

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

[EPA–R05–OAR–2022–0788; FRL–10425–01–R5]

**Air Plan Approval; Ohio; Consumer Products Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), a State Implementation Plan (SIP) revision submitted by the Ohio Environmental Protection Agency (Ohio EPA) on September 7, 2022. Ohio EPA requests that EPA approve revised volatile organic compounds (VOCs) control rules under Chapter 3745–112 of the Ohio Administrative Code (OAC) into Ohio's SIP. The revised rules will reduce emissions that contribute to ozone formation and assist with efforts to achieve and maintain the 2015 ozone National Ambient Air Quality Standard (NAAQS). EPA finds that these rules are approvable because they are SIP strengthening measures.

**DATES:** Comments must be received on or before March 29, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0788 at <https://www.regulations.gov>, or via email to [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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:**

Katie Mullen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3490, [mullen.kathleen@epa.gov](mailto:mullen.kathleen@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. What is EPA proposing?**

EPA is proposing to approve rule revisions to OAC Chapter 3745–112. The revised rules include OAC 3745–112–01 to OAC 3745–112–08 and are intended to assist in achieving and maintaining the 2015 ozone NAAQS through the regulation of VOCs in consumer products. We find that these rules are approvable because they are SIP strengthening measures.

**II. What is the background for these actions?**

On August 13, 2009 (74 FR 40745), EPA approved OAC Chapter 3745–112, “Consumer Products” into Ohio's SIP, which was part of Ohio's strategy to attain the 1997 ozone NAAQS. The rules in OAC Chapter 3745–112 contain regulations for the content of VOCs in consumer products sold, supplied, offered for sale, or manufactured for use in the state of Ohio. These rules adopted the standards in the model rule developed by the Ozone Transport Commission (OTC). The OTC develops model rules for states to consider when adopting consumer products regulations and has since provided updated versions of the model rules, called “phases”, for states to consider in subsequent adoption or revision of consumer products standards.

The rules in OAC Chapter 3745–112 were originally based on the 2006 Phase II OTC model rule for consumer products. Ohio has updated these rules to adopt more recent versions of the OTC model rule; specifically, up through the 2012 Phase IV OTC model rule (this includes adopting the limits in the 2010 Phase III model rule, as well as the 2013 technical update). This update is part of Ohio's strategy to attain the 2015 ozone NAAQS.

As a result of its routine 5-year review process, Ohio EPA also made various minor changes to this chapter, as well

as changes to OAC rule 3745–112–01 to update information on referenced materials. These changes are minor in nature, and do not affect the scope or intent of the rules.

**III. What is EPA's analysis of Ohio's SIP revision?**

Ohio EPA has requested that EPA approve revised 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). These revised rules are intended to assist in achieving and maintaining the 2015 ozone NAAQS through the regulation of volatile organic compounds in consumer products. The revisions are described in detail below. EPA is determining that these revisions are approvable since they serve as SIP strengthening measures.

**A. 3745–112–01 Definitions**

This rule contains the applicable definitions and referenced material for OAC Chapter 3745–112. The rule is being amended to adopt new and revised definitions and referenced material consistent with the updated version of the OTC model rule. Since the revised definitions do not make this rule less stringent, EPA finds that 3745–112–01 is approvable.

**B. 3745–112–02 Applicability**

This rule identifies entities affected by this rule and the date of compliance with the rules contained in OAC Chapter 3745–112. The proposed rule revisions update the date of compliance. Since specifying implementation and compliance dates do not make the rules less stringent, EPA finds that the revisions to 3745–112–02 are approvable.

**C. 3745–112–03 Standards**

This rule identifies the specific consumer products regulated and their associated VOC content limits. This rule is being amended to adopt new and revised VOC limits consistent with the updated version of the OTC model rule. Since this rule adopts new and more stringent VOC content limits, EPA finds that the revisions strengthen the SIP and are approvable.

**D. 3745–112–04 Exemptions**

This rule specifies the exemptions applicable to Chapter 3745–112 of the OAC. The rule is being amended to

include minor changes to correct typos and update the rule language in this chapter to meet agency style and formatting guidelines. Since the minor changes to this rule do not make this rule any less stringent, EPA finds that the revisions to 3745–112–04 are approvable.

#### *E. 3745–112–05 Administrative Requirements*

This rule specifies the administrative requirements applicable to OAC Chapter 3745–112. The rule is being amended to establish effective dates consistent with the updated version of the OTC model rule and to make minor changes to conform with formatting standards. Since the changes to the administrative requirements do not make this rule any less stringent, EPA finds that the revisions to 3745–112–05 are approvable.

#### *F. 3745–112–06 Reporting Requirements*

This rule specifies the reporting requirements for consumer products regulated under OAC Chapter 3745–112. This rule is being amended to conform to agency formatting standards. Since the changes to the reporting requirements do not make this rule any less stringent, EPA finds that the revisions to 3745–112–06 are approvable.

#### *G. 3745–112–07 Variances*

This rule details the procedures for a facility to apply for a variance from the requirements specified in OAC rule 3745–112–03. This rule is being amended to conform to agency formatting standards. Since the changes to the variances do not make this rule any less stringent, EPA finds that the revisions to 3745–112–07 are approvable.

#### *H. 3745–112–08 Test Methods*

This rule specifies the test methods that shall be employed to show compliance with the VOC content limits of consumer products listed in OAC Chapter 3745–112. This rule is being amended to eliminate unnecessary restrictions and conform to agency formatting standards. Since the changes to the test methods do not make this rule any less stringent, EPA finds that the revisions to 3745–112–08 are approvable.

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

EPA is proposing to approve rule revisions to Chapter 3745–112 of the OAC. The revised rules include OAC 3745–112–01 to OAC 3745–112–08 and are intended to assist in achieving and

maintaining the 2015 ozone NAAQS through the regulation of VOCs in consumer products. As discussed above, EPA finds that these rules are approvable because they strengthen the SIP.

### **V. Incorporation by Reference**

In this rule, 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 Ohio Administrative Code Chapter 3745–112, effective on June 20, 2022, discussed in section III 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).

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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 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 (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 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 15, 2023.

**Debra Shore,**

*Regional Administrator, Region 5.*

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

[Docket No. FWS–R8–ES–2022–0082; FF09E21000 FXES1111090FEDR 234]

**RIN 1018–BG07**

### **Endangered and Threatened Wildlife and Plants; Endangered Species Status for the San Francisco Bay-Delta Distinct Population Segment of the Longfin Smelt**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and announcement of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are reopening the public comment period on our October 7, 2022, proposed rule to list the San Francisco Bay-Delta distinct