



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

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 of Submission for CSI Review: December 14, 2022

Public Comment Period End Date: : January 17, 2023

Rule Type/Number of Rules:

New/ rules

No Change/ 35 rules (FYR? X)

Amended/ 24 rules (FYR? X)

Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **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.

Ohio EPA is making various minor changes to several of the rules in this chapter (see answer #3 below for the list) to correct typos, provide clarification, remove unnecessary restriction language, and update the rule language in this chapter to meet legislative service commission (LSC) style and formatting guidelines. These changes are minor in nature and do not affect the scope or intent of the rules.

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3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

| Rule Number | Authorizing Statute | Proposed Action |
|--|---------------------|-----------------|
| OAC rules 3745-103-08-14, -(16-19), -(21-23), -26, -29, -(36-38), -(41-44), -47, -(50-53), -55, -(57-59), -61, and -(63-66). | 3704.03(E) | No-Change |
| OAC rules 3745-103-(01-07), -15, -20, -24, -25, -27, -28, -(31-35), -39, -45, -48, -56, -60, and -62. | 3704.03(E) | Amend |

4. 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 certain sections 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.

5. If the regulation implements a federal requirement, but 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.

6. 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).

7. 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

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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.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

None of the rules in this rulemaking are being proposed under these statutes.

Development of the Regulation

- 9. 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 August 20, 2021. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 3,500+ 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.

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

Ohio EPA did not receive any comments during the early stakeholder outreach comment period.

- 11. 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 the chapter are based on federal rule language. The federal language is 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.

- 12. 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?**

Alternative regulations may include performance-based regulations, which define the

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required outcome, but do not dictate the process the regulated stakeholders must use to comply.

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.

13. 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.

14. 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

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community, and
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

No new costs would result from the proposed changes.

The rules in OAC Chapter 3745-103 have been in effect 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.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden*)

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may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).

Ohio EPA continues to provide clarification and improve the public's ability to interpret Ohio's air pollution regulations. Ohio EPA has performed an extensive review of the rules in this chapter and is removing unnecessary and duplicative restriction language where appropriate.

17. 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

18. 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.

19. 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.

20. 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.

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- Ohio EPA also has a permit assistance web page (<https://epa.ohio.gov/divisions-and-offices/environmental-financial-assistance/compliance-assistance>) 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 Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Paul Braun is the primary contact for this rulemaking. He is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.

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