

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The FOIA Officer shall consider any commercial interest of the requester (with reference to the definition of “commercial use” in paragraph (b)(2) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”* A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The FOIA Officer ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, a fee waiver will be granted only for those records which so qualify.

(6) Requests for the waiver or reduction of fees should address the factors listed in paragraph (n)(3) and (4) of this section, insofar as they apply to each request. FOIA Officers will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decision-making process, however, in deciding to grant waivers or reductions of fees.

(7) An appeal from an adverse fee determination will be processed in accordance with § 1.559.

(8) When considering a request for fee waiver, VA may require proof of identity.

#### **§ 1.562 Other rights and services.**

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

**Authority:** Sections 1.550 to 1.562 issued under 72 Stat. 1114; 38 U.S.C. 501.

## **PART 2—DELEGATIONS OF AUTHORITY**

■ 11. The authority citation for part 2 continues to read as follows:

**Authority:** 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, and as noted in specific sections.

■ 12. Amend § 2.6 by:

■ a. Revising paragraph (e)(10).

■ b. Adding paragraph (g)(3).

■ c. Revising the authority citation at the end of paragraph (g).

The revisions and addition read as follows:

### **§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).**

\* \* \* \* \*

(e) \* \* \*

(10) Except as prescribed in paragraph (g)(3) of this section, the General Counsel, Deputy General Counsel, and the Assistant General Counsel for Professional Staff Group IV are authorized to make final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, and 38 U.S.C. 5701, 5705 and 7332.

(Authority: 38 U.S.C. 512)

\* \* \* \* \*

(g) \* \* \*

(3) The Office of Inspector General is authorized to make final decisions on appeals submitted pursuant to the Freedom of Information Act concerning any Office of Inspector General records.

(Authority: 38 U.S.C. 512)

[FR Doc. 2011-20774 Filed 8-18-11; 8:45 am]

**BILLING CODE P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R05-OAR-2008-0514; FRL-9451-1]**

### **Approval and Promulgation of Air Quality Implementation Plans; Ohio; Control of Emissions of Organic Materials That Are Not Regulated by Volatile Organic Compound Reasonably Available Control Technology Rules**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving, as part of Ohio's State Implementation Plan (SIP) under the Clean Air Act (CAA), a revised rule 3745-21-07, “Control of emissions of organic materials from

stationary sources (*i.e.*, emissions that are not regulated by rule 3745-21-09, 3745-21-12, 3745-21-13, 3745-21-14, 3745-21-15, 3745-21-16, or 3745-21-18 of the Administrative Code).” This rule has been revised because the prior version of 3745-21-07, in Ohio's SIP, has inadequate compliance test methods and definitions. On February 8, 2008, the previously existing rule 3745-21-07, which was part of Ohio's SIP, was rescinded by Ohio EPA. The most significant problem with the prior version is the definition of “photochemically reactive material,” which is different than the definition of “volatile organic compounds” (VOC), upon which EPA's reasonably available control technology (RACT) regulations are based. The revised rule is approvable because it satisfies the applicable requirements for VOC sources under the CAA. EPA proposed this rule for approval on April 13, 2011, and received no comments.

**DATES:** This final rule is effective on September 19, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID EPA-R05-OAR-2008-0514. All documents in the docket are listed on the <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 <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 Steven Rosenthal, Environmental Engineer, at (312) 886-6052 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Steven Rosenthal, Environmental Engineer, Air Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052.

**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 public comments were received on the proposed approval?
- II. What action is EPA taking today and what is the basis of this action?
- III. Statutory and Executive Order Reviews

#### I. What public comments were received on the proposed approval?

EPA proposed to approve Ohio's revised rule Ohio Administrative Code (OAC) 3745–21–07 on April 13, 2011, at 76 FR 20598. This rule consists of VOC control requirements for sources not subject to a VOC RACT regulation. No comments were received on the proposed approval.

#### II. What action is EPA taking today and what is the basis of this action?

EPA is taking final action to approve into Ohio's SIP revised rule OAC 3745–21–07, "Control of emissions of organic materials from stationary sources." This rule regulates emissions that are not regulated by rule 3745–21–09, 3745–21–12, 3745–21–13, 3745–21–14, 3745–21–15, 3745–21–16, or 3745–21–18 of the Administrative Code. This rule was submitted by the Ohio Environmental Protection Agency (Ohio EPA) to EPA on April 7, 2008, but was not approvable at that time because both sheet molding compound (SMC) manufacturing operations and new or modified sources after February 18, 2008, were exempted from that version of the rule. However, on November 10, 2010, Ohio EPA submitted to EPA a new Rule 3745–21–25 "Control of VOC emissions from reinforced plastic composites production operations," which adequately regulates SMC manufacturing operations and was approved on July 13, 2011. Also, on October 25, 2010, Ohio EPA submitted a demonstration that the new 3745–21–07 does not violate the requirements of Section 110(l) of the CAA by not applying to new or modified sources after February 18, 2010. This demonstration is discussed in detail in the April 13, 2011 notice of proposed rulemaking.

In conclusion, and as discussed in more detail in the April 13, 2011 notice of proposed rulemaking, this rule satisfies RACT requirements and is consistent with the CAA and EPA regulations.

#### III. 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 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2011. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 4, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR part 52 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 revising paragraph (c)(114)(i)(A) and by adding paragraph (c)(154) to read as follows:

##### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(114) \* \* \*  
(i) \* \* \*

(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. Rescinded in 2008; see paragraph 154 of this section.

\* \* \* \* \*

(154) On April 7, 2008, the Ohio Environmental Protection Agency (Ohio EPA) submitted revised rule "Control of emissions of organic materials from

stationary sources (*i.e.*, emissions that are not regulated by rule 3745–21–09, 3745–21–12, 3745–21–13, 3745–21–14, 3745–21–15, 3745–21–16, or 3745–21–18 of the Administrative Code).” On February 8, 2008, the previously existing rule 3745–21–07 was rescinded by Ohio EPA.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–21–07 “Control of emissions of organic materials from stationary sources (*i.e.*, emissions that are not regulated by rule 3745–21–09, 3745–21–12, 3745–21–13, 3745–21–14, 3745–21–15, 3745–21–16, or 3745–21–18 of the Administrative Code),” effective February 18, 2008.

(B) February 18, 2008, “Director’s Final Findings and Orders”, signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

(ii) Additional material.

(A) An October 25, 2010, letter from Robert F. Hodanbosi, Chief Division of Air Pollution Control of the Ohio Environmental Protection Agency to Susan Hedman, Regional Administrator, containing documentation of noninterference, under section 110(l) of the Clean Air Act, of the less stringent applicability cutoff for sheet mold compound machines.

[FR Doc. 2011–21225 Filed 8–18–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R08–OAR–2011–0340; FRL–9454–3]

#### Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revised Definitions; Construction Permit Program Fee Increases; Regulation 3

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the two State Implementation Plan (SIP) revision packages submitted by the State of Colorado on August 1, 2007. EPA is approving the August 1, 2007 submittal revisions to Regulation 3, Part A, Section I where the State expanded on the definition of nitrogen dioxide (NO<sub>2</sub>) to include it as a precursor to ozone. An increase in the amount of the fees charged for pollutant emissions and minor wording additions as specified in Regulation 3, Part A, Section VI.D.1 is approved. EPA is also approving one grammatical change the State made to Regulation 3 in the August 1, 2007

submittal. In addition, EPA is taking no action on several revisions to Colorado’s Regulation 3 regarding New Source Review (NSR), that are contained in this submittal, where previously proposed, pending, or future actions by EPA have addressed or will address these revisions. EPA is also not acting on three provisions in the submittals that are not in Colorado’s SIP and revisions to the State’s requirements to file Air Pollution Emission Notices (APENs). This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES: EFFECTIVE DATE:** This final rule is effective September 19, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0340. All documents in the docket are listed in the <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 <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Komp, Air Program, U.S. Environmental Protection Agency, Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number (303) 312–6022, fax number (303) 312–6064, [komp.mark@epa.gov](mailto:komp.mark@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.
- (iv) The words *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *APEN* mean or refer to Air Pollutant Emission Notice.

(vi) The initials *NSR* mean or refer to New Source Review, the initials *PSD* mean or refer to Prevention of Significant Deterioration and the initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(vii) The initials *NO<sub>2</sub>* mean Nitrogen Dioxide.

#### Table of Contents

- I. Background Information
- II. Response to Comments
- III. Section 110(l) of the CAA
- IV. Final Action
- V. Statutory and Executive Order Reviews

#### I. Background Information

The State’s August 1, 2007 submittal consisted of two packages of revisions to the State’s Regulation 3. The first package of revisions was adopted by the State on August 17, 2006 and corrected minor issues EPA had identified regarding Colorado’s NSR program. The State adopted the revisions in order to ensure that the State would continue to have Federal approval of its NSR program. In the definitions section of Regulation 3, Part A, Section I.B.16, Colorado adopted language to treat NO<sub>2</sub> as an ozone precursor. The State added in Part A, Section II.C.2.b(ii) under its APEN requirements that an increase of one ton per year or greater of nitrogen oxides emissions from a source with annual actual emissions less than one hundred tons and located in an ozone nonattainment area constituted a significant change. A significant change meant that a new APEN must be submitted to the State.

In the same revision, Methyl Ethyl Ketone was removed as a reportable compound from Appendix B of Regulation 3. The State added T-Butyl Acetate as a non-criteria reportable pollutant in Regulation 3, Appendix B.

The second package of revisions adopted on December 14, 2006 contained annual emission fee increases in Part A, Section VI.D.1 of Regulation 3. The increase in fees is used to pay for the State’s increased workload from the processing of APENs and permits.

One grammatical change was made by the State in Part A, Section I.B.9.d. in their Regulation 3. The grammatical change is listed as follows:

- Section I.B.9.d. Applicable Requirement.

The right double parenthesis around the wording “Regulation No. 8” was removed and replaced with a single right parenthesis.