

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118-1a; FRL-6353-2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: We, the United States Environmental Protection Agency (EPA), are approving the Ohio Environmental Protection Agency's (OEPA) September 16, 1998 and December 29, 1998, requests for revisions to the Ohio State Implementation Plan (SIP). These requests include an exemption for de minimis sources from the requirement to obtain a permit to operate (OAC 3745-15-05) and revises the permit to operate rule (OAC 3745-35-02). Revisions to OAC 3745-35-02 establish exemptions from the rule, revise the application filing deadline, and allow applicants the ability to demonstrate that their sources are in compliance through a compliance schedule when they are not in compliance at the time of permit issuance. These revisions will not inhibit OEPA from ensuring compliance with the national ambient air quality standards.

DATES: This rule is effective on August 9, 1999, unless EPA receives adverse written comments by July 8, 1999. If we receive adverse comment, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Region 5 at the address listed below.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Steve Gorg or Genevieve Damico, Environmental Engineers, at 312-353-8641 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steve Gorg or Genevieve Damico, Environmental Engineers, Permits and Grants Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, 312-353-8641.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

- A. What action are we taking today?
- B. Who is affected by this rulemaking action?
- C. What are the revisions to OAC rule 3745-35-02?
- D. What recordkeeping and reporting requirements are required of my facility to be exempted from the requirement to obtain a permit to operate?
- E. Why can we approve this request?
- F. What is the background of this rulemaking?

A. What Action Are We Taking Today?

We are approving OEPA's September 16, 1998 and December 29, 1998, requests for revisions to the Ohio SIP. These requests include an exemption for de minimis sources from the requirement to obtain a permit to operate (OAC 3745-15-05) and revision to the permit to operate requirement (OAC 3745-35-02).

B. Who Is Affected by This Rulemaking Action?

OAC 3745-35-02 applies to all new and existing sources, including those sources which are subject to EPA's New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). Generally, this rule requires an owner of an air contaminant source (referred to in this notice as "you"), to apply for and obtain a permit to operate from the OEPA.

Under OAC 3745-15-05, you are not required to get a permit to operate if your facility has potential emissions less than ten pounds per day, except when the Clean Air Act requirements limit or restrict your facility's emissions. This exemption does not apply if your facility:

- (1) Is subject to a requirement of the SIP;
- (2) Emits radionuclides;
- (3) Has potential emissions of any air pollutant in excess of twenty-five tons per year, alone or in combination with a similar source at the same facility; or,
- (4) Emits more than one ton per year of any one or a combination of hazardous air pollutants.

C. What Are The Revisions To OAC Rule 3745-35-02?

The revisions to OAC rule 3745-35-02 establish:

- (1) Exemptions from the rule if you are:
 - (a) a source that is exempted under OAC 3745-31-03 (A)(1) or (A)(2);
 - (b) required to obtain a Title V permit as defined in Chapter 3745-77 of the OAC; or,

(c) a source that is exempt from getting a permit to operate under OAC 3745-15-05;

(2) An application filing date no later than thirty days after commencement of operation; and,

(3) The requirement to demonstrate that your facility will be in compliance with all applicable air pollution control laws through a compliance schedule that is at least as stringent as those laws, if you are not complying at the time of permit issuance.

D. What Recordkeeping and Reporting Requirements Are Required of My Facility To Be Exempted From The Requirement To Obtain a Permit To Operate?

If your facility meets the exemption criteria in OAC 3745-15-05, then you must:

- (1) Keep records that prove actual emissions of any air contaminant from your facility did not exceed the de minimis level,
- (2) Maintain records for two years; and
- (3) Submit an exceedence report and an application for a permit to install if your facility exceeds the de minimis level.

E. Why Can We Approve This Request?

These revisions are approvable because:

(1) The revisions to OAC 3745-35-02 affect the Ohio state operating permit program and do not affect the requirements established by Title V of the Clean Air Act. If you are required to obtain a Title V permit, you must apply for such a permit under OAC 3745-77.

(2) OAC 3745-15-05 establishes exemptions for small sources of air pollution that have little or no adverse impact on air quality. This rule does not apply if your facility is subject to a requirement of the SIP.

F. What Is the Background of This Rulemaking?

OAC 3745-35-02 and 3745-15-05 became effective as a matter of Ohio State law on April 20, 1994. OEPA's original OAC 3745-35-02 was approved on June 10, 1982 (47 FR 25144).

EPA Action

In this rulemaking action, EPA approves OEPA's September 21, 1998 and January 8, 1999 request for revisions to OAC rule 3745-35-02 and OAC rule 3745-15-05, respectively. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, should adverse written

comments be filed, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision. This action will be effective August 9, 1999 without further notice unless EPA receives relevant adverse written comment by July 8, 1999. Should the Agency receive such comments, we will publish a withdrawal document informing the public that this action will not take effect. 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 August 9, 1999.

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a

disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that may have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, 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 Clean Air Act 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 Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

H. Submission to Congress and the Comptroller General

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 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 rule is not a "major" rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

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 August 9, 1999. 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, and part 81 subpart c of 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 *et seq.*

2. Section 52.1870 is amended by adding (c)(119) and (c)(120) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(119) On September 21, 1998, Ohio submitted revisions to its Permit to Operate rules as a revision to the State implementation plan.

(i) Incorporation by reference

(A) Ohio Administrative Code 3745–35–02, adopted April 4, 1994, effective April 20, 1994.

(120) On January 3, 1999, Ohio submitted, as a State implementation plan revision, de minimus exemption provisions for its permitting rules.

(i) Incorporation by reference

(A) Ohio Administrative Code 3745–15–05, adopted April 4, 1994, effective April 20, 1994.

[FR Doc. 99–14052 Filed 6–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 011–0146; FRL–6353–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District, Siskiyou County Air Pollution Control District, and Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approvals of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 18, 1999. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of sulfur dioxide (SO₂) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control the

sulfur content of fuels within the South Coast Air Quality Management District and the Siskiyou County Air Pollution Control District, emissions of sulfuric acid mist within the San Joaquin Valley Unified Air Pollution Control District and emissions of sulfur dioxide in the Bay Area Air Quality Management District. Thus, EPA is finalizing a limited approval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions. There will be no sanctions clock as South Coast Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District, Siskiyou County Air Pollution Control District, and Bay Area Air Quality Management District are in attainment for SO₂.

EFFECTIVE DATE: This action is effective on July 8, 1999.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7714.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Ave., Fresno, CA 93726.

Siskiyou County Air Pollution Control District, 525 South Foothill Dr., Yreka, CA 96097

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1191.