

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Ohio's Startup, Shutdown or Malfunction and Scheduled Maintenance Rules

Rule Number(s): OAC Rules 3745-14-11, 3745-15-01, 3745-15-06, and 3745-17-07

Date: October 7, 2016 modified August 18, 2017

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 Rescinded |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 Ohio EPA Division of Air Pollution Control (DAPC) has completed draft rule language for rules 3745-14-11, 3745-15-01, 3745-15-06, and 3745-17-07 of the Ohio Administrative Code (OAC). The amended language is associated with Ohio's rules on start-up, shut-down, malfunction and scheduled maintenance of air pollution control equipment.

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Ohio's startup, shut down or malfunction (SSM) and scheduled maintenance (SM) rules include regulations for identifying and reporting excess emissions during periods of startup, shut down or malfunction and how to handle scheduled maintenance of air pollution control equipment. Ohio EPA is performing this rulemaking in response to a U.S. EPA call for modifications to the rules on June 12, 2015 in 80 FR 33840. The amendments to these rules will be proposed to U.S. EPA as modifications to Ohio's state implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS).

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

Rule Number	Authorizing Statute	Proposed Action
3745-14-11	3704.03(E)	Amended
3745-15-01	3704.03(E)	Amended
3745-15-06	3704.03(E)	Amended
3745-17-07	3704.03(E)	Amended
<u>3745-15-10</u>	<u>3704.03(E)</u>	<u>New</u>

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.

Ohio EPA is performing this rulemaking in response to a U.S. EPA call for modifications to the rules on June 12, 2015 in 80 FR 33840. The federal requirements call for Ohio and 35 other states to make changes to our rules regarding SSM and SM. The action by USEPA is based on a petition for rulemaking that the Sierra Club filed with the EPA Administrator on June 30, 2011 regarding concerns with how state air agency rules in EPA-approved state implementation plans (SIPs) treat excess emissions during periods of SSM of industrial source process or emission control equipment. Based on USEPA's evaluation of the petition, USEPA reevaluated their interpretation of the Clean Air Act (CAA) and issued the SIP Call modifications in the June, 2015 Federal Register.

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 and are a part of Ohio's SIP as required under Section 110 of the CAA. The new amendments in this rulemaking are

designed to meet the federal requirements in the June 12, 2015 federal register, but not exceed them.

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 3745-15 provide general provisions utilized throughout the air pollution control program. These provisions identify and clarify topics which support the general operation of the air pollution control program. OAC rules 3745-14-11 and 3745-17-07 contain rules for specific point sources. The amendment being made in this rulemaking address the requirements for identifying and reporting excess emissions during periods of startup, shut down or malfunction and how to handle scheduled maintenance of air pollution control equipment. The public purpose of these rules is the control of emissions of pollutants to the ambient air for the protection of human health and the environment.

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

If regulated entities will be able to perform scheduled maintenance without delay and respond promptly to malfunctions of equipment.

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 August 28, 2016. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 3,000+ 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.

Additionally, Ohio EPA meet and had discussions with several industry and trade groups regarding these rules and how USEPA's requirements could best be addressed. Based on the public comments and industry interactions, Ohio EPA developed the draft of rules being presented for this rulemaking.

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

As noted above, Ohio EPA solicited comments from the public as well as holding several meetings with industry and trade groups on this rulemaking. Input from the groups ranged from general comments to suggested rule language. Ohio EPA used input from all sources, including suggested rule language, to develop the draft language for this rulemaking.

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 amendments being made to this rule are primarily administrative in nature. There is no new scientific requirements such as increased control or operating requirements. Therefore, no scientific data was used.

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?

As noted, Ohio EPA met with many industry and trade groups to develop rule language that would best suit all parties. Ohio EPA received numerous comments from interested parties. All suggested alternatives were considered before the current draft was prepared. For example, several parties commented on the amount of time a malfunctions may occur before it must be reported. Suggestions ranged from several hours to several days. After reviewing the comments, Ohio EPA determined that 24 hours was the best alternative and made the change.

Ohio EPA has prepared a response to comments document that discusses the comments made on these rules and Ohio EPA's response to those comments. This document discusses alternatives suggested by commenters and how Ohio EPA evaluated and addressed those alternative suggestions. The document is available for review on Ohio EPA's website at: <http://epa.ohio.gov/dapc/DAPCrules.aspx#112742674-interested-party-review>

~~The current draft language is considered the preferred language at this time.~~

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 amendments to these rules are not performance based. The draft language is mostly concerned with reporting requirements. There are certain requirements and information that must be provided to fulfill USEPA's required changes in the federal register. Therefore, it

was necessary to dictate the process for these rules so that this specific information is presented.

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. 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.

The changes should allow for more certainty to the regulated community since the program will no longer require approval of the director. As currently existing, facilities must submit a written request to perform scheduled maintenance and await Ohio EPA’s reply. Per the amendments, this becomes a notification which must be performed within 5 days before and after the scheduled maintenance. All notifications must still be submitted to Ohio EPA. All else should remain the same.

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.

~~There should be no additional costs associated with the changes in this rulemaking if the changes are accepted by U.S. EPA as part of Ohio’s SIP.~~

Ohio EPA does not anticipate any change in the cost of compliance due to the amendments contained in this rulemaking. The amendments do not add any additional reporting requirements and, in some cases, may even reduce the cost of compliance for facilities that can implement work practice changes that may reduce reporting. Each facility is, however, unique and it is not possible to determine which specific facilities or groups of facilities will

be able to take advantage of cost reductions. At best, Ohio EPA can predict that the cost of compliance will not increase.

Ohio EPA has determined that there may be a one-time cost for owners and operators to review the rule amendments to determine if their facility may be able take advantage of work practice changes. Ohio EPA anticipates that this cost will be a few thousand dollars in labor time for rule review and planning.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

These changes are required to meet the requirements of the Startup, Shutdown and Malfunction SIP Call from U.S. EPA (80 FR 33840). Ohio EPA has crafted the changes to minimize the possible cost of compliance to regulated entities. If states do not comply, U.S. EPA could initiate a “sanctions clock” that requires substantial additional burdens on new sources after 18 months and withholding of federal highway funds after 24 months.

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 any exemption.

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, however, there should be no need to issue a fine or penalty regarding the application process for these rules.

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>.

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- 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 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.