

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9340]

RIN 1545-BB64

**Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts; Correction****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to final regulations (TD 9340) that were published in the **Federal Register** on Thursday, July 26, 2007 (72 FR41128) providing updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). These regulations will affect sponsors of section 403(b) contracts, administrators, participants, and beneficiaries.

**DATES:** The correction is effective October 26, 2010, and is applicable on July 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, John Tolleris at (202) 622-6060; concerning the regulations as applied to church-related entities, Sherri Edelman or Jason Levine at (202) 283-9634 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

The final regulations that are the subject of this correction are under section 403(b) of the Internal Revenue Code.

**Need for Correction**

As published, final regulations (TD 9340) contain an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the final regulations (TD 9340), which was the subject of FR Doc. 07-3649, is corrected as follows:

On page 41138, column 2, in the preamble, under footnote number 11, line 26, the language "Rev. Rul. 66-254 (1966-2 CB. 125)" is removed.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2010-26980 Filed 10-25-10; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[Docket No. USCG-2010-0924]

**Drawbridge Operation Regulations; Mystic River, Charlestown, MA****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the S99 Alford Street Bridge across the Mystic River, mile 1.4, at Charlestown, Massachusetts. The deviation allows the bridge to remain in the closed position three days in November to facilitate scheduled bridge maintenance.

**DATES:** This deviation is effective from 8 p.m. on November 12, 2010 through 4 a.m. on November 15, 2010.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2010-0924 and are available online at <http://www.regulations.gov>, inserting USCG-2010-0924 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. John McDonald, Project Officer, First Coast Guard District, [john.w.mcdonald@uscg.mil](mailto:john.w.mcdonald@uscg.mil), or telephone (617) 223-8364. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

The S99 Alford Street Bridge, across the Mystic River at mile 1.4, at Charlestown, Massachusetts, has a vertical clearance in the closed position of 7 feet at mean high water and 16 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.609.

The owner of the bridge, the City of Boston, requested a temporary deviation from the regulations to facilitate scheduled bridge maintenance, replacing steel members and steel deck grid at the bridge.

Under this temporary deviation the S99 Alford Street Bridge may remain in the closed position from 8 p.m. on November 12, 2010 through 4 a.m. on November 15, 2010.

Vessels that can pass under the bridge in the closed position may do so at any time. A work barge will be located in the main navigation channel during the structural repairs to the bridge. The work barge will move out of the channel upon request by calling William Schurman, of SPS New England at 978-265-7263.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 14, 2010.

**Gary Kassof,***Bridge Program Manager, First Coast Guard District.*

[FR Doc. 2010-26984 Filed 10-25-10; 8:45 am]

BILLING CODE 9110-04-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R05-OAR-2008-0684; FRL-9215-2]

**Approval and Promulgation of Air Quality Implementation Plans; Ohio; Particulate Matter Standards****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a request submitted by the Ohio Environmental Protection Agency (Ohio EPA) on August 22, 2008, to revise the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). The State has submitted revisions to twelve rules and rescinded one rule in Ohio Administrative Code (OAC) Chapter 3745-17, "Particulate Matter Standards." The revisions were submitted by Ohio EPA to satisfy the State's 5-year review requirements. The particulate matter (PM) standards contain the particulate emission control requirements that have been necessary to attain and maintain the 2006 National Ambient Air Quality Standards (NAAQS) for PM in the State.

EPA is approving the revisions to nine of the OAC 3745-17 rules. EPA is approving only a portion of Rule 7, while not acting on the portion providing a partial exemption from opacity limits for a lime kiln in Woodville, Ohio. We are conditionally approving Rule 11 based on a

commitment by Ohio to address EPA's concerns with the large item size exemptions. EPA is not acting on Rule 3, regarding opacity measurement methods. Lastly, EPA is approving the rescission of Rule 5 from the Ohio SIP.

**DATES:** This direct final rule will be effective December 27, 2010, unless EPA receives adverse comments by November 26, 2010. 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-2008-0684, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

3. *Fax:* (312) 692-2054.

4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Jay Bortzer, Chief, 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-2008-0684. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <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 <http://www.regulations.gov>

or e-mail. The <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 <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 <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which 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 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 Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Control Strategies 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 the background for this action?
- II. What is EPA's analysis of the revision?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

**I. What is the background for this action?**

Ohio requested a revision to its SIP on August 22, 2008. Ohio seeks approval of its revision of OAC Chapter 3745-17 to clarify and amend its existing PM rules, in accordance with Chapter 119.032 of the Ohio Revised Code, which requires Ohio EPA to review and revise its rules every five years. The revisions include updating the limits for sources that have changed PM limits or have permanently shut down.

**II. What is EPA's analysis of the revision?**

Ohio submitted revisions to twelve rules and one rescinded rule within its PM rules, OAC 3745-17. EPA agrees with the revisions Ohio made to nine of its PM rules. EPA is approving the changes because the rules are not weakened by the revisions Ohio made. EPA is also taking no action on OAC 3745-17-03, which will be addressed later in separate rulemaking. For OAC 3745-17-07, EPA is taking no action on a portion and approving the rest of the rule. EPA is conditionally approving OAC 3745-17-11 on the condition that Ohio submits revised rule language within one year that resolves EPA concerns. EPA is approving the rescission of OAC 3745-17-05.

**A. OAC 3745-17-01—Definitions**

Ohio revised some of the definitions in Rule 1 along with the addition of new definitions. The new definitions are for "OEPA," "Ohio EPA," "PM<sub>2.5</sub>," and "PM<sub>10</sub>." Fine particulate matter (PM<sub>2.5</sub>) has an aerodynamic diameter of 2.5 micrometers (µm) or smaller, while larger particulate matter with a diameter up to 10 µm is known as coarse particulate matter (PM<sub>10</sub>). The State has replaced references to total suspended particulates with PM<sub>10</sub> and deleted the definition for "total suspended particulates" from Rule 1. The definition of "total suspended particulates" is no longer needed because the term no longer appears in OAC Chapter 3745-17. Ohio also added incorporation by reference information in Rule 1 that references a variety of test methods, the Code of Federal Regulations, and other information. The additional definitions, addition of incorporations by reference, and deletion of a now unused definition clarify OAC Chapter 3745-17. EPA is approving the revisions to Rule 1.

**B. OAC 3745-17-02—Ambient Air Quality Standards**

The ambient air quality standards for PM in Rule 2 have been updated to reflect the current Federal standards for particulate matter as promulgated in October 2006. EPA considers the revisions to be approvable since the state standards are as stringent as the Federal standards. A comment was added to Rule 2 that refers readers to the "Incorporation by Reference" section in Rule 1 (OAC 3745-17-01(C)). Readers seeking test methods, engineering guides, Code of Federal Regulations, or other incorporated material are referenced to where the material is found. This comment that was also added to Rules 3, 7, 8, 12, and 13, will

assist people in finding the supplementary publications referenced in OAC Chapter 3745–17. EPA is approving the Rule 2 revisions because the air quality standards were made as strict as Federal standards and the incorporation by reference comments adds clarity.

#### *C. OAC 3745–17–03—Measurement Methods and Procedures*

In a separate submission, Ohio submitted revisions to OAC 3745–17–03 to allow large boiler sources a new compliance option using continuous emission monitoring data even if 1.1 percent of readings exceed current allowable levels. Those revisions are being evaluated in separate rulemaking; see the June 27, 2005 proposed rule at 70 FR 36901. Ohio's August 22, 2008, submission makes only relatively minor revisions to this rule. Therefore, EPA is not acting on these minor revisions in this rulemaking and instead will continue to address revisions to OAC 3745–17–03 in separate rulemaking.

#### *D. OAC 3745–17–04—Compliance Time Schedules*

Rule 4 was modified to reflect the altered compliance schedules for significantly modified sources and to remove references to permanently shutdown sources. The closed facilities are units at: The Ford Motor Company, Cleveland Castings Plant (Ford); International Mill Service, Incorporated; Standard Slag Company; and the Mingo Junction and Steubenville Wheeling-Pittsburg Steel Corporation facilities. The removal of references to permanently shutdown facilities allows readers to more easily determine the correct compliance schedule. The addition of specified compliance deadlines allows particulate matter limits compliance to proceed. The Rule 4 revisions are being approved by EPA.

#### *E. OAC 3745–17–05—Non-Degradation Policy*

Rule 5 prohibits significant and avoidable deterioration of air quality in area attaining the NAAQS. Ohio has found that Rule 5 is too vague to be enforceable, so that the rule did not protect air quality. Subsequent to the adoption of Rule 5, Ohio adopted and is implementing rules that impose new source review requirements for major sources, found at OAC 3745–31 (approved by EPA on January 10, 2003, 68 FR 1366), to prevent deterioration of the ambient air quality. Ohio has rules that provide specific emission limits for a variety of sources, including rules that restrict the emissions from new sources, such that the NAAQS will not be

threatened. The specific emission limits in or resulting from Ohio's rules can be enforced. As Rule 5 has been superseded by more effective rules, EPA agrees that Rule 5 can be removed from the SIP and thus is approving the rescission.

#### *F. OAC 3745–17–07—Control of Visible Particulate Emissions From Stationary Sources*

EPA is taking no action on OAC 3745–17–07 (A)(3)(j). Section (A)(3)(j) provides startup and shutdown exemptions from opacity limits for the Martin Marietta Magnesia Specialties, Inc. facility in Woodville, Ohio. EPA is working with Ohio to resolve concerns on the exemption conditions in section (A)(3)(j). EPA will act on the startup and shutdown exemptions after the issues are resolved, so EPA is taking no action now on this section of Rule 7.

EPA is approving the minor wording changes in the rest of Rule 7 along with the previously mentioned incorporation by reference comment. The minor wording revisions may ease the readability and do not weaken the rule, so EPA is proceeding with approving those portions of Rule 7.

#### *G. OAC 3745–17–08—Restriction of Emission of Fugitive Dust*

Ohio removed the exemption of the AK Steel Corporation's Middletown Works from Rule 8. Consent decree conditions require upgraded pollution controls on the Middletown Works facility. The consent decree also caused the fugitive dust rule exemption to expire on May 22, 2006. Ohio removed the expired fugitive dust exemptions for three units at the Middletown Works facility from Rule 8. The number 3 blast furnace along with the number 15 and number 16 basic oxygen furnaces are no longer exempt from the fugitive dust emission control requirements in OAC 3745–17–07 and –08. As a result, the Middletown Works units are now subject to the requirement in OAC 3745–17–07(B)(1) to limit opacity to twenty percent as a three-minute average. The units are also subject to requirements in OAC 3745–17–08 for reasonably available control technology, most notably an outlet emissions limit in OAC 3745–17–08 (B)(3) of 0.030 grains of particulate per dry standard cubic foot of exhaust. The comment on incorporation by reference was added to Rule 8, too. The revisions clarify the rule as outdated limits are removed and the revised rule provides current incorporation by reference information. The removal of the exemption from fugitive dust emission limits for three Middletown Works units makes the

units subject to emission limits, effectively strengthening the particulate emission limits for the three units. EPA is approving the revisions to Rule 8.

#### *H. OAC 3745–17–09—Restrictions on Particulate Emissions and Odors From Incinerators*

No changes were made to Rule 9 since it was approved by EPA on May 27, 1994, 59 FR 27464. Ohio requested approval of Rule 9, so EPA is approving the unrevised rule again. This is known as re-codifying the rule.

#### *I. OAC 3745–17–10—Restrictions on Particulate Emissions From Fuel Burning Equipment*

Minor wording changes were made to Rule 10. The wording changes help clarify the rule and therefore are being approved by EPA.

#### *J. OAC 3745–17–11—Restrictions on Particulate Emissions From Industrial Processes*

The most significant revision to OAC 3745–17–11 pertains to surface coating. Although the primary emissions of concern from surface coating are the volatile organic compound emissions that arise from solvent evaporation, OAC 3745–17–11 establishes a particulate emission limit for coating operations simply because OAC 3745–17–11 establishes generic emission limits for any process handling material such as coatings and objects being coated. However, testing of particulate emissions from coating operations is difficult, making it difficult to determine whether particular control measures provide for compliance. Therefore, Ohio exempted surface coating operations from the generic emission limits in OAC 3745–17–11 and subjected these sources instead to a set of rules requiring a specific set of work practices that will control these emissions. EPA agrees with the State that these work practice requirements provide a more effective means to requiring control of these operations than the generic emission limits in 3745–17–11.

EPA has concerns about one aspect of Ohio's revisions to OAC 3745–17–11, in which Ohio authorizes itself to exempt sources that are too large to meet the new work practice requirements. EPA is concerned that this provision grants "director's discretion" for the State to authorize exemptions that EPA might find problematic without providing any opportunity for EPA to object. However, on July 2, 2010, Bob Hodanbosi, Ohio EPA Air Pollution Control Division Chief, submitted a commitment by e-mail to Cheryl Newton, EPA Region 5

Air and Radiation Division Director, to amend the pertinent rule within one year of an EPA conditional approval of the rule. The amendment would provide that any exemption granted by the State must be submitted for EPA approval as a State Implementation Plan revision. This revision would address EPA's concern. Therefore, EPA is conditionally approving this rule, on the condition that Ohio makes the revision that they committed to make.

The revisions to OAC 3745-17-11 also grant an exemption from the rule's limits for jet engine testing. PM emissions resulting from this exemption are expected to be small given that a small number of engines will be tested at once and only for a limited time. Ohio stated that the maximum PM emissions rate resulting from this exemption will be 10 pounds per hour. EPA finds that this exemption will have de minimis impact, and finds this revision approvable. In summary, EPA is conditionally approving revisions to OAC 3745-17-11, conditioned on Ohio revising the rule further to provide that exemptions granted by the State shall be submitted to EPA for review.

*K. OAC 3745-17-12—Additional Restrictions on Particulate Emissions From Specific Air Contaminant Sources in Cuyahoga County*

The changes to Rule 12 are all for the Ford Motor Company, Cleveland Castings Plant facility, with one exception, the "Incorporation by Reference" comment mentioned earlier.

Several emission units at the Ford facility have been permanently shutdown. Thus, most of the revisions to Rule 12 involve removing references to the permanently shutdown units. Ohio revised control requirements and added alternative control requirements for some of the units that will ensure the operating Ford units remain controlled following the unit shutdowns and replacements.

The removed limits are not expected to harm air quality because the units have permanently shutdown. The other Rule 12 revisions accommodate the closed units. The updated control requirements reflect necessary changes to keep the operating units well controlled. Some control devices have been shutdown as portions of the Ford plant closed. In cases where a control device serves multiple units, exhaust from units remaining operational need to be rerouted to operating control devices. The Ohio revisions to Rule 12 keep the operating Ford units controlled while removing the permanently shutdown units and controls from the rule. EPA believes that the revisions

will clarify the rule without harming air quality and therefore is approving the Rule 12 changes.

*L. OAC 3745-17-13—Additional Restrictions on Particulate Emissions From Specific Air Contaminant Sources in Jefferson County*

Ohio revised OAC 3745-17-13 to reflect numerous emission decreases and increases in Jefferson County. Most notably, Ohio removed the requirements for permanently shutdown facilities and units from Rule 13, thereby providing that these facilities must have zero emissions. One exception to this general characterization of Ohio's rule changes is that Wheeling-Pittsburg Steel must continue to control emissions from fugitive dust sources (roadways and storage piles) at its Steubenville facility despite this facility's shutdown status. The revised rule allows slightly more emissions from fugitive dust sources at Wheeling-Pittsburg Steel's Steubenville and Mingo Junction facilities. In addition, the revised rules provide slightly higher emission limits at some sources and slightly lower emission limits at other sources at the Mingo Junction facility.

Under section 110(l) of the CAA, EPA may not approve these rule revisions if the revisions would interfere with attainment of pertinent air quality standards. Ohio's submission provides detailed information on changes in the area's allowable emission since 1991, when Ohio submitted its attainment plan for PM<sub>10</sub> for this area. However, some of the listed changes in allowable emissions are not attributable to rule changes in Ohio's 2008 submittal and instead are attributable to construction permits, most notably three permits: (1) A permit to consolidate boiler operations; (2) a permit to construct an electric arc furnace in Mingo Junction in conjunction with shutdown of three units in Steubenville (Blast Furnace #1 and boilers number 1 and 10) and three coke plants and a sinter plant in neighboring Follansbee, West Virginia; and (3) a permit to rebuild and expand the capacity of Blast Furnace number 5 in conjunction with the shutdown of Blast Furnace number 3. Ohio did not specify which increases and reductions should be considered to be associated with the rule revisions and which are associated with construction permits. Nevertheless, to evaluate the approvability of Ohio's revisions, EPA used allowable emission levels provided in Ohio's submission to examine the expected emission changes that appeared to be mandated by these rule changes for Jefferson County.

Clearly the most significant emission changes pursuant to Ohio's revised rules result from the shutdown of Jefferson County facilities, in particular the shutdown of the International Mill Service and Standard Slag facilities and most of the Wheeling-Pittsburgh Steel-Steubenville Works. Other changes allowed a relatively modest increase in allowable emissions from fugitive dust sources and a modest net increase in process emission limits. At the Steubenville Works, allowable emissions of fugitive dust (e.g., roadway dust) increased from 1.35 to 1.72 pounds per hour, but the shutdown of the remainder of the facility resulted in a net allowable emission decrease of 21.80 pounds per hour. At the Wheeling-Pittsburgh Steel-Mingo Junction Works, the fugitive dust limit increased from 4.91 to 7.67 pounds per hour, and other limits were increased or decreased slightly, resulting in a net reduction at the facility of 14.32 pounds per hour. The net effect of the increases and decreases in emission limits at the Mingo Junction facility was a 5.25 pounds per hour reduction. Since the emission decreases in these revisions are substantially greater than the emission increases, and every facility is decreasing emissions as a result of this rule change, EPA is satisfied that these revisions will yield lower PM<sub>10</sub> concentrations throughout Jefferson County, so that these revisions will not interfere with attainment or maintenance of the PM<sub>10</sub> standards.

EPA must also examine whether the revisions might interfere with attainment of the PM<sub>2.5</sub> National Ambient Air Quality Standards, particularly because Jefferson County has been designated as not attaining the PM<sub>2.5</sub> standards. The emission limits in Rule 13 are PM<sub>10</sub> limits, but fine particulate matter, PM<sub>2.5</sub>, is a subset of PM<sub>10</sub>. The particulate matter formerly emitted by units being shutdown contain as high or higher fractions of fine particulate matter than the units being allowed higher emissions. Therefore, the conclusion found for PM<sub>10</sub> also applies for PM<sub>2.5</sub>. EPA is satisfied that the revisions will yield lower PM<sub>2.5</sub> concentrations throughout Jefferson County, so that these revisions will not interfere with attainment or maintenance of the PM<sub>2.5</sub> standards.

Ohio's submission includes dispersion modeling indicating that the revised limits at each facility including the higher fugitive dust limits will not threaten the PM<sub>10</sub> NAAQS. The modeling method used by the facility and State differs from the modeling method EPA recommends for this scenario. Nevertheless, the modeling

provides supportive evidence that the revisions to Ohio's rules will not interfere with attainment of applicable air quality standards or with any other requirement.

EPA agrees with the State's conclusion that the revisions to Rule 13 will not interfere with attainment of PM NAAQS. EPA is therefore approving the Rule 13 revisions.

*M. OAC 3745-17-14—Contingency Plan Requirements for Cuyahoga and Jefferson Counties*

Minor wording changes were made to Rule 14. This included replacing total suspended particulates with PM<sub>10</sub>. Reference to the annual PM<sub>10</sub> standard was removed as the EPA has revoked that standard. EPA is approving the Rule 14 changes because the remaining particulate standards will adequately protect human health.

### III. What action is EPA taking?

EPA is approving revisions to the Ohio SIP. Ohio submitted revisions to OAC 3745-17. EPA is approving all of the submitted revisions to OAC 3745-17-01, -02, -04, -08, -09, -10, -12, -13, and -14. EPA is approving the rescission of OAC 3745-17-05 from the Ohio SIP. EPA is approving OAC 3745-17-07, except for OAC 3745-17-07(A)(3)(j) that EPA is not taking action on. EPA is conditionally approving OAC 3745-17-11, based on commitment by Ohio to revise OAC 3745-17-11(A)(1)(l) to require all large item size exemptions to be approved by EPA as a SIP revision for the exemption to be valid. Ohio has committed to providing the revised rule language by November 25, 2011.

*A. What does conditional approval mean?*

Pursuant to section 110(k)(4) of the CAA, EPA may conditionally approve a portion of a SIP revision based on a commitment from a state to adopt specific, enforceable measures no later than twelve months from the date of final conditional approval. If it fails to commit to undertake the necessary changes, or fails to actually make the changes within the twelve month period, the conditional approval automatically converts to disapproval. EPA would subsequently publish a notice in the **Federal Register** providing notice and details of the disapproval. EPA is not required to separately propose a finding of disapproval. If a state submits final and effective rule revisions correcting the deficiencies within one year from this conditional approval becoming final and effective, EPA will publish a subsequent notice in the **Federal Register** to acknowledge

conversion of the conditional approval to a full approval.

### 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 CAA; 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 December 27, 2010. 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, Intergovernmental relations, Incorporation by reference, Particulate matter.

Dated: October 4, 2010.

**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 adding paragraph (c)(150) to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(150) On August 22, 2008, Ohio submitted revisions to

Ohio Administrative Code Chapter 3745–17, Rules 3745–17–01 through 3745–112–14. The revisions contain particulate matter standards in the State of Ohio necessary to attain and maintain the 2006 24-hour PM<sub>2.5</sub>, annual PM<sub>2.5</sub> and 24-hour PM<sub>10</sub> NAAQS.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–17–01 Definitions: (A) and (B), Rule 3745–17–02 Ambient air quality standards, Rule 3745–17–04 Compliance time schedules, Rule 3745–17–07 Control of visible particulate emissions from stationary sources, Rule 3745–17–08 Restriction of emission of fugitive dust, Rule 3745–17–09 Restrictions on particulate emissions and odors from incinerators, Rule 3745–17–10 Restrictions on particulate emissions from fuel burning equipment, Rule 3745–17–12 Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga county, Rule 3745–17–13 Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson county, and Rule 3745–17–14 Contingency plan requirements for Cuyahoga and Jefferson counties. The rules became effective on February 1, 2008.

(B) January 22, 2008, “Director’s Final Findings and Orders”, signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

(ii) Additional Information.

(A) Ohio Administrative Code Rule 3745–17–01 Definitions: (C), effective on February 1, 2008.

■ 3. Section 52.1890 is amended by adding paragraph (d) to read as follows:

**§ 52.1890 Removed control measures.**

\* \* \* \* \*

(d) On August 22, 2008, Ohio requested that Ohio Administrative Code 3745–17–05 “Non-degradation Policy.” be removed from the Ohio SIP. The rule was rescinded statewide on February 1, 2008.

■ 4. Section 52.1919 is amended by adding paragraph (c) to read as follows:

**§ 52.1919 Identification of plan—conditional approval.**

\* \* \* \* \*

(c) On August 22, 2008, the Ohio Environmental Protection Agency

submitted a revision to Ohio Administrative Code (OAC) 3745–17–11. The rule establishes a particulate emission limit for coating operations in lieu of generic emission limits based on the weight of processed materials. On July 2, 2010, Ohio submitted a commitment to amend OAC 3745–17–11 by November 25, 2011. The amendment would provide that any exemption granted by the state for sources too large to meet the coating work practice requirement must be submitted for EPA approval as a State Implementation Plan (SIP) revision. When EPA determines the state has met its commitment, OAC 3745–17–11 will be incorporated by reference into the SIP.

[FR Doc. 2010–26880 Filed 10–25–10; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R05–OAR–2009–0807; FRL–9209–1]

**Approval and Promulgation of Air Quality Implementation Plans; Ohio; Ohio Ambient Air Quality Standards**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving amendments to the Ohio Administrative Code (OAC) relating to the consolidation of Ohio’s Ambient Air Quality Standards (AAQS) into Ohio’s State Implementation Plan (SIP) under the Clean Air Act. On April 8, 2009, and August 11, 2009, Ohio EPA adopted amendments to various rules in the OAC to consolidate the state’s AAQS. On September 10, 2009, Ohio EPA requested from EPA approval of amendments to the OAC with the intent to consolidate Ohio’s AAQS into a single rule to provide greater accessibility for the regulated community and to the citizens of Ohio. EPA is approving the request because the revisions clarify the state’s rules and thus better serve the purpose of providing for meeting these standards. **DATES:** This direct final rule will be effective December 27, 2010, unless EPA receives adverse comments by November 26, 2010. 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–2009–0807, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

3. *Fax:* (312) 692–2054.

4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18), 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–2009–0807. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <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 <http://www.regulations.gov> or e-mail. The <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 <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 <http://www.regulations.gov> index. Although