

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations, as follows:

**PART 100—MARINE EVENTS
[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1

2. § 100.1307 is added to read as follows:

§ 100.1307 Special Local Regulations, Strait Thunder Performance, Port Angeles, WA.

(a) *Regulated Areas.* (1) The *race area* encompasses all waters located inside of a line connecting the following points located near Port Angeles, Washington:
Point 1: 48°07'24" N, 123°25'32" W;
Point 2: 48°07'26" N, 123°24'35" W;
Point 3: 48°07'12" N, 123°25'31" W;
Point 4: 48°07'15" N, 123°24'34" W.

[Datum: NAD 1983].

(2) The *spectator area* encompasses all waters located within a box bounded by the following points located near Port Angeles, Washington:

Point 1: 48°07'32" N, 123°25'33" W;
Point 2: 48°07'29" N, 123°24'36" W;
Point 3: 48°07'24" N, 123°25'32" W;
Point 4: 48°07'26" N, 123°24'35" W.

[Datum: NAD 1983.]

(b) *Definitions.* For the purpose of this section the following definitions apply:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Port Angeles. The Coast Guard Patrol Commander is empowered to control the movement of vessels in the regulated area.

(2) *Patrol Vessel* means any Coast Guard vessel, Coast Guard Auxiliary vessel, or other Federal, State or local law enforcement vessel.

(c) *Special Local Regulations.* (1) Non-participant vessels are prohibited from entering the race area unless authorized by the Coast Guard Patrol Commander.

(2) Spectator craft may remain in the designated spectator area but must follow the directions of the Coast Guard Patrol Commander. Spectator craft entering, exiting or moving within the spectator area must operate at speeds, which will create a minimum wake, and not exceed seven knots. The maximum speed may be reduced at the discretion of the Patrol Commander.

(3) A succession of sharp, short signals by whistle or horn from a Patrol Vessel will serve as a signal to stop. Vessels signaled must stop and comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Coast Guard Patrol Commander may be assisted by other federal, state and local law enforcement agencies in enforcing this regulation.

(d) *Enforcement dates.* This section is enforced annually on the first or second Friday, Saturday, and Sunday in October from 9 a.m. until 5 p.m. The event is a three day event and the specific dates will be published each year in the **Federal Register**. In 2005, this section will be enforced from 9 a.m. until 5 p.m. on Friday, September 30th, to Sunday, October 2nd.

Dated: June 13, 2005.

J.M. Garrett,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 05-12648 Filed 6-24-05; 8:45 am]

BILLING CODE 4910-15-P

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

[R05-OAR-2005-OH-0002; FRL-7928-2]

**Approval and Disapproval of Ohio
Implementation Plan for Particulate
Matter**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing action on various particulate matter rule revisions that Ohio submitted on June 4, 2003. EPA is proposing to approve numerous minor provisions that clarify a variety of elements of these rules. However, EPA is proposing to disapprove revisions that provide for use of continuous opacity monitoring data but allow more exceedances of the general opacity limit in cases where an eligible large coal fired boiler opts to use these data for determining compliance. EPA proposes to find that these revisions constitute a relaxation of the opacity rules, and that, contrary to section 110(l) of the Clean Air Act, these revisions may interfere with satisfaction of relevant state planning requirements.

DATES: Comments shall be received by July 27, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05-OAR-2005-

OH-0002, by one of the following methods:

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

Agency Web site: <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: mooney.john@epa.gov.

Fax: (312) 886-5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05-OAR-2005-OH-0002. EPA's policy is that all comments received will be included in the public docket without change, 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 RME, regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are "anonymous access" systems, 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 RME or 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. For additional instructions on submitting comments, go to Section V of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone John Summerhays at 312-886-6067 before visiting the Region 5 office. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays.

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6067. *Summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

- I. Background Information
 - A. Does this action apply to me?
 - B. What did Ohio submit?
- II. Review of Ohio's Submittal
 - A. Review of revisions of opacity limits
 - B. Review of other revisions
- III. Rulemaking Action
- IV. Statutory and Executive Order Reviews
- V. Procedures for Commenting

I. Background Information

A. Does This Action Apply to Me?

This action addresses opacity as measured continuously and other particulate matter issues in Ohio. This action applies to you if you have an interest in these issues.

B. What Did Ohio Submit?

On June 4, 2003, Ohio submitted to EPA several revised rules for control of particulate matter emissions into the atmosphere. These rule revisions arose from a State legislative requirement that the State review its rules every five years and incorporate any updates and clarifications that are judged to be warranted. Most of the revisions Ohio submitted represent clarifications and

relatively minor updates to its rules. However, these rule revisions also include a significant revision to Ohio's rules on opacity, providing for use of continuous opacity monitoring data for judging compliance with a modified set of opacity limitations. The following delineation of revisions identifies the revisions included in each submitted rule, including a description of the revisions to the opacity test method provisions in Rule 3745-17-03. The next section of this notice describes EPA's review of Ohio's submittal.

Rule 3745-17-01, entitled "Definitions," includes a more precise definition of "British thermal unit" than the prior rule, and includes updated version dates for the Code of Federal Regulations (CFR) citations included in the rule.

Rule 3745-17-02, entitled "Ambient air quality standards," incorporates the changes EPA made in 1997 and 1999 to Appendix K of 40 CFR part 50, describing procedures for analyzing concentrations of particulate matter of a nominal aerodynamic diameter of 10 micrometers or less (PM₁₀). The focus of EPA's revisions on the dates cited in Rule 3745-17-02, *i.e.* July 18, 1997, and April 22, 1999, were on particulate matter nominally 2.5 micrometers or less (PM_{2.5}) and the procedures for analyzing concentrations of PM_{2.5} as identified in Appendix N of 40 CFR part 50. EPA's rulemaking of April 22, 1999, did not amend Appendix K. However, EPA's rulemaking of July 18, 1997, did amend Appendix K, to apply a format for this appendix similar to the format for other appendices to 40 CFR part 50. Ohio did not revise its rules to incorporate the PM_{2.5} air quality standards (which have been upheld by decisions of the Supreme Court and the Circuit Court of Appeals for the District of Columbia), or the new PM₁₀ standards in 40 CFR part 50.7 and 40 CFR part 50 Appendix N (which were subsequently vacated by the Circuit Court of Appeals for the District of Columbia).

Rule 3745-17-03, entitled "Measurement methods and procedures," most significantly incorporates new provisions relating to continuous opacity monitoring. The rule was also revised to update references to the CFR and to remove an unused test of gaseous fuel heat content.

The version of Rule 3745-17-03(B)(1) currently in the SIP designates Method 9 of Appendix A to 40 CFR part 60 as the sole reference method for assessing whether the opacity of stack emissions exceeds the limits specified in Rule 3745-17-07(A)(1). These limits are 20 percent opacity as a 6-minute average,

except that one 6-minute average per hour may be as high as 60 percent opacity. The rule also identifies some exemptions that are limited in circumstance and limited in duration.

Ohio's revised version of Rule 3745-17-03 states that "as an alternative to [Method 9], coal-fired boilers with heat input capacities equal to or greater than 250 million Btu per hour that are controlled with either baghouses or electrostatic precipitators may determine the compliance with the visible particulate emission limitations specified in paragraph (A)(1) of rule 3745-17-07 * * * through the use of continuous opacity monitoring data." The rule stipulates that the monitoring system must comply with the requirements of 40 CFR 60.13, and must be certified in accordance with 40 CFR part 60, Appendix B, Performance Specification 1.

For eligible sources that assess compliance with opacity limits using data from continuous opacity monitoring systems (COMS), Ohio's revised Rule 3745-17-03(B)(1) allows additional time of excess opacity (between 20 and 60 percent opacity) beyond the current provision for one 6-minute period per hour of such opacity. Specifically, this rule provides that the time of such additional excess opacity values may represent up to 1.1 percent of the operating time per calendar quarter. This rule also provides that the total time of excess opacity, including any hour's initial 6-minute period above 20 percent opacity plus any newly allowed additional time of excess opacity, may not exceed 10 percent of the operating time in any calendar quarter.

EPA submitted adverse comments on these rule revisions to Ohio during its rulemaking process. Ohio's submittal presents EPA's comments and other comments and provides Ohio's responses. While Ohio made selected changes in its final rule, EPA's comments and Ohio's responses remain fully pertinent to Ohio's final revised rule. EPA's comments, Ohio's responses, and EPA's proposed evaluation of Ohio's final rule, are described in the following section describing EPA's review of Ohio's submittal.

Rule 3745-17-04, entitled "Compliance time schedules," incorporates several simplifications and clarifications. For numerous compliance schedules involving final compliance over 10 years ago, Ohio has removed various interim deadlines, *e.g.* for initiating construction of control equipment, and retained only the final compliance deadline. Ohio removed

arguably redundant language in places, and Ohio clarified that the limits applicable to one facility would become the responsibility of any subsequent owner of such facility should the facility be sold. The rule changes did not change any final compliance deadlines.

Rule 3745-17-07, entitled "Control of visible particulate emissions from stationary sources," reflects changes only in 3745-17-07(A)(3)(h). The version of this provision in the current SIP provides an exemption from the general stack opacity limits for sources that are not subject to the requirements of Rules 3745-17-08(B)(3) or (B)(4), 3745-17-10, and 3745-17-11. The revised rule provides this same exemption for sources that are not subject to any *mass emission limitation* in these rules. With one exception, the limitations in these rules are mass emission limitations, so sources that are subject to requirements of these three rules are also subject to mass emission limitations, and the rule language change has no effect. The one exception is in Rule 3745-17-08(B)(4), which provides that ship loading operations at grain terminals may satisfy the requirement for reasonably available control technology either (a) by installing control equipment that achieves an outlet emission rate of 0.030 grains of particulate matter per dry standard cubic foot or (b) by installing and using "control measures such as deadbox or bullet-type loading spouts which are equivalent to or better than" the controls under (a). Thus, the revision to Rule 3745-17-07(A)(3)(h) would clarify that ship loading operations at a grain terminal that implement alternate control measures would not be subject to stack opacity limits.

Rule 3745-17-08, entitled "Restriction of emission of fugitive dust," has a small number of clarifications and minor corrections. The revisions correct source identification numbers for one plant and the spelling of the town name for another plant. The revisions clarify that one of the criteria for judging whether a source has met the requirement for reasonably available control measures is the definition of "reasonably available control measures" given in Rule 3745-17-01(B)(15). The revisions clarify that a source that has both stack and fugitive emissions is subject to both stack and fugitive emission limits as applicable. The revisions clarify that used oil that is regulated under a specified separate Ohio rule may not be spread on roadways to satisfy road dust control requirements. The revisions also clarify

a previously established rule effective date.

Rule 3745-17-11, entitled "Restrictions on particulate emissions from industrial processes," reflects one editorial change and one clarification. The clarification is essentially the same as the clarification of Rule 3745-17-08, that a source that has both stack and fugitive emissions is subject to both stack and fugitive emission limitations if applicable.

II. Review of Ohio's Submittal

A. Review of Revisions of Opacity Limits

The most significant revision that Ohio made provides for use of continuous opacity monitoring data to assess compliance with modified opacity limits. Currently the SIP only identifies Method 9 (delineated in Appendix A to 40 CFR part 60) as a reference method for assessing compliance with opacity limits. Ohio's revision establishes continuous opacity monitoring as a reference method for assessing compliance with opacity limits, but provides sources that use this method with expanded exemptions from those limits.

EPA provided comments to the State objecting to these revisions during the comment period of the State's rulemaking. The State's submittal repeats EPA's comments and provides responses. The following discussion summarizes EPA's comments and Ohio's responses and evaluates Ohio's responses.

EPA's first concern is that the expansion of exemptions from Ohio's opacity limits constitute a relaxation that may interfere with applicable requirements and thus contravene Clean Air Act section 110(l). Ohio responded that it "believe[s] it would be beneficial to implement an additional exemption category, that does not affect the total amount of exemptible time or maximum exemptible opacity values under the existing regulations, in exchange for a clearly enforceable, technically-supported, 24-hour per day compliance approach using a continuous monitoring system for a specific source category—an approach that does not have to pass any credible evidence demonstration."

Ohio is correct that its rule revisions do not increase the *total* amount of allowable time of excess opacity (*i.e.* opacity between 20 and 60 percent), nor do the revisions alter the 60 percent opacity cap. However, the revised rules allow excess opacity on occasions that excess opacity is currently prohibited, without any compensating prohibitions of emissions that are currently allowed. For example, a source that routinely has

1 full hour of excess opacity and then 9 subsequent hours of no excess opacity would comply with the new revised rule but would clearly violate the existing SIP rule. Therefore, contrary to Ohio's implication, the revised rule clearly allows emissions that are prohibited by the current SIP.

Section 110(l) states that EPA "shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment * * * or any other applicable requirement of this Act." Ohio provided no analyses or demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements. Therefore, EPA must disapprove this revised rule.

Currently, COMS data may be used as credible evidence of violations, and EPA would welcome rule revisions that provide more clearly that valid COMS data are enforceable evidence of a source's compliance status. However, EPA cannot approve such a revision that also includes a less stringent set of opacity limits without a demonstration pursuant to section 110(l) that the revisions would not interfere with applicable requirements of the Clean Air Act.

EPA's second, related concern is that the language of the rule essentially authorizes the source to choose its approach for addressing opacity, either to use Method 9 with existing limits or to use COMS data with less stringent opacity limits. The rule states that "As an alternative to [Method 9], coal-fired boilers [meeting certain criteria] may determine compliance * * * through the use of continuous opacity monitoring data." This language suggests that such sources may also choose instead to determine compliance through the use of Method 9. This suggests that a source that has COMS data indicating impermissibly frequent excess opacity could attempt to avoid noncompliance status simply by choosing to rely on well-timed Method 9 readings instead. At the same time, Ohio's rule has the effect of reducing the utility of Method 9 readings, because violations according to Method 9 can be rendered moot by COMS data indicating compliance.

In comments during the Ohio rulemaking, EPA requested that the State clearly provide in the rule that enforcement action may be taken for noncompliance based either on Method 9 data or on COMS data. Ohio stated in its response that COMS data that are appropriate to use for enforcement are by definition equivalent to data that

would be obtained by Method 9. However, conformance of COMS data with human observations in accordance with criteria in 40 CFR part 60 does not signify that opacity values from the two methods will be equivalent under all circumstances, or that compliance with a calendar quarter-based limit based on COMS data should prevent enforcement action based on violation of a short-term limit based on Method 9.

Ohio elaborated on its response to EPA by making several additional points for EPA's consideration, enumerated as points A through G. In points A through C, Ohio clarified the accounting of excess opacity values and explained its basis for concluding that the revised rule allows no more total time of excess opacity than the current SIP rule. In point D, Ohio explained that its exemption level was derived by analyzing an extensive set of COMS data, and suggested that the allowance of excess opacity for 1.1 percent of operating time reflects a level that sources meet for 95 percent of the data sets. In point E, Ohio commented that EPA did not provide input for selection of an exemption level and did not provide data to support a view that large coal-fired boilers can continuously meet Ohio's opacity limitations. In point F, Ohio made several responses to an EPA comment about Method 9 potentially detecting opacity from sulfate that is not observed by a COMS. Ohio noted that compliance with its mass emission limits is typically determined with a method that does not include most sulfate emissions; Ohio argued on this basis that it is inappropriate to use Method 9 to evaluate a detached sulfate plume. Ohio stated that EPA inherently finds COMS data as equivalent to Method 9 data by using COMS data for enforcement purposes, an equivalence that Ohio apparently views as invalidating the need for COMS-based limits and Method 9-based limits to be independently enforceable. Finally, in point G, Ohio noted "concerns raised in [two federal court opinions identified in a subsequent e-mail as *National Parks Conservation Association, Inc. v. Tennessee Valley Authority*, Case No. 3:00-cv-547, issued by the Eastern District of Tennessee on November 26, 2001; and *Appalachian Power Co. v. EPA*, 208 F. 3d 1015, issued by the Circuit Court for the District of Columbia on April 14, 2000] regarding the method of measuring compliance as related to the stringency of the limitations."

EPA appreciates the clarifications in points A through C, which have assisted EPA in the above review of Ohio's rules. Regarding point D, the critical point, not

addressed by Ohio, is how the selected compliance level affects the stringency relative to the limitation in the current SIP. Regarding the first part of point E, EPA provided input which focused not on Ohio's analyses of noncompliance frequencies but rather on the statutory requirements of section 110(l) of the Clean Air Act. Regarding the second part of point E, Ohio already has data within its own COMS data base that documents numerous occasions for numerous facilities in which the facilities report operating entire quarters in full compliance with the previous rule, in some cases having no 6-minute opacity values above 20 percent whatsoever. Regarding point F, there is no question that sulfate is found in particulate form; indeed, sulfate is a major constituent of the PM_{2.5} concentrations in Ohio that violate the PM_{2.5} standard. Method 9 provides detailed procedures that measure the opacity of sulfate and other particles irrespective of whether the plume is detached or attached. The changes that have been made to mass emission test methods to address concerns about their measurement of sulfate particles do not warrant changes in the measurement of the opacity of these particles. Use of COMS data as credible evidence of noncompliance in selected cases does not signify that the particular COMS-based opacity limits in Ohio's revised rule are equivalent to the Method 9-based rule in the Ohio SIP or that a rule that provides the source the choice of which set of limits to comply with is equivalent to a rule that requires compliance with both sets of limits.

With regard to point G, EPA finds that the above-cited court cases were decided on grounds that were not relevant to a decision in a SIP context. Furthermore, the discussion contained in these court opinions does not address several issues pertinent to section 110(l). For example, the opinions do not address how to conduct a quantitative comparison between opacity monitoring data collected continuously versus Method 9 data obtained at indeterminate frequency. As another example, the opinions do not address how to compare a rule that specifies continuous opacity monitoring as a reference method (used on a voluntary basis) versus the current SIP under which COMS data are used on a credible evidence basis.

Several other commenters submitted comments to Ohio during its rulemaking comments. A member of the law firm Shumaker, Loop & Kendrick, LLP submitted a variety of comments on the derivation and use of the data base that Ohio used to derive its COMS-based

opacity limit exemptions; however, as indicated above, the data base analyses used to derive these exemptions do not address the question of whether the exemption levels can be justified under section 110(l). Other comments generally either did not result in any rule changes or are addressed above. Therefore, EPA is not providing an exhaustive discussion of other comments that were submitted to Ohio.

B. Review of Other Revisions

This review is organized by rule and proceeds in order of rule number.

In Rule 3745-17-01, the formalizing of the definition of British thermal unit should have no substantive effect. EPA finds this revision approvable.

In Rule 3745-17-02, Ohio provided updated version dates for Appendix K to 40 CFR part 50, specifying use of the version as of July 18, 1997, as amended on April 22, 1999. These revisions must be examined in the context of two extant sets of particulate matter air quality standards, one of which addresses particles that are nominally 10 micrometers and smaller ("PM₁₀") and the other of which addresses particles that are nominally 2.5 micrometers and smaller ("PM_{2.5}"). Appendix K describes data handling procedures for the PM₁₀ standards promulgated in 1987. (Newer air quality standards for PM₁₀ were promulgated in 1997 but were subsequently vacated by the District of Columbia Circuit Court of Appeals.) On July 18, 1997, EPA reformatted Appendix K for consistency with the appendices associated with the PM_{2.5} and PM₁₀ standards promulgated that day, but EPA made no substantive changes to Appendix K that day. On April 22, 1999, EPA amended Appendix L but not Appendix K. Thus, EPA interprets Ohio's rule to apply the reformatted Appendix K published on July 18, 1997, and concludes that this appendix continues to provide the appropriate procedures for data handling for the 1987 PM₁₀ standards.

Rule 3745-17-03 includes several paragraphs in which the version date of the referenced part of the Code of Federal Regulations was updated. These revisions are approvable. Rule 3745-17-03 was also revised to identify a single test method for determining the heat content of gaseous fuels rather than identifying a second method if the first method "does not apply." This revision simplifies the identification of test methods and is approvable.

Rule 3745-17-04 includes various simplifications and clarifications. Rule 3745-17-04(A)(6) is clarified to state that the requirements in that paragraph apply to the Columbus and Southern

Ohio Electric Company but also to any subsequent owner or operator of the Conesville Station. Rule 3745-17-04(B) is revised to eliminate numerous interim compliance deadlines that generally date back to 1993 and earlier and to simplify some of the language. These revisions are approvable. Rule 3745-17-04 also clarifies in some cases that "the effective date of this rule" is January 31, 1998. While EPA has no objection to this revision, the pertinent requirements for which these compliance dates apply are still under EPA review. Because EPA has not approved the pertinent requirements, EPA may not act on the paragraphs in Rule 3745-17-04 (specifically paragraphs (B)(5)(c), (B)(6)(f), (B)(7)(e), and (B)(8)) that set compliance deadlines for requirements that EPA has not approved. EPA will act on these paragraphs in conjunction with its action on the corresponding requirements.

Rule 3745-17-07 includes one revision, in 3745-17-07(A)(h), that revises this exemption from applying to any source "which is not subject to the requirements of [Rule 3745-17-08(B)(3) or (B)(4) or other specified rules]" to apply to any source "which is not subject to any mass emission limitation in" those rules. That is, the exemption is being broadened beyond sources with no applicable requirement in those paragraphs to also exempt sources for which those paragraphs impose requirements other than mass emission limitations. Rule 3745-17-08(B)(3) requires use of emission capture equipment and achievement of outlet gases that either contain no more than 0.030 grains of particulate emissions per standard cubic foot or have no visible emissions. It is clearly not a relaxation to provide that a source that has no visible emissions is exempt from a 20 percent opacity limit. (A source that is subject to the 0.030 grains limit is subject to a mass emissions limitation and thus is not affected by the change in the language of Rule 3745-17-07(A)(h).) Rule 3745-17-08(B)(4) requires ship loading operations at grain terminals either to achieve controlled emission rates to achieve a limit of 0.030 grains of particulate emissions per standard cubic foot or to install and use "control measures such as deadbox or bullet-type loading spouts which are equivalent to or better than [measures that would achieve 0.030 grains per standard cubic foot]." These alternative control measures would not necessarily have an outlet to which the normal stack opacity limit would reasonably apply, and yet the installed equipment

would be achieving equivalent emission reductions. Therefore, EPA believes that this exemption is reasonable and does not decrease the stringency of the requirements for such sources.

Rule 3745-17-08 reflects a variety of clarifications. Paragraph 3745-17-08(A)(3)(b) reflects updated Ohio EPA source numbers for three units at Armco Steel Middletown Works. Paragraph 3745-17-08(A)(4) is a new paragraph, also added to Rule 3745-17-11, that clarifies that a source can be subject to both stack emission limits and fugitive emission control requirements if the source has both stack and fugitive emissions. Paragraph 3745-17-08(B)(2) is amended by clarifying that used oil is not an acceptable dust suppression material. Paragraph 3745-17-08(C) is amended by adding subparagraph (3), providing that an additional criterion for judging whether a source has applied reasonably available control measures for fugitive dust is whether the measures comply with the definition of reasonably available control measures given in Rule 3745-17-01(B)(15). These revisions all clarify the State rules and do not relax the requirements in any way.

Rule 3745-17-11, as noted above, includes a new paragraph that clarifies that a source can be subject to both stack emission limits and fugitive emission control requirements if the source has both stack and fugitive emissions. The rule also contains one editorial improvement. These revisions are approvable.

III. Rulemaking Action

For reasons described in the previous section, EPA proposes to disapprove the revision to Ohio Rule 3745-17-03(B)(1), which would provide for optional use of COMS data for enforcing a revised set of opacity limitations. EPA is not acting on revisions to Ohio Rule 3745-17-04(B)(5)(c), (B)(6)(f), (B)(7)(e), and (B)(8), because these represent compliance dates for requirements that EPA has not approved. EPA is proposing to approve all other revisions in Ohio's request of June 4, 2003.

IV. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

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

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

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

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

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

V. Procedures for Commenting

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket R05-OAR-2005-OH-0002". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional

Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket R05-OAR-2005-OH-0002" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA

will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to mooney.john@epa.gov. Please include the text "Public comment on proposed rulemaking Region 5 Air Docket OHxxx" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to regulations.gov at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: John Mooney, Chief, Criteria Pollutant Section (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket OHxxx" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: John Mooney, Chief, Criteria Pollutant Section (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's

normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

Dated: May 24, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR-2002-0058; FRL-7928-7]

RIN 2060-AM97

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of reconsideration of final rule; request for public comment.

SUMMARY: The EPA is requesting comment on certain aspects of our national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters, which EPA promulgated on September 13, 2004.

After promulgation of the final regulations for boilers and process heaters, the Administrator received petitions for reconsideration of certain provisions in the final rule. In this document, the EPA is initiating the reconsideration of some of those provisions. We are requesting comment on certain provisions of the approach used to demonstrate eligibility for the health-based compliance alternatives, as outlined in appendix A of the final rule, and on the provisions establishing a health-based compliance alternative for total selected metals. We are not requesting comment on any other provisions of the final rule. We are not granting petitioners' request that we stay the effectiveness of the health-based compliance provisions of the final rule, pending this reconsideration action.

DATES: *Comments.* Comments must be received on or before August 11, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by July 7, 2005, a public hearing will be held on July 12, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR-2002-0058 (Legacy Docket ID No. A-96-47) by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR-2002-0058 (Legacy Docket ID No. A-96-47). The 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.epa.gov/edocket>, 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, 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 EDOCKET or 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.

Public Hearing. If a public hearing is held, it will be held on July 12, 2005 at the EPA facility, Research Triangle Park, N.C. or an alternative site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pamela Garrett at least 2 days in advance of the public hearing (see **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this document.

Docket. The EPA has established an official public docket for today's document, including both Docket ID No. OAR-2002-0058 and Legacy Docket ID No. A-96-47. The official public docket consists of the documents specifically referenced in today's document, any public comments received, and other information related to the document. All items may not be listed under both