



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2010-0997; FRL-9901-38-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Ohio; Ohio NO_x SIP Call Rule Revisions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 15, 2010, Ohio EPA submitted to EPA revisions to Ohio OAC 3745-14. EPA is approving these revisions under the Clean Air Act, which allows for Ohio's Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program rules to supersede Ohio's nitrogen oxides (NO_x) State Implementation Plan (SIP) Call Budget Trading Program rules, but leave other requirements of the NO_x SIP Call in place for units not covered by CAIR.

DATES: This rule is effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives adverse comments by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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-2010-0997, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: aburano.douglas@epa.gov.
3. Fax: (312) 408-2279.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance 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 AM to 4:30 PM, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2010-0997. 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 website 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 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886-9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, Arra.Sarah@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. Analysis of Ohio's SIP revisions.
- III. What action is EPA taking?
- IV. Statutory and executive order reviews.

I. Background.

On October 27, 1998 (63 FR 57356), EPA published the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," commonly referred to as the NO_x SIP Call. Under the NO_x SIP Call, 22 states and the District of Columbia, including Ohio, were required to submit plans reducing NO_x emissions to reduce ozone transport throughout the eastern half of the United States. The obligations of the rule could be met through a cap and trade program for NO_x emissions (referred to as the NO_x Budget Trading Program) for large electric generating units (EGUs) and other large boilers and turbines (non-EGUs), along with controls on cement kilns and large internal combustion engines. Under the NO_x SIP Call, states have flexibility in determining where NO_x emission reductions are achieved and can choose other ways to comply. For the most part, states found that EGUs and other large industrial boilers, cement kilns, and internal combustion engines were the most cost-effective sources for NO_x emissions reductions.

On May 12, 2005 (70 CFR 25162), EPA published the "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone," commonly known as the Clean Air Interstate Rule (CAIR). This rule required 28 states and the District of Columbia to

submit plans reducing NO_x and sulfur dioxide (SO₂) emissions to reduce the interstate transport of ozone and fine particulates. Each state generally has separate budgets for ozone season NO_x, annual NO_x, and annual SO₂ emissions. For each covered pollutant, the state must achieve the required emission reductions either by requiring EGUs (and large non-EGUs in the case of ozone season NO_x) to participate in an EPA-administered interstate cap and trade system that caps emissions in two stages, or by meeting an individual state emissions budget through measures of the state's choosing. CAIR includes a NO_x Ozone Season Trading Program that supersedes the NO_x Budget Trading Program. States subject to both the NO_x SIP Call and CAIR's ozone season NO_x requirements (including Ohio) could choose to participate in the CAIR NO_x Ozone Season Trading Program and in so doing satisfy the requirements of the NO_x SIP Call with regard to EGUs and large non-EGUs. In 2008, the D.C. Circuit Court of Appeals remanded CAIR to EPA but left the rule in place pending its replacement. *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir.), *modified*, 550 F.3d 1176 (D.C. Cir. 2008).

In response to the remand of CAIR, on August 8, 2011 (76 FR 48208), EPA published the "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals," commonly known as the Cross-State

Air Pollution Rule (CSAPR). CSAPR addresses interstate transport of ozone and fine particulates by setting state budgets for 28 states, including Ohio, for ozone season NO_x, annual NO_x, and annual SO₂ emissions. CSAPR also establishes emissions trading programs that would replace the CAIR emissions trading programs. On August 21, 2012, the D.C. Circuit Court of Appeals vacated CSAPR, and ordered EPA to continue implementing CAIR in the interim. On June 24, 2013, the U.S. Supreme Court granted EPA's petition for certiorari and agreed to review the decision by the D.C. Circuit Court. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted*, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12-1182). In the meantime, and unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, CAIR remains in place and EPA intends to act in accordance with the D.C. Circuit opinion in *EME Homer City*.

II. Analysis of Ohio's SIP revisions.

On November 15, 2010, Ohio EPA submitted to EPA revisions to Ohio OAC 3745-14, the chapter containing Ohio's rules for the NO_x SIP Call. The revisions were specifically in sections 3745-14-01 and 3745-14-06, and allow for Ohio's CAIR NO_x Ozone Season Trading Program rules to supersede Ohio's NO_x Budget Trading Program rules. Although Ohio submitted these revisions before

the promulgation of CSAPR, the revisions are still relevant given the continuing implementation of CAIR.

The first revision adds a subsection to OAC 3745-14-01 which allows units subject to OAC 3745-109, Ohio's CAIR rules, to be exempt from Ohio's NO_x Budget Trading Program rules. In context, the new subsection states, "(2) The following units shall be exempt from the requirements of the NO_x budget trading program: (a) *Any unit to which Chapter 3745-109 of the Administrative Code applies.*" (OAC 3745-14-01(C)) (emphasis added showing new language). Because participation in the CAIR NO_x Ozone Season Trading Program satisfies the NO_x SIP Call for EGUs and large non-EGUs, units subject to CAIR would not need additional rules under the NO_x SIP Call. Also, Ohio's requested revisions to OAC 3745-14-01 would leave the monitoring and reporting requirements of OAC 3745-14 in place for any EGUs or large non-EGUs subject to the NO_x SIP Call that would not otherwise be required to monitor and report ozone season NO_x emissions using 40 CFR Part 75.

The second revision adds a subsection to OAC 3745-14-06 addressing excess emissions for the 2008 control period, the final year of the NO_x Budget Trading Program. Under the trading programs, affected units are allocated a certain number of allowances each year. An allowance is equal to a ton of NO_x

emissions. Allowances can also be transferred to or from other participating units. The resulting number of allowances held for a given unit makes up the unit's compliance account. At the end of each year, allowances equal to the unit's actual emissions for the covered period are deducted from the unit's compliance account. Any excess of the unit's emissions over the total number of allowances in the compliance account, as well as any additional quantity of allowances owed due to the excess emissions penalty, is deducted from the unit's allocations for subsequent years. The SIP revision for OAC 3745-14-06 provides that allowance deductions related to any excess emissions by a unit for the 2008 control period should be taken from the unit's CAIR NO_x Ozone Season Trading Program compliance account rather than the unit's NO_x Budget Trading Program compliance account, because NO_x Budget Trading Program compliance accounts would not receive any allowance allocations for years after 2008.

2008 was the year the NO_x Budget Trading Program transitioned to the CAIR NO_x Ozone Season Trading Program, therefore the deduction of allowances based on a source's old NO_x Budget Trading Program budget from the source's new CAIR NO_x Ozone Season Trading Program budget ensures that the source is still accountable for emissions penalties based on excess emissions despite the rule transition. EPA finds the revisions

to OAC 3745-14-01, transitioning applicable emissions units from Ohio's NO_x Budget Trading Program rules to Ohio's CAIR rules, and revisions to OAC 3745-14-06, transitioning 2008 allowance deductions, approvable under the Clean Air Act.

III. What action is EPA taking?

EPA is approving revisions to OAC 3745-14, specifically the additions to sections 3745-14-01 and 3745-14-06 and the associated renumbering. CAIR is the current rule implementing a trading program to address interstate transport and was promulgated to replace the NO_x SIP Call. CAIR is a more stringent program and exceeds the requirements of the NO_x SIP Call. These revisions allow for Ohio's CAIR NO_x Ozone Season Trading Program to replace Ohio's NO_x Budget Trading Program where applicable, but leave the requirements of the NO_x SIP Call in place for units not covered by CAIR. These revisions are consistent with the Clean Air Act and CAIR.

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 [INSERT DATE 60 DAYS FROM THE DATE

OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless we receive relevant adverse written comments by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

IV. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act 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 Clean Air Act. 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 (Public Law 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 [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and

address the comment in the proposed rulemaking. 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, Reporting and recordkeeping requirements.

Dated: September 16, 2013

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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 paragraph (c) (159) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(159) On August November 15, 2010, Ohio submitted revisions to Ohio Administrative Code Chapter 3745-14, Rules 3745-14-01 and 3745-14-06. The revisions sunset NO_x Budget Trading Program rules for units subject to CAIR NO_x Ozone Season Trading Program rules.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745-14-01 "Definitions and general provisions.", effective October 18, 2010.

(B) Ohio Administrative Code Rule 3745-14-06 "The NO_x allowance tracking system.", effective October 18, 2010.

(C) October 8, 2010, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

[FR Doc. 2013-27142 Filed 11/13/2013 at 8:45 am; Publication
Date: 11/14/2013]