



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information:

Mandi Payton, 614-644-3134, Amanda.payton@epa.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

OAC Chapter 3745-73, "Total Reduced Sulfur Rules"

Rule Number(s): OAC Rules 3745-73-01 to 3745-73-04

Date of Submission for CSI Review: November 4, 2020

Public Comment Period End Date: December 8, 2020

Rule Type/Number of Rules:

New/ rules

No Change/ rules (FYR?)

Amended/ 4 rules (FYR? Yes)

Rescinded/ rules (FYR?)

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):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- 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 Chapter 3745-73 of the Ohio Administrative Code (OAC) set limits, testing and recordkeeping requirements for emissions of reduced sulfur from Kraft Pulp mills in the state of Ohio. The rules are patterned after the New Source Performance Standards (NSPS) for Kraft Pulp Mills in 40 CFR part 60, subpart BB.

The Ohio EPA Division of Air Pollution Control (DAPC) has completed draft rule language for incorporation of appropriate changes as a result of the 5-year review of the rules in accordance with Ohio Revised Code 106.03 and 106.031.

As a result of the review, Ohio EPA has determined that these rules remain necessary, and are in need of minor changes. Minor changes to update formatting and grammar and remove unnecessary or obsolete rule restriction language have been made to all four of the rules in this chapter. In addition, information on the version and availability of items referenced in this chapter has been updated in paragraph (L) of OAC rule 3745-73-01.

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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.

Rule Number	Authorizing Statute	Proposed Action
3745-73-01	3704.03(E)	Amend
3745-73-02	3704.03(E)	Amend
3745-73-03	3704.03(E)	Amend
3745-73-04	3704.03(E)	Amend

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.

These rules are part of Ohio’s plan to control reduced sulfur emissions from Kraft Pulp Mills under the Clean Air Act Section 111(d) and 40 CFR part 60, subpart BB.

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

These rules mirror the federal language in 40 CFR part 60, subpart BB and do not exceed any of the limits set in the federal rules.

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)?

As mentioned above, the rules in this chapter are part of Ohio’s plan for controlling reduced sulfur emissions from Kraft Pulp Mills as required under section 111 of the Clean Air Act.

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

These rules set limits on the emission of reduced sulfur compounds from Kraft Pulp Mills. Reduced sulfur compounds are precursors to criteria pollutants like particulate matter for which national ambient air quality standards have been established. Ohio EPA considers these rules successful when Ohio continues to progress towards, attain and maintain the various standards established by USEPA.

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 the rules in this rulemaking are being submitted pursuant to these 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 public comment period ending September 9, 2020. The 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. Ohio EPA did not receive any comments on these rules during the comment period.

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

Ohio EPA did not receive any comments on the rules in this rulemaking during the early stakeholder comment period ending September 9, 2020.

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?**

These rules were developed in the 1980's and are only applicable to facilities which commenced construction, reconstruction, or modification after September 24, 1976, and on or before May 23, 2013. Ohio EPA is only aware of 1 facility remaining in operation in Ohio which meets these requirements, Glatfelter (formerly Mead Paper) in Chillicothe, Ohio.

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?**

These rules are based on federal regulations in 40 CFR part 60, subpart BB. There are no alternative regulations to consider.

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- 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 these rules performance based. The rules set monitoring criteria and emission limits. The facilities are free to design their own collection and monitoring systems as long as they can meet the criteria.

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

Ohio EPA performed a review of our internal regulations as well as rules of other OEPA divisions and outside agencies. These rules do not duplicate any other state rules.

- 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.**

As mentioned, these rules were originally promulgated in the 1980's and the facilities that are still subject have long since complied with the requirements of these rules. The emission limits, monitoring and reporting requirements are placed as a requirement in the facility's permit-to-install and permit-to-install and operate.

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.

These rules have been in existence since the 1980's and are only applicable for facilities that commenced construction, reconstruction, or modification after September 24, 1976, and on or before May 23, 2013. Facilities subject to these rules have long since installed their monitoring and emission control systems and because the rules do not apply to new facilities, Ohio EPA does not anticipate any facilities to incur new costs for installation of these systems.

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

These rules fulfill federal requirements under federal regulations in 40 CFR part 60, subpart BB. Ohio EPA was required to adopt these rules in the 1980's under Section 111 of the Clean Air Act

Regulatory Flexibility

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

Because of the date limitations and other factors, Ohio EPA does not expect any new facilities to be identified that are affected by these rules. Facilities that still meet the requirements of these rules have long since installed their control systems and are complying with these rules as part of their operating permits.

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 to typically wave penalties for facilities committing a first-time paperwork violation

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 tollfree 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.
- 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.

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- 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.

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