

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2020-0126; FRL-10022-85-Region 5]

### Air Plan Approval; Ohio; NSR Program Administrative Rules

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), new and updated administrative rules for the Ohio State Implementation Plan (SIP) for the New Source Review (NSR) permitting program. The new and amended administrative rules in the Ohio Administrative Code (OAC) replace the currently effective procedural rules in the NSR SIP in their entirety. As part of this action, EPA is also approving the removal of obsolete language related to Significant Deterioration of Air Quality. EPA proposed to approve this action on February 26, 2021 and received no adverse comments.

**DATES:** This final rule is effective on May 24, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2020-0126. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) 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 [www.regulations.gov](http://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 and facility closures due to COVID-19. We recommend that you telephone Mari González, Environmental Engineer, at (312) 886-6175 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Mari González, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6175, [Gonzalez.Mari@epa.gov](mailto:Gonzalez.Mari@epa.gov).

## SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

### I. Background Information

On February 26, 2021, EPA proposed to approve revisions to replace existing SIP-approved procedural rules contained in OAC Chapter 3745-47 with administrative rules from OAC 3745-49-01, 3745-49-02, 3745-49-05, 3745-49-06, 3745-49-07, and 3745-49-08. EPA also proposed to approve the removal of 40 CFR 52.1884 from the CFR (86 FR 11691). An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA’s reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on March 29, 2021. EPA received no comments on the proposal.

### II. Final Action

EPA is approving revisions to the Ohio SIP submitted on February 28, 2020. This submittal includes revisions which replace the entire existing SIP-approved procedural rules in OAC 3745-47 with the administrative rules from OAC 3745-49-01, 3745-49-02, 3745-49-05, 3745-49-06, 3745-49-07, and 3745-49-08.

EPA is also approving the removal of 40 CFR 52.1884 from the CFR. The language contained in 40 CFR 52.1884 became obsolete when EPA delegated authority to Ohio EPA to implement the Federal Prevention of Significant Deterioration (PSD) program.

### 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 the amendments to 40 CFR part 52 set forth below. 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). 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 rulemaking of EPA’s approval, and will be

incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

Also in this document, as described in the amendments to 40 CFR part 52 set forth below, EPA is removing provisions of the EPA-Approved Ohio Regulations and Statutes from the Ohio SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

### 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 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

<sup>1</sup> 62 FR 27968 (May 22, 1997).

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).

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 2021. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 15, 2021.

**Cheryl Newton,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 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:

■ a. By removing the heading “Chapter 3745–47 Procedural Rules” and entries 3745–47–01, 3745–47–02, 3745–47–03, 3745–47–05, 3745–47–07, and 3745–47–08; and

■ b. By adding a heading immediately after the entry for 3745–45–05 titled “Chapter 3745–49 Miscellaneous Rules” followed by entries for 3745–49–01, 3745–49–02, 3745–49–05, 3745–49–06, 3745–49–07, and 3745–49–08.

The revisions read as follows:

#### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
<b>Chapter 3745–49 Miscellaneous Rules</b>				
3745–49–01 ....	Administrative Procedures—applicability and construction of rules.	4/2/2012	4/23/2021, [INSERT <b>Federal Register</b> CITATION].	
3745–49–02 ....	Administrative procedures—definitions.	4/2/2012	4/23/2021, [INSERT <b>Federal Register</b> CITATION].	
3745–49–05 ....	Draft actions and proposed actions	4/2/2012	4/23/2021, [INSERT <b>Federal Register</b> CITATION].	
3745–49–06 ....	Issuance of final actions .....	4/2/2012	4/23/2021, [INSERT <b>Federal Register</b> CITATION].	
3745–49–07 ....	Public notice .....	7/27/2019	4/23/2021, [INSERT <b>Federal Register</b> CITATION].	
3745–49–08 ....	Contents of public notices .....	4/2/2012	4/23/2021, [INSERT <b>Federal Register</b> CITATION].	
*	*	*	*	*

\* \* \* \* \*

#### § 52.1884 [Removed and Reserved]

■ 3. Section 52.1884 is removed and reserved.

[FR Doc. 2021–08375 Filed 4–22–21; 8:45 am]

**BILLING CODE 6560–50–P**