* * * * *

[FR Doc. 2010–3509 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–OH–0004; FRL–9107–4]

Approval and Promulgation of Implementation Plans; Ohio New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the prevention of significant deterioration (PSD) and nonattainment new source review (NSR) construction permit programs to the Ohio State Implementation Plan (SIP) based on the State's November 15, 2005, letter. The Ohio Environmental Protection Agency (OEPA) is seeking approval of its rules to implement the NSR Reform provisions that were not vacated by the United States Court of Appeals for the District of Columbia (DC Circuit) in *New York* v. *EPA.* EPA proposed approval of these rules on May 11, 2005 and received adverse comments. In this action, EPA responds to these comments and announces EPA's final rulemaking action. This action affects major stationary sources in Ohio that are subject to or potentially subject to the PSD and NSR construction permit programs.

DATES: This final rule is effective on March 29, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–OH–0004. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Genevieve Damico, Environmental Engineer, at (312) 353–4761 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Air Permit Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761, *damico.genevieve@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 Being Addressed by This Document?
II. What Sections of Ohio's Rules Are We Approving in Today's Action?
III. How Has This Rulemaking Been Affected by the June 24, 2005 DC Circuit Court of Appeals?
IV. What Are EPA's Responses to Adverse Comments?
V. What Action Is EPA Taking Today?
VI. Statutory and Executive Order Review

I. What Is Being Addressed by This Document?

We are partially approving revisions to the PSD and nonattainment NSR construction permit programs of the State of Ohio. EPA fully approved Ohio's nonattainment NSR program on January 10, 2003 (68 FR 1366). EPA fully approved Ohio's PSD program on January 22, 2003 (68 FR 2909).

On December 31, 2002, EPA published revisions to the Federal PSD and NSR regulations in 40 CFR Parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as "NSR Reform" regulations and became effective on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). As stated in the December 31, 2002, EPA rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that rulemaking no later than January 2, 2006 (67 FR 80240). OEPA submitted these regulatory revisions for parallel processing on September 14, 2004, which was prior to final adoption of the State rules. Ohio adopted the final rules on October 28, 2004. EPA proposed conditional approval of these rules on May 11, 2005 (70 FR 24734). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR reform revisions. *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). Although the court did uphold most of EPA's rules, it vacated both the clean unit and the PCP provisions. As a result of this court ruling, OEPA submitted a letter to EPA on November 15, 2005, amending its request for approval of Ohio's rule. Specifically, Ohio withdrew its request for approval of the clean units and PCP portions of the Ohio rules.

II. What Sections of Ohio's Rules Are We Approving in Today's Action?

Ohio Administrative Code (OAC) 3745–31–01 Definitions

Definitions Unchanged From Proposal

In accordance with the May 11, 2005 proposal, EPA is approving the definitions for actual emissions, actuals PAL, baseline actual emissions, baseline concentration, best available control technology, continuous emission monitoring system, continuous emissions rate monitoring system, continuous parameter monitoring system, emission unit, lowest achievable emission rate, major source baseline date, major stationary source, minor source baseline, new source review project, nonattainment or nonattaiment area, nonattainment new source review permit, PAL allowable emissions, PAL effective date, PAL effective period, PAL major emissions unit, PAL major modification, PAL permit, PAL pollutant, PAL significant emissions unit, PAL small emissions unit, particulate matter, particulate matter emissions, plantwide applicability limit, PM10, PM10 emissions, total suspended particulate, pollution prevention, predictive emissions monitoring system, prevention of significant deterioration increment, prevention of significant deterioration permit, projected actual emission, regulated NSR pollutant, replacement unit, representative actual annual emissions, significant emissions increase, and stationary source in OAC 3745–31–01(C), (D), (O), (Q), (S), (EE), (FF), (GG), (MM), (FFF), (JJJ), (KKK), (NNN), (UUU), (VVV), (WWW), (CCCC), (DDDD), (EEEE), (FFFF), (GGGG), (HHHH), (IIII), (JJJJ), (KKKK), (LLLL), (MMMM), (OOOO), (PPPP), (QQQQ), (UUUUU), (SSSS), (VVVV), (WWWW), (XXXX), (ZZZZ), (DDDDD), (EEEEE), (KKKKK), (LLLLL), and (PPPPP) respectively. EPA is also approving the definitions in OAC 3745–31–01, the non-40 CFR 51.166 and 51.165 definitions in OAC 3745–31–01 (E), (J), (M), (X), (JJ), (QQ), (DDD), (EEE), (XXX), (HHHHH), and (XXXXX) and the minor revisions to the definitions for "available information", "baseline area", "baseline concentration", "best available

technology", "Clean Air Act", "Clean Coal Technology", "Clean Coal Technology Demonstration Project", "Construction", "facility", "non-methane organic compound", "Non-road engine", and "Temporary clean coal demonstration project", in accordance with the May 11, 2005 proposal.

In a November 15, 2005 letter, OEPA withdrew its request for approval of the definitions for "clean unit" and "PCP" found in OAC 3745–31–01(Y) and OAC 3745–31–01(RRRR) respectively. EPA does not approve these definitions into the SIP.

Definition of Major Modification

In the November 15, 2005 letter, OEPA withdrew its request for approval into the SIP of the emission test for NSR projects that involve clean units and exclusion of a PCP from a physical change or change in the method of operation from the definition of major modification found in OAC 3745–31–01(III)(4)(c) and (5)(h) respectively. OEPA also withdrew the phrase "3745–31–31 and" from the comment in OAC 3745–31–01(III)(2) and the sentence "For example, if a NSR project involves both an existing emissions unit and a clean unit, the projected increase is determined by summing the values determined using the method specified in paragraph (III)(4)(a) of this rule for the existing unit and using the method specified in paragraph (III)(4)(c) of this rule for the clean unit." from OAC 3745–31–01(III)(4)(d). EPA is approving the definition of "major modification" in OAC 3745–31–01(III) with the exception of the portions withdrawn by OEPA in the November 15, 2005 letter.

Definition of Net Emissions Increase

In the November 15, 2005 letter, OEPA withdrew its request for approval of the exemption of increases or decreases in clean units from the determination of a net emissions increase and the requirements for credibility of decreases in emissions from clean units and PCPs when determining a net emissions increase found in OAC 3745–31–01(SSS)(3)(d) and OAC 3745–31–01(SSS)(3)(f)(iv) respectively. EPA is approving into the SIP the definition of "net emissions increase" in OAC 3745–31–01(SSS) with the exception of the portions withdrawn by OEPA in the November 15, 2005 letter.

Incorporation by Reference

In the November 15, 2005 letter, OEPA withdrew its request for approval into the SIP the reference to 68 FR 61276, October 27, 2003 in OAC 3745–31–01(ZZZZZ)(2)(h). This is a reference to the vacated equipment replacement provisions (ERP). Ohio's rules do not contain any implementing language for the ERP. OEPA committed in its November 15, 2005 letter to remove the reference to the ERP by June 2006. EPA is approving OAC 3745–31–01(ZZZZZ) with the exception of the reference to 68 FR 61276, October 27, 2003 in OAC 3745–31–01(ZZZZZ)(2)(h).

OAC 3745–31–09: Air Permit To Install Completeness Determinations, Public Participation and Public Notice

EPA is approving OAC 3745–31–09 as proposed on May 11, 2005.

OAC 3745–31–10 Air Stationary Source Obligations

In the November 15, 2005 letter, OEPA withdrew its request for approval of the phrase "3745–31–30 to" from OAC 3745–31–10(B) and the phrase "at a clean unit or" from OAC 3745–31–10(C). EPA is approving OAC 3745–31–10 into the SIP with the exceptions of these two phrases.

OAC 3745–31–10(C) specifies record keeping and reporting requirements for sources that elect to use the actual-to-projected-actual emission test and where there is a reasonable possibility that a project may result in a significant net emissions increase. In 2005, in *New York* v. *EPA,* the DC Circuit Court remanded to EPA this provision of the Federal rule (40 CFR 52.21(r)(6)) because "EPA has failed to explain how it can ensure NSR compliance without the relevant data" in the circumstances where a facility concludes that a significant emissions increase is not a reasonably possible. 413 F.3d at 35–36. As stated in the November 15, 2005 letter, OEPA believes its rules addressed the court's decision remanding the record keeping and reporting requirements when there is not "reasonable possibility" of a significant emissions increase. Ohio incorporated a requirement that all facilities "where the sum of the Federally enforceable potential to emit of the new or modified emissions units associated with the NSR project prior to the issuance of the NSR project's [minor NSR] permit-to-install is greater than any one of the significant levels found in the significant definition of rule 3745–31–01 of the Administrative Code" must record and submit the documents required under the original rule regardless of a reasonable possibility determination.

EPA promulgated regulations to clarify the "reasonable possibility" record keeping and reporting standard of the 2002 NSR reform rules on December 21, 2007 (72 FR 72607). EPA's rules allow permitting authorities three years to incorporate these changes. Ohio has three years to change OAC 3745–31–10 to meet the requirements of the December 21, 2007 rulemaking.

OAC 3745–31–13 Attainment Provisions—Review of Major Stationary Sources and Major Modifications, Stationary Source Applicability and Exemptions

EPA is approving OAC 3745–31–13 as proposed on May 11, 2005.

OAC 3745–31–15 Attainment Provisions—Control Technology Review

EPA is approving OAC 3745–31–15 as proposed on May 11, 2005.

OAC 3745–31–21 Nonattainment Provisions

EPA is approving OAC 3745–31–21 as proposed on May 11, 2005.

OAC 3745–31–22 Nonattainment Provisions—Conditions for Approval

In the November 15, 2005 letter, OEPA withdrew its request for approval for the exclusion of clean unit or PCP emission reductions from use in determining emissions offsets found in OAC 3745–31–22(A)(3)(e) and (A)(3)(f). EPA is approving OAC 3745–31–22 with the exception of OAC 3745–31–22(A)(3)(e) and (A)(3)(f).

OAC 3745–31–24 Nonattainment Provisions—Baseline for Determining Credit for Emission and Air Quality Offsets

EPA is approving OAC 3745–31–24 as proposed on May 11, 2005.

OAC 3745–31–26 Nonattainment Provisions—Offset Ratio Requirements

EPA is approving OAC 3745–31–26 as proposed on May 11, 2005.

OAC 3745–31–30 Clean Units

In the November 15, 2005 letter, OEPA withdrew its request for approval for OAC 3745–31–30 in its entirety. By removing OAC 3745–31–30 from the request for approval and its rules, the portions of OAC 3745–31 which were the basis for proposing conditional approval in the May 11, 2005 **Federal Register** are no longer under consideration by EPA. EPA is not approving OAC 3745–31–30 into the SIP.

OAC 3745–31–31 Pollution Control Project

In the November 15, 2005 letter, OEPA withdrew its request for approval for OAC 3745–31–31 in its entirety. EPA is not approving OAC 3745–31–31 into the SIP.

OAC 3745–31–32 Plantwide Applicability Limit (PAL)

EPA is approving OAC 3745–31–32 as proposed on May 11, 2005.

III. How Has This Rulemaking Been Affected by the June 24, 2005 DC Circuit Court of Appeals?

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR reform revisions. *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). Although the Court did uphold most of EPA's rules, it vacated both the clean unit and the PCP provisions. As a result of this court ruling, OEPA submitted a letter to EPA on November 15, 2005, amending its request for approval of Ohio's rule. Specifically, Ohio withdrew its request for approval of the clean unit and PCP portions of the Ohio rules. By removing the clean unit provisions from the request for approval and its rules, the portions of OAC 3745–31 which were the basis for proposing conditional approval in the May 11, 2005 **Federal Register** are no longer under consideration by EPA. Therefore, the basis for proposing conditional approval instead of approval is no longer present. EPA is instead partially approving Ohio's rules in this action with no conditions.

IV. What Are EPA's Responses to Adverse Comments?

EPA received comments in support of Ohio's rules, as well as adverse comments. Several commenters provided comments on the May 11, 2005 proposal prior to the June 24, 2005 court ruling. Therefore, the comments do not reflect the DC Circuit Court decision. This final action takes into consideration the court's ruling on the Federal NSR reform regulations. Therefore, Ohio's approved SIP is consistent with the Federal NSR reform regulations. This action discusses three significant adverse comments. However, EPA responds to all adverse comments in three documents that can be found in the docket for this action. These documents are: Response to Comments of the National Resources Defense Council to EPA's Proposed Rule to Conditionally Approve Ohio's Changes to Its New Source Review Rules, Response to the State of Vermont's Comments, and Response to Comments of the Ohio Environmental Council to EPA's Proposed Rule to Conditionally Approve Ohio's Changes to its New Source Review Rules.

A. Provisions in Ohio's Submission Cause the State's Revised Plan To Interfere With Applicable Requirements Concerning Attainment and Reasonable Further Progress

Commenters express concern that the EPA has never made, or even proposed to make, a finding that revising Ohio's permit provisions so that they track the non-vacated provisions of the 2002 rules "would not interfere with attainment or other applicable requirements." Commenters state that neither Ohio nor EPA has analyzed the particular impact of each part of the rule, much less the particular impact that each part's adoption by Ohio would have on that State's compliance with the requirements that it provide for attainment, prohibit emissions that interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), and require reasonable further progress toward expeditious attainment. Therefore, commenters believe that finalizing the EPA rulemaking proposal at issue here would violate section 110(1) of the Clean Air Act (CAA).

EPA responds that Section 110(l) of the CAA states that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this chapter." 42 U.S.C. 7410(l).

In "Approval and Promulgation of Implementation Plans; NSR; State of Nevada, Clark County Department of Air Quality and Environmental Management", 69 FR 54006 (Sept. 7, 2004), EPA stated that section 110(l) does not preclude SIP relaxations. EPA stated that Section 110(l) only requires that the "relaxations not interfere with specified requirements of the CAA including requirements for attainment and reasonable further progress", and that therefore, a State can relax its SIP provisions if it is able to show that it can "attain or maintain the NAAQS and meet any applicable reasonable further progress goals or other specific requirements." 69 FR 54011–12.

The Ohio Proposed NSR Reform Rules track the Federal NSR Reform Rules, and EPA previously determined that the implementation of the Federal NSR Reform Rules will be environmentally beneficial. (*See* 68 FR 44620 and 63021). EPA's Supplemental Analysis for the Federal NSR Reform Rules estimated that there are likely to be reductions in emissions of volatile organic compounds (VOC) due to the use of PALs. Using the same methodology used in the Supplemental Analysis to assess the emissions benefits of the Ohio's NSR Reform Rules in Ohio as EPA used to assess the benefits nationally, we conclude that the PAL option would result in a net reduction of VOC emissions.

It is more difficult to assess the environmental impacts of the actual-to-projected-actual test and the "2 in 10" baseline provisions. The Supplemental Analysis determined that there is a slight national environmental benefit brought about by these NSR reform provisions. However, in Ohio, sources undergoing construction which are not subject to the best available control technology or lowest achievable emission reduction NSR requirements will need to comply with Ohio's best available technology provisions under OAC 3745–31–05(A)(3).

Overall, we expect changes in air quality as a result of implementing PALs, the actual-to-projected-actual test, and the "2 in 10" baseline provisions in Ohio to be somewhere between neutral and providing modest contribution to reasonable further progress. Accordingly, EPA determines that these changes will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

B. Provisions in Ohio's Submission Cause the State's Revised Plan To Interfere With Applicable Requirements Concerning Backsliding in Nonattainment Areas.

Commenters expressed concern that EPA's approval will allow sources in Ohio's nonattainment areas to "backslide" on more stringent pollution control requirements contrary to section 193 of the CAA. Section 193 of the CAA provides in part that: "No control requirement in effect * * * before November 15, 1990, in any area which is a non-attainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant." 42 U.S.C. 7515. According to commenters, Ohio has made no demonstration, and EPA has proposed no finding, that the modifications to Ohio's NSR rules ensure "equivalent or greater emissions reductions." Moreover, commenters state, Ohio cannot make a demonstration of equivalency, and EPA cannot make such a finding. Because, far from ensuring "equivalent or greater emission reductions" than Ohio's preexisting permit provisions, the modifications ensure that emissions will

not be reduced as much as under the preexisting rules. In fact, commenters believe, the modifications allow emissions to increase in Ohio's nonattainment areas.

EPA responds that assuming that section 193 applies to NSR, section 193 does not require additional emission reductions before this SIP revision is approved. As of November 15, 1990, the approved SIP did not contain a major source NSR program consistent with the requirements of the CAA, which requires offsets for construction of major sources or major modifications in nonattainment areas. The SIP in effect on November 15, 1990 did include a preconstruction permitting program, but that program did not require offsets for any sources. Under Ohio's new rules, major sources are subject to permitting requirements that are consistent with current CAA requirements (while minor sources remain subject to the 1990 permitting program). This SIP revision affects only the major source permitting program.

Thus, assuming that section 193 applies in some fashion to the permitting program in the SIP as of November 15, 1990 as it applied to major sources, that program did not achieve any "emission reductions" from major sources because it did not require offsets for any sources. It follows that if there were no emission reductions generated by the 1990 permitting program, then the section 193 requirement to provide "equivalent or greater emission reductions" of any air pollutant as part of this SIP revision would be satisfied with no additional reductions. Furthermore, for the reasons discussed above with respect to Section 110(l), EPA has found that the net effect of these changes will be neutral or environmentally beneficial.

C. Ohio's Incorporation of EPA's 2003 New Source Review Rule by Reference

Commenters express concern that EPA's May 11, 2005, action appears to propose to approve Ohio provisions that incorporate by reference an EPA rule that has been stayed by order of the DC Circuit, as well as a second EPA rule—a related Federal implementation plan rule—that the agency has acknowledged to be stayed by virtue of the same DC Circuit order. If EPA approves those provisions, the action will be a violation of the DC Circuit's order. Additionally, the action will exceed EPA's authority under section 110(k)(3) of the CAA while violating sections 110(l) and 193.

EPA responds that in a November 15, 2005 letter, OEPA withdrew its request for approval of the phrase "68 FR 61276, Oct. 27, 2003:" in OAC 3745–31–01 (ZZZZZ)(2)(h). EPA is not approving this section into the SIP. Furthermore, in the November 15, 2005 letter, OEPA commits to strike this phrase during its next five-year review which is expected to be completed by June 2006.

V. What Action Is EPA Taking Today?

EPA is partially approving revisions to Ohio's permit to install provisions, which were submitted by Ohio to EPA on September 14, 2004. These revisions meet the minimum program requirements of the December 31, 2002 EPA NSR Reform rulemaking. As requested by OEPA's November 15, 2005 letter, EPA is not taking action on the provisions of Ohio's rule relating to clean units, PCP, and ERP. Furthermore, OEPA has removed the respective clean unit, PCP and ERP provisions from its rules.

VI. 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 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 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 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. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 21, 2010.

Walter W. Kovalick Jr.,

Acting 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 K—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(145) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(145) On September 14, 2004, Ohio submitted modifications to its Prevention of Significant Deterioration and nonattainment New Source Review rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–31–01, Definitions: (C), (D), (E), (J), (M), (N), (O), (P), (Q), (S), (T), (U), (V), (W), (X), (DD), (EE), (FF), (GG), (JJ), (MM), (NN), (QQ), (DDD), (EEE), (FFF), (JJJ), (KKK), (NNN), (UUU), (VVV), (WWW), (XXX), (YYY), (ZZZ), (CCCC), (DDDD), (EEEE), (FFFF), (GGGG), (HHHH), (IIII), (JJJJ), (KKKK), (LLLL), (MMMM), (OOOO), (PPPP), (QQQQ), (SSSS), (VVVV), (WWWW), (XXXX), (ZZZZ), (DDDDD), (EEEEE), (HHHHH), (KKKKK), (LLLLL), (PPPPP), (QQQQQ), (UUUUU), and (XXXXX), adopted on October 18, 2004, effective October 28, 2004.

(B) Ohio Administrative Code Rules 3745–31–01, Definitions: (III) and (SSS), 3745–31–10 "Air Stationary Source Obligations.", and 3745–31–22 "Nonattainment Provisions—Conditions for Approval", adopted on October 18, 2004, effective October 28, 2004 and revised by the November 15, 2005 letter from Joseph P. Koncelik to Thomas Skinner. This letter, included as Additional material in paragraph (145)(ii)(B) below, removes references to the Pollution Control Project (PCP) and Clean Unit provisions vacated by a June 24, 2005 DC Circuit Court of Appeals decision.

(C) Ohio Administrative Code Rules 3745–31–09 "Air permit to install completeness determinations, public participation and public notice.", 3745–31–13 "Attainment provisions—review of major stationary sources and major modifications, stationary source applicability and exemptions.", 3745–31–15 "Attainment provisions—Control Technology Review.", 3745–31–21 "Nonattainment provisions—review of major stationary sources and major modifications—stationary source applicability and exemptions.", 3745–31–24 "Non-attainment Provisions—Baseline for Determining Credit for Emission and Air Quality Offsets.", 3745–31–26 "Nonattainment Provisions—Offset Ratio Requirements.", and 3745–31–32 "Plantwide applicability limit (PAL).", adopted on October 18, 2004, effective October 28, 2004.

(D) October 18, 2004, "Director's Final Findings and Orders", signed by Christopher Jones, Director, Ohio Environmental Protection Agency, adopting rules 3745–31–01, 3745–31–09, 3745–31–10, 3745–31–13, 3745–31–15, 3745–31–21, 3745–31–22, 3745–31–24, 3745–31–26, 3745–31–30, 3745–31–31, and 3745–31–32.

(ii) Additional material.

(A) Ohio Administrative Code Rule 3745–31–01, Definitions: (ZZZZZ) adopted on October 18, 2004, effective October 28, 2004.

(B) Letter dated November 15, 2005, from Ohio EPA Director Joseph P. Koncelik to Regional Administrator Thomas Skinner, titled Request for Approval of Ohio Administrative Code ("OAC") Chapter 3745–31 NSR Reform Rule Changes into the State Implementation Plan ("SIP").

* * * * *

[FR Doc. 2010–3831 Filed 2–24–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0213; FRL–8813–8]

1,2,3-Propanetriol, Homopolymer Diisooctadecanoate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 1,2,3-propanetriol, homopolymer diisooctadecanoate, herein referred to as triglycerol diisostearate, when used as an inert ingredient (emulsifier) when applied to animals. Valent Biosciences Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of triglycerol diisostearate.

DATES: This regulation is effective February 25, 2010. Objections and requests for hearings must be received on or before April 26, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0213. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8560; e-mail address: *fertich.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be