

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio EPA

Regulation/Package Title: OAC Chapter 3745-23, Nitrogen Oxide Standards

Rule Number(s): OAC Rules 3745-23-01 and 3745-23-02

Date: March 5, 2014

Rule Type:

- | | |
|----------------------------------|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input 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 Rescinded |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 3745-23 contain requirements for how Ohio EPA will monitor for Nitrogen Oxides as part of Ohio's State Implementation

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Plan (SIP) for the attainment and attainment of the national ambient air quality standard (NAAQS). These standards also apply in the rare instances where a facility would need to perform monitoring as part of a compliance requirement for a permit.

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

These rules are authorized under Ohio Revised Code 3704.03(E) and amplify Ohio Revised Code 3704.03(A) and 3704.03(E). The rules in this rulemaking are as follows:

Rule Number	Authorizing Statute	Proposed Action
3745-23-01	3704.03(D)	Amend
3745-23-02	3704.03(D)	Amend

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.

These rules do implement a federal requirement. Ohio is required under Section 110 of the Federal Clean Air Act to prepare a plan for the attainment and maintenance of the national ambient air quality standards (NAAQS). These rules are part of Ohio's state implementation plan (SIP) for attaining and maintaining the NAAQS for nitrogen dioxide.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

These rules do not exceed federal requirements.

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 public purpose is set requirements for monitoring ambient levels of nitrogen oxides to determine if Ohio is attaining and maintaining the NAAQS. In the rare case where a facility is required to do monitoring to support compliance with a permit or enforcement order, they would be required to perform testing by these standards as well.

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

Ohio EPA measures the success of these rules by the successful collection of data to determine if Ohio is attaining and maintaining the NAAQS.

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 a 30-day early stakeholder comment period and requested comments from potentially affected parties. The comment period ended as of November 12, 2013. Ohio EPA Division of Air Pollution Control (DAPC) sent notice of our request for comments electronically to the 1,200+ 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.

No comments were received as a result of Ohio EPA's request for input.

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 no input on our request.

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?

These rules are based on Federally developed and implemented monitoring methods. These methods are used by most states to maintain unity among the data collected. The analytical methods were originally developed in the 1980's and have been refined by USEPA over the years. One of the modifications Ohio EPA is making to these rules is to update the citations to the federal regulations to ensure usage of the most recent versions of the methods.

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?

These rules implement federal requirements and test methods. There are no alternatives.

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.*

These rules require use of specific analytical methods to produce the required monitoring data for nitrogen oxides. To maintain uniformity among all state monitoring for nitrogen oxides, it is necessary to use uniform methods of analysis. There is not a practical way to make these rules performance based.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Ohio EPA reviewed our own regulations and performed a search of regulation from other agencies to determine if duplication was being made. To our knowledge, Ohio EPA is not duplicating another existing Ohio regulation.

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.

These rules have been in effect since the agency started monitoring for nitrogen oxides in 1972. Ohio EPA has developed and maintains an extensive monitoring network based on the requirements in this chapter. The amendments being made for this rulemaking do not affect the monitoring network. Ohio EPA's plan for implementation is to continue to operate the monitoring network.

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.

The cost of compliance with the rules in this chapter is a purely internal cost to Ohio EPA. Ohio EPA is the lone operator of Ohio’s monitoring network for nitrogen oxides. On rare occasions, a large facility may be required to perform monitoring to determine compliance with a permit requirements or an enforcement action. When this is necessary, they are required to perform the monitoring methods contained in this chapter.

The cost of establishing a monitoring station is approximately \$15,000 with an additional yearly operating cost of approximately \$5,000/year. The average life span of a monitor is approximately 10 years, after which the monitor would require replacement. Given that the monitor operates continuously and produces one sample result per hour, the overall cost per sample is under \$2.00 each.

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

These rules do not directly affect the business community. The monitoring of nitrogen oxides as required by these rules is performed in-house by Ohio EPA. Sampling results are used to determine if Ohio is in attainment with the Nitrogen Dioxide NAAQS. Current monitoring data indicate that Ohio is in attainment for the standard, which is beneficial to business because it means less requirements and easier permitting.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

These rules do not contain any exemptions. They only contain requirements for testing methods for nitrogen oxides. Exemptions to testing are included in other rule chapters not included in this package.

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?

Violations of this rule would be treated as paperwork violations and would be addressed under the scope of ORC 119.14.

18. What resources are available to assist small businesses with compliance of the regulation?

As noted in item #16 above, these rules would almost certainly never be applied to an affected facility which could be considered a small business, however, 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 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 these rules, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.state.oh.us.