

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-103, 5-year review

Rule Number(s): OAC Rules 3745-103-01 to 3745-103-09, 3745-103-11 to 3745-103-29, 3745-103-31 to 3745-103-39, 3745-103-41 to 3745-103-45, 3745-103-47, 3745-103-48, 3745-103-50 to 3745-103-53, 3745-103-55 to 3745-103-63, 3745-103-65, and 3745-103-66

Date: 5/25/17

Rule Type:

☐ New/Rescind

☒ Amended/No Change

☒ 5-Year Review

☐ Rescinded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.

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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 3745-103 establish requirements pertaining to the Acid Rain Program for limitation of emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) from fossil-fuel fired electrical generating units. The rules also contain the requirements for applications for and issuing acid rain permits in accordance with 40 CFR Part 76 and Title IV of the Clean Air Act.

The changes being made to the rules in this chapter include minor amendments to ensure equivalency with the federal equivalent, correct cross-references and typographical errors, and conform with agency formatting standards. These changes are minor in nature, and do not affect the scope or intent of the rules.

Several rules in this chapter have also been identified as necessary and not needing changes and will be proposed as “no-change” rules.

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

Rule Number	Authorizing Statute	Proposed Action
OAC rules 3745-103-01 to -09, -11 to -22, -24, -26 to -29, -31 to -35, and -42 to -45, -47 to -48, -51 to -53, -55 to -63 and -65 to -66	3704.03(E)	Amended
3745-103-23, -25, -36 to -39, -41, and -50	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.

OAC Chapter 3745-103 enables the state to administer the requirements of U.S. EPA’s Acid Rain Program, which was established under Title IV of the 1990 Clean Air Act (CAA). The federal Acid Rain Program regulations are contained in 40 CFR Parts 72 through 78.

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.

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- 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 public purpose of these rules is to protect public health and welfare. The rules also assist in the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

- 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 and NO_x pollution in Ohio has been on the steady decline since the first of the rules in this chapter were promulgated in 1997.

Additionally, the requirements in this chapter are utilized in environmental 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 December 1, 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?**

No comments were received during the early stakeholder outreach period.

- 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?**

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The rules in the chapter are based on federal rule language based on research and investigation performed by U.S. EPA. The states, including the state of Ohio, are required by the CAA to adopt Acid Rain Program rules at least as stringent as the federal 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?

There are no alternatives available. The states, including the state of Ohio, are required to adopt Acid Rain Program rules at least equivalent to the federal requirements. Ohio's Acid Rain Program rules are equivalent to, but do not exceed, the federal requirements.

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.*

The rules in this chapter are performance based regulations. The rules set emission limits and budgets which must be met, and allow regulated sources to determine the methods by which they will meet the limits.

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 Acid Rain rules have been in place since the late 1990's. The provisions in this chapter have been and still are incorporated into Acid Rain permits issued under this chapter.

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

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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.

At this time, Ohio EPA is making only minor amendments which do not affect the scope or intent of the rules. No cost has been determined to be associated with any of these changes.

Chapter 3745-103 has been in the OAC since 1997 and facilities subject to these rules have long since installed controls and continue to operate them under the terms of their Acid Rain permits. Please see the attached Fiscal Analysis developed in 2006 and updated with current information regarding the price of SO₂ and NO_x allowances.

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 implement the Acid Rain Program.

Regulatory Flexibility

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

These rules do not contain any exemptions or alternate means of compliance for affected sources. By federal rule, sources that are subject to the Acid Rain rules must meet their NO_x emissions limit and SO₂ emissions cap established under the rules. This can be done through the installation and operation of emission controls, system-wide averaging for NO_x, or through the purchase of additional allowances for SO₂. However, the facilities must have adequate SO₂ allowances at the end of the season to offset their emissions and achieve their cap requirements.

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:

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- 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.