

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-17, "Particulate Matter Standards"

Rule Number(s): OAC Rule 3745-17-03

Date: 8-14-18

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 Rescinded |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 3745-17 establish requirements for the control of emissions of particulate matter from stationary emission sources. Particulate matter 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 particulate matter to allow the state of Ohio to attain and maintain the NAAQS for particulate matter.

Ohio EPA is adding an additional compliance option for certain facilities that are required to use a continuous opacity monitor (COM) to determine compliance with visible emissions requirements per paragraph (C) of OAC rule 3745-17-03. In situations where a COM would not provide accurate visible emissions determinations, such as air contaminant sources that are controlled by wet scrubbers, the owner or operator may install a particulate matter continuous emission monitor (CEM) per new paragraph (F) of OAC rule 3745-17-03 or per new paragraph (G) of OAC rule 3745-17-03, comply with a particulate matter limit by source testing per the methods and frequency specific in 40 CFR part 63, subpart UUUUU. In addition, Ohio EPA is removing the requirement to obtain written permission from the U.S. EPA in paragraphs (D) and (E) of OAC rule 3745-17-03.

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

Rule Number	Authorizing Statute	Proposed Action
3745-17-03	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 3745-17 establish requirements for the control of particulate matter emissions from various industries and industrial processes. These rules are a part of Ohio's control strategies for the attainment and maintenance of the NAAQS for particulate matter and are a part of Ohio's state implementation plan (SIP) under Section 110 of the CAA.

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 part of Ohio's strategy for the attainment and maintenance of the NAAQS for particulate matter as required by the CAA.

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 this chapter do not exceed federal requirements. These rules are part of Ohio's strategy for the attainment and maintenance of the NAAQS for particulate matter as required by the CAA.

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 particulate matter pollution in Ohio has been on the steady decline since the first of the rules in this chapter were promulgated in 1972. In fact, in 2013, Ohio achieved statewide attainment of the 1997 annual PM_{2.5} (fine particulate matter) NAAQS and the 2006 24-hr PM_{2.5} NAAQS in particular through reductions in the emission of particulate matter attributed to the rules in this chapter. However, Ohio currently has counties that are nonattainment for the 2012 annual PM_{2.5} NAAQS. Continued compliance with the chapter will help in attaining this newer standard.

Additionally, the requirements in this chapter are utilized in environmental permits issued to industry 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 14-day early stakeholder outreach period ending August 3, 2018. 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.

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

DAPC completed the 5-year review for OAC Chapter 3745-17 on January 10, 2018. However, the rule was appealed by AEP, Buckeye Power, Dynegy, FirstEnergy and Ohio Valley Electric on February 9, 2018. The appeal centered on paragraphs (D) and (E) of OAC rule 3745-17-03. DAPC worked with the appellants and their attorney to create new paragraphs (F) and (G) to address the appeal.

DAPC received one comment from a stakeholder requesting additional details on the planned rule revisions and additional compliance options. This information is included in the draft rule and synopsis.

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 particulate matter rules and guidance. In order to develop a SIP to demonstrate attainment with the particulate matter 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 in order to ensure these areas attained 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.

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 early 1970's and then expanded in the early 1990's based on a requirement for Ohio EPA to establish a method to attain and maintain the particulate matter NAAQS. In order to achieve the particulate matter NAAQS, emissions of particulate matter 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 3745-17 to be performance based. These rules discuss emission limits that must be met from the various processes, 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 particulate matter rules have been in place since the early 1970's. The particulate matter 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 3745-17.

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 3745-17 has been in the OAC since 1972 and the majority of facilities subject to these rules have long since installed controls and continue to operate them under the terms of their air pollution control permits.

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 federal programs that regulate particulate matter 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.

- 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 particulate matter nonattainment areas into attainment. Once the NAAQS is attained, the rules are then converted to fulfill the requirements under the CAA for Ohio’s maintenance plan for maintaining the particulate matter 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. 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.

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- 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 rule writer 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.