

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

[OH106-1a; FRL-5808-5]

**Approval and Promulgation of Implementation Plans; Ohio****AGENCY:** U.S. Environmental Protection Agency (USEPA).**ACTION:** Direct final rule.

**SUMMARY:** On November 12, 1996, USEPA received a State Implementation Plan (SIP) revision request from the Ohio Environmental Protection Agency (Ohio EPA). This revision request was in the form of an amendment to the Ohio Administrative Code (OAC) which added an additional exemption from organic compound emission controls for qualifying new sources. In this action, USEPA is approving the State's SIP revision request through a "direct final" rulemaking; the rationale for this approval is set forth below. Elsewhere in this **Federal Register**, USEPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, USEPA will withdraw the direct final rulemaking and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this SIP revision request.

**DATES:** This action will be effective June 16, 1997 unless substantive adverse comments not previously addressed by the State or USEPA are received by May 16, 1997. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Ohio submittal are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

**FOR FURTHER INFORMATION CONTACT:** Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 886-6036.

**SUPPLEMENTARY INFORMATION:****I. Background**

Rule 3745-21-07 of the Ohio Administrative Code (OAC) specifies organic compound control requirements

for existing stationary sources located in twenty-eight Ohio Counties: Butler, Clark, Clermont, Cuyahoga, Darke, Delaware, Fairfield, Franklin, Geauga, Greene, Hamilton, Lake, Licking, Lorain, Lucas, Madison, Medina, Miami, Montgomery, Perry, Pickaway, Portage, Preble, Starke, Summit, Union, Warren and Wood which are referred to as "Priority I" counties in Rule 3745-21-06. It should be noted that Rule 3745-21-06 which lists the counties subject to the requirements of Rule 3745-21-07 is not being considered as part of this direct final rule. Rule 3745-21-07 also specifies organic compound control requirements for all new stationary sources regardless of location.

On November 12, 1996, USEPA received a SIP revision request from Ohio EPA in the form of an October 7, 1996 amendment to Rule 3745-21-07—Section(G)(9)(g)—which added an additional exemption from organic compound emission controls for qualifying new sources which met three requirements.

1. The Director of the Ohio EPA determined that "Best Available Technology" (BAT) for the emissions unit, as required by Ohio's permit to install rules, is either less stringent than or inconsistent with the requirements of OAC Rule 3745-21-07(G). The term "BAT" is defined at Section 3704.01 of the Ohio Regulatory Code (ORC). Since a BAT determination could be less stringent than the USEPA definition of reasonably available control technology (RACT) requirements due to Ohio's definition of BAT, in cases where an emissions limitation is applicable, the BAT determination must reflect the lowest emission limit that the emissions unit is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. In addition, the BAT determination for an emissions unit located within an ozone nonattainment area must comply with Section 193 (General Savings Clause) of the Clean Air Act (Act).

2. The USEPA has provided written approval of the issuance of a permit to install for the emissions unit.

3. The issued permit to install contains terms and conditions specifying the BAT requirements for the emissions unit, and the permit is issued by Ohio EPA in a manner that makes the terms and conditions of the permit federally enforceable.

In addition to adopting Section (G)(9)(g), the October 7, 1996, final rule made a limited number of changes to portions of OAC Rule 3745-21-07 previously adopted and approved by USEPA. USEPA has reviewed these

changes and found them to be nonsubstantive.

**II. Rulemaking Action**

The USEPA approves the incorporation of Section (G)(9)(g) of OAC Rule 3745-21-07 into the Ohio SIP. Because nonsubstantive revisions were also made to Rule 3745-21-07, the USEPA is incorporating all of Rule 3745-21-07 so that the text of the current State rule is identical to the text of the federally approved rule. The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on June 16, 1997 unless, by May 16, 1997, adverse or critical comments are received.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 16, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**III. Administrative Requirements****A. Executive Order 12866**

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

**B. Regulatory Flexibility**

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, USEPA

must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds.

*Union Electric Co. v. EPA.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

#### C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. This Federal action approves pre-existing requirements under State or local law. No new Federal requirements are imposed. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

#### D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by section 804(2).

#### E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Hydrocarbons.

Dated: April 1, 1997.

**Michelle D. Jordan,**

*Acting Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401-7671q.

#### Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(114) to read as follows:

#### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(114) On November 12, 1996, the Ohio Environmental Protection Agency submitted a request to incorporate section(G)(9)(g) of Rule 3745-21-07 of the Ohio Administrative Code into the Ohio State Implementation Plan (SIP). Section (G)(9)(g) provides an additional exemption from organic compound emission controls for qualifying new sources. Because, in the process of adopting section(G)(9)(g), minor editorial changes were made to other parts of Rule 3745-21-07, the United States Environmental Protection Agency is incorporating all of Rule 3745-21-07 into the Ohio SIP. This will avoid confusion by making the SIP approved rule identical to the current State rule.

(i) Incorporation by reference.

(A) Rule 3745-21-07 of the Ohio Administrative Code, adopted October 7, 1996, effective October 31, 1996, as certified by Donald R. Schregardus,

Director of the Ohio Environmental Protection Agency.

[FR Doc. 97-9752 Filed 4-15-97; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[IN73-1a; FRL-5807-9]

### Approval and Promulgation of Implementation Plan; Indiana

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** In this action, USEPA is approving a State Implementation Plan Revision (SIP) request submitted by the Indiana Department of Environmental Management (IDEM) on October 2, 1996, to eliminate references to total suspended particulates (TSP) while maintaining the existing opacity requirements. This SIP revision will also enable the removal of the TSP designation table for Indiana counties from 40 CFR 81.315.

**DATES:** This action is effective on June 16, 1997, unless USEPA receives adverse or critical comments by May 16, 1997. If the effective date is delayed, timely notification will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4366.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 30, 1971, the USEPA promulgated primary and secondary standards for particulate matter (PM) measured as total suspended particulates (TSP) (36 FR 8166). On July 1, 1987 (52 FR 24633), the National Ambient Air Quality Standard (NAAQS)