

§ 1.110 Inventorship and date of invention of the subject matter of individual claims.

When more than one inventor is named in an application or patent, the Patent and Trademark Office, when necessary for purposes of an Office proceeding, may require an applicant, patentee, or owner to identify the inventive entity of the subject matter of each claim in the application or patent. Where appropriate, the invention dates of the subject matter of each claim and the ownership of the subject matter on the date of invention may be required of the applicant, patentee or owner. *See also* §§ 1.78(c) and 1.130.

■ 12. Section 1.114 is amended by removing paragraphs (f), (g), and (h) and by revising paragraphs (a) and (d) to read as follows:

§ 1.114 Request for continued examination.

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(d) If an applicant timely files a submission and fee set forth in § 1.17(e), the Office will withdraw the finality of any Office action and the submission will be entered and considered. If an applicant files a request for continued examination under this section after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. An appeal brief (§ 41.37 of this title) or a reply brief (§ 41.41 of this title), or related papers, will not be considered a submission under this section.

§ 1.117 [Removed and Reserved]

■ 13. Section 1.117 is removed and reserved.

■ 14. Section 1.136 is amended by revising paragraph (a)(1) to read as follows:

§ 1.136 Extensions of time.

(a)(1) If an applicant is required to reply within a nonstatutory or shortened

statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 41.41 of this title;

(iii) The reply is a request for an oral hearing submitted pursuant to § 41.47(a) of this title;

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or

(v) The application is involved in a contested case (§ 41.101(a) of this title).

■ 15. Section 1.142 is amended by removing paragraph (c) and by revising paragraph (a) to read as follows:

§ 1.142 Requirement for restriction.

(a) If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division). Such requirement will normally be made before any action on the merits; however, it may be made at any time before final action.

■ 16. Section 1.145 is revised to read as follows:

§ 1.145 Subsequent presentation of claims for different invention.

If, after an Office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144.

§ 1.265 [Removed]

■ 17. Section 1.265 is removed.

■ 18. Section 1.495 is amended by revising paragraph (g) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

(g) The documents and fees submitted under paragraphs (b) and (c) of this

section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a).

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§ 1.704 [Amended]

■ 19. Section 1.704 is amended by removing existing paragraph (c)(11) and redesignating paragraph (c)(12) as paragraph (c)(11).

Dated: October 7, 2009.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E9-24667 Filed 10-13-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R05-OAR-2007-0908; FRL-8958-1]

Approval and Promulgation of Air Quality Implementation Plans; Ohio Administrative Code Rule 3745-21-17 Portable Fuel Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Ohio Environmental Protection Agency (Ohio EPA) submitted a revision to its State Implementation Plan (SIP) under the Clean Air Act (CAA) in order to reduce air pollution in Ohio. The SIP revision consists of a new regulation entitled Ohio's Administrative Code Rule 3745-21-17 "Control of VOC Emissions from Portable Fuel Containers." This rule impacts sale, use, and manufacture of Portable Fuel Containers (PFC) in the State of Ohio. Ohio EPA submitted this request for approval of this rule on August 7, 2007. EPA is approving this rule.

DATES: This direct final rule will be effective December 14, 2009, unless EPA receives adverse comments by November 13, 2009. 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-2007-0908, 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.

3. Fax: (312) 692-2551.

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-2007-0908. 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, 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 or e-mail. The 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, 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 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 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 Michael G. Leslie, Environmental Engineer, at (312) 353-6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Michael G. Leslie, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, leslie.michael@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. Background
- II. Summary of SIP Revision
- III. What Action Is EPA Taking?
- IV. Statutory and Executive Order Reviews

I. Background

The State of Ohio currently has eleven 8-hour ozone nonattainment and maintenance areas. Ohio's Administrative Code Rule 3745-21-17 impacts sale, use, and manufacture of PFCs in the State of Ohio. This rule is intended to help Ohio attain and maintain the 8-hour ozone standard through reductions of emissions of Volatile Organic Compounds (VOC) from these containers. VOCs are precursors to the formation of ozone.

II. Summary of SIP Revision

The PFC regulations are useful in Ohio's and EPA's efforts to improve Ohio's air quality. PFCs, also known as gas cans, are used to fill a variety of equipment including lawnmowers, vehicles, and personal watercraft. The goal of this program is to ensure that spillage and evaporative emissions from such containers are minimized or eliminated. Because of their large numbers, PFCs have the cumulative potential to create substantial hydrocarbon emissions resulting in ozone-forming smog and health related problems. On September 11, 2006, California's Air Resources Board (CARB) finalized regulations that set specific limitations on the maximum allowable diurnal emission standard for PFCs and operation of the automatic shut-off feature of spill-proof systems and spill-

proof spouts on PFCs. EPA modeled its own PFC rules on the CARB rules. The State of Ohio finds that these regulations are an effective tool to attain and maintain the 8-hour ozone standard throughout Ohio.

On August 7, 2007, Ohio EPA submitted a formal request to EPA to revise the Ohio SIP by adding the new regulation entitled "Control of VOC Emissions from Portable Fuel Containers." This regulation applies statewide to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers and/or spouts for use in Ohio on or after July 1, 2007.

This regulation requires that each PFC and/or spout for sale or use in the State of Ohio: (1) Be certified by the CARB, or (2) be certified or otherwise approved under requirements and in a manner that Ohio EPA determines are as stringent as the California requirements. EPA is approving this rule because it meets CAA and EPA requirements and helps reduce ozone concentrations.

This rule does not apply to: (1) Any PFC or spout or combination portable fuel container and spout manufactured in Ohio for shipment, sale, and use outside of Ohio, (2) safety cans meeting the requirements of 29 CFR part 1926, subpart F: "Fire Protection and Prevention;" as published in the July 1, 2006, edition of the Code of Federal Regulations, (3) PFC with a nominal capacity less than or equal to one quart, (4) rapid refueling devices with nominal capacities greater than, or equal to four gallons, provided such devices are designed for use in officially sanctioned off-highway motor sports, (5) portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine, (6) closed-system PFC that are used exclusively for fueling remote control model airplanes, and (7) PFC or PFC spouts manufactured prior to July 1, 2007.

III. What Action Is EPA Taking?

EPA is approving Ohio's Administrative Code Rule 3745-21-17 which governs sale, use, and manufacture of PFCs in the State of Ohio.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no 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 December 14, 2009 without further notice unless we receive relevant adverse written comments by November 13, 2009. 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. 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 *December 14, 2009*.

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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 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 December 14, 2009. 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, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: September 9, 2009.

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)(144) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *
(144) The Ohio Environmental Protection Agency formally submitted revisions to Ohio's Administrative Code on August 7, 2007. These revisions consists of Rule 3745-21-17 which impacts sale, use, and manufacture of Portable Fuel Containers in the State of Ohio.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745-21-17 "Portable fuel containers", adopted on June 11, 2007, effective on June 21, 2007.

(B) June 11, 2007, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0339; FRL-8947-2]

Revisions to the Arizona State Implementation Plan, Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions and precursors from steam generating units, cogeneration units, stationary gas turbines, process heaters and internal combustion engines. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 14, 2009 without further