

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-18, 5-year review

Rule Number(s): OAC Rules 3745-18-01, and 3745-18-03 to 3745-18-94

Date: 6/14/16

Rule Type:

☒ New/Rescind

☒ 5-Year Review

☒ Amended/No Change

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The rules in Ohio Administrative Code (OAC) chapter 3745-18 establish requirements for the control of emissions of sulfur dioxide (SO₂) from stationary emission sources. SO₂ is one of the six criteria pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under the Clean Air Act (CAA). The intent of these rules is to limit emissions of SO₂ to allow the state of Ohio to attain and maintain the NAAQS for SO₂.

The CAA requires each state with areas failing to meet the sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) to develop State Implementation Plans (SIPs) to expeditiously attain and maintain the standard. The rules in this chapter are a part of Ohio's SIP for SO₂.

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The changes being made to the rules in this chapter include removal of facility specific emission limits for shut down facilities and emission units, updates to facility names and emissions unit identifications, and fixing grammatical and typographical errors encountered in the rules for clarity and to conform with agency formatting standards.

On February 24, 2016, Ohio EPA received notification from U.S. EPA that language in paragraph (C)(11) of the rule regarding the director's discretion in issuing an extension to the compliance date for affected facilities was not approvable as part of Ohio's SIP. In the interest of the state of Ohio, and to make the rule approvable as a part of Ohio's SIP, Ohio EPA is striking the director's discretion language from the rule as part of this rulemaking.

One rule in this chapter has also been identified as necessary and not needing changes and will be proposed as a "no-change" rule.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule Number	Authorizing Statute	Proposed Action
3745-18-(01, 03-05, 07, 08-11, 13-16, 20-23, 25-27, 30, 32, 33, 36, 39, 40, 42, 43, 46-49, 52, 54, 58-62, 65-70, 73, 74, 78, 81, 82, 87, 91, 92, and 94)	3704.03(E)	Amended
3745-18-(10, 12, 17, 18, 19, 24, 28, 29, 31, 34, 35, 37, 38, 41, 44, 45, 50, 51, 53, 55, 57, 63, 64, 71, 72, 75-77, 79, 80, 83-85, 86, 88-90 and 93).	3704.03(E)	Rescind/New
3745-18-06	3704.03(E)	No-Change

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?
If yes, please briefly explain the source and substance of the federal requirement.**

Section 110 of the CAA requires all states to develop a plan for attaining and maintaining the NAAQS. The rules in OAC chapter 3745-18 establish requirements for the control of SO₂ emissions from various sources. These rules are a part of Ohio's control strategies for the attainment and maintenance of the NAAQS for SO₂ and are a part of Ohio's state implementation plan (SIP) under Section 110 of the CAA. These rules are necessary to maintain emissions to ensure Ohio's maintenance areas remain in compliance with the federal standard.

The change to OAC 3745-18-03(C)(11) is necessary to ensure the Ohio's SIP submitted on October 13, 2015 is approvable to attain the 2010 SO₂ NAAQS.

- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

The rules in this chapter do not exceed federal requirements. These rules are based on an analysis by Ohio EPA that determined the minimum SO₂ emission reductions needed to provide for future attainment in these areas after implementation of the strategies.

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The rules in OAC Chapter 3745-18 serve as part of Ohio's strategies for the control of SO₂ emissions and are a part of Ohio's strategy for the attainment and maintenance of the NAAQS for SO₂ as required in the CAA. The public purpose of this rule is to assist in the attainment and maintenance of the NAAQS and protect public health and welfare.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Ohio EPA measures the success of the rules in this chapter through the fact that SO₂ pollution in Ohio has been on the steady decline since the first of the rules in this chapter were promulgated in 1979. In fact, for many years Ohio achieved statewide attainment of the older SO₂ NAAQS through reductions in the emission of SO₂ attributed to the rules in this chapter. Ohio can maintain compliance with the SO₂ NAAQS by maintaining these rules.

Additionally, the requirements in this chapter are utilized in environment permits issued to sources throughout the state. These permits identify the applicable air pollution control rules and regulations under which the source must operate and establishes monitoring, record keeping, testing and reporting requirements by which the sources can demonstrate compliance with the rules and regulations. Ohio EPA considers the rules a success when a source is issued a permit and can, thereby, commence operations in compliance with the applicable air pollution rules and regulations, including the rules and regulations in this chapter.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio EPA established an initial 30-day early stakeholder outreach period ending March 17, 2015. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 1,300+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Comments relevant to this rulemaking were received from the Department of Defense – Wright Patterson Air Force Base, Lubrizol and Porter Wright Law Firm.

Wright-Patterson provided information that the boilers regulated under OAC 3745-18-35(E) had been shut down and that the boilers regulated under OAC 3745-18-35(F) had been converted to natural gas only. Ohio EPA is removing the boilers in paragraph (E) as they are completely shut down, but cannot remove the boilers under paragraph (F) because they are still in use and not eligible to be removed. Wright-Patterson also suggested adding emission limits for additional boilers to the rules, however, it is not necessary to add these units to these rules as they were not required to be regulated under these rules for attaining or maintaining the SO₂ NAAQS. Ohio EPA will not be adding them.

Lubrizol asked that Ohio EPA make several changes to the regulations for their facility in OAC rule 3745-18-49(B). The suggested changes were not necessary for Ohio EPA to comply with the requirements on the SO₂ NAAQS, so Ohio EPA will not be making the suggested changes. During our review of the rules, Ohio EPA did identify several Lubrizol sources under paragraph (B) that were shut down and removed them from the rule.

Porter-Wright suggested a rulemaking strategy of “...no changes, or as few as possible, during the five-year review.” Given the large number of shut down facilities identified in the rules by Ohio EPA, we are not able to perform this rulemaking as a no change rulemaking. Ohio EPA will be making all necessary changes identified during the review to fulfill the requirements of ORC 106.03 and 106.031 (5-year review).

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The rules in this chapter are based upon multiple technical analyses that are required by U.S. EPA in their SO₂ rules and guidance. To develop a SIP to demonstrate attainment with the SO₂ standard, Ohio EPA must analyze facility emissions, meteorology, terrain and other factors. Ohio EPA worked with each facility gathering extensive data on emissions levels and used that data along with other technical inputs to perform computer aided dispersion modeling to predict what reductions in emissions levels were necessary to ensure these areas attained the standard by the required attainment date. These analyses were all part of previous rulemakings under this chapter and were made available to the entities and the general public for input and then submitted as part of Ohio’s SIP to support the regulations. This rulemaking does not establish any new requirements.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn’t the Agency consider regulatory alternatives?

The rules in this chapter were originally promulgated in the late 1970’s/early 1980’s based on a requirement for Ohio EPA to establish a method to attain and maintain the SO₂ NAAQS. They were most recently revised on October 25, 2015 as a method to attain the newest 2010 SO₂ NAAQS. To achieve the SO₂ NAAQS, emissions of SO₂ required control, and establishing emissions limits

based on computer modeling is a well-established method for achieving these goals. The use of emissions limits gives industry a tangible number which they can plan around and measure themselves against. Once the NAAQS is attained, the emission limits then serve as a standard through which companies can maintain compliance with the standard.

11. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Ohio EPA considers the rules in OAC Chapter 3745-18 to be performance based. These rules discuss emission limits that must be met from the various sources, however, facilities are allowed to determine the various methods of controls they will use such as mechanical control, work practices, raw materials or a combination to attain the emission limits in the most economical and efficient way.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Ohio EPA is the only agency having jurisdiction over the control of air pollution, and is specifically directed, under Section 3704.03 of the Revised Code to develop rules for the control of emissions of air pollutants. The rules in this chapter are unique within the Ohio EPA and do not duplicate the rules of this or any other agency.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Ohio EPA's SO₂ rules have been in place since the late 1970's. The SO₂ standards in this chapter have been and still are used in development of air pollution control permits issued under Ohio's New Source Review permitting program in OAC Chapter 3745-31 and Title V permitting program in OAC Chapter 3745-77. The permits list the emission standards that the facilities are required to achieve and the reporting and recordkeeping requirements to document that the standards are being achieved, all of which is included in OAC chapter 3745-18.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and *may be estimated for the entire regulated population or for a "representative business."* Please include the source for your information/estimated impact.

Chapter 3745-18 has been in the OAC since 1979 and facilities subject to these rules have long since installed controls and continue to operate them under the terms of their air pollution control permits. These rules can also apply to new coal or fossil fuel fired units.

The rules require all coal-fired steam generating units in the state of Ohio to comply with the county specific sulfur dioxide emission limits listed in OAC rules 3745-18-07 to 3745-18-94. Additionally, OAC rules 3745-18-(31, 82, and 83) broaden their scope to include units fired by “fossil fuels” as defined in OAC rule 3745-18-01. Each county-specific rule consists of a general sulfur dioxide limit which must be met by all regulated sources in the county unless there is a facility specific, alternate emissions limits established for the source. Each affected source must also demonstrate compliance and perform reporting as required in OAC rules 3745-18-03 and 3745-18-04. These requirements are established through a permit-to-install and operate (PTIO) issued under OAC Ch. 3745-31 or a Title V Permit-to-operate (PTO) issued under OAC Ch. 3745-77.

A major area of emphasis with this rulemaking is to remove facility-specific rule language for facilities and emissions units which are permanently shut down. There is no cost of compliance for these facilities as they no longer exist and the exercise is purely administrative to remove unneeded rule language and avoid confusion.

The cost of compliance with the existing rules in this chapter can range from a few hundred dollars for a control technology such as a work practice or raw material change, to a few million dollars for the installation and operation of a mechanical control device. However, all of the entities required to incur the cost of compliance with these rules did so a number of years ago and these rules are often less stringent than other newer federal programs that regulate SO₂ emissions that have been adopted since these rules were first developed. Even the monitoring and record keeping provisions of these rules are often satisfied by the requirements in more recent federal rules.

Ultimately, the requirements imposed by these rules are incorporated into air pollution permits. These permits are already required under a different chapter of the revised code. These requirements will also include the methods for maintaining records and submitting reports. The estimated costs discussed above include any additional costs associated with the permit process as well as the cost of any recordkeeping or reporting required to fulfill the requirements of these rules.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The state of Ohio is required by the CAA to enact rules to bring SO₂ nonattainment areas into attainment with the standard. Once the NAAQS is attained, the rules are then necessary to fulfill the requirements under the CAA for Ohio’s plan for maintaining the SO₂ NAAQS.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules in this chapter do not provide exemptions or alternatives. All facilities, wishing to operate the regulated processes in the applicable areas must achieve the emission limits outlined in the rules as required by the CAA.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Ohio EPA uses enforcement discretion regarding fines, and penalties for facilities committing a first-time violation are typically waived.

18. What resources are available to assist small businesses with compliance of the regulation?

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at <http://www.epa.ohio.gov/ocapp>.
- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.
- Ohio EPA's DAPC maintains a SIP Development section through which SIP related rulemaking is performed. DAPC's rules coordinator, Paul Braun, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.