



Early Stakeholder Outreach — OAC Chapter 3745-14 (NO_x Budget Trading Program) and Chapter 3745-109 (Clean Air Interstate Rule)

Ohio EPA prepares early stakeholder outreach fact sheets to ensure stakeholders are brought into the review process as early as possible and to obtain additional input and discussion before development of interested party draft rules.

What do these rules cover?

Ohio Administrative Code (OAC) Chapter 3745-14 establishes Ohio's NO_x Budget Trading (NBT) Program. These rules were promulgated to satisfy the federal NO_x SIP Call, which required 22 states and the District of Columbia to submit state implementation plans to set statewide NO_x budgets [October 27, 1998, 63 FR 57356]. These rules created an ozone season NO_x allowance and trading program for electric generating units (EGUs) and large non-EGUs.

On May 12, 2005, U.S. EPA published the Clean Air Interstate Rule (CAIR) [70 FR 25162]. To meet the requirements of CAIR, Ohio EPA promulgated OAC Chapter 3745-109. These rules established annual and ozone season NO_x budgets for large EGUs. Ohio also opted to incorporate large non-EGUs previously regulated under OAC Chapter 3745-14 into Chapter 3745-109, in order to meet the obligations of the NO_x SIP call through the CAIR trading program.

In July 2008, the D.C. Circuit court vacated CAIR, and issued a subsequent remand without vacature of CAIR in December 2008. The court directed U.S. EPA to revise or replace CAIR in order to address those deficiencies identified by the court. On July 6, 2011, U.S. EPA finalized the Cross State Air Pollution Rule (CSAPR) as a replacement for CAIR [77 FR 10342]. CSAPR became effective on January 1, 2015, for SO₂ and annual NO_x, and May 1, 2015 for ozone season NO_x. Notably, CSAPR did not initially contain provisions to incorporate large non-EGUs. With the replacement of CAIR by CSAPR, those non-EGUs previously regulated under CAIR were again regulated by the NBT program.

U.S. EPA has indicated non-EGUs are required show continued compliance with the NO_x SIP Call. Although no formal guidance has been issued, U.S. EPA presented several options for this process via a Frequently Asked Questions (FAQs) website.

Subsequently, on October 26, 2016, U.S. EPA published the CSAPR Update rule, which again allows states to expand the applicability of the CSAPR NO_x ozone season trading program to include non-EGUs [81 FR 74504].

Why are these rules being sent out for Early Stakeholder Outreach?

The first step in the rule-making process is for Ohio EPA to identify that a rule needs to be amended, rescinded, or created. In response to Executive Order 2011-01K, Ohio EPA has added an additional step to ensure stakeholders are brought into the rule process as early as possible. This additional interested party notification and request for information will allow for early feedback before the rule language has been developed by the Agency.

How can I provide input?

The Agency is seeking stakeholder input on the rules. When preparing your comments, be sure to:

- explain your views as clearly as possible;
- describe any assumptions used;
- provide any technical information and/or data used to support your views;
- explain how you arrived at your estimate for potential burdens, benefits or costs;
- provide specific examples to illustrate your views; and
- offer alternatives.

Written comments will be accepted through close of business **Monday, January 23, 2017**. Please submit input to:

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What if I have questions?

These rules can be found on Ohio EPA's website for electronic downloading at: http://epa.ohio.gov/dapc/regs/3745_14.aspx and http://epa.ohio.gov/dapc/regs/3745_109.aspx or contact Mr. Braun (information provided above).

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What changes are being considered?

Ohio EPA must revise the rules to address U.S. EPA's discontinuance of compliance trading options under the NBT Program, and to ensure continued compliance with the NO_x SIP Call by large non-electric generating units (non-EGUs). Ohio EPA has evaluated the options (including expansion of the CSAPR trading program), and benchmarked with other states. First, Ohio EPA does not believe participation in the CSAPR program is the best option for Ohio. Under the CSAPR update, the allowed increase to the CSAPR budget would be 1,541 tons per ozone season, a significant reduction from the NBT budget of 4,028 tons per ozone season.

Rather, Ohio EPA plans on selecting the streamlined demonstration option from the FAQs, which demonstrates that the total ozone-season NO_x emissions from large non-EGUs could not exceed the large non-EGU budget imposed by the NO_x SIP Call, even if these units were to operate every hour of the ozone season. Ohio is currently at 1,817 tons for this demonstration (45% of the statewide non-EGU budget).

States must continue to demonstrate existing non-EGUs will meet the NO_x SIP Call requirements, as well as have a mechanism to ensure any new non-EGUs would also meet these requirements, including Part 75 monitoring and reporting requirements. Given this demonstration showing that Ohio continues to meet the NO_x SIP Call statewide budget, Ohio could proceed with rulemaking to rescind provisions of OAC Chapter 3745-14 pertaining to individual unit allocations and trading. Ohio EPA would retain provisions in the rules pertaining to applicability, the statewide emissions budget, and Part 75 monitoring and reporting, as well as rules 3745-14-11 and 3745-14-12 regarding portland cement kilns and stationary internal combustion engines. The CAIR rules in OAC Chapter 3745-109 would be rescinded. Initial discussions with U.S. EPA indicate this would be an approvable approach.

Under this plan, non-EGUs subject to the revised NO_x Budget Program rules would be required to conduct Part 75 monitoring and reporting and submit compliance certifications regarding the Part 75 monitoring only. These requirements would continue to be included in a Title V or non-Title V permit. However, non-EGUs would no longer receive individual NO_x allowances, be part of a trading program, or be required to certify compliance with any allocation or budget. Rather, Ohio would use the Part 75 reporting to perform an annual review to show all existing and new non-EGU NO_x SIP Call units continue to meet the state-wide budget. Ohio EPA is also exploring options to allow an alternative to Part 75 monitoring to be approved.

EGUs will demonstrate compliance with the NO_x SIP Call through the CSAPR trading program. There will be no changes to the requirements for portland cement kilns and stationary internal combustion engines.

Who will be regulated by these rules?

Generally, units subject to these rules include fossil-fuel fired stationary boilers, combustion turbines, or combined cycle systems, including EGUs serving a generator with a nameplate capacity greater than 25 MWe and producing electricity for sale to the grid, and non-EGUs with a maximum design heat input greater than 250 mmBTU/hr, that do not serve a generator producing electricity for sale. See the applicability provisions in OAC rule 3745-14-01 and OAC rule 3745-109-01 (http://epa.ohio.gov/dapc/regs/3745_14.aspx and http://epa.ohio.gov/dapc/regs/3745_109.aspx) for more detail.

What is the rulemaking schedule?

Upon completion of the Early Stakeholder Outreach portion of this rulemaking, Ohio EPA will make any changes necessary to the rule language and make a draft of the rule language available to the public for a 30-day review.

What input is the Agency seeking?

The following questions may help guide you as you develop your comments.

- Is the general regulatory framework proposed the most appropriate? Should the Agency consider any alternative framework?
- What options are available for improving an identified concept? What options are available for improving the existing rules?
- Are there considerations the Agency should take into account when updating the existing rules? Are there considerations the Agency should take into account when developing a specific concept?
- Is there any information or data the Agency should be aware of when developing program concepts or rule language?

Contact

For more information, contact Paul Braun at paul.braun@epa.ohio.gov or (614)644-3734.