

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-14: "Nitrogen Oxides – Budget Trading Rules"

Rule Number(s): OAC Chapter 3745-14, Rules 01 to 12

Date: April 25, 2014

Rule Type:

- | | |
|----------------------------------|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |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.

Rules 3745-14-01 to 3745-14-12 of the administrative Code establish the NOx Budget Trading Program. This program was originally promulgated in 2002 in response to USEPA's 1998 NOx SIP Call. The NOx Budget Trading Program was a market-based cap and trade program created to reduce the regional transport of Nitrogen Oxide (NOx) emissions from power plants and other large combustion sources that contribute to ozone nonattainment in the eastern United States. This program was superseded by the Clean Air Interstate Program (OAC Chapter 3745-109) in 2009.

Ohio EPA maintains the rules in this chapter as a fall back in the event that the CAIR program is ever discontinued. When first promulgated (2008), the CAIR program was subject to many federal court challenges that put its future in question. In the intervening years, these challenges have been resolved via legal actions and/or alternate replacement programs for the CAIR program. Ohio EPA still sees value in maintaining this program as a fallback, but does not recognize the need for any changes to the program rules at this time.

In addition to the NOx Budget Program, OAC rules 3745-14-11 and 3745-14-12 contain requirements for control of NOx emissions from Portland Cement Kilns and Stationary Internal Combustion engines which are outside the realm of the NOx Budget program. These rules also remain necessary, but are without need of change.

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

Rule Number	Authorizing Statute	Proposed Action
3745-14-01	3704.03(E)	No-Change
3745-14-02	3704.03(E)	No-Change
3745-14-03	3704.03(E)	No-Change
3745-14-04	3704.03(E)	No-Change
3745-14-05	3704.03(E)	No-Change
3745-14-06	3704.03(E)	No-Change
3745-14-07	3704.03(E)	No-Change
3745-14-08	3704.03(E)	No-Change
3745-14-09	3704.03(E)	No-Change
3745-14-10	3704.03(E)	No-Change
3745-14-11	3704.03(E)	No-Change
3745-14-12	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.

On October 27, 1998, USEPA published the “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone” in the Federal Register (63 FR 57356), requiring 22 states (including Ohio) and the District of Columbia to reduce emissions of nitrogen oxides, a precursor to ozone (smog) pollution, to prevent transport of pollutants across state boundaries in the eastern half of the United States.

Ohio EPA promulgated the rules in OAC Chapter 3745-14 in 2002 to establish the NO_x Budget Trading program in Ohio to fulfill the federal requirements for establishing a program to reduce NO_x emissions. These rules were also submitted to USEPA for inclusion in Ohio’s state implementation plan (SIP) for attainment and maintenance of the national ambient air quality standard (NAAQS) for nitrogen dioxide.

As noted above, these rules have been superseded by the CAIR program rules, however, the rules remain a part of Ohio’s SIP as a potential fallback should the CAIR program be cancelled or otherwise invalidated.

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 were based on the federal model rule in 40 CFR Part 96 and do not exceed the federal rule requirements with one exception. Ohio’s rules contain provisions for new unit and energy efficient/renewable energy (EE/RE) project set asides. Qualifying new units and energy efficient projects can apply and receive NO_x and SO₂ credits under these programs as if they were large EGU’s. These provisions are intended to encourage development of green, energy efficient projects in the state of Ohio. The total quantity of the set asides amounts to approximately 1% of the total statewide emissions budget every year. Any unused set-aside allowances are returned to the EGU’s at the end of the year.

It should be noted that, although the EE/RE set asides are still a part of these rules, all participating facilities were transferred to the CAIR program and no units remain in the NO_x Budget Trading program.

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 improve the health and welfare of the citizens of Ohio through the attainment and maintenance of the nitrogen dioxide, ozone and PM 2.5 NAAQS.

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These rules were adopted as a part of Ohio's SIP to attain and maintain the NAAQS on June 27, 2005 (70 FR 36845).

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

These rules were originally promulgated in 2002. Since 2007, the state of Ohio has attained the NAAQS for the 1997 8-hr ozone standard in all non-attainment areas statewide. The fact that the state is now attaining and maintaining the ozone NAAQS is, in part, a measure of the success of these rules and Ohio's strategy for attaining the NAAQS in general.

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 a 30-day early stakeholder comment period and requested comments from potentially affected parties. The comment period ended as of January 3, 2014. Ohio EPA Division of Air Pollution Control (DAPC) sent notice of our request for comments electronically to the 1,263 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.

Ohio EPA did not receive any comments or suggestions on these rules during the ESO period.

8. 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 or suggestions on these rules during the ESO 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?

The Ohio NOx Budget Trading Program rules (OAC chapter 3745-14) are based on the federal model rule in 40 CFR Part 96 developed by U.S. EPA. U.S. EPA developed the rule based on research and investigation performed by their research branch in Triangle Park, North Carolina.

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?

Ohio was required under federal mandate (63 FR 57356) to develop a program for controlling NOx from large EGUs. Ohio's NOx Budget Trading Program is based on the federal model rule and has equivalent, but no more stringent requirements to the federal model program. The necessity to meet the federal requirements meant that any alternate program developed by Ohio EPA would have had to be identical to the program developed using the federal model rule.

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 limits and emission 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?

Ohio EPA reviewed our own regulations and performed a search of regulation from other agencies to determine if duplication was being made.

It could be said that these rules duplicate the Clean Air Interstate Rules (CAIR) program in OAC Chapter 3745-109 as both program are intended to reduce NOx emissions and the CAIR program was promulgated to replace the NOx Budget Trading program. The rules in OAC chapter 3745-14 are essentially inactive at this time, having been superseded by the CAIR rules, and are kept strictly as a backup. It is Ohio EPA's plan that these rules will be rescinded at a future date when legal challenges to the CAIR program are resolved.

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.

These rules have been superseded by the CAIR program (OAC chapter 3745-109) since 2009 and are being preserved as a fallback pending the resolution of legal challenges to the CAIR program at the federal level. Should it be necessary to reinstitute this program, Ohio EPA will work with affected facilities to ensure that requirements are met. Because the rules were in effect in Ohio between 2002 and 2009, most existing facilities in Ohio are already familiar with the requirements in this rule and would easily meet them since they have complied with the CAIR program which is equivalent or more strict than the NOx Budget Trading Program.

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For cement kilns and large stationary internal combustion engines subject to OAC rules 3745-14-11 and 3745-14-12, Ohio is working with existing facilities as the 5-year review of their permits comes up to ensure that their permits reflect the appropriate limits, and that the facilities are applying these rules and complying with the appropriate emission limits.

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.

Because these rules have been superseded by the CAIR program rules, there is quite literally no cost of compliance with the rules in this chapter. These rules serve as a backup to the CAIR program and do not require any actions on the part of potentially affected parties at this time. Should it be necessary to reinstate these rules, capital improvements made by facilities to comply with the CAIR rules would likely meet or exceed the requirements of the NOx Budget Trading Program.

For facilities subject to the requirements of OAC rules 3745-14-11 and 3745-14-12, the cost of installing controls was originally estimated at approximately \$147,000 per facility (2002 dollars) with annual operating costs of approximately \$112,000 per facility (2002 dollars). Ohio EPA is not aware of any new facilities being constructed in Ohio which would be subject to these requirements. Existing facilities have long since installed these controls and are operating them as part of their permitted activities. There are no changes to these rules that would affect (raise or lower) the cost of compliance with these rules.

Regulatory Flexibility

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

The NOx Budget Trading Program rules do not contain any exemptions or alternate means of compliance for affected sources. By federal rule, sources that are subject to these rules must meet their emissions cap established under the rules. This can be done through the

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installation and operation of emission controls, or through the purchase of additional allowances; however the facilities must have adequate allowances in their accounts at the end of the season to offset their emissions and achieve their cap requirements.

16. 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. The procedures specified in the agency's "Compliance Assurance through Enforcement" program are used to ensure implementation of the regulations.

17. 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 Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Chris Beekman, the primary contact for the Rules in OAC Chapter 3745-14, is available to answer questions. He can be reached by calling 614-644-3597 or by e-mail at chris.beekman@epa.state.oh.us.

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