

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2006-0879; FRL-8533-8]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). On September 7, 2006, Ohio requested approval of revisions to its open burning standards. In order to clarify the open burning rules, Ohio added requirements for specific types of burning that were previously not addressed. The state also added or refined some of the definitions and slightly changed some of the existing rules. The revisions were made to increase clarity of Ohio's open burning rules. EPA finds that the revisions are consistent with the CAA.

**DATES:** This direct final rule will be effective May 20, 2008, unless EPA receives adverse comments by April 21, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-0879, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
3. *Fax*: (312) 886-5824.
4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2006-0879. EPA's policy is that all comments received will be included in the public

docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy 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 legal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, [rau.matthew@epa.gov](mailto:rau.matthew@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean

EPA. This supplementary information section is arranged as follows:

- I. What Is EPA Approving?
- II. What Is the Background for This Action?
- III. What Is EPA's Analysis of the State Submission?
- IV. What Action Is EPA Taking?
- V. Statutory and Executive Order Reviews

#### I. What Is EPA Approving?

EPA is approving the Ohio SIP revisions submitted on September 7, 2006, which change its open burning standards. Standards for new open burning purposes were added to Ohio Administrative Code (OAC) 3745-19. The rules were added for emergency burning, recreational fires, hazardous material disposal, and firefighting training. The conditions under which open burning of storm debris is allowed are stated. A definition for emergency burning was added. Minor revisions to some other definitions and to notification requirements were made to enhance clarity. Specifically, EPA is approving revisions to OAC 3745-19 Sections 1, 2, 3 (including Appendix), 4, and 5.

#### II. What Is the Background for this Action?

Ohio conducted a periodic review of its open burning standards, OAC 3745-19. The state determined that rewording portions of the rules and adding language for new types of burning would clarify the rules. Questions from the regulated community and field staff led to the revisions. The standards the state added explicitly list the requirements for each type of burning.

#### III. What Is EPA's Analysis of the State Submission?

Ohio made revisions to its open burning rules with the intent to improve rule clarity. It added a definition of emergency burning that lists six distinct disaster types. This sufficiently limits the types of events that could lead to emergency burning. Ohio also declared the conditions for special approvals for the open burning of storm debris.

The state also added requirements for new burning types. The new requirements provide restrictions that are appropriate for the type of burning being conducted. Requirements were added for recreational fires such as campfires, emergency disposal of hazardous materials, fire extinguisher training, fire department training burns, and for emergency burning. The specific requirements for certain types of burning clarify the standards that apply to those burns.

The emergency burning situations that do not need a permit or that only

need oral permission are clearly stated. Under the rules, written permission will follow oral permission, but the burning can proceed prior to the written permission being issued. This allows for emergency burning that protects public health and welfare to proceed without unnecessary delay. The strict definition of emergency burning should prevent an overly broad application of the emergency burning provisions. The revised rules make it clear when a burning permit is not required and what restrictions apply to several types of burning. This should improve compliance and aid enforcement of Ohio's open burning standards.

#### IV. What Action Is EPA Taking?

EPA is approving revisions to the Ohio SIP. The revisions were submitted on September 7, 2006. Specifically, EPA is approving the revisions to OAC Chapter 3745-19, Sections 1 through 5 including the Section 3 Appendix. The changes to Ohio's open burning regulations were made to increase the clarity of regulations particularly for select types of burning. Specific regulations were added for emergency burning, recreational fires, hazardous material disposal, and firefighting training.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective May 20, 2008 without further notice unless we receive relevant adverse written comments by April 21, 2008. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective May 20, 2008.

#### V. Statutory and Executive Order Reviews

##### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and

therefore is not subject to review by the Office of Management and Budget.

##### *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

##### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

##### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

##### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

##### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

##### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

##### *National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

##### *Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

##### *Congressional Review Act*

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 rule 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. section 804(2).

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 May 20, 2008. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 15, 2008.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, 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.*

#### Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(143) to read as follows:

##### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(143) On September 7, 2006, Ohio submitted revisions to Ohio Administrative Code Chapter 3745–19, Rules 3745–19–01 through 3745–19–05 including the 3754–19–03 Appendix. The revisions update Ohio's open burning regulations. Ohio added requirements for specific types of burning: emergency burning, recreational fires, hazardous material disposal, and firefighting training. The State also added or refined some of the definitions.

(i) Incorporation by reference.

(A) Ohio Administrative Code Chapter 3745: Ohio Environmental Protection Agency, Chapter 19: Open Burning Standards, Rule 3745–19–01: Definitions, Rule 3745–19–02: Relations to Other Prohibitions, Rule 3745–19–03: Open Burning in Restricted Areas with Appendix “Open Burning of Storm Debris Conditions”, Rule 3745–19–04: Open Burning in Unrestricted Areas, and Rule 3745–19–05: Permission to Individuals and Notification to the Ohio EPA. The rules were effective on July 7, 2006.

(B) June 27, 2006, “Director's Final Findings and Orders”, signed by Joseph P. Koncelik, Director, Ohio Environmental Protection Agency,

adopting rules 3745–19–01, 3745–19–02, 3745–19–03, 3745–19–04, and 3745–19–05.

[FR Doc. E8–5667 Filed 3–20–08; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0546; FRL–8534–4]

#### Approval and Promulgation of Ohio SO<sub>2</sub> Air Quality Implementation Plans and Designation of Areas

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving an assortment of rules, submitted by Ohio on May 16, 2006, as amended on December 10, 2007, setting limits on sulfur dioxide (SO<sub>2</sub>) emissions. Most significantly, EPA is approving rules for Franklin, Stark, and Summit Counties and for one source in Sandusky County, rules that supersede regulations that EPA promulgated in 1976 as a Federal Implementation Plan (FIP). This action provides that the entire FIP for SO<sub>2</sub> in Ohio will now be superseded by approved State limits. Consequently, EPA is rescinding the entire FIP. EPA is also approving several substantive rule revisions and approving numerous Ohio rules that update various company names and unit identifications. Finally, since this rulemaking resolves the issues, which led a court to remand the designation for a portion of Summit County to EPA for reconsideration, EPA is promulgating a designation of attainment for the presently undesignated portion of this county.

**DATES:** This final rule is effective on April 21, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0546. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. 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 electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy 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. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, [summerhays.john@epa.gov](mailto:summerhays.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is arranged as follows:

#### I. Background for This Action

- A. Summary of Ohio's Submittal
- B. Summary of EPA's Proposed Rulemaking
- C. Comments on EPA's Proposal

#### II. What Action Is EPA Taking?

#### III. Statutory and Executive Order Reviews.

#### I. Background for This Action

##### A. Summary of Ohio's Submittal

On May 16, 2006, Ohio EPA submitted 4 amended general SO<sub>2</sub> rules and 40 county-specific SO<sub>2</sub> rules. The county-specific rules include 4 rules that were submitted to supersede remaining FIP rules, 4 rules that include substantive revisions to the limits, and 32 rules, which only change company names or unit identifications or make other such administrative changes.

On July 24, 2007, Ohio submitted a letter identifying an error, noted by the company, in its SO<sub>2</sub> limit for the facility in Stark County owned by the Canton Drop Forging and Manufacturing Company. On December 10, 2007, Ohio submitted rule revisions correcting this error. The correction of this error makes the Stark County rules consistent with Ohio's attainment demonstration for this county and fully approvable.

##### B. Summary of EPA's Proposed Rulemaking

EPA proposed action on this submittal on May 1, 2007. The notice of proposed rulemaking provided a summary of the full history of the regulation of SO<sub>2</sub> emissions in the State of Ohio. Most notably, because Ohio withdrew its original SO<sub>2</sub> rules from EPA consideration, EPA promulgated a FIP for SO<sub>2</sub> on August 27, 1976, with numerous subsequent amendments. On September 12, 1979, Ohio submitted a plan with limits for SO<sub>2</sub> in all 88 Ohio counties. For many of the counties, EPA approved Ohio's rules and provided that the approved rules would supersede the