIP?
  - A. Definitions and Applicability for Volatile Organic Compounds Emissions From Consumer Products
  - B. Standards and Exemptions for Volatile Organic Compounds Emissions From Consumer Products
  - C. Administrative and Reporting Requirements, Variances, and Testing Methods for Volatile Organic Compounds Emissions From Consumer Products
- III. What will approval of these rules accomplish?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

**I. When did the State submit the requested rule revisions to EPA, and did the State satisfy the administrative requirements of 40 CFR Part 51, Appendix V?**

Ohio EPA submitted the requested revisions to EPA on October 7, 2007, and demonstrated through its submittal that the State satisfied all the requirements of 40 CFR Part 51, Appendix V, "Criteria for Determining the Completeness of Plan Submissions." The administrative requirements are outlined in Section 2.1 of this appendix. Most notably, a public hearing was held on June 12, 2007, and the rules became effective State-wide on September 12, 2007.

**II. What are the revisions that the State is requesting for incorporation into the SIP?**

The State has requested that EPA approve new rules under Chapter 3745-112 of the OAC. These rules include 3745-112-01 (Definitions); 3745-112-02 (Applicability); 3745-112-03 (Standards); 3745-112-04 (Exemptions); 3745-112-05 (Administrative Requirements); 3745-112-06 (Reporting Requirements); 3745-112-07 (Variances); and 3745-112-08 (Test Methods). All submitted rules are intended to assist the State in achieving and/or maintaining the national 8-hour ground level ozone standard through the regulation of volatile organic

compounds in consumer products. The revisions are described in detail below.

#### *A. Definitions and Applicability for Volatile Organic Compounds Emissions From Consumer Products*

Ohio EPA submitted definitions and applicability rules, which adopt almost verbatim, the rules found in the Model Rule. There are very minor modifications, which are related to implementation and compliance dates that are updated from the Model Rule. With exceptions only applicable to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulated products, the implementation date is January 1, 2009. Unless provided in subsequent rule 3745–112–04 (Exemptions), the applicability rule applies to any person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2009, for use in the State of Ohio. Specifying implementation and compliance dates do not make the rules less stringent; therefore, EPA concludes that the State's definitions and applicability rules for VOC emissions from consumer products are approvable.

#### *B. Standards and Exemptions for Volatile Organic Compounds Emissions From Consumer Products*

Ohio EPA adopted the Model Rule's standards for VOC emissions in their entirety with very minor modifications; Ohio EPA has specified that any consumer product manufactured prior to January 1, 2009, may be sold, supplied, or offered for sale after January 1, 2009 (sell-through of products). The State's exemptions rules were based entirely on the Model Rule, and include those for "Innovative Products." Specifying a date pertaining to sell-through of products does not weaken the rules; therefore, EPA concludes that the State's standards and exemptions rules for VOC emissions from consumer products are approvable.

#### *C. Administrative and Reporting Requirements, Variances, and Testing Methods for Volatile Organic Compounds Emissions From Consumer Products*

The rules covering these sections were drafted in their entirety based on guidance from the Model Rule. All requirements and methodologies mirror exactly those found in the Model Rule; therefore, EPA concludes that the State's administrative and reporting requirements, variances, and testing methods for VOC emissions from consumer products are approvable.

### **III. What will approval of these rules accomplish?**

Approval of these rules submitted by Ohio EPA will help attain and maintain the national eight-hour standard for ground-level ozone, and reduce eight-hour ozone levels. Ozone is a human respiratory system irritant, and is harmful to the environment as well. Both ozone and volatile organic compounds are components of smog, which poses a significant threat to animal, plant, and human life. By maintaining the national standard for ground-level ozone and decreasing the levels of ozone, the benefits to human and environmental health in the State of Ohio and surrounding areas is expected to be permanent.

### **IV. What action is EPA taking?**

We are approving revisions to the Ohio SIP; the State has submitted new rules under Chapter 3745–112 of the OAC. These rules encompass OAC rule 3745–112–01 to OAC rule 3745–112–08, and are intended to assist the state of Ohio in achieving and/or maintaining the national 8-hour ground level ozone standard through the regulation of VOCs in consumer products. Ohio drafted their rules based almost entirely on the Model Rule with one exception, severability, which was already addressed in OAC rule 3745–15–09.

We are approving these rules because they will help reduce emissions of volatile organic compounds and will therefore help reduce ground-level ozone concentrations in the State of Ohio and surrounding areas. Ohio EPA's rules closely follow the Model Rule, which EPA has determined to be approvable in other SIPs. The State's submittal meets the requirements of Section 183 of the Clean Air Act, as well as requirements of 40 CFR Part 51, Appendix V.

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 October 13, 2009 without further notice unless we receive relevant adverse written comments by September 14, 2009. 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. The EPA will not institute a second comment period, therefore, any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective October 13, 2009.

### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 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 Clean Air Act; 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 2009. 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 today's **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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 28, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

#### Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(147) to read as follows:

#### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(147) On October 5, 2007, Ohio submitted revisions to Ohio Administrative Code Chapter 3745–112, Rules 3745–112–01 through 3745–112–08. The revisions regulate the volatile organic compounds content of consumer products.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–112–01 "Definitions.", Rule 3745–112–02 "Applicability.", Rule 3745–112–03 "Standards.", Rule 3745–112–04 "Exemptions.", Rule 3745–112–05 "Administrative requirements.", Rule 3745–112–06 "Reporting requirements.", Rule 3745–112–07 "Variances.", and Rule 3745–112–08 "Test methods.", adopted September 5, 2007, effective on September 15, 2007.

(B) September 5, 2007, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

[FR Doc. E9–19305 Filed 8–12–09; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R03–OAR–2008–0591; FRL–8941–4]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revised Motor Vehicle Emission Budgets for the York-Adams Counties 8-Hour Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision amends the

8-hour ozone maintenance plan for the York-Adams Counties 8-Hour Ozone Maintenance Area (the Area). This revision amends the maintenance plan's 2009 and 2018 motor vehicle emissions budgets (MVEBs) by unequally dividing the existing approved MVEBs which covers the entire maintenance area into two sub-regional MVEBs, one set of MVEBs for each county comprising the area. The revised plan continues to demonstrate maintenance of the 8-hour national ambient air quality standard (NAAQS) for ozone. EPA is approving this SIP revision to the Pennsylvania maintenance plan for York-Adams in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 13, 2009 without further notice, unless EPA receives adverse written comment by September 14, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0591 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: [febbo.carol@epa.gov](mailto:febbo.carol@epa.gov).

C. Mail: EPA–R03–OAR–2008–0591, Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0591. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.