



# Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. 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 3745-18, 5-year review and Globe SO2 Emissions Limit

Rule Number(s): OAC Rules 3745-18-01 to 3745-18-94

Date of Submission for CSI Review: Tuesday, April 13, 2021

Public Comment Period End Date: Monday, May 17, 2021

**Rule Type/Number of Rules:**

New/ 1 rules

No Change/ 1 rules (FYR? Y)

Amended/ 36 rules (FYR? Y)

Rescinded/ 56 rules (FYR? Y)

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 3745-18 establish requirements for the control of emissions of sulfur dioxide (SO<sub>2</sub>) from stationary emission sources. SO<sub>2</sub> 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 SO<sub>2</sub> to allow the state of Ohio to attain and maintain the NAAQS for SO<sub>2</sub>.

The CAA requires each state with areas failing to meet the 1-hour SO<sub>2</sub> NAAQS to develop a State Implementation Plan (SIP) to expeditiously attain and maintain the standard. The United States Environmental Protection Agency (U.S. EPA) promulgated a revised NAAQS for SO<sub>2</sub> by replacing the 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 SO<sub>2</sub> 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 to bring the areas that do not meet the standard into attainment and to ensure maintenance of the standard. On August 15, 2013, U.S. EPA published (78 FR 47191) the initial SO<sub>2</sub> nonattainment area designations for the 1-hour SO<sub>2</sub> standard across the country (effective October 4, 2013), including the Muskingum River, OH nonattainment area (Center Township in Morgan County and Waterford Township in Washington County). The Clean Air Act (CAA), as amended, requires each state with areas

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failing to meet the 1-hour SO<sub>2</sub> NAAQS to develop and submit SIPs to expeditiously attain and maintain the standard.

On June 23, 2020, Ohio EPA submitted a supplement to the attainment demonstration SIP for the Muskingum River, OH nonattainment area which included SO<sub>2</sub> emission limits for Globe Metallurgical. These limits were established in Director’s Final Findings and Orders (DFFOs). Ohio EPA is now incorporating these emission limits and associated requirements into the applicable rules. Specifically, OAC Rule 3745-18-90 is being amended to incorporate SO<sub>2</sub> emissions limit for the Globe Metallurgical, and OAC Rule 3745-18-03 and 3745-18-04 are being revised to incorporate compliance time schedules and measurement methods and procedures relevant to the Globe emissions limit.

Minor changes are also being made as a result of the 5-year rule review process. The changes being made to the rules in this chapter include removal of facility specific emission limits for shut down facilities and emission units, updates to facility names and emissions unit identifications, and fixing grammatical and typographical errors encountered in the rules for clarity and to conform with agency formatting standards.

For county rules that no longer include facility specific emission limits, it is not necessary to have an individual rule. These rules are being rescinded as part of this rulemaking and a new “General Emissions Limit” rule is being promulgated as OAC rule 3745-18-02.

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

**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.**

<b>Rule Number</b>	<b>Authorizing Statute</b>	<b>Proposed Action</b>
3745-18-02	3704.03(E)	New
3745-18-(01, 03, 04, 05, 06, 08, 10, 11, 15, 23, 24, 26, 28, 31, 33, 35, 37, 47, 49, 53, 54, 56, 60, 61, 63, 68, 69, 77, 78, 80, 82, 83, 84, 85, 90, 91, 92)	3704.03(E)	Amend
3745-18-(07, 09, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 25, 27, 29, 30, 32, 34, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 50, 51, 52, 55, 57, 58, 59, 60, 62, 64, 65, 67, 70, 71, 72, 73, 74, 75, 76, 79, 81, 86, 87, 88, 89, 93, 94).	3704.03(E)	Rescind
3745-18-(66)	3704.03(E)	No-Change

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- 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.*

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 SO<sub>2</sub> emissions from various sources. These rules are a part of Ohio's control strategies for the attainment and maintenance of the NAAQS for SO<sub>2</sub> and are a part of Ohio's state implementation plan (SIP) under Section 110 of the CAA. These rules are necessary to maintain emissions to ensure Ohio's maintenance areas remain in compliance with the federal standard.

- 5. 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 SO<sub>2</sub> emission reductions needed in order to provide for future attainment in these areas after implementation of the strategies.

- 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 rules in OAC Chapter 3745-18 serve as part of Ohio's strategies for the control of SO<sub>2</sub> emissions and are a part of Ohio's strategy for the attainment and maintenance of the NAAQS for SO<sub>2</sub> as required in the CAA. The public purpose of this rule is to assist in the attainment and maintenance of the NAAQS and protect public health and welfare.

- 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 SO<sub>2</sub> 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 SO<sub>2</sub> NAAQS in particular through reductions in the emission of SO<sub>2</sub> attributed to the rules in this chapter. Ohio is able to maintain compliance with the SO<sub>2</sub> NAAQS by maintaining these rules.

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.

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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 these rules are being proposed pursuant to the listed 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 February 3, 2021 for the 5-year rule review process. In addition, Ohio EPA established a separate initial 30-day early stakeholder outreach period ending August 13, 2020 regarding the adoption of the SO<sub>2</sub> emissions limit in OAC rule 3745-18-90 for Globe Metallurgical. For each of these early stakeholder outreach periods, 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. Following the early stakeholder outreach process, Ohio EPA combined these two initiatives into this single rulemaking.

In addition, Ohio EPA has consulted with and communicated detailed information on the limitation included in these draft rules to Globe Metallurgical prior to making it available to the general public to solicit any initial comments.

**10. 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 for the Globe SO<sub>2</sub> emissions limit or the 5-year review of the Chapter.

**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 this chapter are based upon multiple technical analyses that are required by U.S. EPA in their SO<sub>2</sub> rules and guidance. In order to develop a SIP to demonstrate attainment with the SO<sub>2</sub> 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 were all part of previous rulemakings under this chapter and were made available to the entities and the general public for input and then submitted as part of Ohio's SIP to support the regulations.

Ohio EPA worked closely with Globe Metallurgical (and their consultant ERM), who gathered extensive data on current emissions levels and used that data along with other technical inputs (including meteorology, terrain and other factors) to perform computer aided dispersion

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modeling to demonstrate the emissions levels necessary to ensure the area attains and maintains the standard.

These analyses were made available to the entities and the general public for input from February 20, 2020 to April 2, 2020 and submitted to U.S. EPA as part of Ohio's attainment demonstration SIP (June 23, 2020 supplement for the Muskingum River, OH nonattainment area, available at <https://www.epa.ohio.gov/dapc/sip/SO2>).

**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?**

The rules in this chapter were originally promulgated in the late 1970's/early 1980's based on a requirement for Ohio to establish a method to attain and maintain the SO<sub>2</sub> NAAQS. They were most recently revised in 2015, 2017, and 2019 as a method to attain the newest 2010 SO<sub>2</sub> NAAQS. In order to achieve the SO<sub>2</sub> NAAQS, emissions of SO<sub>2</sub> 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.

Ohio is required under the CAA to adopt federally enforceable requirements (e.g., rules) to address areas designated nonattainment for the 2010 SO<sub>2</sub> standard based on the required dispersion modeling in U.S. EPA's rules and guidance. For this rulemaking, Ohio EPA worked closely with Globe Metallurgical to establish an emissions limits which could be placed in the rule to assist Washington County in attaining and maintaining the SO<sub>2</sub> NAAQS. The alternative would be for the area to continue to stay in nonattainment, which restricts the economic development of the area because of the difficulty in meeting federal requirements necessary to obtain permits to install and operate. Further, if Ohio EPA does not provide regulations that demonstrate attainment and maintenance, Ohio may be subject to 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 in the state will be subject to a Federal Implementation Plan (FIP).

**13. 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.

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**14. 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.

**15. 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 SO<sub>2</sub> rules have been in place since the late 1970’s. The SO<sub>2</sub> standards in this chapter have been and still 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 close contact with Globe Metallurgical and they fully understand how the regulations are to be applied.

**Adverse Impact to Business**

**16. 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; and**
- b. Identify the nature of all adverse impact (e.g., 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 1979 and facilities subject to these rules have long since installed controls and continue to operate them under the terms of their air pollution control permits. These rules can also apply to new coal or fossil fuel fired units. The rules are being changed now to incorporate the emissions limits and associated requirements for Globe Metallurgical previously established in the June 23, 2020 DFFOs into the applicable rules. This action provides for attainment and ongoing maintenance of the federal SO<sub>2</sub> standard in the Muskingum River nonattainment area.

The rules require all coal-fired steam generating units in the state of Ohio to comply with the county specific sulfur dioxide emission limits listed in OAC rules 3745-18-02 or 3745-18-07

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to 3745-18-94. Additionally, OAC rules 3745-18-(31, 82, and 83) broaden their scope to include units fired by “fossil fuels” as defined in OAC rule 3745-18-01. Each county-specific rule consists of a general sulfur dioxide limit which must be met by all regulated sources in the county unless there is a facility specific, alternate emissions limits established for the source. For counties where no facility specific rules are needed, their generic emission limit can be found in OAC rule 3745-18-02. Each affected source must also demonstrate compliance and perform reporting as required in OAC rules 3745-18-03 and 3745-18-04. These requirements are established through a permit-to-install and operate (PTIO) issued under OAC Ch. 3745-31 or a Title V Permit-to-operate (PTO) issued under OAC Ch. 3745-77.

A major area of emphasis with this rulemaking is to remove facility-specific rule language for facilities and emissions units which are permanently shut down. There is no cost of compliance for these facilities as they no longer exist and the exercise is purely administrative to remove unneeded rule language and avoid confusion.

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 newer federal programs that regulate SO<sub>2</sub> 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 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.

The estimated cost of compliance with the SO<sub>2</sub> emissions limits and associated requirements for Globe Metallurgical, which were previously established in the June 23, 2020 Director’s Final Findings and Orders (DFFOs) and are now being incorporated into OAC rules 3745-18-03, 3745-18-04, and 3745-18-90 includes:

- Approximately \$250,000 in employee time and environmental consultant work product to develop a Compliance Assurance Plan and develop internal procedures used to perform the daily mass balance calculations to demonstrate compliance with the SO<sub>2</sub> emission limit sets.
- Approximately \$50,000 in laboratory equipment purchased to use in performing daily SO<sub>2</sub> mass balance calculations.
- Employee costs to perform the daily raw material sampling, preparation, moisture and sulfur analysis, and SO<sub>2</sub> mass balance calculations under the rules. Annual costs associated with such work are estimated at approximately \$70,000.

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- Approximately \$400,000 associated with the purchase of equipment, engineering costs, and costs of contractors and environmental consultants to perform validation and performance tests necessary to demonstrate compliance with the SO<sub>2</sub> emission limit sets.

In addition, Globe anticipates incurring additional future costs (costs are not currently known) associated with the purchase of real property necessary to ensure that the SO<sub>2</sub> emission limit sets demonstrate compliance with the 2010 SO<sub>2</sub> NAAQS.

**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 bring SO<sub>2</sub> nonattainment areas into attainment with the standard. Once the NAAQS is attained, the rules are then necessary to fulfill the requirements under the CAA for Ohio's plan for maintaining the SO<sub>2</sub> NAAQS.

**Regulatory Flexibility**

**18. 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.

**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 <http://www.epa.ohio.gov/ocapp>.

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- Ohio EPA also has a permit assistance web page ([http://www.epa.ohio.gov/dir/permit\\_assistance.aspx](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](mailto:paul.braun@epa.ohio.gov).

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