

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-18 changes necessary to assure attainment of the 2010 SO2 national ambient air quality standards in Ohio's nonattainment areas

Rule Number(s): OAC Rules 3745-18-01, 3745-18-03, 3745-18-04, 3745-18-47 and 3745-18-49

Date: 5-18-15

Rule Type:

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 Rescinded |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

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 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) to develop State Implementation Plans (SIPs) to expeditiously attain and maintain the standard. The United States Environmental Protection Agency (U.S. EPA) promulgated a revised NAAQS for SO₂ on June 2, 2010. The existing rules in this Chapter establish SO₂ requirements to limit emissions to address an older less stringent SO₂ standard. U.S. EPA replaced the older less stringent 24-hour and annual standards with a new short-term 1-hour standard of 75 parts per billion (ppb). The new 1-hour SO₂ standard was published in the Federal Register on June 22, 2010 (75 FR 35520) and became effective on August 23, 2010. The standard is based on the three-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Whenever a new standard is promulgated states are required to determine if further limitations on emissions are necessary in order to bring the areas that do not meet the standard into attainment.

On August 15, 2013, U.S. EPA published (78 FR 47191) the initial SO₂ nonattainment area designations for the 1-hour SO₂ standard across the country (effective October 4, 2013). Four areas of the state were designated nonattainment in 2013: Lake County, OH nonattainment area (all of Lake County); Muskingum River, OH nonattainment area (Center Township in Morgan County and Waterford Township in Washington County); Steubenville OH-WV nonattainment (Cross Creek Township, Steubenville Township, Warren Township, Wells Township, and Steubenville City in Jefferson County, Ohio and Cross Creek Tax District in Brooke County, West Virginia); and Campbell-Clermont KY-OH nonattainment area (Pierce Township in Clermont County, Ohio and portions of Campbell County, Kentucky). The Campbell-Clermont KY-OH nonattainment area is not addressed in this rulemaking. Air quality data from the 2012 to 2014 period indicates this area is now attaining the standard. On March 12, 2015 Ohio EPA provided a draft redesignation request and maintenance plan to U.S. EPA and the public for comment. Areas that attain before the required date for submitting a plan do not have to submit a full nonattainment area SIP.

The remaining three areas are addressed under Ohio's nonattainment area SIP and Ohio has performed analyses that provide for attainment of the standard, as follows:

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- Lake County, OH: the permanent shutdown of Eastlake Power Plant and reductions made at Painesville Municipal Power.
- Muskingum River, OH: the permanent shutdown of Muskingum River Power Plant.
- Steubenville, OH-WV: reductions will be achieved at the former Wheeling Pittsburgh Mingo Junction Steel Plant and the Mingo Junction Energy Center. The most significant reductions will be required of Mountain State Carbon in West Virginia.

The changes to these rules will incorporate the emissions limits, requirements, and compliance deadlines that are a part of Ohio’s nonattainment are SIP necessary to provide for attainment in these nonattainment areas.

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

Rule Number	Authorizing Statute	Proposed Action
3745-18-01	3704.03(E)	Amended
3745-18-03	3704.03(E)	Amended
3745-18-04	3704.03(E)	Amended
3745-18-47	3704.03(E)	Amended
3745-18-49	3704.03(E)	Amended

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. The revisions to these rules are necessary to reduce emissions to bring Ohio’s nonattainment areas into compliance with the federal standard.

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 in order 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 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 in particular through reductions in the emission of SO₂ attributed to the rules in this chapter. Success with the revisions to these rules to address the new SO₂ NAAQS will be measured by monitoring real air quality after the new limitations are put in place to assure SO₂ levels in these areas drop below the federal required level.

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 1,250+ 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.

In addition, throughout the development of the nonattainment area SIP, Ohio EPA routinely worked with, consulted with and communicated detailed information on the limitations

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included in these draft rules to each of the entities affected. Further, Ohio EPA provided each of the entities with the draft language prior to making it available to all of the public to solicit any initial concerns.

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

Ohio EPA received several comments from stakeholders during the Early Stakeholder Comment Period and made changes where appropriate. The Early Stakeholder Comment Period not only solicited input on the changes needed for Ohio's SO₂ SIP but it also solicited input on the 5-year review of the entirety of this Chapter. Due to timing concerns associated with the federal mandated timelines for the SO₂ SIP, Ohio EPA found it necessary to divide these two actions into separate rulemakings. The BIA for the 5-year review will address input related to those impending changes while this BIA will address input related to the changes proposed in this more limited rule action.

Comments relevant only to the impending 5-year review were received from the Department of Defense – Wright Patterson Air Force Base, Lubrizol and Porter Wright Law Firm.

Comments related to this limited rule making for the SO₂ SIP were received from Globe Metallurgical and Porter Wright Law Firm.

Globe Metallurgical recommended Ohio EPA develop its SIP with a weight of evidence approach regarding Globe's emissions because they believe the nonattainment issue in their area will be solved as a result of the shut down of a major power plant. Ohio EPA's SIP in fact reflected this approach and this should address Globe's comments.

Porter Wright Law Firm felt it would be most prudent, given Ohio EPA's limited resources, that when the SO₂ SIP requirements are incorporated into the rule that they are segregated from the current rules. Ohio EPA did not feel this would be the best path and actually be more resource intensive. Many of the definitions, compliance methods and other requirements already contained in this chapter are also applicable to the new limitations included in these draft rules. Ohio EPA would have to spend additional resources sifting through all of those elements to determine which are necessary for just these draft changes. In addition, some of the facilities with new requirements also had existing requirements in the rules. Ohio EPA felt it would be more confusing to have requirements for the same facility in two different locations.

As noted above, Ohio EPA also provided affected entities with a preview of the proposed language in these draft rules. One entity raised minor concerns with some of the specific technical elements of the requirements and those were resolved to their satisfaction.

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. In order to develop a SIP to demonstrate attainment with the SO₂ standard, Ohio EPA must analyze facility emissions, meteorology, terrain and other factors. Ohio EPA works with each facility gathering extensive data on current emissions levels and uses that data along with other technical inputs to perform computer aided dispersion modeling to predict what reductions in current emissions levels are necessary in order to ensure these areas attain the standard by the required attainment date. These analyses are made available to the entities and the general public for input and are submitted as part of Ohio's SIP to support the regulations. Ohio's SIP identifying all of these technical analysis can be found under the heading "Attainment Demonstration" here: <http://www.epa.ohio.gov/dapc/SIP/so2.aspx>.

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 is required under the CAA to adopt rules to address areas designated nonattainment for the 2010 SO₂ standard based on the required dispersion modeling in U.S. EPA's rules and guidance. The only alternative would be to provide regulations that do not demonstrate attainment and face U.S. EPA's disapproval of Ohio's SIP. If U.S. EPA disapproves a SIP for implementation of a NAAQS, states will be required to correct the deficiency and if they choose not to they will be subject to sanctions and facilities will be subject to a Federal Implementation Plan (FIP).

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 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.

In addition, Ohio EPA has been in closed contact with each entity affected by this draft rule change and they fully understand how the regulations are to be applied.

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 1972. The rules have not changed for a number of years, and are being changed now because of U.S. EPA’s recent revision to the NAAQS for SO₂. The existing rules and additional technical support were submitted to U.S. EPA for review and approval as part of the SIP as will the updated rules and technical support.

The cost of compliance with the existing rules 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 rule did so a number of years ago and these rules are often less stringent than other 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 usually 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.

Only four entities are specifically addressed in these draft rules.

- a. Painesville Municipal Power (paragraph (F) of OAC rule 3745-18-49). There should be no additional cost of compliance associated with this rule. Painesville Municipal Power is electing to limit its operations in order to achieve compliance with this rule while also achieving compliance with another federally mandated rule, the Boiler Maximum Achievable Control Technology Rule.
- b. Eastlake Power Plant (paragraph (G) of OAC rule 3745-18-49) is permanently shutting down (and therefore stricken from the rule) as a result of other federal regulatory requirements. This shutdown assists in the attainment of this area for SO₂.
- c. Wheeling-Pittsburgh Steel Plant (paragraph (G) of OAC rule 3745-18-47) and the Mingo Junction Energy Center (paragraph (P) of OAC rule 3745-18-47) are reducing emissions from currently allowed emissions contained in their regulatory permits issues under NSR. These reductions will result from limiting the fuel to be burn to natural gas rather than also burning coke oven gas. Coke oven gas has not been supplied to either of the companies for a number of years and they have in fact been idled. Wheeling-Pittsburgh Steel Plant has indicated an intent to reopen and has said this change will not impact their operations or increase costs because coke oven gas is not available to them anymore.

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.

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

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 SIP Manager, Jennifer Van Vlerah, the primary contact for this rulemaking, is available to answer questions. She can be reached by calling 614-644-3696 or by e-mail at Jennifer.vanvlerah@epa.ohio.gov.