

Dated: August 29, 1997.

**R.R. Pixa,**

*Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OH106-1a; FRL-5890-9]

#### Approval and Promulgation of Implementation Plans; Ohio

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

**ACTION:** Direct final rule.

**SUMMARY:** On February 21, 1997 the Ohio Environmental Protection Agency (Ohio EPA) submitted a State Implementation Plan (SIP) revision request to USEPA under the Clean Air Act (CAA). This revision request contained a number of rules and rule paragraphs formerly contained in the Ohio Administrative Code (OAC) which had been incorporated in the Ohio SIP but which had been amended or removed from the OAC by the State. The State requested that these rules and rule paragraphs be removed from the Ohio SIP since they were no longer part of the OAC. 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 appropriate 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 November 12, 1997 unless substantive adverse written comments not previously addressed by the State or USEPA are received by October 14, 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

This is a list of the affected rules and paragraphs accompanied by an explanation of the action taken by the State as well as the reason for the State's request to remove it from the SIP.

##### 1. OAC 3745-21-02 *Ambient Air Quality Standards and Guidelines*

An amendment to this rule deleted Paragraph (C) because Paragraph (C) was superseded by a revision to the National Ambient Air Quality Standards (NAAQS).

##### 2. OAC 3745-21-03 *Methods of Ambient Air Quality Measurement*

An amendment to this rule deleted Paragraph (D) because it was superseded by a USEPA Reference Method.

##### 3. OAC 3745-21-05 *Non-Degradation Policy*

This rule was rescinded because it has been superseded by Federal Prevention of Significant Deterioration (PSD) regulations.

##### 4. OAC 3745-22-01 *Applicability*

OAC 3745-22-02 Definitions. OAC 3745-22-03 Fuel Quality Standards. OAC 3745-22-04 Registration. OAC 3745-22-05 Transfer Documentation and Labeling. OAC 3745-22-06 Compliance Averaging. OAC 3745-22-07 Sampling, Test Methods, and Compliance Calculations. OAC 3745-22-08 Recordkeeping, Reporting, and Auditing

This Chapter of Ohio's Regulations was rescinded because Cuyahoga County was redesignated as attaining the carbon monoxide NAAQS.

##### 5. OAC 3745-23-03 *Compliance Time Schedule*

This rule was rescinded because it is outdated in that it requires sources to comply not later than April 15, 1977.

##### 6. OAC 3745-23-04 *Non-Degradation Policy*

This rule was rescinded because it was superseded by Federal PSD regulations.

##### 7. OAC 3745-23-05 *Classification of Regions*

This rule was rescinded because the State believes it to be outdated. On May 8, 1974 (39 FR 16344) the Administrator of USEPA promulgated regulations classifying all Ohio Air Quality Control Regions as Priority III. This subsequent Federal rule supplanted the State's classification of regions.

##### 8. OAC 3745-102-07 *Savings Provision*

This rule was rescinded because Chapter 102 was approved by USEPA as a general conformity SIP revision on March 11, 1996 (61 FR 9644).

#### II. Rulemaking Action

The USEPA approves the deletion of the following rules from the Ohio SIP: OAC 3745-21-02(C), OAC 3745-21-03(D), OAC 3745-21-05, OAC 3745-22-01, OAC 3745-22-02, OAC 3745-22-03, OAC 3745-22-04, OAC 3745-22-05, OAC 3745-22-06, OAC 3745-22-07, OAC 3745-22-08, OAC 3745-23-03, OAC 3745-23-04, OAC 3745-23-05, and OAC 3745-102-07. Based on the information submitted by Ohio, the USEPA has determined that the deletions are approvable under the CAA. 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 written comments be filed. This action will be effective on November 12, 1997 unless, by October 14, 1997, written adverse or critical comments are received.

If the USEPA receives such written comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. Public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA does not plan to 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 written comments are received, the public is advised that this action will be effective on November 12, 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, Etc.

#### A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

#### B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 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. 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 CAA 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 the removal of pre-existing requirements which are no longer a part of 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 section 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. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70-3745.73 of the Ohio Revised Code). The USEPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the CAA, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, Federal approval for the CAA program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

#### F. Petitions for Judicial Review

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 November 12, 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, Carbon monoxide and Hydrocarbons.

Dated: August 27, 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. 7401-7671(q).

#### Subpart KK—Ohio

2. Subpart KK is amended by adding Section 52.1890 to read as follows:

#### § 52.1890 Removed control measures.

On the dates listed below, Ohio requested that the indicated control measures be removed from the Ohio State Implementation Plan (SIP).

(a) On February 21, 1997, the State of Ohio requested that the following rules and rule paragraphs be removed from the SIP because they have been amended or revoked by the State subsequent to their incorporation in the SIP: OAC 3745-21-02(C), OAC 3745-21-03(D), OAC 3745-21-05, OAC 3745-22-01, OAC 3745-22-02, OAC 3745-22-03, OAC 3745-22-04, OAC 3745-22-05, OAC 3745-22-06, OAC 3745-22-07, OAC 3745-22-08, OAC 3745-23-03, OAC 3745-23-04, OAC 3745-23-05, and OAC 3745-102-07.

(b)[Reserved]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 271

[FRL-5892-1]

#### Texas: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** The State of Texas has applied for final authorization to revise to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA