



Mike DeWine, Governor  
Jon Husted, Lt. Governor  
Laurie A. Stevenson, Director

AUG 26 2019

Ms. Cathy Stepp  
Regional Administrator  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

**Re: Request for Approval of Ohio Administrative Code (OAC) Chapter 3745-14 (Phase 2 Revisions) into Ohio's State Implementation Plan (SIP)**

Dear Administrator Stepp:

On March 8, 2019, U.S. EPA finalized amendments to the NO<sub>x</sub> SIP Call requirements in 40 CFR 51.121(i)(4) which would allow states to include alternate forms of monitoring requirements in their SIPs [84 FR 8422]. On August 12, 2019, Ohio EPA adopted amended OAC rules 3745-14-01, 3745-14-04 and 3745-14-08 to allow approval of alternatives to the existing Part 75 monitoring and reporting requirements. At this time, Ohio EPA is requesting U.S. EPA approval of these changes for incorporation into the SIP.

No other changes have been made to these rules since Ohio's February 5, 2018 SIP submittal requesting approval of rule amendments which demonstrated continued compliance with the NO<sub>x</sub> SIP Call following the discontinuation of compliance trading options under the NO<sub>x</sub> Budget Trading Program.

This letter should meet the requirements in 40 CFR Part 51, Appendix V, Section 2.1(a): a "formal letter of submittal from the Governor or his designee, requesting EPA approval of the plan or revision."

The following documents are attached for your consideration per the requirements of 40 CFR Part 51, Appendix V:

Article I addresses the following two requirements:

40 CFR Part 51, Appendix V, Section 2.1(b)

Evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement (hereafter "document") in final form. That evidence shall include the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date.

40 CFR Part 51, Appendix V, Section 2.1(d)

A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made to the existing approved plan, where applicable. The submittal shall be a copy of the official State regulation /document signed, stamped, and dated by the appropriate State official indicating that it is fully enforceable by the State. The effective date of the regulation/document shall, whenever possible, be indicated in the document itself.

Certified copies of the OAC Chapter 3745-14 rules, in redline and strikeout, are being submitted for approval and incorporation by reference into the plan. The copy is included as evidence that the State has adopted the body of regulations in final form. This submittal includes a copy of the official State regulation signed, stamped, and dated by the appropriate State official indicating that it is fully enforceable by the State. The effective date of the regulation is indicated in the document itself. Please consider that Ohio has an electronic rule filing system and all certifications/signatures of regulations are done electronically.

Article II addresses the following requirement:

Copies of the public notice of adoption and Director's Findings & Orders have been included as evidence of the date of adoption as well as the effective date of the regulation and evidence that public notice was given of the proposed changes consistent with procedures approved by EPA, including the date of publication of such notice.

Requirements of 40 CFR Part 51, Appendix V, Section 2.1(c):

Evidence that the State has the necessary legal authority under State law to adopt and implement the plan.

Ohio's legislature has given Ohio EPA authority under paragraphs (A) and (E) of Section 3704.03 of the Ohio Revised Code (ORC) to enact these rules. Copies of these sections of the ORC can be provided upon request.

Article III addresses the following requirements:

40 CFR Part 51, Appendix V, Section 2.1(e)

Evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan.

40 CFR Part 51, Appendix V, Section 2.1(f)

Evidence that public notice was given of the proposed change consistent with procedures approved by EPA, including the date of publication of such notice.

Ohio EPA has included a narrative and several attachments as evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan.

#### Article IV

40 CFR Part 51, Appendix V, Section 2.1(g)

Certification that public hearings(s) were held in accordance with the information provided in the public notice and the State's laws and constitution, if applicable.

A copy of the public notice and transcript from the public hearing has been provided as certification that a public hearing was held in accordance with the information provided in the public notice and the State's laws and constitution.

#### Article V

40 CFR Part 51, Appendix V, Section 2.1(h)

Compilation of public comments and the State's response thereto.

Copies of the Response to Comments documents for both the draft language and proposed language comment periods are attached.

Also attached to this letter is a demonstration that the revised rules will not interfere with the attainment of the National Ambient Air Quality Standards (NAAQS) or violate the requirements of Section 110(l) of the Clean Air Act (CAA). Ohio's draft 110(l) demonstration was made available for public comment and public hearing along with the proposed rules. A copy of the public notice and response to comments are included in the attachments for Article IV and V above.

Ohio EPA asks that the above mentioned rules be accepted as revisions to Ohio's SIP.

Please contact Bob Hodanbosi (614) 644-3585 or [robert.hodanbosi@epa.ohio.gov](mailto:robert.hodanbosi@epa.ohio.gov) if you have any questions about this submittal.

Sincerely,



Laurie A. Stevenson  
Director, Ohio Environmental Protection Agency

cc: Bob Hodanbosi, Chief Division of Air Pollution Control

Attachments



# Article I

## Certified Copy of Rules

3745-14-01

**Definitions and general provisions.**

[Comment: For dates and availability of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (F) of this rule titled "referenced materials."]

(A) This chapter establishes the provisions and requirements to implement a NOx budget, portland cement kilns, and a stationary (large) internal combustion engines program in the state of Ohio as a means of control and reduction of NOx emissions.

(B) Definitions.

(1) Except as otherwise provided in this rule, the definitions in rule 3745-15-01 of the Administrative Code shall apply to this chapter.

(2) As used in this rule and in rules 3745-14-03, 3745-14-04 and 3745-14-08 of the Administrative Code (pertaining to NOx budget program and other sources identified in paragraph (A) of this rule):

(a) "Acid Rain emissions limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or NOx under the acid rain program under Title IV of the Clean Air Act.

(b) "Administrator" means the administrator of the United States environmental protection agency or the administrator's duly authorized representative.

(c) "AP-42" means the USEPA document "Compilation of Air Pollutant Emissions Factors, Volume I: Stationary Point and Area Sources."

~~(e)~~(d) "ASTM" means the "American Society for Testing and Materials," 100 Barr Harbor Drive, West Conshohocken, Pennsylvania.

~~(d)~~(e) "Automated data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under paragraphs (A) to (G) of rule 3745-14-08 of the Administrative Code, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by paragraphs (A) to (G) of rule 3745-14-08 of the Administrative Code.

~~(e)~~(f) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam,

or other medium, excluding CO boilers associated with combusting CO from fluidized catalytic crackers at petroleum refineries.

~~(f)~~(g) "Btu" means British thermal unit.

~~(g)~~(h) "CAA" means the Clean Air Act as contained in 42 USC 7401 to 7671q.

~~(h)~~(i) "CO" means carbon monoxide.

~~(i)~~(j) "Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

~~(j)~~(k) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

~~(k)~~(l) "Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in paragraph (C)(2) of this rule, for a unit that is a NOx budget unit under paragraph (C)(1) of this rule on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in paragraph (C)(2) of this rule, for a unit that is not a NOx budget unit under paragraph (C)(1) of this rule on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under paragraph (C)(1) of this rule shall be the unit's date of commencement of commercial operation.

~~(l)~~(m) "Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in paragraph (C)(2) of this rule, for a unit that is a NOx budget unit under paragraph (C)(1) of this rule on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in paragraph (C)(2) of this rule, for a unit that is not a NOx budget unit under paragraph (C)(1) of this rule on the date of commencement of operation, the date

the unit becomes a NOx budget unit under paragraph (C)(1) of this rule shall be the unit's date of commencement of operation.

~~(m)~~(n) "Common stack" means a single flue through which emissions from two or more units are exhausted.

~~(n)~~(o) "Continuous emission monitoring system" or "CEMS" means the equipment required under paragraphs (A) to (G) of rule 3745-14-08 of the Administrative Code to sample, analyze, measure, and provide, by readings taken at least once every fifteen minutes (using an automated DAHS, a permanent record of NOx emissions, stack gas volumetric flow rate or stack gas moisture content (as applicable), in a manner consistent with paragraphs (A) to (G) of rule 3745-14-08 of the Administrative Code. The following are the principal types of continuous emission monitoring systems required under paragraphs (A) to (G) of rule 3745-14-08 of the Administrative Code and 40 CFR Part 75:

(i) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh).

(ii) A NOx concentration monitoring system, consisting of a NOx pollutant concentration monitor and an automated DAHS. A NOx concentration monitoring system provides a permanent, continuous record of NOx emissions in units of parts per million (ppm).

(iii) A NOx emission rate (or NOx-diluent) monitoring system, consisting of a NOx pollutant concentration monitor, a diluent gas (carbon dioxide or oxygen) monitor, and an automated DAHS. A NOx concentration monitoring system provides a permanent, continuous record of: NOx concentration in units of parts per million, diluent gas concentration in units of percent carbon dioxide or oxygen, and NOx emission rate in units of pounds per mmBtu.

(iv) A moisture monitoring system, as defined in 40 CFR 75.11(b)(2). A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of per cent water.

~~(o)~~(p) "Control period" means the period beginning May first of a year and ending on September thirtieth of the same year, inclusive.

~~(p)~~(q) "DAHS" means data acquisition and handling system.



- ~~(q)~~(r) "Designated representative" means, for a NOx budget source or NOx budget unit at the source, the natural person who is authorized by the owner and operator of the source and all NOx budget units at the source to represent and legally bind each owner and operator in matters pertaining to the NOx budget program. For Title V sources, the designated representative shall be the responsible official under paragraph (II) of rule 3745-77-01 of the Administrative Code. For non-Title V sources, the designated representative shall be the signatory authority under paragraph (B) of rule 3745-31-04 of the Administrative Code.
- ~~(r)~~(s) "Director" means the director of the Ohio environmental protection agency.
- ~~(s)~~(t) "Electricity for sale under firm contract to the grid" means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.
- ~~(t)~~(u) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator in accordance with paragraphs (A) to (G) of rule 3745-14-08 of the Administrative Code, or as measured, recorded and reported to the director by the designated representative in accordance with paragraph (H) of rule 3745-14-08 of the Administrative Code.
- ~~(u)~~(v) "Energy information administration" means the energy information administration of the United States department of energy.
- ~~(v)~~(w) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.
- ~~(w)~~(x) "Fossil fuel-fired" means one of the following, with regard to a unit:
- (i) For units that commenced operation before January 1, 1996, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty per cent of the annual heat input, on a Btu basis, during 1995, or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995.

(ii) For units that commenced operation on or after January 1, 1996 and before January 1, 1997, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty per cent of the annual heat input, on a Btu basis, during 1996.

(iii) For units that commence operation on or after January 1, 1997, one of the following:

~~(A)~~(a) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty per cent of the annual heat input, on a Btu basis, during any year.

~~(B)~~(b) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than fifty per cent of the annual heat input, on a Btu basis, during any year, provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

~~(x)~~(y) "Generator" means a device that produces electricity.

~~(y)~~(z) "Heat input" means the product (in mmBtu per time) of the gross calorific value of the fuel (in mmBtu per pound) and the fuel feed rate into a combustion device (in pounds of fuel per time), as measured, recorded, and reported to the director by the designated representative and as determined by the director in accordance with rule 3745-14-08 of the Administrative Code, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

~~(z)~~(aa) "Heat input rate" means the amount of heat input (in mmBtu) divided by unit operating time (in hours) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hours) during which the unit combusts the fuel.

~~(aa)~~(bb) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract that meets one of the following:

- (i) For the life of the unit.
  - (ii) For a cumulative term of no less than thirty years, including contracts that permit an election for early termination.
  - (iii) For a period equal to or greater than twenty-five years or seventy per cent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.
- ~~(bb)~~(cc) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.
- ~~(ee)~~(dd) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in per cent carbon dioxide) or the minimum oxygen concentration (in per cent oxygen).
- ~~(dd)~~(ee) "Maximum potential NO<sub>x</sub> emission rate" means the emission rate of NO<sub>x</sub> (in pounds per mmBtu) calculated in accordance with Section 3 of Appendix F of 40 CFR Part 75, using the maximum potential concentration of NO<sub>x</sub> as defined in Section 2 of Appendix A of 40 CFR Part 75, and either the maximum oxygen concentration (in per cent oxygen) or the minimum carbon dioxide concentration (in per cent carbon dioxide), under all operating conditions of the unit except for unit start up, shutdown, and upsets.
- ~~(ee)~~(ff) "Maximum rated hourly heat input" means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.
- ~~(ff)~~(gg) "mmBtu" means million. British thermal unit.
- ~~(gg)~~(hh) "MWe" means megawatt electrical.

~~(hh)~~(ii) "Monitoring system" means any monitoring system that meets the requirements of rule 3745-14-08 of the Administrative Code, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

~~(ii)~~(jj) "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States department of energy standards.

~~(jj)~~(kk) "Non-Title V permit" means a federally enforceable permit administered by the director pursuant to the Clean Air Act and regulatory authority under the Clean Air Act, other than Title V of the Clean Air Act and Chapter 3745-77 of the Administrative Code.

~~(kk)~~(ll) "NO<sub>x</sub>" means all oxides of nitrogen which are determined to be ozone precursors, including, but not limited to, nitrogen oxide and nitrogen dioxide, but excluding nitrous oxide.

~~(ll)~~(mm) "NO<sub>x</sub> budget source" means a source that includes one or more NO<sub>x</sub> budget units.

~~(mm)~~(nn) "NO<sub>x</sub> budget program" means a NO<sub>x</sub> air pollution control program approved by the administrator pursuant to 40 CFR 51.121 or established by the administrator pursuant to 40 CFR 52.34, as a means of mitigating the interstate transport of ozone and NO<sub>x</sub>.

~~(nn)~~(oo) "NO<sub>x</sub> budget unit" means a unit that is subject to the requirements of the NO<sub>x</sub> budget program.

~~(oo)~~(pp) "Operator" means any person who operates, controls, or supervises a NO<sub>x</sub> budget unit or a NO<sub>x</sub> budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

~~(pp)~~(qq) "Owner" means any of the following persons:

- (i) Any holder of any portion of the legal or equitable title in a NO<sub>x</sub> budget unit.
- (ii) Any holder of a leasehold interest in a NO<sub>x</sub> budget unit.
- (iii) Any purchaser of power from a NO<sub>x</sub> budget unit under a life-of-the-unit, firm power contractual arrangement (however, unless

expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit.

~~(qq)~~(rr) "Potential electrical output capacity" means thirty-three per cent of a unit's maximum design heat input.

~~(rr)~~(ss) "Receive" or "receipt of" means, when referring to the director or the administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the director or the administrator in the regular course of business.

~~(ss)~~(tt) "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in Appendix A of 40 CFR Part 60.

~~(tt)~~(uu) "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Clean Air Act. For purposes of Section 502(c) of the Clean Air Act, a source, including a source with multiple units, shall be considered a single facility.

~~(uu)~~(vv) "State" means one of the forty-eight contiguous states or a portion thereof or the District of Columbia that is subject to a NOx budget program under Section 110(c) or Section 126 of the Clean Air Act.

~~(vv)~~(ww) "State program budget" means the total number of NOx tons available to the NOx budget program, for use in a given control period.

~~(ww)~~(xx) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation by any of the following:

- (i) In person.
- (ii) By United States postal service.
- (iii) By other means of dispatch or transmission and delivery.

Compliance with any submission, service, or mailing deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

~~(xx)~~(yy) "Title V operating permit" means a permit issued under Chapter 3745-77 of the Administrative Code.

~~(yy)~~(zz) "Title V operating permit regulations" means Chapters 3745-77 and 3745-78 of the Administrative Code.

~~(zz)~~(aaa) "Ton" or "tonnage" means any "short ton" (i.e., two thousand pounds). For the purpose of determining compliance with the NOx ~~budget program~~budget program, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with paragraph (A) to (G) of rule 3745-14-08 of the Administrative Code, or the sum of all daily emissions in accordance with paragraph (H) of rule 3745-14-08 of the Administrative Code, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

~~(aaa)~~(bbb) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

~~(bbb)~~(ccc) "Unit operating day" means a calendar day in which a unit combusts any fuel.

~~(ccc)~~(ddd) "Unit operating hour" or "hour of unit operation" means any hour (or fraction of an hour) during which a unit combusts any fuel.

(3) As used in rule 3745-14-11 of the Administrative Code (pertaining to NOx budget program requirements for portland cement manufacturing):

(a) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(b) "Long dry kiln" means a kiln fourteen feet or larger in diameter, four hundred feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

(c) "Long wet kiln" means a kiln fourteen feet or larger in diameter, four hundred feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

- (d) "Low-NOx burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing, and establish fuel-rich zones for initial combustion.
- (e) "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.
- (f) "Mid-kiln system firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln system using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through both of the following:
  - (i) Burning part of the fuel at a lower temperature.
  - (ii) Reducing conditions at the solid fuel injection point that may destroy some of the NOx formed upstream in the kiln burning zone.
- (g) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.
- (h) "Portland cement kiln" means a system, including any solid, gaseous or liquid fuel combustion equipment, used to heat, calcine and fuse raw materials, including limestone and clay, to produce portland cement clinker.
- (i) "Precalciner kiln" means a kiln system where the feed to the kiln is preheated in cyclone chambers which utilize a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.
- (j) "Preheater kiln" means a kiln system where the feed to the kiln is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.
- (k) "Shutdown" means the cessation of operation of a portland cement kiln for any purpose.
- (l) "Startup" means the setting in operation of a portland cement kiln for any purpose.

- (4) As used in rule 3745-14-12 of the Administrative Code (pertaining to NO<sub>x</sub> budget program requirements for stationary internal combustion engines):
- (a) “Affected engine” means any stationary internal combustion engine that is a large NO<sub>x</sub> SIP call engine, or other stationary internal combustion engine that is subject to NO<sub>x</sub> control under a compliance plan established pursuant to paragraph (B) of rule 3745-14-12 of the Administrative Code.
  - (b) “Engine seasonal NO<sub>x</sub> 2007 tonnage reduction” means the year 2007 control period NO<sub>x</sub> emissions reductions value for a large NO<sub>x</sub> SIP call engine which is calculated as the difference between the 2007 base NO<sub>x</sub> emissions and the 2007 budget NO<sub>x</sub> emissions contained in the NO<sub>x</sub> SIP call engine inventory. The total engine seasonal NO<sub>x</sub> 2007 tonnage reduction for all large NO<sub>x</sub> SIP call engines in Ohio is 2730 tons.
  - (c) “Facility seasonal NO<sub>x</sub> 2007 tonnage reduction” means the total of the engine seasonal NO<sub>x</sub> 2007 tonnage reductions attributable to all of an owner/operator’s large NO<sub>x</sub> SIP call engines.
  - (d) “Large NO<sub>x</sub> SIP call engine” means a stationary internal combustion engine identified and designated as “large” in the NO<sub>x</sub> SIP call engine inventory (as defined in paragraph (B)(4)(e) of this rule) as emitting more than one ton of NO<sub>x</sub> emissions per average control period day in 1995.
  - (e) “NO<sub>x</sub> SIP call engine inventory” means the inventory of internal combustion engines compiled by the United States environmental protection agency as part of the NO<sub>x</sub> SIP call rule, including the Federal Register notice entitled “Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone,” and the adjustment of the 2007 budget NO<sub>x</sub> control efficiency to eighty-two per cent for large gas-fired engines discussed in the Federal Register notice entitled “Interstate Ozone Transport: Response to Court Decisions on the NO<sub>x</sub> SIP Call, NO<sub>x</sub> SIP Call Technical Amendments, and Section 126 Rules.”
  - (f) “Past NO<sub>x</sub> emission rate” means the emission rate of an affected engine in grams per brake horsepower-hour as determined by performance testing consistent with the requirements of 40 CFR Part 60, Appendix A. Where such performance test data are not available, the appropriate past NO<sub>x</sub> emission rate shall be evaluated and approved or denied by the director on a case-by-case basis using, for example, appropriate emission factors or data from the NO<sub>x</sub> SIP call engine inventory. For large NO<sub>x</sub> SIP call engines, the past NO<sub>x</sub> emission rate is the uncontrolled emission rate.



- (g) “Projected operating hours” means the projected actual number of hours of operation per control period for an affected engine.
- (h) “Projected NOx emission rate” means the projected emission rate in grams per brake horsepower-hour after installation of controls on an affected engine.
- (i) “Stationary internal combustion engine” means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than twelve consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

(C) Applicability.

- (1) All of the following units shall be NOx budget units, and any source that includes one or more such units shall be a NOx budget source, subject to the requirements of this chapter:
  - (a) For EGUs:
    - (i) For units, other than cogeneration units, that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than twenty-five MWe and produced electricity for sale under a firm contract to the electric grid.
    - (ii) For units, other than cogeneration units, that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit serving during 1997 or 1998 a generator that had a nameplate capacity greater than twenty-five MWe and produced electricity for sale under a firm contract to the electric grid.
    - (iii) For units, other than cogeneration units, that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than twenty-five MWe and produces electricity for sale.
    - (iv) For cogeneration units:

~~(A)~~(a) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator with a nameplate capacity greater than twenty-five MWe and failing to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the "Acid Rain Program."

~~(B)~~(b) For units commencing operation in 1997 or 1998, a unit serving during 1997 or 1998 a generator with a nameplate capacity greater than twenty-five MWe and failing to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the "Acid Rain Program."

~~(C)~~(c) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator with a nameplate capacity greater than twenty-five MWe and failing to qualify as an unaffected unit under 40 CFR 72.6(b)(4) under the "Acid Rain Program" for any year.

(b) For non-EGUs:

(i) For units, other than cogeneration units, that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than two hundred fifty mmBtu per hour and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(ii) For units, other than cogeneration units, that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than two hundred fifty mmBtu per hour and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(iii) For units, other than cogeneration units, that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour that:

~~(A)~~(a) At no time serves a generator producing electricity for sale.

~~(B)~~(b) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of twenty-five MWe or less and has the potential to use no more than fifty per cent of the potential electrical output capacity of the unit.

(iv) For cogeneration units:

~~(A)~~(a) For units commencing operation before January 1, 1997, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour and qualifying as an unaffected unit under 40 CFR 72.6(b)(4) under the "Acid Rain Program" for 1995 and 1996.

~~(B)~~(b) For units commencing operation in 1997 or 1998, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour and qualifying as an unaffected unit under 40 CFR 72.6(b)(4) under the "Acid Rain Program" for 1997 and 1998.

~~(C)~~(c) For units commencing on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour and qualifying as an unaffected unit under 40 CFR 72.6(b)(4) under the "Acid Rain Program" for each year.

(2) The following units shall be exempt from the requirements of the NOx budget program:

- (a) Any unit under paragraph (C)(1) of this rule that is subject to the federal Cross-State Air Pollution Rule (CSAPR) program under 40 CFR 52.38 or a replacement established to address transport under Section 110(c) or Section 126 of the CAA.

[Comment: The above exemption applies to units under paragraph (C)(1) of this rule, for any ozone season to which 40 CFR 52.38 applies. Ohio EPA is inserting this language because the United States environmental protection agency will not administer the NOx SIP Call trading program after 2008 (see 40 CFR 51.121(r) or the Clean Air Interstate Rule (CAIR) program after 2014 (see 40 CFR 51.123(ff)). Ohio will meet the NOx SIP Call obligations for these units through the CSAPR program under 40 CFR 52.38.

Should the United States environmental protection agency eliminate or suspend the CSAPR program, units previously exempted under this paragraph would need to meet the requirements of this chapter following the elimination or suspension of the federal CSAPR program unless replacement is established to address transport under Section 110(c) or Section 126 of the CAA.]

- (b) A unit under paragraph (C)(1) of this rule that has a federally enforceable permit that includes a NO<sub>x</sub> emission limitation restricting NO<sub>x</sub> emissions during a control period to twenty-five tons or less and restricts the unit to burning only natural gas or fuel oil during a control period in 2004 or later and that includes the special provisions in paragraph (C)(2)(e) of this rule shall be exempt from the requirements of this chapter, except for the provisions of this paragraph and paragraphs (B), (C)(1) and (E) of this rule. The NO<sub>x</sub> emission limitation under this paragraph shall restrict NO<sub>x</sub> emissions during the control period by one of the following methods:
- (i) A restriction on unit operating hours calculated by dividing the federally enforceable emission limitation, in tons, determined in accordance with paragraph (C)(2)(b) of this rule, by the unit's maximum potential hourly NO<sub>x</sub> mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NO<sub>x</sub> emission rate applicable to the unit under 40 CFR 75.19(c), Table LM-2.
  - (ii) A restriction on unit fuel usage calculated by dividing the federally enforceable emission limitation, in tons, determined in accordance with paragraph (C)(2)(b) of this rule, by the product of the heat value of the fuel to be used multiplied by the default NO<sub>x</sub> emission rate for the fuel to be used as specified in 40 CFR 75.19(c), Table LM-2.
- (c) The exemption under paragraph (C)(2)(b) of this rule shall become effective upon one of the following:
- (i) The exemption shall become effective on the date on which the NO<sub>x</sub> emission limitation and the special provisions in the permit under paragraph (C)(2)(b) of this rule become final; or
  - (ii) If the NO<sub>x</sub> emission limitation and the special provisions in the permit under paragraph (C)(2)(b) of this rule become final during a control period and after the first date on which the unit operates during such control period, then the exemption shall become effective on May first of such control period, provided that such NO<sub>x</sub> emission limitation and the special provisions apply to the unit as of such first date of operation. If such NO<sub>x</sub> emission limitation and special provisions do not apply to the unit as of such first date of operation, then the exemption under paragraph (C)(2)(b) of this rule shall become effective on October first of the year during which such NO<sub>x</sub> emission limitation and the special provisions become final.

- (d) The director shall provide the administrator written notice of the issuance of any permit under paragraph (C)(2)(b) of this rule and, upon request, a copy of the permit.
- (e) The following special provisions apply to units exempt under paragraph (C)(2)(b) of this rule.
  - (i) A unit exempt under paragraph (C)(2)(b) of this rule shall comply with the restriction on unit operating hours and fuel use described in paragraph (C)(2)(b) of this rule during the control period in each year.
  - (ii) A unit exempt under paragraph (C)(2)(b) of this rule shall report hours of unit operation or fuel usage during the control period in each year to the director by November first of that year.
  - (iii) For a period of five years from the date the records are created, the owners and operators of a unit exempt under paragraph (C)(2)(b) of this rule shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under paragraph (C)(2)(b) of this rule were met, including the restrictions on unit operating hours and fuel usage. The five-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the director or the administrator. The owners and operators bear the burden of proof that the unit met the restriction on unit operating hours and fuel use.
  - (iv) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (C)(2)(b) of this rule shall comply with the requirements of the NOx budget program concerning all periods for which the exemption is not in effect, even if such requirements arise, or shall be complied with, after the exemption takes effect.
  - (v) On the earlier of the following dates, a unit exempt under paragraph (C)(2)(b) of this rule shall lose its exemption:
    - ~~(A)~~(a) The date on which the restriction on unit operating hours and fuel use described in paragraph (C)(2)(b) of this rule is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any control period starting in 2004.

~~(B)(b)~~ The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on unit operating hours and fuel use described in paragraph (C)(2)(b) of this rule during any control period starting in 2004.

(vi) A unit that loses its exemption in accordance with paragraph (C)(2)(e)(v) of this rule shall be subject to the requirements of this chapter. For the purpose of applying permitting requirements under rule 3745-14-03 of the Administrative Code and applying monitoring requirements under rule 3745-14-08 of the Administrative Code, the unit shall be treated as commencing operation and, if the unit is covered by paragraph (C)(1)(b) of this rule, commencing commercial operation on the date the unit loses its exemption.

(D) Standard requirements.

(1) State program budget.

(a) For EGUs: Ohio's state program budget for EGUs is forty-five thousand four hundred thirty-two tons of NO<sub>x</sub> for each control period for units under paragraph (C)(1)(a) of this rule. The sum of the total number of tons of NO<sub>x</sub> emitted from the NO<sub>x</sub> budget units under paragraph (C)(1)(a) for the control period plus the sum of the NO<sub>x</sub> emission limitations (in tons) for each EGU unit exempt under paragraph (C)(2) of this rule shall be less than or equal to the state program budget for EGUs.

(b) For non-EGUs: Ohio's state program budget for non-EGUs is four thousand twenty-eight tons of NO<sub>x</sub> for each control period for units under paragraph (C)(1)(b) of this rule. The sum of the total number of tons of NO<sub>x</sub> emitted from the NO<sub>x</sub> budget units under paragraph (C)(1)(b) of this rule for the control period plus the sum of the NO<sub>x</sub> emission limitations (in tons) for each non-EGU unit exempt under paragraph (C)(2) of this rule shall be less than or equal to the state program budget for non-EGUs.

(i) Unless all NO<sub>x</sub> budget units under paragraph (C)(1)(b) of this rule are exempt under paragraph (C)(2) of this rule, by May 1 of each year, Ohio EPA will conduct an annual review of actual NO<sub>x</sub> emissions during the previous control period from all NO<sub>x</sub> budget units under paragraph (C)(1)(b) of this rule, including any new units, to ensure the total emissions remain below the state program budget for non-EGUs.

- (ii) Should the total emissions for the control period exceed the state program budget for non-EGUs, Ohio EPA will, within one year of determining the exceedance of the state program budget, submit a revised state implementation plan to the United States Environmental Protection Agency which compensates for the budget shortfall and ensures the state program budget is met in future years.

(2) Permit requirements.

The owners or operators and, to the extent applicable, the designated representative of each NO<sub>x</sub> budget unit or NO<sub>x</sub> budget source shall meet the permit requirements in rule 3745-14-03 of the Administrative Code.

(3) Monitoring requirements.

- (a) The owners and operators and, to the extent applicable, the designated representative of each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall comply with the monitoring requirements of rule 3745-14-08 of the Administrative Code.

- (b) The emissions measurements recorded and reported in accordance with rule 3745-14-08 of the Administrative Code shall be used to determine compliance with the NO<sub>x</sub> state program budget under paragraph (D)(1) of this rule.

(4) Record keeping and reporting requirements.

- (a) Unless otherwise provided, the owners and operators of a NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall keep on site at the source, or at a central location in Ohio for unattended sources, each of the following documents for a period of five years from the date the document is created: (This period may be extended for cause, at any time prior to the end of five years, in writing by the director or the administrator. Records for unattended sources retained at a central location shall be available immediately at the central location upon the request of the director or administrator and within three days following receipt of a written request from the director or administrator.)

- (i) Documents demonstrating the designated representative's authority necessary to carry out his or her duties and responsibilities under the NO<sub>x</sub> budget program on behalf of the owners and operators of the NO<sub>x</sub> budget source and of each NO<sub>x</sub> budget unit at the source and certifying that each such owner and operator shall be fully

bound by the designated representative's representations, actions, inactions, or submissions and by any decision or order issued to the designated representative by the director, the Administrator, or a court regarding the source or unit, provided that the documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the selection of a new designated representative.

- (ii) All emissions monitoring information, in accordance with rule 3745-14-08 of the Administrative Code.
- (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NOx budget program.
- (iv) Copies of all documents used to complete a permit application and any other submission under the NOx budget program or to demonstrate compliance with the requirements of the NOx budget program.

- (b) The designated representative of a NOx budget source and each NOx budget unit at the source shall submit the reports and compliance certifications required under the NOx budget program, including those under rule 3745-14-04 and rule 3745-14-08 of the Administrative Code.

(5) Liability.

- (a) Any person who knowingly violates any requirement or prohibition of the NOx budget program, a permit, or an exemption under paragraph (C)(2) of this rule shall be subject to enforcement pursuant to applicable state and federal law.
- (b) Any person who knowingly makes a false material statement in any record, submission, or report under the NOx budget program shall be subject to criminal enforcement pursuant to applicable state and federal law.
- (c) No permit revision shall excuse any violation of the requirements of the NOx budget program that occurs prior to the date that the revision takes effect.
- (d) Each NOx budget source and each NOx budget unit shall meet the requirements of the NOx budget program.
- (e) Any provision of the NOx budget program that applies to a NOx budget source (including a provision applicable to the designated representative



of a NOx budget source) shall also apply to the owners and operators of such source and of the NOx budget units at the source.

(f) Any provision of the NOx budget program that applies to a NOx budget unit (including a provision applicable to the designated representative of a NOx budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under rule 3745-14-08 of the Administrative Code, the owners and operators and the designated representative of one NOx budget unit shall not be liable for any violation by any other NOx budget unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(6) No provision of the NOx budget program, a permit application, a permit, or an exemption under paragraph (C)(2) of this rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the designated representative of a NOx budget source or NOx budget unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, or the Clean Air Act.

(E) Computation of time.

(1) Unless otherwise stated, any time period scheduled, under the NOx budget program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(2) Unless otherwise stated, any time period scheduled, under the NOx budget program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(3) Unless otherwise stated, if the final day of any time period under the NOx budget program, except for the control period defined in paragraph (B)(2)(o) of this rule, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

(F) Referenced materials. This chapter includes references to certain subject matter or materials. The text of the referenced materials is not included in the rules contained in this chapter. Information on the availability of the referenced materials as well as the date of and the particular edition or version of the material is included in this rule. For materials subject to change, only the specific version specified in this rule are referenced. Material is referenced as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal

Regulation compilations, any amendment or revision to a referenced document is not referenced unless and until this rule has been amended to specify the new dates.

(1) Availability. The materials incorporated by reference are available as follows:

(a) Clean Air Act as defined in this rule. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the Act as amended in 1990 is also available in electronic format at [www.epa.gov/oar/caa/](http://www.epa.gov/oar/caa/). A copy of the Act is also available for inspection and use at most public libraries and "The State Library of Ohio."

(b) Code of Federal Regulations. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the CFR is also available in electronic format at <http://www.ecfr.gov/>. The CFR compilations are also available for inspection and use at most Ohio public libraries and "The State Library of Ohio."

(c) "Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area Sources" (AP-42). Information and copies may be obtained by writing to: "U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000." The full text of AP-42 is also available in electronic format at <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emission-factors>. AP-42 is also available for inspection and copying at most public libraries and "The State Library of Ohio."

~~(e)~~(d) Ohio EPA weekly review. Information and copies may be obtained by writing to: "Ohio EPA Legal Department, 50 W. Town Street, Columbus, Ohio, 43125." The full text of the Ohio EPA Weekly Review is also available in electronic format at <http://epa.ohio.gov/Actions.aspx>. The Ohio EPA Weekly Review compilations are also available for inspection and use at most Ohio public libraries and "The State Library of Ohio."

~~(d)~~(e) Federal Registrar. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." Text of the Federal Register is also available in electronic format at ~~[www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html)~~ [www.federalregister.gov](http://www.federalregister.gov). The Federal Register is also available for inspection and use at most Ohio public libraries and "The State Library of Ohio."

(e)(f) American Society for Testing Materials (ASTM). Information and copies may be obtained by writing to: "ASTM International, 100 Bar Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959." These documents are available for purchase at [www.astm.org](http://www.astm.org). ASTM documents are also generally available at local public libraries and "The State Library of Ohio."

(2) Referenced materials.

- (a) 40 CFR 51.121; "Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen;" 63 FR 57491, Oct. 27, 1998, as amended at 63 FR 71225, Dec. 24, 1998; 64 FR 26305, May 14, 1999; 65 FR 11230, Mar. 2, 2000; 65 FR 56251, Sept. 18, 2000; 69 FR 21642, Apr. 21, 2004; 70 FR 25317, May 12, 2005; 70 FR 51597, Aug. 31, 2005; 73 FR 21538, Apr. 22, 2008; 76 FR 48353, Aug. 8, 2011; 79 FR 71671, Dec. 3, 2014; 84 FR 8442, Mar. 8, 2019.
- (b) 40 CFR 51.123; "Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule;" 70 FR 25319, May 12, 2005, as amended at 71 FR 25301, 25370, Apr. 28, 2006; 71 FR 74793, Dec. 13, 2006; 72 FR 59203, Oct. 19, 2007; 74 FR 56726, Nov. 3, 2009; 76 FR 48353, Aug. 8, 2011; 79 FR 71671, Dec. 3, 2014.
- (c) 40 CFR 52.34; "Action on petitions submitted under section 126 relating to emissions of nitrogen oxides;" 64 FR 28318, May 25, 1999, as amended at 64 FR 33961, June 24, 1999; 65 FR 2042, Jan. 13, 2000; 65 FR 2726, Jan. 18, 2000; 69 FR 31505, June 3, 2004.
- (d) 40 CFR 52.38; "What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?" 76 FR 48354, Aug. 8, 2011, as amended at 76 FR 80774, Dec. 27, 2011; 79 FR 71671, Dec. 3, 2014; 81 FR 74586, Oct. 26, 2016; 82 FR 45496, Sept. 29, 2017; 82 FR 46677, Oct. 6, 2017; 82 FR 47934, 47939, Oct. 13, 2017; 82 FR 57366, Dec. 5, 2017; 83 FR 64476, Dec. 17, 2018; 84 FR 8442, Mar. 8, 2019.
- (e) 40 CFR Part 60; "Standards of Performance for New Stationary Sources;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (f) 40 CFR Part 60, Appendix A; "Test Methods 1 through 29;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.

- (g) 40 CFR Part 72; "Permits Regulation;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (h) 40 CFR 72.2; "Definitions;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (i) 40 CFR 72.6; "Applicability;" 58 FR 3650, Jan. 11, 1993, as amended at 58 FR 15648, Mar. 23, 1993; 62 FR 55475, Oct. 24, 1997; 64 FR 28588, May 26, 1999; 66 FR 12978, Mar. 1, 2001.
- (j) 40 CFR Part 75; "Continuous Emission Monitoring;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (k) 40 CFR 75.10; "General operating requirements;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26519, May 17, 1995; 64 FR 28590, May 26, 1999; 67 FR 40422, June 12, 2002; 70 FR 28678, May 18, 2005; 76 FR 17308, Mar. 28, 2011.
- (l) 40 CFR 75.11; "Specific provisions for monitoring SO2 emissions (SO2 and flow monitors);" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26520, 26566, May 17, 1995; 61 FR 59157, Nov. 20, 1996; 63 FR 57499, Oct. 27, 1998; 64 FR 28590, May 26, 1999; 67 FR 40423, June 12, 2002, 73 FR 4342, Jan. 24, 2008.
- (m) 40 CFR 75.17; "Specific provisions for monitoring emissions from common, bypass, and multiple stacks for NOX emission rate;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26523, May 17, 1995; 63 FR 57499, Oct. 27, 1998; 64 FR 28592, May 26, 1999; 67 FR 40424, June 12, 2002, 73 FR 4343, Jan. 24, 2008.
- (n) 40 CFR 75.19; "Optional SO2, NOX, and CO2 emissions calculation for low mass emissions (LME) units;" 63 FR 57500, Oct. 27, 1998, as amended at 64 FR 28592, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40424, 40425, June 12, 2002; 67 FR 53504, Aug. 16, 2002, 73 FR 4344, Jan. 24, 2008.
- (o) 40 CFR 75.20; "Initial certification and recertification procedures;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26524, May 17, 1995; 60 FR 40296, Aug. 8, 1995; 61 FR 59158, Nov. 20, 1996; 63 FR 57506, Oct. 27, 1998; 64 FR 28592, May 26, 1999; 67 FR 40431, June 12, 2002; 70 FR 28678, May 18, 2005, 72 FR 51527, Sept. 7, 2007; 73 FR 4345, Jan. 24, 2008; 76 FR 17308, Mar. 28, 2011.

- (p) 40 CFR 75.21; "Quality assurance and quality control requirements;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26527, 26566, May 17, 1995; 61 FR 25582, May 22, 1996; 61 FR 59159, Nov. 20, 1996; 64 FR 28599, May 26, 1999; 67 FR 40433, June 12, 2002; 67 FR 53505, Aug. 16, 2002; 70 FR 28679, May 18, 2005, 73 FR 4345, Jan. 24, 2008; 76 FR 17308, Mar. 28, 2011.
- (q) 40 CFR 75.34; "Units with add-on emission controls;" 60 FR 26567, May 17, 1995, as amended at 61 FR 59160, Nov. 20, 1996; 64 FR 28604, May 26, 1999; 67 FR 40438, June 12, 2002, 73 FR 4348, Jan. 24, 2008; 76 FR 17312, Mar. 28, 2011.
- (r) 40 CFR 75.61; "Notifications;" 60 FR 26538, May 17, 1995, as amended at 61 FR 25582, May 22, 1996; 61 FR 59162, Nov. 22, 1996; 64 FR 28620, May 26, 1999; 67 FR 40442, 40443, June 12, 2002, 73 FR 4356, Jan. 24, 2008; 76 FR 17316, Mar. 28, 2011.
- (s) 40 CFR 75.62; "Monitoring plan submittals;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26539, May 17, 1995; 64 FR 28621, May 26, 1999; 67 FR 40443, June 12, 2002, 73 FR 4356, Jan. 24, 2008; 76 FR 17316, Mar. 28, 2011.
- (t) 40 CFR 75.64; "Quarterly Reports;" 64 FR 28622, May 26, 1999, as amended at 67 FR 40444, June 12, 2002, 73 FR 4357, Jan. 24, 2008; 76 FR 17317, Mar. 28, 2011.
- (u) 40 CFR 75.66; "Petitions to the Administrator;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26540, 26569, May 17, 1995; 61 FR 59162, Nov. 20, 1996; 64 FR 28623, May 26, 1999; 67 FR 40444, June 12, 2002, 73 FR 4358, Jan. 24, 2008.
- (v) 40 CFR 75.70; "NOX mass emissions provisions;" 63 FR 57507, Oct. 27, 1998, as amended at 64 FR 28624, May 26, 1999; 67 FR 40444, June 12, 2002.
- (w) 40 CFR 75.71; "Specific provisions for monitoring NOX and heat input for the purpose of calculating NOX mass emissions;" 63 FR 57508, Oct. 27, 1998, as amended at 64 FR 28624, May 26, 1999; 67 FR 40444, 40445, June 12, 2002; 67 FR 53505, Aug. 16, 2002, 73 FR 4358, Jan. 24, 2008.
- (x) 40 CFR 75.72; "Determination of NOX mass emissions;" 63 FR 57507, Oct. 27, 1998, as amended at 67 FR 40445, June 12, 2002, 73 FR 4358, Jan. 24, 2008.

- (y) 40 CFR 75.74; "Annual and ozone season monitoring and reporting requirements;" 63 FR 57507, Oct. 27, 1998, as amended at 64 FR 28627, May 26, 1999; 67 FR 40446, 40447, June 12, 2002; 67 FR 57274, Sept. 9, 2002, 73 FR 4360, Jan. 24, 2008.
- (z) 40 CFR Part 75, Appendix A; "Specifications and Test Procedures;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (aa) 40 CFR Part 75, Appendix B; "Quality Assurance and Quality Control Procedures;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26546, 26571, May 17, 1995; 61 FR 59165, Nov. 20, 1996; 64 FR 28644, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40456, 40457, June 12, 2002; 67 FR 53505, Aug. 16, 2002; 67 FR 57274, Sept. 9, 2002; 70 FR 28693, May 18, 2005, 72 FR 51528, Sept. 7, 2007; 73 FR 4367, Jan. 24, 2008; 76 FR 17321, Mar. 28, 2011.
- (bb) 40 CFR Part 75, Appendix D; "Optional SO<sub>2</sub> Emissions Data Protocol for Gas-Fired and Oil-Fired Units;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26548, 26551, May 17, 1995; 61 FR 25585, May 22, 1996; 61 FR 59166, Nov. 20, 1996; 63 FR 57513, Oct. 27, 1998; 64 FR 28652-28663, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40460, 40472, June 12, 2002; 67 FR 53505, Aug. 16, 2002, 73 FR 4369, Jan. 24, 2008; 76 FR 17324, Mar. 28, 2011; 76 FR 20536, Apr. 13, 2011; 77 FR 2460, Jan. 18, 2012.
- (cc) 40 CFR Part 75, Appendix E; "Optional NO<sub>x</sub> Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26551-26553, May 17, 1995; 64 FR 28665, May 26, 1999; 67 FR 40473, 40474, June 12, 2002; 67 FR 53505, Aug. 16, 2002, 73 FR 4372, Jan. 24, 2008; 76 FR 17325, Mar. 28, 2011.
- (dd) 40 CFR Part 75, Appendix F; "Conversion Procedures;" 58 FR 3701, Jan. 11, 1993; Redesignated and amended at 60 FR 26553-26556, 26571, May 17, 1995; 61 FR 25585, May 22, 1996; 61 FR 59166, Nov. 20, 1996; 63 FR 57513, Oct. 27, 1998; 64 FR 28666-28671, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40474, 40475, June 12, 2002; 67 FR 53505, Aug. 16, 2002, 70 FR 28695, May 18, 2005; 73 FR 4372, Jan. 24, 2008; 76 FR 17325, Mar. 28, 2011; 77 FR 2460, Jan. 18, 2012.
- (ee) 40 CFR Part 75, Subpart D; "Missing Data Substitution Procedures;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.

- (ff) 40 CFR Part 75, Subpart E; “Alternative Monitoring Systems;” as published in the July 1, ~~2016~~2018 Code of Federal regulations.
- (gg) 40 CFR Part 75, Subpart F; “Recordkeeping Requirements;” as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (hh) 40 CFR Part 75, Subpart G; “Reporting Requirements;” as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (ii) 40 CFR Part 75, Subpart H; “NOX mass emissions provisions;” as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (jj) ASTM D6522-11; “Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers;” approved December 1, 2011.
- (kk) Clean Air Act, as contained in 42 USC 7401 to 7671q; "Air Pollution Prevention and Control; " published January 3, 2017 in Supplement III of the 2012 edition of the United States Code.
- (ll) “Interstate Ozone Transport: Response to Court Decisions on the NOX SIP Call, NOX SIP Call Technical Amendments, and Section 126 Rules;” 69 FR 21603 to 69 FR 21648, April 21, 2004.
- (mm) Section 110 of the Clean Air Act; contained in 42 USC 7410; "State implementation plans for national primary and secondary ambient air quality standards;" published January 3, 2017 in Supplement III of the 2012 Edition of the United States Code.
- (nn) Section 126 of the Clean Air Act; contained in 42 USC 7426; "Interstate pollution abatement;" published January 3, 2017 in Supplement III of the 2012 Edition of the United States Code.
- (oo) Section 502 of the Clean Air Act; contained in 42 USC 7661a; "Permit programs;" published January 3, 2017 in Supplement III of the 2012 Edition of the United States Code.
- (pp) "Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone;" 65 FR 11222 to 65 FR 11231, March 2, 2000.

- (qq) Title IV of the Clean Air Act, contained in 42 USC 7651 to 7651o; "Acid deposition control;" published January 3, 2017 in Supplement III of the 2012 Edition of the United States Code.
- (rr) Title V of the Clean Air Act, contained in 42 USC 7661 to 7661f; "Permits;" published January 3, 2017 in Supplement III of the 2012 Edition of the United States Code.
- (ss) USEPA Method 1; contained in 40 CFR Part 60, Appendix A; "Sample and velocity traverses for stationary sources;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (tt) USEPA Method 2; contained in 40 CFR Part 60, Appendix A; "Determination of stack gas velocity and volumetric flow rate (Type S pitot tube);" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (uu) USEPA Method 3; contained in 40 CFR Part 60, Appendix A; "Gas analysis for the determination of dry molecular weight;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (vv) USEPA Method 4; contained in 40 CFR Part 60, Appendix A;" Determination of moisture content in stack gases;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (ww) USEPA Method 7; contained in 40 CFR Part 60, Appendix A; "Determination of nitrogen oxide emissions from stationary sources;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (xx) USEPA Method 7a; contained in 40 CFR Part 60, Appendix A; "Determination of nitrogen oxide emissions from stationary sources-Ion chromatographic method;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (yy) USEPA Method 7c; contained in 40 CFR Part 60, Appendix A; "Determination of nitrogen oxide emissions from stationary sources-Alkaline-permanganate/colorimetric method;" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.
- (zz) USEPA Method 7e; contained in 40 CFR Part 60, Appendix A; "Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure);" as published in the July 1, ~~2016~~2018 Code of Federal Regulations.



(aaa) USEPA Method 19; contained in 40 CFR Part 60, Appendix A; "Determination of sulfur dioxide removal efficiency and particulate, sulfur dioxide and nitrogen oxides emission rates" as published in the July 1, 2018 Code of Federal Regulations.

Effective: 8/22/2019  
Five Year Review (FYR) Dates: 6/6/2019 and 06/06/2024

CERTIFIED ELECTRONICALLY

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Certification

08/12/2019

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Date

Promulgated Under: 119.03  
Statutory Authority: 3704.03(E)  
Rule Amplifies: 3704.03(A), 3704.03(E), 3704.03(D)  
Prior Effective Dates: 06/21/1994, 07/18/2002, 05/25/2004, 05/07/2005,  
07/19/2008, 10/18/2010, 03/23/2015, 01/29/2018

3745-14-04

**Compliance certification.**

## (A) The compliance certification report.

For each control period in which one or more NOx budget units at a source are subject to the NOx budget program, the designated representative of the source shall submit to the director, by November thirtieth of that year, in a format prescribed by the director, a compliance certification report for each unit at the source. The compliance certification report shall include all of the following:

- (1) Identification of each NOx budget unit.
- (2) Certification by the designated representative, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NOx budget units at the source in compliance with the NOx budget program, whether each NOx budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NOx budget program applicable to the unit, including all the following:

(a) For NOx budget units subject to monitoring and reporting requirements provided in paragraphs (A) to (G) of rule 3745-14-08 of the Administrative Code:

~~(a)~~(i) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NOx emissions to the unit, in accordance with paragraphs (A) to (G) of rule 3745-14-08 of the Administrative Code.

~~(b)~~(ii) Whether all the NOx emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with rule 3745-14-08 of the Administrative Code, and if conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made.

(b) For NOx budget units with approved alternative monitoring and reporting requirements provided in paragraph (H) of rule 3745-14-08 of the Administrative Code, whether all the NOx emissions from the unit, or a group of units (including the unit) using a common stack, were

accounted for in accordance with paragraph (H) of rule 3745-14-08 of the Administrative Code and the terms and specifications specified in the applicable installation or operating permit issued in accordance with Chapter 3745-77 or Chapter 3745-31 of the Administrative Code.

- (c) Whether the facts that form the basis for certification under rule 3745-14-08 of the Administrative Code of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under rule 3745-14-08 of the Administrative Code, if any, have changed.
- (d) If a change is required to be reported under paragraph (A)(2)(c) of this rule, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

(B) Director's action on compliance certifications.

The director may review and conduct independent audits concerning any compliance certification or any other submission under the NO<sub>x</sub> budget program and make appropriate adjustments of the information in the compliance certifications or other submissions.

Effective: 8/22/2019  
Five Year Review (FYR) Dates: 6/6/2019 and 06/06/2024

CERTIFIED ELECTRONICALLY

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Certification

08/12/2019

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3745-14-08

**Monitoring and reporting.**

[Comment: For dates and availability of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (F) of rule 3745-14-01 of the Administrative Code titled "referenced materials."]

The owners and operators, and to the extent applicable, the designated representative of a NOx budget unit, shall comply with the monitoring and reporting requirements as provided in paragraphs (A) to (G) of this rule, except when complying with approved alternative monitoring and reporting requirements provided in paragraph (H) of this rule.

**(A) General requirements.**

- (1) The owners and operators, and to the extent applicable, the designated representative of a NOx budget unit, shall comply with the monitoring and reporting requirements as provided in paragraphs (A) to (G) of this rule and in 40 CFR Part 75, Subpart H. For purposes of complying with such requirements, the definitions in paragraph (B) of rule 3745-14-01 of the Administrative Code and in 40 CFR 72.2 shall apply, and the terms "affected unit" and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75 shall be replaced by the terms "NOx budget unit" and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in paragraph (B) of rule 3745-14-01 of the Administrative Code.
- (2) The owner or operator of each NOx budget unit shall meet all of the following requirements:
  - (a) Install all monitoring systems required under paragraphs (A) to (G) of this rule for monitoring NOx mass emissions. (This includes all systems required to monitor NOx emission rate, NOx concentration, heat input rate, and stack flow rate, in accordance with 40 CFR 75.71 and 40 CFR 75.72.)
  - (b) Install all monitoring systems for monitoring heat input rate.
  - (c) Successfully complete all certification tests required under paragraph (B) of this rule and meet all other requirements of paragraphs (A) to (G) of this rule and 40 CFR Part 75 applicable to the monitoring systems under paragraphs (A)(2)(a) and (A)(2)(b) of this rule.
  - (d) Record, report and quality assure the data from the monitoring systems required under paragraphs (A)(2)(a) and (A)(2)(b) of this rule.

- (3) The owner or operator shall meet the certification and other requirements of paragraphs (A)(2)(a) to (A)(2)(c) of this rule on or before the following dates. The owner or operator shall record, report and quality-assure the data from the monitoring systems under paragraphs (A)(2)(a) and (A)(2)(b) of this rule on and after the following dates:
- (a) For the owner or operator of a NOx budget unit under paragraph (C)(1) of rule 3745-14-01 of the Administrative Code that commences operation before January 1, 2003, by May 1, 2003.
  - (b) For the owner or operator of a NOx budget unit under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code that commences operation on or after January 1, 2003 and that reports on an annual basis under paragraph (E)(4) of this rule, by the later of the following dates:
    - (i) May 1, 2003.
    - (ii) Ninety days after the date on which the unit commences commercial operation.
  - (c) For the owner or operator of a NOx budget unit under paragraph (C)(1)(a) of rule 3745-14-01 of the Administrative Code that commences operation on or after January 1, 2003 and that reports on a control period basis under paragraph (E)(4)(b)(i) of this rule, by no later than ninety days after the date on which the unit commences commercial operation, provided that this date is during a control period; (If this date does not occur during a control period, the applicable deadline is May first immediately following this date.)
  - (d) For the owner or operator of a NOx budget unit under paragraph (C)(1)(b) of rule 3745-14-01 of the Administrative Code that commences operation on or after January 1, 2003 and that reports on an annual basis under paragraph (E)(4) of this rule, by the later of the following dates:
    - (i) May 1, 2003.
    - (ii) One hundred eighty days after the date on which the unit commences operation.
  - (e) For the owner or operator of a NOx budget unit under paragraph (C)(1)(b) of rule 3745-14-01 of the Administrative Code that commences operation on or after January 1, 2003 and that reports on a control period basis under paragraph (E)(4)(b)(ii) of this rule, by one hundred eighty days after the date on which the unit commences operation, provided that this

date is during a control period. (If this date does not occur during a control period, the applicable deadline is May first immediately following this date.)

- (f) For the owner or operator of a NO<sub>x</sub> budget unit that has a new stack or flue for which construction is completed after the applicable deadline under paragraph (A)(3)(a), (A)(3)(b), (A)(3)(c), (A)(3)(d) or (A)(3)(e) of this rule and that reports on an annual basis under paragraph (E)(4) of this rule, by ninety days after the date on which emissions first exit to the atmosphere through the new stack or flue.
- (g) For the owner or operator of a NO<sub>x</sub> budget unit that has a new stack or flue for which construction is completed after the applicable deadline under paragraph (A)(3)(a), (A)(3)(b), (A)(3)(c), (A)(3)(d) or (A)(3)(e) of this rule and that reports on a control period basis under paragraph (E)(4)(b)(ii) of this rule, by ninety days after the date on which emissions first exit to the atmosphere through the new stack or flue, provided that this date is during a control period. (If this date does not occur during a control period, the applicable deadline is May first immediately following this date.)

(4) Reporting data prior to initial certification.

The owner or operator of a NO<sub>x</sub> budget unit under paragraph (A)(3)(b), (A)(3)(c), (A)(3)(d) or (A)(3)(e) of this rule shall determine, record and report NO<sub>x</sub> mass emissions, heat input rate, and any other values required to determine NO<sub>x</sub> mass emissions (e.g., NO<sub>x</sub> emission rate and heat input rate, or NO<sub>x</sub> concentration and stack flow rate) in accordance with 40 CFR 75.70(g), from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted monitoring system under 40 CFR Part 75, Appendix D or 40 CFR Part 75 Appendix E, or excepted monitoring methodology under 40 CFR 75.19, is provisionally certified.

(5) Prohibitions.

- (a) No owner or operator of a NO<sub>x</sub> budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with paragraph (F) or (H) of this rule.
- (b) No owner or operator of a NO<sub>x</sub> budget unit shall operate the unit so as to discharge, or allow to be discharged, NO<sub>x</sub> emissions to the



atmosphere without accounting for all such emissions in accordance with the applicable provisions of paragraphs (A) to (G) of this rule and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

- (c) No owner or operator of a NO<sub>x</sub> budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO<sub>x</sub> mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of paragraphs (A) to (G) of this rule and 40 CFR Part 75 except as provided for in 40 CFR 75.74.
- (d) No owner or operator of a NO<sub>x</sub> budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system, except under any one of the following circumstances:
  - (i) During the period that the unit is covered by an exemption under paragraph (C)(2) of rule 3745-14-01 of the Administrative Code that is in effect.
  - (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved by the director, in accordance with the applicable provisions of paragraphs (A) to (G) of this rule and 40 CFR Part 75, for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system.
  - (iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with paragraph (B)(2)(b) of this rule.
  - (iv) When operating under approved alternative monitoring and reporting requirements in accordance with paragraph (H) of this rule.

(B) Initial certification and recertification procedures.

- (1) The owner or operator of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR Part 75, except ~~that~~ as follows:

- (a) If, prior to January 1, 1998, the administrator approved a petition under 40 CFR 75.17(a) or 40 CFR 75.17(b) for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the designated representative shall resubmit the petition, under paragraph (F)(1) of this rule, to the administrator to determine if the approval applies under the NO<sub>x</sub> budget program.
  - (b) For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any NO<sub>x</sub> concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of paragraph (B)(2) of this rule.
- (2) The owner or operator of a NO<sub>x</sub> budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures. The owner or operator of such a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 or that qualifies to use an alternative monitoring system under subpart E of 40 CFR Part 75 shall comply with the following procedures, as modified by paragraph (B)(3) or (B)(4) of this rule. The owner or operator of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation and that requires additional CEMS under the common stack provisions in 40 CFR 75.72 or uses a NO<sub>x</sub> concentration CEMS under 40 CFR 75.71(a)(2) shall comply with the following:
- (a) The owner or operator shall ensure that each monitoring system required by 40 CFR Part 75, Subpart H (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadline in paragraph (A)(3) of this rule. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this chapter in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.
  - (b) Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that may significantly affect the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input rate or to meet the requirements of 40 CFR 75.21 or Appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that

may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system in accordance with 40 CFR 75.20(b). Examples of changes that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

(c) Certification approval process for initial certifications and recertification.

(i) The designated representative shall submit to the administrator, the United States environmental protection agency region 5 office, and the director a written notice of the dates of certification in accordance with paragraph (D) of this rule.

(ii) The designated representative shall submit to the administrator, the United States environmental protection agency region 5 office, and director a certification application for each monitoring system required under 40 CFR Part 75, Subpart H. A complete certification application shall include the information specified in. 40 CFR Part 75, Subpart H.

(iii) Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NOx budget program for a period not to exceed one hundred twenty days after receipt by the director of the complete certification application for the monitoring system or component thereof under paragraph (B)(2)(c)(ii) of this rule. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, shall be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the director does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty days of receipt of the complete certification application by the director.

(iv) The director shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty days of receipt of the complete certification application under paragraph (B)(2)(c)(ii) of this rule. In the event the director does not issue such a notice within such one hundred twenty-day period, each monitoring system that meets the

applicable performance requirements of 40 CFR Part 75 and is included in the certification application shall be deemed certified for use under the NOx budget program.

~~(A)~~(a) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the director shall issue a written notice of approval of the certification application within one hundred twenty days of receipt.

~~(B)~~(b) A certification application shall be considered complete when all of the applicable information required to be submitted under paragraph (B)(2)(c)(ii) of this rule has been received by the director. If the certification application is not complete, then the director shall issue a written notice of incompleteness that sets a reasonable date by which the designated representative shall submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the director may issue a notice of disapproval under paragraph (B)(2)(c)(iv)(c) of this rule. The one hundred twenty-day review period shall not begin prior to receipt of a complete certification application.

~~(C)~~(c) If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this chapter, or if the certification application is incomplete and the requirement for disapproval under paragraph (B)(2)(c)(iv)(b) of this rule has been met, then the director shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the director and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification [as defined under 40 CFR 75.20(a)(3)]. The owner or operator shall follow the procedures for loss of certification in paragraph (B)(2)(c)(v) of this rule for each monitoring system or component thereof which is disapproved for initial certification.

- ~~(D)~~(d) The director may issue a notice of disapproval of the certification status of a monitor in accordance with paragraph (C)(2) of this rule.
- (v) If the director issues a notice of disapproval of a certification application under paragraph (B)(2)(c)(iv)(c) of this rule or a notice of disapproval of certification status under paragraph (B)(2)(c)(iv)(d) of this rule, ~~then~~the following shall occur:
- ~~(A)~~(a) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), 40 CFR 75.20(b)(5), 40 CFR 75.20(h)(4) or 40 CFR 75.21(e) and continuing until the date and hour specified under 40 CFR 75.20(a)(5)(i):
- (i) For units that the owner or operator intends to monitor or monitors for NO<sub>x</sub> emission rate and heat input or intends to determine or determines NO<sub>x</sub> mass emissions using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO<sub>x</sub> emission rate and the maximum potential hourly heat input of the unit.
  - (ii) For units that the owner or operator intends to monitor or monitors for NO<sub>x</sub> mass emissions using a NO<sub>x</sub> pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO<sub>x</sub> and the maximum potential flow rate of the unit under Section 2 of Appendix A of 40 CFR Part 75.
- ~~(B)~~(b) The designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (B)(2)(c)(i) and (B)(2)(c)(ii) of this rule.
- ~~(C)~~(c) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the director's notice of disapproval, no later than thirty unit operating days after the date of issuance of the notice of disapproval.

- (3) The owner or operator of a gas fired or oil fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 and not subject to an acid rain emission limitation shall meet the applicable general operating requirements of 40 CFR 75.10 and the applicable requirements of 40 CFR 75.19. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of paragraph (B)(2) of this rule, except that the excepted methodology shall be deemed provisionally certified for use under the NOx budget program as of the following dates:
- (a) For a unit that does not have monitoring equipment initially certified or recertified for the NOx budget program as of the date on which the designated representative submits the certification application under 40 CFR 75.19 for the unit, starting on the date of such submissions until the completion of the period for the director's review.
  - (b) For a unit that has monitoring equipment initially certified or recertified for the NOx budget program as of the date on which the designated representative submits the certification application under 40 CFR 75.19 for the unit and that reports data on an annual basis under paragraph (E) (4) of this rule, starting January first of the year after the year of such submission until the completion of the period for the director' review.
  - (c) For a unit that has monitoring equipment initially certified or recertified for the NOx budget program as of the date on which the designated representative submits the certification application under 40 CFR 75.19 for the unit and that reports on a control period basis under paragraph (E)(4) of this rule, starting May first of the control period after the year of such submission until the completion of the period for the director's review.
- (4) The designated representative of each unit not subject to an acid rain emissions limitation for which the owner or operator intends to use an alternative monitoring system approved by the administrator under subpart E of 40 CFR Part 75, shall comply with the applicable certification procedures in paragraph (B)(2) of this rule before using the system under the NOx budget program. The designated representative shall also comply with the applicable recertification procedures in paragraph (B)(2)(c) of this rule. The requirements of 40 CFR 75.20(f) shall apply to such alternative monitoring system.

(C) Out of control periods.

- (1) Whenever any monitoring system fails to meet the quality assurance or data validation requirements of 40 CFR Part 75, data shall be substituted using

the applicable procedures in 40 CFR Part 75, Appendix D, 40 CFR Part 75, Appendix E, or 40 CFR Part 75, Subpart D.

- (2) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under paragraph (B) of this rule or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the director shall issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the director or the administrator. By issuing the notice of disapproval, the director revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the system or component.
- (D) The designated representative for a NO<sub>x</sub> budget unit shall submit written notice of certification and recertification test dates to the director and the administrator in accordance with 40 CFR 75.61, except that if a unit is not subject to an acid rain emission limitation, notification is only required to be sent to the director.
- (E) Record keeping and reporting.
- (1) General provisions.
    - (a) The designated representative shall comply with all record keeping and reporting requirements in paragraphs (A) to (G) of this rule.
    - (b) If the designated representative for a NO<sub>x</sub> budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under 40 CFR Part 75, Subpart F or 40 CFR Part 75, Subpart G and which includes data and information required under paragraphs (A) to (G) of this rule or 40 CFR Part 75, Subpart H is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, then the submission shall also be signed by the designated representative or the alternative designated representative.
  - (2) Monitoring plans.

- (a) The owner or operator of a unit subject to an acid rain emissions limitation shall comply with the requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by 40 CFR Part 75, Subpart H.
  - (b) The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with the requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by 40 CFR Part 75, Subpart H.
- (3) The designated representative shall submit an application to the administrator, United States environmental protection agency region 5 office, and the director within forty-five days after completing all initial certification or recertification tests required under paragraph (B) of this rule including the information required under 40 CFR Part 75, Subpart H.
- (4) The designated representative shall submit quarterly reports as follows:
- (a) If a unit is subject to an acid rain emission limitation or if the owner or operator of the NOx budget unit chooses to meet the annual reporting requirements of paragraphs (A) to (G) of this rule, the designated representative shall submit a quarterly report for each calendar quarter beginning with the following:
    - (i) For a unit that commences operation on or before May 1, 2003, the earlier of the calendar quarter that includes the date of initial provisional certification under paragraph (B)(2)(c)(iii) or (B)(3) of this rule or, if the certification tests are not completed by May 1, 2003, the calendar quarter covering May 1, 2003 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003.
    - (ii) For a unit that commences operation after May 1, 2003, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.
  - (b) If a NOx budget unit is not subject to an acid rain emission limitation, then the designated representative shall do either of the following:



- (i) Meet all of the requirements of 40 CFR Part 75 related to monitoring and reporting NOx mass emissions during the entire year and meet the reporting deadlines specified in paragraph (E)(4)(a) of this rule.
- (ii) Submit quarterly reports covering the period May first through September thirtieth of each year and including the data described in 40 CFR 75.74(c)(6). The designated representative shall submit such quarterly reports, beginning with:
  - ~~(A)~~(a) For a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph (E)(4)(b)(i) of this rule, the calendar quarter covering May 1, 2003 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial certification under paragraph (B)(2)(c)(iii) or (B)(3) of this rule or the first hour of May 1, 2003.
  - ~~(B)~~(b) For a unit that commences operation after May 1, 2003 and during a control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commences operation.
  - ~~(C)~~(c) For a unit that commences operation after May 1, 2003 and not during a control period, the calendar quarter covering the first control period after the unit commences operation. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under paragraph (B)(2)(c)(iii) or (B)(3) of this rule or the first hour of May first of the first control period after the unit commences operation.
- (c) The designated representative shall submit each quarterly report to the administrator within thirty days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR Part 75, Subpart H and 40 CFR 75.64-, as follows:
  - (i) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR Part 75, Subpart H for each NOx budget unit (or group of units using a common stack) and the data and information required in 40 CFR Part 75, Subpart G.

- (ii) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and information required in 40 CFR Part 75, Subpart H for each NO<sub>x</sub> budget unit (or group of units using a common stack).
- (d) The designated representative shall submit to the administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the units' emissions are correctly and fully monitored. The compliance certification shall state ~~that~~ the following:
  - (i) The monitoring data submitted were recorded in accordance with the applicable requirements of paragraphs (A) to (G) of this rule and 40 CFR Part 75, including the quality assurance procedures and specifications.
  - (ii) For a unit with add-on NO<sub>x</sub> emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR Part 75, Appendix B and the substitute values do not systematically underestimate NO<sub>x</sub> emissions.
  - (iii) For a unit that is reporting on a control period basis under paragraph (E)(4)(d)(ii) of this rule, the NO<sub>x</sub> emission rate and NO<sub>x</sub> concentration values substituted for missing data under 40 CFR Part 75, Subpart D are calculated using only values from a control period and do not systematically underestimate NO<sub>x</sub> emissions.

(F) Petitions.

- (1) The designated representative of a NO<sub>x</sub> budget unit that is subject to an acid rain emission limitation may submit a petition under 40 CFR 75.66 to the administrator requesting approval to apply an alternative to any requirement of paragraphs (A) to (G) of this rule, as follows:
  - (a) Application of an alternative to any requirement of paragraphs (A) to (G) of this rule shall be in accordance with paragraphs (A) to (G) of this rule only to the extent that the petition is approved by the administrator in consultation with the director.
  - (b) Notwithstanding paragraph (F)(1)(a) of this rule, if the petition requests approval to apply an alternative to a requirement concerning any

additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition shall be governed by paragraph (F)(2) of this rule.

(2) The designated representative of a NO<sub>x</sub> budget unit that is not subject to an acid rain emission limitation may submit a petition under 40 CFR 75.66 to the director and the administrator requesting approval to apply an alternative to any requirement of paragraphs (A) to (G) of this rule, as follows:

(a) The designated representative of a NO<sub>x</sub> budget unit that is subject to an acid rain emission limitation may submit a petition under 40 CFR 75.66 to the director and the administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a NO<sub>x</sub> concentration CEMS used under 40 CFR 75.71(a)(2).

(b) Application of an alternative to any requirement of paragraphs (A) to (G) of this rule shall be in accordance with paragraphs (A) to (G) of this rule only to the extent the petition under paragraph (F)(2) of this rule is approved by both the director and the administrator.

(G) Additional requirements to provide heat input data.

The owner or operator of a NO<sub>x</sub> budget unit that monitors and reports NO<sub>x</sub> mass emissions using a NO<sub>x</sub> concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR Part 75.

(H) Alternative monitoring and reporting.

(1) Upon request, the director may approve alternative monitoring and reporting requirements in lieu of the requirements of paragraphs (A) to (G) of this rule. Alternative monitoring and reporting requirements shall be based on the best available data, provide for reporting the nature and amount of emissions of a NO<sub>x</sub> budget unit, and shall be sufficient to determine compliance with this Chapter. Alternative monitoring and reporting shall include either monitoring and reporting in accordance with 40 CFR Part 60, or monitoring of heat input and fuel use for each control period and an approved emission factor for current operating conditions.

(2) The designated representative of a NO<sub>x</sub> budget unit requesting alternative monitoring and reporting shall submit an application for an installation permit or an application for modification of an installation permit in accordance with Chapter 3745-31 of the Administrative Code, or shall submit an application for

an operating permit or an application for a modification to an operating permit in accordance with the following:

- (a) For sources subject to the Title V program, Chapter 3745-77 of the Administrative Code.
  - (b) For sources not subject to the Title V program, Chapter 3745-31 of the Administrative Code.
- (3) The application for an installation or operating permit requesting alternative monitoring and reporting shall include all of the following:
- (a) Whether 40 CFR Part 60 monitoring and reporting is requested as the alternative or whether monitoring of heat input and fuel use and an approved emission factor is requested as the alternative.
  - (b) If monitoring of heat input and fuel use and an approved emission factor is requested as the alternative, an emission factor analysis evaluating potential emission factors in pounds of NO<sub>x</sub> emitted per unit of fuel and heat input, for each fuel type, based on each of the following:
    - (i) U.S. EPA's "AP-42 Compilation of Emission Factors".
    - (ii) A valid stack test using USEPA Method 3, USEPA Method 7 and USEPA Method 19 conducted within the previous two years from the date of the application submittal, if available.
    - (iii) An analysis of continuous emission monitoring data representative of current operating conditions.
    - (iv) An analysis of other relevant data or emission factors, if available (for example, an emission factor used for compliance with an existing NO<sub>x</sub> emission limitation for the NO<sub>x</sub> budget unit, or an emission factor developed for similar sources).
  - (c) A description of the proposed monitoring procedures, including how monitoring data will be obtained, recorded and quality assured, and how NO<sub>x</sub> emissions will be accounted for during periods of missing or inaccurate data, such as periods of maintenance or disruption.
  - (d) If 40 CFR Part 60 monitoring and reporting is requested, how the amount of NO<sub>x</sub> emissions in tons per control period will be determined from the 40 CFR Part 60 NO<sub>x</sub> emission rate data.

- (e) If alternative monitoring and reporting is requested to begin within a control period, a description of the transition process which ensures there will not be gaps in data monitoring and reporting.
- (4) Prior to the use of alternative monitoring and reporting, applicable terms and conditions, including 40 CFR Part 60 monitoring and reporting requirements, or an approved emission factor and monitoring procedures for fuel use and heat input, shall be specified in an installation permit issued in accordance with Chapter 3745-31 or an operating permit issued in accordance with the following:
- (a) For sources subject to the Title V program, Chapter 3745-77 of the Administrative Code.
- (b) For sources not subject to the Title V program, Chapter 3745-31 of the Administrative Code.
- (5) When approved by the director, the owners and operators, and to the extent applicable, the designated representative of a NOx budget unit, shall comply with the monitoring and reporting requirements as provided during the control period.
- (6) The owners and operators, and to the extent applicable, the designated representative, of a NOx budget unit approved for alternative monitoring and reporting under paragraph (H) of this rule shall meet all of the following:
- (a) Comply with all terms and conditions specified in the installation or operating permit.
- (b) Install all monitoring systems required for alternative monitoring.
- (c) Record and report the data from the monitoring systems required under paragraph (H) of this rule in accordance with the terms and conditions in the installation or operating permit. By April fifteenth of each year, report actual NOx emissions in tons, as determined using the approved alternative monitoring procedures, for the previous control period in the fee emissions report required in accordance with rule 3745-78-02 of the Administrative Code.
- (d) If alternative monitoring is based on an approved emission factor, conduct stack tests to demonstrate the approved emission factor continues to be representative of current operating conditions. If the emissions factor analysis submitted in accordance with (H)(3)(b) of this rule did not include a stack test, an initial stack test shall be conducted within ninety

days of permit issuance. Ongoing stack tests shall be conducted at least once every five years from the date of the previous stack test for units still in operation. In the event a unit not in operation at the time a stack test was required under this paragraph resumes operation, a stack test shall be conducted within ninety days of resuming operation. Stack tests shall be conducted in accordance with a test method specified in the installation or operating permit and reported to the director within thirty days of the test. If a stack test indicates an emission factor may require adjustment, the director may require submission of an application in accordance with paragraph (H)(2) of this rule. The designated representative shall submit an application in accordance with paragraph (H) of this rule within sixty days of notification by the director.

- (e) Maintain records in accordance with the terms and conditions in the installation or operating permit for a period of five years from the date the records are created. These records shall be made available to the director or his representative upon request.

(7) Prohibitions.

- (a) No owner or operator of a NOx budget unit shall operate the unit so as to discharge, or allow to be discharged, NOx emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of paragraphs (H) of this rule.
- (b) No owner or operator of a NOx budget unit shall retire or permanently discontinue use of the monitoring system, or any component thereof, except under any one of the following circumstances:
- (i) During the period that the unit is covered by an exemption under paragraph (C)(2) of rule 3745-14-01 of the Administrative Code that is in effect.
- (ii) When discontinuing use of alternative monitoring and reporting in accordance with paragraph (H) of this rule and resuming compliance with monitoring and reporting requirements in accordance with paragraphs (A) to (G) of this rule. This may only occur outside of the control period.

- (8) This Chapter does not authorize exceptions or alternatives to any 40 CFR Part 75 monitoring requirements that might apply to a source under a different legal authority.

(9) In accordance with the requirements of 40 CFR 51.122 (c)(1)(i), Ohio EPA will report annually to the administrator all NOx emissions reported under paragraph (H) of this rule.

Effective: 8/22/2019  
Five Year Review (FYR) Dates: 6/6/2019 and 06/06/2024

CERTIFIED ELECTRONICALLY

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Certification

08/12/2019

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Date

Promulgated Under: 119.03  
Statutory Authority: 3704.03(E)  
Rule Amplifies: 3704.03(A), 3704.03(D), 3704.03(E)  
Prior Effective Dates: 07/18/2002, 07/19/2008, 01/29/2018



## Article II

Copy of Public Notice and  
Director's Findings & Orders

**NOTICE OF ADOPTION OF RULES  
OHIO ENVIRONMENTAL PROTECTION AGENCY  
OHIO ADMINISTRATIVE CODE (OAC) CHAPTER 3745-14  
“NOX BUDGET TRADING PROGRAM” (PHASE 2)**

Notice is hereby given that the Director of the Ohio Environmental Protection Agency (Ohio EPA) has adopted the following rules of the Ohio Administrative Code:

<u>Rule #</u>	<u>Title</u>	<u>Type of Filing</u>
3745-14-01	Definitions and General Provisions	Amend
3745-14-04	Compliance Certification	Amend
3745-14-08	Monitoring and Reporting	Amend

This is the second in two phases of rulemaking to revise OAC Chapter 3745-14. In the first phase, revisions to OAC Chapter 3745-14 were made to demonstrate continued compliance by large non-Electric Generating Units (non-EGUs) with the NOx State Implementation Plan (SIP) Call following U.S. EPA’s discontinuation of compliance trading options. During the comment period for the Phase 1 rulemaking, Ohio EPA received comments requesting an alternative to continuous monitoring and reporting of emissions under 40 CFR Part 75 (commonly referred to as Part 75 monitoring and reporting). In this second phase of the rulemaking, provisions were added for an alternative to the existing Part 75 monitoring and reporting requirements.

The Director's order of adoption was issued on Monday, August 12, 2019. These amended rules will become effective on Thursday, August 22, 2019.

The Director's action in this matter is pursuant to the procedural requirements of Ohio Revised Code Chapter 119 and is based upon the record of the public hearing conducted by Ohio EPA on July 16, 2019, and comments received during the public comment period.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to “Treasurer, State of Ohio,” which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General’s Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission  
30 East Broad St., 4<sup>th</sup> Floor  
Columbus, Ohio 43215



## APPEAL RIGHTS

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission  
30 East Broad St., 4<sup>th</sup> Floor  
Columbus, OH 43215



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Laurie A. Stevenson, Director  
Ohio Environmental Protection Agency

Issued at Columbus, Ohio this 12<sup>th</sup> day of August, 2019.

# Article III

Evidence Ohio EPA  
Followed Rule Adoption  
Procedures

## Evidence Ohio EPA Followed Rule Adoption Procedures

Ohio Revised Code (ORC) 119.03, Procedures for adoption, amendment, or rescission of rules; finding that fiscal analysis is incomplete or inaccurate, outlines the requirements Ohio EPA must follow during the rule-making process. A copy of ORC 119.03 can be provided upon request. Ohio EPA fully complied with the requirements of this law and has provided evidence on the major requirements below:

1. ORC 119.03(A): Reasonable public notice shall be given in the register of Ohio at least 30 days prior to the date set for a hearing.

Ohio's electronic rule filing system automatically posts public notices in the Ohio Register when rules are proposed. A copy of the Public Hearing notice is included (Attachment A). The Public Hearing notice was placed in the Ohio Register on June 6, 2019. Ohio EPA held a public hearing on Tuesday, July 16, 2019 in Columbus, Ohio. This hearing was held 40 days after the notice was placed in the register. The ORC 119.03 requirements for public notice contents were met as evidenced by comparing the public notice and ORC 119.03 (A)(1)-(4). In addition to the Register of Ohio, Ohio EPA also placed an advertisement in the major newspapers throughout the state. Copies can be provided upon request.

2. ORC 119.03(B): The required materials must be filed with the secretary of state and the director of the legislative service commission (LSC).

Ohio's electronic filing system automatically generates a letter when all the required elements have been uploaded on the system and the package is proposed. This letter is included (Attachment B).

Ohio EPA also complied with all requirements for incorporated materials. In addition, the answers to questions eight and nine of each of the Rule Summary and Fiscal Analysis (RSFA) documents are provided (Attachment C).

3. ORC 119.03(C): Conduct public hearings as advertised.

Ohio EPA conducted a public hearing on July 16, 2019 as identified in the Public Hearing notice. A copy of the hearing transcript is included (Article IV).

4. ORC 119.03(D): After the period of time when legislative review and invalidation may occur expires, the agency may issue an order adopting the rule.

The Joint Committee on Agency Rule Review (JCARR) oversees agency rule-making in Ohio. A hearing was held with JCARR on July 15, 2019 where this rule was placed on the consent agenda (Attachment D). No testimony, questions or invalidation of the rule occurred during this hearing. JCARR jurisdiction expired on August 10, 2019 as evidenced by the JCARR consent agenda.

Ohio EPA issued the order to adopt the rules on August 12, 2019 as evidenced by the Director's Findings & Orders and the Public Notice (both contained in Article

2). The Secretary of the State and Director of the LSC once again received a letter of notice (Attachment E).

5. ORC 119.03(E): Provide notice to public prior to effective date of rules.

Ohio EPA provided an update of the adoption of the rules through the Ohio EPA website and through an e-mail notice to all interested parties on August 12, 2019. A copy of these notifications can be provided upon request.

ORC 121.39, Provisions applicable to proposed legislation or administrative rules concerning environmental protection, imposes further requirements for interested party review specific to environmental rule adoption. Ohio EPA fully complied with the requirements of this law and has provided evidence on the major requirements below:

1. ORC 121.39(B): Legislation dealing with the environment must be accompanied by a statement identifying if it is necessary to comply with a federal requirement. It must also include information on the estimated cost of compliance.

The RSFA and Environmental Rule Adoption/Amendment Form (ERAF) documents are automatically generated questions that are part of the States electronic rule filing system (Attachment C). The questions are intended to address the items in ORC 121.39. As evidenced in Question 6 of the RSFA documents and item (C) of the ERAF for the rule, Ohio EPA stated the adoption of this rule, or a version as stringent as, is required by U.S. EPA. The RSFA documents also contain a section entitled Fiscal Analysis which addresses potential costs. Our responses met the requirements of this law as evidenced in the consent by JCARR who reviews these documents.

2. ORC 121.39(D): Prior to adopting any environmental rule, the agency must consult with interested parties, consider all documentation relevant to the need for the rule making, identify any need to adopt in order to maintain approval to administer a federal environmental law, and it must include an RSFA.

On January 5, 2018 Ohio EPA notified interested parties via e-mail of the draft rule language. A copy of the notification may be provided upon request. We provided a 33-day comment period closing February 7, 2018. The interested parties list included Ohio EPA, DAPC's general rule making list. A copy of the e-mail and interested party list will be provided upon request.

As evidenced in item (C) of the ERAF for each rule, Ohio EPA stated the adoption of this rule is required in order to maintain approval to administer a federal environmental law.

As evidenced in item (A) of the ERAF for each rule, Ohio EPA identified that it considered all documentation relevant to the need for the rule making and identified those documents in list form.

Article III

Attachment A

Public Hearing Notice



**Public Hearing**  
**Ohio Environmental Protection Agency**  
**Revisions to Rules in Ohio Administrative Code (OAC) Chapter 3745-14 (Phase 2)**  
**Nitrogen Oxide (NOx) Budget Program Rules**

Notice is hereby given that the Ohio Environmental Protection Agency, Division of Air Pollution Control (DAPC) has prepared amendments to Ohio Administrative Code (OAC) rules 3745-14-01, 3745-14-04, and 3745-14-08. This is the second in two phases of rulemaking to revise OAC Chapter 3745-14. In the first phase, revisions to OAC Chapter 3745-14 were made to demonstrate continued compliance by large non-Electric Generating Units (non-EGUs) with the NOx State Implementation Plan (SIP) Call following U.S. EPA's discontinuation of compliance trading options. During the comment period for the Phase 1 rulemaking, Ohio EPA received comments requesting an alternative to continuous monitoring and reporting of emissions under 40 CFR Part 75 (commonly referred to as Part 75 monitoring and reporting). In this second phase of the rulemaking, provisions are being added for an alternative to the existing Part 75 monitoring and reporting requirements.

DAPC also performed a review of these rules to fulfill the requirements of Ohio Revised Code (ORC) 106.03. Upon review, DAPC determined that the rules were necessary and made minor changes to fix typos and formatting errors in addition to the changes discussed above.

Pursuant to Section 121.39 of the Ohio Revised Code, DAPC was required to consult with interested parties affected by the rules before the Division formally adopts them. On January 5, 2018 these rules went out for a 30-day review by interested parties. Ohio EPA's responses to comments received is available electronically on Ohio EPA's website at the URL listed below.

Pursuant to Part D of Title I of the Clean Air Act (CAA), Ohio EPA is required to establish a SIP for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The above-mentioned rules are a part of Ohio's SIP and the proposed amendments will be submitted to USEPA as a modification of the SIP. This SIP action requires a demonstration pursuant to CAA section 110(l) that the action will not interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the Clean Air Act. Ohio EPA's draft 110(l) demonstration is also being made available for comment.

Pursuant to Section 106.03 and 106.031 of the Ohio Revised Code, a public hearing on these rule changes and SIP revision will be conducted on **Tuesday, July 16, 2019 at 10:30 AM** at Ohio EPA, Lazarus Government Center, 50 W. Town Street, Suite 700, Columbus, Ohio. All visitors to Ohio EPA must register at the Security desk in the lobby upon arrival. Please bring photo identification (such as a valid driver's license). For security reasons, visitors are required to wear their badge at all times while in the building. Please arrive early to complete these procedures.

All interested persons are entitled to attend or be represented at the hearing and give written or oral comments on these rule changes and SIP revision. All oral comments presented at the hearing, and all written statements submitted at the hearing or by the close of business on July 16, 2019 will be considered by Ohio EPA prior to final action on this rule. Written statements submitted after July 16, 2019 may be considered as time and circumstances permit, but will not be part of the official record of the hearing.

These rules and associated documents are available on DAPC's Web page for electronic downloading. The URL is: <http://epa.ohio.gov/dapc/DAPCrules.aspx>. Please see the information under the "proposed rules"

tab. Questions regarding accessing the web site should be directed to Paul Braun at 614-644-3734; other questions or comments about these rules should be directed to Holly Kaloz at Ohio EPA, (614) 644-3632, [holly.kaloz@epa.ohio.gov](mailto:holly.kaloz@epa.ohio.gov), or mailed to Holly Kaloz, Ohio EPA, Division Air Pollution Control, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049.

# Article III

## Attachment B

Letter to Secretary of State  
and Director of LSC



# ELECTRONIC RULE-FILING SYSTEM

FILING OF OHIO ADMINISTRATIVE RULES AND RULE-RELATED DOCUMENTS

**The Honorable Frank LaRose**  
Secretary of State  
180 E. Broad St., 16th Floor  
Columbus, OH 43215

**Mark Flanders, Director**  
Legislative Service Commission  
77 South High St., 9th Floor  
Columbus, OH 43215

**Larry Wolpert, Director**  
Joint Committee on Agency Rule Review  
77 South High St., Concourse Level  
Columbus, OH 43215

It is hereby confirmed that the Ohio Environmental Protection Agency **original filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

**Package Number:** 181255  
**File Date and Time:** 06/06/2019 9:23 AM  
**Confirmation Number:** 28f8bd22fb11fdb23cd6125544db6

## ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
3745-14-01	Amendment	Y	Y	08/10/2019			Definitions and general provisions.
3745-14-04	Amendment	Y	Y	08/10/2019			Compliance certification.
3745-14-08	Amendment	Y	Y	08/10/2019			Monitoring and reporting.

Article III  
Attachment C  
RSFAs

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 3745-14-01

**Rule Type:** Amendment

**Rule Title/Tagline:** Definitions and general provisions.

**Agency Name:** Ohio Environmental Protection Agency

**Division:** Division of Air Pollution Control (DAPC)

**Address:** 50 West Town Street, Suite 700 PO Box 1049 Columbus OH 43216-1049

**Contact:** Holly Kaloz

**Email:** holly.kaloz@epa.ohio.gov **Phone:** 614-644-2760

#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 6/6/2019
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3704.03(E)
5. **What statute(s) does the rule implement or amplify?** 3704.03(A), 3704.03(E), 3704.03(D)

6. **What are the reasons for proposing the rule?**

This rule is being amended to add provisions for an alternative to existing requirements for continuous monitoring and reporting of emissions under 40 CFR Part 75 (commonly referred to as Part 75 monitoring and reporting).

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule contains definitions used in this chapter, information on applicability and exemptions to the rule, and information on the version and availability of items

referenced in the rule. The revisions to this rule update and add definitions and referenced materials applicable to the proposed Part 75 alternative.

8. **Does the rule incorporate material by reference? Yes**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule contains references to the Ohio Administrative Code (OAC). While copies of these rules and statutes are generally available to the public through libraries and on-line sources, including the Ohio EPA website, ORC 121.76 (A) exempts such references from the provisions of ORC 121.71 through 121.75.

This rule also contains references to the Code of Federal Regulations (CFR). These rules are generally available through libraries, Ohio EPA and U.S. EPA websites. CFR references have also been dated to reference the specific version of the rules. ORC 121.75 (D) exempts such references from the requirements of ORC 121.71 through 121.74.

This rule also contains references to the Clean Air Act (CAA). Copies of the Act are generally available through libraries, Ohio EPA and Government Printing Office's websites. CAA references have also been dated to reference the specific version of the rules. ORC 121.75 (D) exempts such references from the requirements of ORC 121.71 through 121.74.

Referenced materials are cited, dated and availability noted in paragraph (F) of this rule.

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

*Not Applicable*

## **II. Fiscal Analysis**

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

0.00

Not applicable.

**12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

There is no cost of compliance associated with this rule. This rule contains definitions applicable to this chapter, the applicability of units, general information on standard requirements, and information on items "Incorporated by Reference" in this chapter.

**13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

**14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**

### **III. Common Sense Initiative (CSI) Questions**

**15. Was this rule filed with the Common Sense Initiative Office? Yes**

**16. Does this rule have an adverse impact on business? Yes**

**A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes**

This rule requires regulated entities to obtain a permit in accordance with OAC rule 3745-14-03.

**B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes**

This rule establishes liabilities for violations of OAC Chapter 3745-14.

**C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

This rule requires regulated entities to monitor emissions in accordance with OAC rule 3745-14-08 as well as submit reports and compliance certifications in accordance with OAC rule 3745-14-04. This rule also requires exempt units to report hours of operation and fuel usage for each control period.



## Rule Summary and Fiscal Analysis

### Part C - Environmental Rule Questions

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

---

**(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted? Yes**

**Please list each contact.**

A draft of these rules was released for a 30-day public comment and review period ending February 7, 2018. The rules were released to Ohio EPA's electronic interested parties list, posted on Ohio EPA's regulations website and shared with interested industry parties. Two sets of comments were received on Ohio EPA's rulemaking effort. Ohio EPA's response to comments document can be provided upon request. A copy of Ohio EPA's interested parties distribution list can be made available upon request.

**(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? Yes**

**Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)**

Ohio EPA referred to 40 CFR 51.121 as well as U.S. EPA's fact sheet "NOx SIP Call Transition for Large Non-EGUs", in developing the amendments to OAC Chapter 3745-14. Ohio EPA

also used internal review and discussion, review and discussion with U.S. EPA Region 5, and considered comments from interested parties.

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program? Yes**

**Is the proposed rule or rule amendment more stringent than its federal counterpart?**  
*No Not Applicable*

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? No**

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 3745-14-04

**Rule Type:** Amendment

**Rule Title/Tagline:** Compliance certification.

**Agency Name:** Ohio Environmental Protection Agency

**Division:** Division of Air Pollution Control (DAPC)

**Address:** 50 West Town Street, Suite 700 PO Box 1049 Columbus OH 43216-1049

**Contact:** Holly Kaloz

**Email:** holly.kaloz@epa.ohio.gov **Phone:** 614-644-2760

#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 6/6/2019
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3704.03(E)
5. **What statute(s) does the rule implement or amplify?** 3704.03(A), 3704.03(E), 3704.03(D)

6. **What are the reasons for proposing the rule?**

This rule is being amended to add provisions for an alternative to existing requirements for continuous monitoring and reporting of emissions under 40 CFR Part 75 (commonly referred to as Part 75 monitoring and reporting).

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule contains the requirements for the submittal of a compliance certification report by the affected unit's authorized account representative following each control

period. The revisions to this rule establish requirements for the report applicable to the proposed Part 75 alternative.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule contains references to the Ohio Administrative Code (OAC). While copies of these rules and statutes are generally available to the public through libraries and on-line sources, including the Ohio EPA website, ORC 121.76 (A) exempts such references from the provisions of ORC 121.71 through 121.75.

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

*Not Applicable*

## **II. Fiscal Analysis**

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

0.00

Not applicable.

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

This rule requires submittal of a compliance certification report at the end of each control period or ozone season. There are minimal costs associated with the requirement. The designated representative would typically be an existing employee of an affected facility, and the required duties would represent a fraction of the individual's time. This compliance reporting requirement has been in place since the original effective date of these rules.

For electric generating units (EGUs), the requirements of this rule are satisfied through the federal CSAPR program, so there are no direct costs of this rule for EGUs. For non-EGUs, the revisions to this rule do not change the cost of compliance. Ohio EPA estimates this duty for a representative to perform, as a result of this rule requirement, would require 20 to 40 man-hours per year at a rate of \$50 per hour or approximately \$1,000 to \$2,000. This cost represents personnel costs only.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**

### **III. Common Sense Initiative (CSI) Questions**

15. **Was this rule filed with the Common Sense Initiative Office? Yes**
16. **Does this rule have an adverse impact on business? Yes**
  - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**
  - B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**
  - C. **Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

This rule details all necessary compliance reporting information required for NOx budget program units.

## Rule Summary and Fiscal Analysis

### Part B - Local Governments Questions

**1. Does the rule increase costs for:**

<b>A. Public School Districts</b>	No
<b>B. County Government</b>	Yes
<b>C. Township Government</b>	Yes
<b>D. City and Village Governments</b>	Yes

**2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.**

This rule requires submittal of a compliance certification report at the end of each control period or ozone season. There are minimal costs associated with the requirement. The designated representative would typically be an existing employee of an affected facility, and the required duties would represent a fraction of the individual's time. This compliance reporting requirement has been in place since the original effective date of these rules.

For electric generating units (EGUs), the requirements of this rule are satisfied through the federal CSAPR program, so there are no direct costs of this rule for EGUs. For non-EGUs, the revisions to this rule do not change the cost of compliance. Ohio EPA estimates this duty for a representative to perform, as a result of this rule requirement, would require 20 to 40 man-hours per year at a rate of \$50 per hour or approximately \$1,000 to \$2,000. This cost represents personnel costs only.

**3. Is this rule the result of a federal government requirement? Yes**

- A. If yes, does this rule do more than the federal government requires? No**
- B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**

*Not Applicable*

**4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:**

- A. Personnel Costs**

See above response.
  - B. New Equipment or Other Capital Costs**

Not applicable.
  - C. Operating Costs**

Not applicable.
  - D. Any Indirect Central Service Costs**

Not applicable.
  - E. Other Costs**

Not applicable.
- 5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.**
- There are two municipally owned groups operating ten units that were subject to these rule requirements. These facilities pay for the cost of compliance through the sale of electricity. For these EGUs, the requirements of this rule are satisfied through the federal CSAPR program, so there are no direct costs of this rule for EGUs.
- 6. What will be the impact on economic development, if any, as the result of this rule?**
- There is no anticipated impact on economic development.

## Rule Summary and Fiscal Analysis

### Part C - Environmental Rule Questions

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

---

**(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted? Yes**

**Please list each contact.**

A draft of these rules was released for a 30-day public comment and review period ending February 7, 2018. The rules were released to Ohio EPA's electronic interested parties list, posted on Ohio EPA's regulations website and shared with interested industry parties. Two sets of comments were received on Ohio EPA's rulemaking effort. Ohio EPA's response to comments document can be provided upon request. A copy of Ohio EPA's interested parties distribution list can be made available upon request.

**(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? Yes**

**Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)**

Ohio EPA referred to 40 CFR 51.121 as well as U.S. EPA's fact sheet "NOx SIP Call Transition for Large Non-EGUs", in developing the amendments to OAC Chapter 3745-14. Ohio EPA



also used internal review and discussion, review and discussion with U.S. EPA Region 5, and considered comments from interested parties.

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program? Yes**

**Is the proposed rule or rule amendment more stringent than its federal counterpart?**  
*No Not Applicable*

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? No**

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 3745-14-08

**Rule Type:** Amendment

**Rule Title/Tagline:** Monitoring and reporting.

**Agency Name:** Ohio Environmental Protection Agency

**Division:** Division of Air Pollution Control (DAPC)

**Address:** 50 West Town Street, Suite 700 PO Box 1049 Columbus OH 43216-1049

**Contact:** Holly Kaloz

**Email:** holly.kaloz@epa.ohio.gov **Phone:** 614-644-2760

#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 6/6/2019
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3704.03(E)
5. **What statute(s) does the rule implement or amplify?** 3704.03(A), 3704.03(D), 3704.03(E)

6. **What are the reasons for proposing the rule?**

This rule is being amended to add provisions for an alternative to existing requirements for continuous monitoring and reporting of emissions under 40 CFR Part 75 (commonly referred to as Part 75 monitoring and reporting).

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule contains the provisions and outlines the requirements owners and operators of affected units (NOx budget units) must follow to comply with the monitoring, record

keeping, and reporting requirements of the NOx Budget trading program. The revisions to this rule establish provisions for an alternative to Part 75 monitoring and reporting.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule contains references to the Ohio Administrative Code (OAC). While copies of these rules and statutes are generally available to the public through libraries and on-line sources, including the Ohio EPA website, ORC 121.76 (A) exempts such references from the provisions of ORC 121.71 through 121.75.

This rule also contains references to the Code of Federal Regulations (CFR). These rules are generally available through libraries, Ohio EPA and U.S. EPA websites. CFR references have also been dated to reference the specific version of the rules. ORC 121.75 (D) exempts such references from the requirements of ORC 121.71 through 121.74.

Referenced materials are cited, dated and availability noted in paragraph (F) of rule 3745-14-01 of the Administrative Code.

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

*Not Applicable*

## **II. Fiscal Analysis**

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

0.00

Not applicable.

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

This rule contains the provisions and outlines the requirements owners and operators of affected units (NOx budget units) must follow to comply with the monitoring, record keeping, and reporting requirements of the NOx Budget program. The NOx Budget program required owners and operators of each NOx unit to install all monitoring systems required under the rule, certify the systems and record, quality-assure, and report the data for the monitoring systems to the administrator. All of the existing units in the program have had these monitoring systems installed and operating since the beginning of the program (2004).

Newly installed NOx budget units either at existing facilities or completely new facilities, would need to install these monitoring systems, which consist of a continuous emission monitoring system (or "CEMS"). Ohio EPA estimates the capital cost for installing a CEMS is between \$56,000 and \$112,000, depending on the site specific installation challenges. The estimated cost of the CEMS includes: NOx monitor, O2 monitor, probe/filter box, sample conditioner, heated sampler line (\$55/ft), climate controller rack, PC and software start-up service, and training. The actual cost can exceed the values listed above if the stack servicing the unit does not currently have proper shelter for the equipment and available electric hook-ups which would therefore need to be installed. Annual average operating costs for most systems is estimated to be between \$15,000 and \$20,000 addressing maintenance, calibration gasses as well as certifications and audits. Costs may be more for systems subject to more extreme conditions. However, there are existing options for requesting an alternative within the framework of Part 75 that could reduce these costs.

Also, there would be some minor costs associated with the quarterly reporting and compliance certification requirements of this rule for emissions of NOx and heat input data to be performed by the designated representative. Ohio EPA estimates these reporting requirements for affected units require at most 20 man-hours per year at a rate of \$50 per hour, or approximately \$1,000. This cost represents personnel costs only.

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.

For electric generating units (EGUs), the requirements of this rule are satisfied through the federal CSAPR program, so there are no direct costs of this rule for EGUs. For non-EGUs, the revisions to this rule offer an additional alternative to the

existing monitoring and reporting requirements which will dramatically reduce the costs of compliance. With the approval of alternative monitoring and reporting, the costs noted above for operating and maintaining CEMS, quarterly reporting, and replacement costs when the existing CEMS have reached the end of their useful life, will no longer be incurred. Instead, costs would include those associated with obtaining a permit, monitoring heat input and fuel use, conducting stack tests, reporting data, and maintaining records.

Costs for obtaining a permit include personnel costs to prepare the application including development of the emission factor analysis, and in some cases an application fee. Depending on the type of facility, either a permit-to-install (PTI) and Title V operating permit application or a Permit-to-Install-and-Operate (PTIO) application is required. Applications may be prepared and submitted by facility representatives or a facility may hire a consultant to prepare their application so that a facility representative can submit the application. The decision to hire a consultant often depends on the size of the facility, type of facility, and how complicated/extensive the permitting action and analysis is. An application may take a facility a few hours to prepare and comprise 30 pages or less, or it could take several months to prepare and contain hundreds of pages of documents. The cost to prepare these applications (and comply with permit requirements) can vary across a wide range being as little as \$100 to \$30,000 (typical estimated cost to have a larger project application be completed by a consulting firm). Ohio EPA does not charge an application fee for Title V permits. For PTIs and PTIOs, the application fee amount varies depending on the type of facility and project. Fee requirements are contained ORC 3745.11 and range from \$50 to thousands of dollars.

Costs to monitor heat input and fuel use include capital costs for initial installation of a new monitoring system of approximately \$10,000 to \$50,000, depending on the type of equipment purchased and site specific installation needs. Annual average operating and maintenance costs for most systems is estimated to be between \$2,000 and \$10,000. Some facilities may already conduct monitoring for fuel use and/or heat input as part of their normal operations and therefore would not incur the capital costs. Stack testing typically costs up to fifteen thousand dollars per testing event and will need to be repeated every five years. Ozone season NO<sub>x</sub> emissions data will be reported as part of the Fee Emissions Reports (FER) which are currently required under OAC Chapter 3745-78. There will be minimal additional personnel costs associated with reporting additional emissions data on the FER. Costs to maintain records of daily heat input and fuel use and daily NO<sub>x</sub> emissions are expected to be significantly less than records maintenance costs under the existing requirements. Overall, the alternative monitoring and reporting requirements will provide a cost savings of tens of thousands of dollars in annual operating costs, as well as \$56,000 to \$112,000 for

capital replacement costs, as compared to the existing current requirements while providing the same level of environmental protection.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**

### **III. Common Sense Initiative (CSI) Questions**

15. **Was this rule filed with the Common Sense Initiative Office? Yes**
16. **Does this rule have an adverse impact on business? Yes**

- A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes**

This rule requires approval for use of an alternative to Part 75 monitoring and reporting requirements to be established in a permit.

- B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**

- C. **Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

This rule contains the provisions and outlines the requirements owners and operators of affected units (NOx budget units) must follow to comply with the monitoring, record keeping, and reporting requirements of the NOx Budget program.

## Rule Summary and Fiscal Analysis

### Part B - Local Governments Questions

**1. Does the rule increase costs for:**

<b>A. Public School Districts</b>	No
<b>B. County Government</b>	Yes
<b>C. Township Government</b>	Yes
<b>D. City and Village Governments</b>	Yes

**2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.**

This rule contains the provisions and outlines the requirements owners and operators of affected units (NOx budget units) must follow to comply with the monitoring, record keeping, and reporting requirements of the NOx Budget program. The NOx Budget program required owners and operators of each NOx unit to install all monitoring systems required under the rule, certify the systems and record, quality-assure, and report the data for the monitoring systems to the administrator. All of the existing units in the program have had these monitoring systems installed and operating since the beginning of the program (2004).

Newly installed NOx budget units either at existing facilities or completely new facilities, would need to install these monitoring systems, which consist of a continuous emission monitoring system (or "CEMS"). Ohio EPA estimates the capital cost for installing a CEMS is between \$56,000 and \$112,000, depending on the site specific installation challenges. The estimated cost of the CEMS includes: NOx monitor, O2 monitor, probe/filter box, sample conditioner, heated sampler line (\$55/ft), climate controller rack, PC and software start-up service, and training. The actual cost can exceed the values listed above if the stack servicing the unit does not currently have proper shelter for the equipment and available electric hook-ups which would therefore need to be installed. Annual average operating costs for most systems is estimated to be between \$15,000 and \$20,000 addressing maintenance, calibration gasses as well as certifications and audits. Costs may be more for systems subject to more extreme conditions. However, there are existing options for requesting an alternative within the framework of Part 75 that could reduce these costs.

Also, there would be some minor costs associated with the quarterly reporting and compliance certification requirements of this rule for emissions of NO<sub>x</sub> and heat input data to be performed by the designated representative. Ohio EPA estimates these reporting requirements for affected units require at most 20 man-hours per year at a rate of \$50 per hour, or approximately \$1,000. This cost represents personnel costs only.

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.

For electric generating units (EGUs), the requirements of this rule are satisfied through the federal CSAPR program, so there are no direct costs of this rule for EGUs. For non-EGUs, the revisions to this rule offer an additional alternative to the existing monitoring and reporting requirements which will dramatically reduce the costs of compliance. With the approval of alternative monitoring and reporting, the costs noted above for operating and maintaining CEMS, quarterly reporting, and replacement costs when the existing CEMS have reached the end of their useful life, will no longer be incurred. Instead, costs would include those associated with obtaining a permit, monitoring heat input and fuel use, conducting stack tests, reporting data, and maintaining records.

Costs for obtaining a permit include personnel costs to prepare the application including development of the emission factor analysis, and in some cases an application fee. Depending on the type of facility, either a Permit-to-Install (PTI) and Title V operating permit application or a Permit-to-Install-and-Operate (PTIO) application is required. Applications may be prepared and submitted by facility representatives or a facility may hire a consultant to prepare their application so that a facility representative can submit the application. The decision to hire a consultant often depends on the size of the facility, type of facility, and how complicated/extensive the permitting action and analysis is. An application may take a facility a few hours to prepare and comprise 30 pages or less, or it could take several months to prepare and contain hundreds of pages of documents. The cost to prepare these applications (and comply with permit requirements) can vary across a wide range being as little as \$100 to \$30,000 (typical estimated cost to have a larger project application be completed by a consulting firm). Ohio EPA does not charge an application fee for Title V permits. For PTIs and PTIOs, the application fee amount varies depending on the type of facility and project. Fee requirements are contained ORC 3745.11 and range from \$50 to thousands of dollars.



Costs to monitor heat input and fuel use include capital costs for initial installation of a new monitoring system of approximately \$10,000 to \$50,000, depending on the type of equipment purchased and site specific installation needs. Annual average operating and maintenance costs for most systems is estimated to be between \$2,000 and \$10,000. Some facilities may already conduct monitoring for fuel use and/or heat input as part of their normal operations and therefore would not incur the capital costs. Stack testing typically costs up to fifteen thousand dollars per testing event and will need to be repeated every five years. Ozone season NOx emissions data will be reported as part of the Fee Emissions Reports (FER) which are currently required under OAC Chapter 3745-78. There will be minimal additional personnel costs associated with reporting additional emissions data on the FER. Costs to maintain records of daily heat input and fuel use and daily NOx emissions are expected to be significantly less than records maintenance costs under the existing requirements. Overall, the alternative monitoring and reporting requirements will provide a cost savings of tens of thousands of dollars in annual operating costs, as well as \$56,000 to \$112,000 for capital replacement costs, as compared to the existing current requirements while providing the same level of environmental protection.

3. **Is this rule the result of a federal government requirement? No**
  - A. **If yes, does this rule do more than the federal government requires?** *Not Applicable*
  - B. **If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**  
*Not Applicable*
4. **Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:**
  - A. **Personnel Costs**  
See above response.
  - B. **New Equipment or Other Capital Costs**  
See above response.
  - C. **Operating Costs**  
See above response.

**D. Any Indirect Central Service Costs**

See above response.

**E. Other Costs**

See above response.

**5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.**

There are two municipally owned groups operating ten units that were subject to these rule requirements. These facilities pay for the cost of compliance through the sale of electricity. For these EGUs, the requirements of this rule are satisfied through the federal CSAPR program, so there are no direct costs of this rule for EGUs.

**6. What will be the impact on economic development, if any, as the result of this rule?**

There is no anticipated impact on economic development.

## Rule Summary and Fiscal Analysis

### Part C - Environmental Rule Questions

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

---

**(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted? Yes**

**Please list each contact.**

A draft of these rules was released for a 30-day public comment and review period ending February 7, 2018. The rules were released to Ohio EPA's electronic interested parties list, posted on Ohio EPA's regulations website and shared with interested industry parties. Two sets of comments were received on Ohio EPA's rulemaking effort. Ohio EPA's response to comments document can be provided upon request. A copy of Ohio EPA's interested parties distribution list can be made available upon request.

**(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? Yes**

**Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)**

Ohio EPA referred to 40 CFR 51.121 as well as U.S. EPA's fact sheet "NOx SIP Call Transition for Large Non-EGUs", in developing the amendments to OAC Chapter 3745-14. Ohio EPA

also used internal review and discussion, review and discussion with U.S. EPA Region 5, and considered comments from interested parties.

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program? Yes**

**Is the proposed rule or rule amendment more stringent than its federal counterpart?**  
*No Not Applicable*

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? No**

Article III  
Attachment D  
JCARR Agenda

**JOINT COMMITTEE ON AGENCY RULE REVIEW**  
**Agenda - 7/15/2019 - 1:30 P.M.**  
**Statehouse Hearing Room 121(William McKinley Room)**



**TENTATIVE AGENDA**

**TENTATIVE AGENDA**

**Consent**

**1 Counselor, Social Worker, and Marriage and Family Therapist Board •**

Total Rules: 11      Original Filing Date: 5/13/2019

Jurisdiction Ends: 7/17/2019      Public Hearing: 6/17/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Original Filing	Yes	No	<a href="#">4757-1-05</a>	License fees.
Amendment	Original Filing	Yes	No	<a href="#">4757-5-03</a>	Standards of ethical practice and professional conduct: multiple relationships.
Amendment	Original Filing	Yes	Yes	<a href="#">4757-5-10</a>	Standards of ethical practice and professional conduct: reporting unethical actions.
Amendment	Original Filing	Yes	No	<a href="#">4757-5-13</a>	Standards of practice and professional conduct: electronic service delivery (internet, email, teleconference, etc.).
Amendment	Original Filing	Yes	No	<a href="#">4757-9-01</a>	Continuing education requirements for renewal of a marriage and family therapist or independent marriage and family therapist license.
Amendment	Original Filing	Yes	No	<a href="#">4757-13-01</a>	Education requirements for admission to the examination for licensed professional counselor.
Amendment	Original Filing	Yes	No	<a href="#">4757-13-07</a>	Counselor program approval.
Amendment	Original Filing	Yes	No	<a href="#">4757-17-01</a>	Counseling supervision.
Amendment	Original Filing	Yes	Yes	<a href="#">4757-25-01</a>	Education requirements for admission to the examination for marriage and family therapist.
Amendment	Original Filing	Yes	No	<a href="#">4757-25-02</a>	Marriage and family therapist examination policy.
Amendment	Original Filing	Yes	No	<a href="#">4757-29-01</a>	Marriage and family therapy supervision.

Total Rules: 1      Original Filing Date: 5/13/2019

Date of Revised Filing: 6/14/2019      Jurisdiction Ends: 7/17/2019      Public Hearing: 6/17/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Revised Filing	Yes	No	<a href="#">4757-3-01</a>	Definitions.

**2 Department of Administrative Services • Division of Human Resources**

Total Rules: 1      Original Filing Date: 5/15/2019

Jurisdiction Ends: 7/19/2019      Public Hearing: 6/19/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Original Filing	No	Yes	<a href="#">123:1-25-01</a>	Transfers and intra-transfers in classified service.

**3 Department of Commerce • Division of Real Estate**

Click on the rule number in blue above to view the rule in its entirety on the *Register of Ohio* website.

Total Rules: 1      Original Filing Date: 11/26/2018      Date of Refiled Filing: 6/19/2019      Jurisdiction Ends: 7/19/2019      Public Hearing: 6/25/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Refiled Filing	Yes	Yes	<a href="#">1301:5-1-21</a>	Team advertising.

**4 Department of Education •**

Total Rules: 1      Original Filing Date: 5/31/2019      Jurisdiction Ends: 8/4/2019      Public Hearing: 7/8/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
New Rule	Original Filing	No	No	<a href="#">3301-24-28</a>	Interim License.

**5 Department of Health •**

Total Rules: 1      Original Filing Date: 5/17/2019      Date of Revised Filing: 5/20/2019      Jurisdiction Ends: 7/21/2019      Public Hearing: 6/20/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Revised Filing	Yes	Yes	<a href="#">3701-3-02</a>	Diseases to be reported.

**6 Department of Taxation •**

Total Rules: 3      Original Filing Date: 5/29/2019      Jurisdiction Ends: 8/2/2019      Public Hearing:

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Original Filing	Yes	Yes	<a href="#">5703-15-20</a>	Licensing cigarette manufacturers and importers and registration of other tobacco products manufacturers, importers, and brokers.
Amendment	Original Filing	Yes	Yes	<a href="#">5703-15-21</a>	Sale of other tobacco products between licensed other tobacco product distributors.
Amendment	Original Filing	Yes	Yes	<a href="#">5703-15-22</a>	Sale of unstamped cigarettes between licensed cigarette wholesalers.

Total Rules: 1      Original Filing Date: 5/29/2019      Date of Revised Filing: 6/24/2019      Jurisdiction Ends: 8/2/2019      Public Hearing:

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Revised Filing	Yes	Yes	<a href="#">5703-15-18</a>	Suspension of discount for selling cigarettes below cost.

**7 Ohio Casino Control Commission •**

Total Rules: 19      Original Filing Date: 6/3/2019      Jurisdiction Ends: 8/7/2019      Public Hearing: 7/10/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
New Rule	Original Filing	Yes	No	<a href="#">3772-74-01</a>	Definitions.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-02</a>	Authority and purpose.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-03</a>	Construction.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-04</a>	Access to records, examinations under oath, and subpoena power.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-05</a>	Waivers and variances.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-06</a>	General fantasy contest licensing requirements.

Click on the rule number in blue above to view the rule in its entirety on the *Register of Ohio* website.

New Rule	Original Filing	Yes	No	<a href="#">3772-74-07</a>	Fantasy contest operator licensure.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-08</a>	Management company licensure.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-09</a>	Duty to update information.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-10</a>	Fantasy contest operator internal procedures.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-10.1</a>	Initial internal procedure submissions.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-11</a>	Prohibited activities.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-12</a>	Duties of fantasy contest operators.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-13</a>	Duties of key employees.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-14</a>	Duties of management company applicants or licensees.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-15</a>	Inspection and audits.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-16</a>	Advertising.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-17</a>	Hearings.
New Rule	Original Filing	Yes	No	<a href="#">3772-74-18</a>	Sanctions.

**8 Ohio Department of Medicaid •**

Total Rules: 1      Original Filing Date: 5/24/2019      Jurisdiction Ends: 7/28/2019      Public Hearing: 6/24/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Original Filing	No	Yes	<a href="#">5160-1-17.2</a>	Provider agreement for providers.

**9 Ohio Environmental Protection Agency •**

Total Rules: 3      Original Filing Date: 6/6/2019      Jurisdiction Ends: 8/10/2019      Public Hearing: 7/16/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Original Filing	Yes	Yes	<a href="#">3745-14-01</a>	Definitions and general provisions.
Amendment	Original Filing	Yes	Yes	<a href="#">3745-14-04</a>	Compliance certification.
Amendment	Original Filing	Yes	Yes	<a href="#">3745-14-08</a>	Monitoring and reporting.

**10 Ohio Environmental Protection Agency •**

Total Rules: 2      Original Filing Date: 6/6/2019      Jurisdiction Ends: 8/10/2019      Public Hearing: 7/16/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Original Filing	Yes	Yes	<a href="#">3745-14-11</a>	Portland cement kilns.
Amendment	Original Filing	Yes	Yes	<a href="#">3745-14-12</a>	Stationary internal combustion engines.

**11 Ohio Respiratory Care Board • Home Medical Equipment Service Providers**

Total Rules: 50      Original Filing Date: 5/13/2019      Jurisdiction Ends: 7/17/2019      Public Hearing: 6/13/2019



**JOINT COMMITTEE ON AGENCY RULE REVIEW**  
**7/15/2019 - 1:30 P.M.**  
**Statehouse Hearing Room 121(William McKinley Room)**

**TENTATIVE AGENDA**

**TENTATIVE AGENDA**

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-1-01</a>	Public hearings on adoption, amendment, or rescission of rules: methods of public notice.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-1-02</a>	Notice of board meetings.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-2-01</a>	Board organization.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-2-02</a>	Personnel.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-2-03</a>	Board records.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-2-05</a>	Personal information systems.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-3-01</a>	Definition of terms.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-3-02</a>	Home medical equipment defined.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-4-01</a>	Recognition of accrediting organizations.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-5-01</a>	Qualifications for licensure.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-5-02</a>	Application form requirements.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-5-03</a>	Failure to file a complete application for a license.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-6-01</a>	Qualifications to obtain a certificate of registration.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-6-02</a>	Application form requirements to apply for a certificate of registration.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-6-03</a>	License and certificate of registration issuance and display.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-6-04</a>	Failure to file a complete application for a certificate of registration.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-7-01</a>	Qualifications for license renewal.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-7-02</a>	Qualifications for certificate of registration renewal.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-7-03</a>	Lapsed license or certificate of registration reinstatement procedure.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-8-01</a>	Fees.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-8-02</a>	Late fees.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-8-03</a>	Inspection fees.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-8-04</a>	License and certificate of registration replacement fees.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-9-01</a>	Standards of practice for license holders.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-9-02</a>	Standard for maintaining a facility.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-9-03</a>	Standard for maintaining equipment.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-9-04</a>	Client records.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-9-05</a>	Personnel.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-10-01</a>	Filing of complaints.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-10-02</a>	Authority of board investigators.

Click on the rule number in blue above to view the rule in its entirety on the *Register of Ohio* website.

JOINT COMMITTEE ON AGENCY RULE REVIEW

7/15/2019 - 1:30 P.M.

Statehouse Hearing Room 121(William McKinley Room)

TENTATIVE AGENDA

TENTATIVE AGENDA

Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-10-03</a>	Licenses and certificate holders must comply with investigations conducted by the board.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-11-01</a>	Administrative procedure for refusal to issue or renew a license, suspend, or revoke a license or impose a fine or other disciplinary action.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-11-02</a>	Board imposition of penalties.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-11-03</a>	Filing a request with the Ohio attorney general's office for injunctive relief or civil penalties.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-11-04</a>	Other disciplinary action.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-01</a>	Representation; appearance; communication; applicability.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-02</a>	Authority and duties of the board or hearing examiner.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-03</a>	Filing.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-04</a>	Motions.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-05</a>	Service.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-06</a>	Computation and extension of time.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-07</a>	Exchange of documents and witness lists.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-08</a>	Exhibits.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-09</a>	Witnesses.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-10</a>	Subpoenas for purposes of hearing.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-11</a>	Expert testimony.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-12</a>	Mileage reimbursement and witness fees.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-13</a>	Depositions and transcripts of prior testimony.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-14</a>	Continuance of hearing.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-15</a>	Reports and recommendations.

12 **Ohio Respiratory Care Board • Home Medical Equipment Service Providers**

Total Rules: 14      Original Filing Date: 5/13/2019      Jurisdiction Ends: 7/17/2019      Public Hearing: 6/13/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-16</a>	Transcripts.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-12-17</a>	Prior action by the board.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-13-01</a>	Continuing education standards.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-14-01</a>	Inspection frequency.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-14-02</a>	Inspection requirements.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-15-01</a>	Advertising and solicitation.

Click on the rule number in blue above to view the rule in its entirety on the Register of Ohio website.

**JOINT COMMITTEE ON AGENCY RULE REVIEW**  
**7/15/2019 - 1:30 P.M.**  
**Statehouse Hearing Room 121(William McKinley Room)**

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Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-15-02</a>	Signage.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-15-03</a>	Transfer of authorization to new facility or new ownership.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-15-04</a>	Requirement to provide board contact information to clients.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-16-01</a>	Definitions for accessing confidential personal information.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-16-02</a>	Procedures for accessing confidential personal information.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-16-03</a>	Valid reasons for accessing confidential personal information.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-16-04</a>	Confidentiality statutes.
Rescission	Original Filing	Yes	Yes	<a href="#">4761:1-16-05</a>	Restricting and logging access to confidential personal information in computerized information systems.

**13 Ohio Speech and Hearing Professionals Board •**

Total Rules: 4      Original Filing Date: 5/23/2019      Jurisdiction Ends: 7/27/2019      Public Hearing: 6/27/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
New Rule	Original Filing	Yes	No	<a href="#">4744-1-01</a>	Procedure for adoption of rules.
New Rule	Original Filing	Yes	No	<a href="#">4744-1-02</a>	Method of determining time and place of meetings.
New Rule	Original Filing	Yes	No	<a href="#">4744-1-03</a>	Personal information systems.
New Rule	Original Filing	Yes	No	<a href="#">4744-1-04</a>	Duties of officers and staff.

**14 Ohio Speech and Hearing Professionals Board •**

Total Rules: 4      Original Filing Date: 5/23/2019      Jurisdiction Ends: 7/27/2019      Public Hearing: 6/27/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Original Filing	Yes	No	<a href="#">4753-2-01</a>	Telehealth communication.
Amendment	Original Filing	Yes	No	<a href="#">4753-3-01</a>	Application for license.
Amendment	Original Filing	Yes	No	<a href="#">4753-3-03</a>	Notice of change of address.
Amendment	Original Filing	Yes	No	<a href="#">4753-9-01</a>	"Code of Ethics".

Total Rules: 6      Original Filing Date: 5/23/2019      Date of Revised Filing: 6/19/2019      Jurisdiction Ends: 7/27/2019      Public Hearing: 6/27/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Rescission	Revised Filing	Yes	Yes	<a href="#">4753-1-01</a>	Procedure for adoption of rules.
Rescission	Revised Filing	Yes	Yes	<a href="#">4753-1-02</a>	Method of determining time and place of meetings.
Rescission	Revised Filing	Yes	Yes	<a href="#">4753-1-04</a>	Personal information systems.
Rescission	Revised Filing	Yes	Yes	<a href="#">4753-1-05</a>	Duties of officers and staff.
Amendment	Revised Filing	Yes	No	<a href="#">4753-3-10</a>	Exempt practice; renewal.
Amendment	Revised Filing	Yes	No	<a href="#">4753-5-01</a>	Speech-language pathologist or audiologist; fee for initial license; fee for renewal of license; late renewal fee.

Click on the rule number in blue above to view the rule in its entirety on the *Register of Ohio* website.

**15 Ohio Speech and Hearing Professionals Board •**

Total Rules: 4      Original Filing Date: 5/23/2019      Jurisdiction Ends: 7/27/2019      Public Hearing: 6/27/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Original Filing	Yes	No	<a href="#">4747-1-12</a>	Duplicate certificates.
Amendment	Original Filing	Yes	No	<a href="#">4747-1-13</a>	Sales receipt.
Amendment	Original Filing	Yes	No	<a href="#">4747-1-15</a>	Fraud and/or misrepresentation, suspension, revocation or refusal of issuance of licenses and trainee permits.
New Rule	Original Filing	Yes	No	<a href="#">4747-1-23</a>	Code of Ethics.

Total Rules: 11      Original Filing Date: 5/23/2019      Date of Revised Filing: 6/19/2019      Jurisdiction Ends: 7/27/2019      Public Hearing: 6/27/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
Rescission	Revised Filing	Yes	Yes	<a href="#">4747-1-01</a>	Public notice - rules.
Rescission	Revised Filing	Yes	Yes	<a href="#">4747-1-04</a>	Duties and powers of the board.
Rescission	Revised Filing	Yes	Yes	<a href="#">4747-1-05</a>	Duties of the chairperson.
Rescission	Revised Filing	Yes	Yes	<a href="#">4747-1-06</a>	Duties of the vice chairperson.
Rescission	Revised Filing	Yes	Yes	<a href="#">4747-1-07</a>	Duties of the secretary.
Amendment	Revised Filing	Yes	No	<a href="#">4747-1-11</a>	Renewal procedures.
Amendment	Revised Filing	Yes	No	<a href="#">4747-1-17</a>	Licensee responsibilities.
Rescission	Revised Filing	Yes	Yes	<a href="#">4747-1-18</a>	Complaint procedures.
Rescission	Revised Filing	Yes	Yes	<a href="#">4747-1-20</a>	Sunshine law.
Rescission	Revised Filing	Yes	Yes	<a href="#">4747-1-21</a>	Rules governing personal information systems.
New Rule	Revised Filing	Yes	No	<a href="#">4747-1-22</a>	Fees.

**16 State Board of Pharmacy • Home Medical Equipment Service Providers**

Total Rules: 8      Original Filing Date: 5/13/2019      Jurisdiction Ends: 7/17/2019      Public Hearing: 6/13/2019

<u>Rule Type</u>	<u>Action</u>	<u>CSI</u>	<u>FYR</u>	<u>Rule Number</u>	<u>Rule Title</u>
New Rule	Original Filing	Yes	No	<a href="#">4729:11-1-01</a>	Definitions - home medical equipment.
New Rule	Original Filing	Yes	No	<a href="#">4729:11-2-02</a>	Designated representative.
New Rule	Original Filing	Yes	No	<a href="#">4729:11-2-03</a>	Applications.
New Rule	Original Filing	Yes	No	<a href="#">4729:11-2-04</a>	Recognized accrediting bodies.
New Rule	Original Filing	Yes	No	<a href="#">4729:11-2-05</a>	Change in description of an HME services provider or discontinuation of business.
New Rule	Original Filing	Yes	No	<a href="#">4729:11-3-02</a>	Record keeping.
New Rule	Original Filing	Yes	No	<a href="#">4729:11-3-05</a>	Advertising and solicitation.

New Rule Original Filing Yes No [4729:11-4-01](#) Disciplinary Actions.  
 Total Rules: 4 Original Filing Date: 5/13/2019 Date of Refiled Filing: 6/19/2019 Jurisdiction Ends: 7/19/2019 Public Hearing: 6/13/2019

Rule Type	Action	CSI	FYR	Rule Number	Rule Title
New Rule	Refiled Filing	Yes	No	<a href="#">4729:11-2-01</a>	Licensure, registration and renewal.
New Rule	Refiled Filing	Yes	No	<a href="#">4729:11-3-01</a>	Minimum standards for licensees.
New Rule	Refiled Filing	Yes	No	<a href="#">4729:11-3-03</a>	Inspections and corrective actions.
New Rule	Refiled Filing	Yes	No	<a href="#">4729:11-3-04</a>	Continuing education.

**17 State Board of Pharmacy • Terminal Distributors of Dangerous Drugs**

Total Rules: 1 Original Filing Date: 3/19/2018 Date of Refiled Filing: 6/26/2019 Jurisdiction Ends: 7/26/2019 Public Hearing: 6/13/2019

Rule Type	Action	CSI	FYR	Rule Number	Rule Title
New Rule	Refiled Filing	Yes	No	<a href="#">4729:5-5-10</a>	Manner of processing a prescription.

**18 State Board of Pharmacy • Terminal Distributors of Dangerous Drugs**

Total Rules: 1 Original Filing Date: 2/8/2019 Date of Refiled Filing: 6/26/2019 Jurisdiction Ends: 7/26/2019 Public Hearing: 6/13/2019

Rule Type	Action	CSI	FYR	Rule Number	Rule Title
New Rule	Refiled Filing	Yes	No	<a href="#">4729:5-5-15</a>	Manner of issuance of a prescription.

**19 State Board of Pharmacy • Terminal Distributors of Dangerous Drugs**

Total Rules: 1 Original Filing Date: 4/18/2019 Date of Refiled Filing: 6/26/2019 Jurisdiction Ends: 7/26/2019 Public Hearing: 5/20/2019

Rule Type	Action	CSI	FYR	Rule Number	Rule Title
New Rule	Refiled Filing	Yes	No	<a href="#">4729:5-5-06</a>	Labeling of drugs dispensed on prescription.

**20 State Board of Pharmacy • Terminal Distributors of Dangerous Drugs**

Total Rules: 1 Original Filing Date: 5/13/2019 Jurisdiction Ends: 7/17/2019 Public Hearing: 6/13/2019

Rule Type	Action	CSI	FYR	Rule Number	Rule Title
Amendment	Original Filing	Yes	No	<a href="#">4729:5-2-03</a>	Change in description of a terminal distributor of dangerous drugs.

**21 State Racing Commission •**

Total Rules: 1 Original Filing Date: 5/16/2019 Jurisdiction Ends: 7/20/2019 Public Hearing: 6/20/2019

Rule Type	Action	CSI	FYR	Rule Number	Rule Title
Amendment	Original Filing	Yes	No	<a href="#">3769-5-27</a>	Registration with associations.

**22 State Racing Commission •**

Total Rules: 1 Original Filing Date: 5/16/2019 Jurisdiction Ends: 7/20/2019 Public Hearing: 6/20/2019

Rule Type	Action	CSI	FYR	Rule Number	Rule Title
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Click on the rule number in blue above to view the rule in its entirety on the *Register of Ohio* website.

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Amendment	Original Filing	Yes	No	<a href="#">3769-15-10</a>	Registration with associations.
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# Article III

## Attachment E

Final Adoption Notice to LSC  
Director and Secretary of  
State



# ELECTRONIC RULE-FILING SYSTEM

FILING OF OHIO ADMINISTRATIVE RULES AND RULE-RELATED DOCUMENTS

The Honorable Frank LaRose  
Secretary of State  
180 E. Broad St., 16th Floor  
Columbus, OH 43215

Mark Flanders, Director  
Legislative Service Commission  
77 South High St., 9th Floor  
Columbus, OH 43215

Larry Wolpert, Director  
Joint Committee on Agency Rule Review  
77 South High St., Concourse Level  
Columbus, OH 43215

It is hereby confirmed that the Ohio Environmental Protection Agency **final filed** the following rule(s) pursuant to section 119.04 of the Ohio Revised Code.

**Package Number:** 181255  
**File Date and Time:** 08/12/2019 9:52 AM  
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## FINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
3745-14-01	Amendment	Y	Y	08/10/2019	08/22/2019	06/06/2024	Definitions and general provisions.
3745-14-04	Amendment	Y	Y	08/10/2019	08/22/2019	06/06/2024	Compliance certification.
3745-14-08	Amendment	Y	Y	08/10/2019	08/22/2019	06/06/2024	Monitoring and reporting.



# Article IV

## Hearing Transcripts

OHIO ENVIRONMENTAL PROTECTION AGENCY

- - - - -

RULES HEARING

JULY 16, 2019

- - - - -

Before Mary McCarron, Public Information Officer;  
Paul Braun, Rules Coordinator;  
Mandi Payton, Agency Rules Coordinator  
Taken at Ohio Environmental Protection Agency  
50 West Town Street  
Columbus, OH 43215  
10:46 a.m.

- - - - -

Spectrum Reporting LLC  
400 South Fifth Street, Ste. 201  
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1           -----  
 2           P R O C E E D I N G S  
 3           -----  
 4           MS. MCCARRON: Okay. My name is Mary  
 5 McCarron, and I'm with the Public Interest Center.  
 6 I'll be presiding over today's public hearing.  
 7           The purpose of the hearing today is to  
 8 obtain comments from any interested person  
 9 regarding Ohio EPA's proposed rules. Ohio EPA  
 10 Division of Pollution -- Air Pollution Control is  
 11 proposing to amend the following rules of the Ohio  
 12 Administrative Code: Chapter 3745-14-01, 14-04,  
 13 14-08, 14-11, and 14-12. These rules regard the  
 14 NOx Budget Program.  
 15           The Clean Air Act requires Ohio EPA to  
 16 establish a state implementation plan for the  
 17 attainment and maintenance of the National Ambient  
 18 Air Quality Standards. This rule is part of Ohio  
 19 SIP, and the proposed amendments will be submitted  
 20 to U.S. EPA as a modification of the SIP. This  
 21 hearing is the public hearing for the SIP  
 22 submittal.  
 23           These rules have been filed with the  
 24 Joint Commission on Agency Rule Review, and copies

1   State of Ohio       :    C E R T I F I C A T E  
 County of Franklin: SS  
 2  
 3           I, Craig Ross, RPR, CRR, a Notary Public in  
 and for the State of Ohio, do hereby certify that  
 I reported the aforementioned proceedings; that  
 the foregoing is a true record of the proceedings.  
 4  
 5           I do further certify I am not a relative,  
 employee or attorney of any of the parties hereto,  
 6 and further I am not a relative or employee of any  
 attorney or counsel employed by the parties  
 hereto, or financially interested in the action.  
 7  
 8           IN WITNESS WHEREOF, I have hereunto set my  
 hand and affixed my seal of office at Columbus,  
 Ohio, on July 19, 2019.  
 9  
 10  
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 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20           Craig Ross, Notary Public - State of Ohio  
 My commission expires July 7, 2021.  
 21  
 22  
 23  
 24



1 of the rules are available for public review at  
 2 Ohio EPA's Columbus office and on our website.  
 3 All interested persons are entitled to attend or  
 4 be represented and to present oral and/or written  
 5 comments concerning the proposed rules.  
 6           All written and oral comments received  
 7 as part of the official record will be considered  
 8 by the director of Ohio EPA. To be included on  
 9 the official record, written comments must be  
 10 received by Ohio EPA by the close of business  
 11 today, July 16th, 2019.  
 12           At this time, there is no one present  
 13 to provide testimony, so we will go off the record  
 14 until 11 a.m.  
 15           (A discussion is held off the record.)  
 16           MS. MCCARRON: All right. The time is  
 17 now 11 a.m. No one has arrived to provide  
 18 testimony, so this hearing is adjourned.  
 19           -----  
 20           Thereupon, the foregoing proceedings  
 21 concluded at 11:00 a.m.  
 22           -----  
 23  
 24

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# Article V

## Response to Comments



## Division of Air Pollution Control Response to Comments

### Rules: OAC Chapter 3745-14 “Nitrogen Budget Program” (Phase 2)

#### Agency Contact for this Package

Division Contact: Holly Kaloz, Division of Air Pollution Control, 614-644-3632, holly.kaloz@epa.ohio.gov

Ohio EPA held an interested party comment period on January 5, 2018 regarding draft amended rules in Ohio Administrative Code (OAC) Chapter 3745-14, "NOx Budget Program" (Phase 2). This document summarizes the comments and questions received during the comment period, which ended on February 7, 2018.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

#### General/Overall Concerns

- Comment 1:** Comments were received from U.S. EPA indicating the draft rule revisions would not be consistent with the state’s obligations under 40 CFR 51.121(i)(4). The full comment can be found at the end of this response to comments document. (U.S. EPA)
- Response 1:** On March 8, 2019, U.S. EPA finalized amendments to 40 CFR 51.121(i)(4) which allow states to include alternate forms of monitoring requirements in their SIPs. Ohio now believes our approach in this proposed rulemaking may be approvable with minor revisions (described in the Rule Synopsis).
- Comment 2:** The commenter reiterated previous comments that continuous monitoring and reporting of emissions under 40 CFR Part 75 (commonly referred to as Part 75 monitoring and reporting, or CEMS) is no longer needed and not legally required. Specific comments were received regarding the draft case-by-case alternative to the requirement for Part 75 monitoring. Comments were also received requesting a specific exemption for blast furnace gas-fired non-EGU boilers. The full comment letter can be found at the end of this response to comments document. (Joseph P. Koncelik, Tucker Ellis LLP on behalf of ArcelorMittal)

**Response 2:** Ohio EPA has had several discussions with the commenter regarding the need for an alternative to Part 75 monitoring and reporting requirements. Ohio EPA does not disagree with many of the issues raised by the commenter, and therefore has agreed to pursue an alternative to the Part 75 monitoring and reporting requirements. Responses 3 to 8 below address specific issues raised by the commenter.

OAC Rule 3745-14-08 - Proposed case-by-case alternative

**Comment 3:** “Ohio EPA's proposed strategy to allow for alternative monitoring on a case-by-case basis will result in significant delays in finalizing the removal of CEMS for these units. First, a permit modification request must be submitted. Second, both Ohio EPA and U.S. EPA must review and approve the alternative monitoring as a federally enforceable permit condition in the operating permit. This case-by-case process could take months and there is no certainty that the proposed permit modification will be accepted.”

“Operating Permit- Please explain the process for incorporating alternative monitoring in OAC 3745-14-08(H)(2). How long would this process take? What approvals would be needed before the owner and/or operator could remove CEMS. ArcelorMittal is concerned the permit would need approval by both Ohio EPA and U.S. EPA before alternative monitoring could be implemented. Would it be possible to have the alternative monitoring approved as part of a plan approval submitted to Ohio EPA?” (Joseph P. Koncelik, Tucker Ellis LLP on behalf of ArcelorMittal)

**Response 3:** While the rule revisions and accompanying state implementation plan (SIP) submittal would need to be approved by U.S. EPA, the draft rules currently only require Ohio EPA approval as a part of the permit process of any case-by-case approval of alternative monitoring. The typical permit modification process would be followed, with the addition of the submittal of an emissions factor analysis and a description of proposed alternative monitoring procedures. The amount of time this process would take would be variable depending on the complexity of the submittal. Once the alternative monitoring requirements are issued in the permit the source could remove the CEMS.

**Comment 4:** “Deletion of "Designated Representative"- The references to Designated Representative should be replaced with "Owner and Operator" since the non-EGU units subject to alternative monitoring are opting out of the trading program. There is no need for formal certification of monitoring data by a designated representative now that these units are no longer participating in the trading program.” (Joseph P. Koncelik, Tucker Ellis LLP on behalf of ArcelorMittal)

**Response 4:** Use of a “designated representative” was included in the Phase 1 rules to certify monitoring data for the purposes of ensuring the statewide budget is met, not as part of the trading program. Monitoring data must be certified by a designated representative, regardless of whether it is collected through Part 75 or an alternative.

**Comment 5:** “Fuel Blend- Proposed adding "or representative fuel blend" to OAC 3745-14-08(H)(3)(a) because the fuel blend used by the Cleveland Works is primarily blast furnace gas with natural gas pilots/supplemental fuel for which the Company has years of Part 75 certified NOx CEMS data.” (Joseph P. Koncelik, Tucker Ellis LLP on behalf of ArcelorMittal)

**Response 5:** An emissions factor for each fuel type, rather than for a representative blend of fuels, is necessary due to variability in the heat content of the fuels as well as variability in the amount of each type of fuel in a blend. The heat content of blast furnace gas is highly variable. Use of an emissions factor based on a representative blend of fuels is not expected to provide an accurate accounting of NOx emissions.

**Comment 6:** “Frequency of Stack Test Requirement for Certain Alternative Monitoring- There is no need for frequent stack tests if emission data is based upon years of CEMS data. ArcelorMittal submits that a once every five years should be sufficient stack testing for units still in operation. A stack test can be performed for units shutdown once the unit resumes operations. Also, a stack test should be allowed to be used for sources with similar operations (i.e. "representative sources").”

Suggested modifications to the draft rule included:

3745-14-08(H)(3)(ii): A valid stack test using USEPA Method 3, USEPA Method 7 and USEPA Method 19 ~~conducted within the previous two years from the date of the application submittal~~, if available.

3745-14-08(H)(7)(d): Conduct stack tests to demonstrate the approved emission factor continues to be representative of current operating conditions. If the emissions factor analysis submitted in accordance with (H)(3)(a) of this rule did not include a stack test or was not based on continuous emission monitoring data, an initial stack test shall be conducted within ninety days of permit issuance. Ongoing stack tests shall be conducted at least once every five years from the date of the previous stack test for units still in operation or within 90 days for a unit resuming operation during the control period. Stack tests shall be conducted in accordance with a test method specified in the operating permit and reported to the director within thirty days of the test. If a stack test indicates an emission factor may require adjustment, the director may require submission of an application in accordance with paragraph (H)(2) of this rule. The ~~designated representative~~owner and operator shall submit



an application in accordance with paragraph (H) of this rule within sixty days of notification by the director.

(Joseph P. Koncelik, Tucker Ellis LLP on behalf of ArcelorMittal)

**Response 6:** An initial stack test is necessary to ensure the approved emissions factor is representative of operating conditions when the emissions factor analysis did not include a recent stack test, even if the approved emissions factor was based on continuous emission monitoring data. Ongoing stack testing (every five years) is necessary to demonstrate the approved emission factor continues to be representative of current operating conditions. Language was added to clarify that units not in operation at the time of a required stack test shall conduct the stack test within ninety days of resuming operation.

**Comment 7:** The commenter suggested changes to OAC 3745-14-08(H)(6) and (7)(C) “designed to provide flexibility to monitor fuel use and measure heat content instead of monitoring heat input.” (Joseph P. Koncelik, Tucker Ellis LLP on behalf of ArcelorMittal)

**Response 7:** Monitoring heat input is necessary to provide an accurate accounting of NOx emissions due to variability in the heat content of the fuels as well as variability in the amount of each type of fuel in a blend. The heat content of blast furnace gas is highly variable.

#### New OAC Rule - Site-Specific Provision for Blast Furnace Gas Fired Non-EGU Boilers

**Comment 8:** The commenter proposed a specific exemption for blast furnace gas fired non-EGU Boilers, similar to that implemented by IDEM. The commenter proposed revisions to OAC 3745-14-11 which “establish a NOx emission limit of 0.17 pound of NOx per million BTUs (lb/MMBtu) averaged over the ozone season. The rule language also requires greater than 50% of the heat input be derived from blast furnace gas averaged over the ozone season. By establishing a NOx emission limit for these units by rule, coupled with a SIP revision eliminating reductions from these units to meet the NOx SIP Call Non-EGU budget... CEMS can be eliminated for these units.” (Joseph P. Koncelik, Tucker Ellis LLP on behalf of ArcelorMittal)

**Response 8:** In additional discussions following U.S. EPA’s proposed modification to 40 CFR 51.121(i)(4), the commenter indicated that the case-by-case alternative included in the draft rule was sufficient and the site-specific provision was no longer requested. Therefore, the entire new rule that was being contemplated to add a site-specific provision for blast furnace gas fired non-EGUs is no longer being proposed for adoption.

**End of Response to Comments**

**EPA's Comments on Ohio's Draft Amendments to the Monitoring Requirements for Certain Sources Controlled in Response to the NO<sub>x</sub> SIP Call (OAC Rules 3745-14-01, 3745-14-04, and 3745-14-08)**

Under 40 CFR 51.121(i)(4), where the SIP adopted by a state to meet the requirements of the NO<sub>x</sub> SIP Call imposes control measures on certain types of sources as a means of meeting the state's NO<sub>x</sub> budget – including the types of sources that are “NO<sub>x</sub> budget units” subject to monitoring and reporting requirements under OAC Rule 3745-14-08 – then the SIP must require these sources to monitor and report ozone season NO<sub>x</sub> emissions in accordance with 40 CFR part 75, subpart H. The requirement for part 75 monitoring is independent of the state's choice of the specific control measures applicable to these sources, and the requirement does not lapse simply because of a change in the required control measures. EPA expects to propose a rulemaking in the near future that, if finalized, would amend the NO<sub>x</sub> SIP Call regulations to provide states with flexibility to amend their SIPs to include other forms of monitoring requirements as alternatives to the existing part 75 monitoring requirements. However, unless and until EPA finalizes amendments to the NO<sub>x</sub> SIP Call regulations providing this flexibility, Ohio's draft revisions to OAC Rule 3745-14-08 and the associated revisions to Rules 3745-14-01 and 3745-14-04 would not be consistent with the state's obligations under § 51.121(i)(4) of the existing NO<sub>x</sub> SIP Call regulations.

February 7, 2018

DIRECT DIAL 216.696.2373 | joseph.koncelik@tuckerellis.com

Mr. Paul Braun  
Ohio EPA Division of Air Pollution Control  
P.O. Box 1049  
Columbus, OH 43216-1049

*Re: ArcelorMittal Cleveland LLC's Interested Party Comments on the Proposed Rules on OAC Chapter 3745-14 (Phase 2- NOx Budget Trading Program)*

Dear Mr. Braun:

Thank you for the opportunity to submit interested party comments on Ohio EPA's proposed Phase 2 rule revisions to the NOx Budget Trading Program (Chapter 14). ArcelorMittal Cleveland LLC operates an integrated iron and steel-making plant in Cleveland, and its subsidiary ArcelorMittal Warren operates a coke plant in Warren ("ArcelorMittal"), both of which include large industrial boilers affected by this rulemaking.

The Phase 1 rules for the NOx Budget Trading Program retired the trading program for non-EGUs. In its comments on the Phase 1 rules, ArcelorMittal objected to Ohio EPA's proposed use of continuous emission monitors ("CEMS") for NOx to meet the monitoring requirements set forth in 40 CFR Part 75 ("Part 75") in the proposed rules. As set forth in our prior comments, Part 75 monitoring is unnecessary without a trading program. Also, Part 75 monitoring is more expensive to operate and less accurate than alternative methods.

### **CEMS- No Longer Practically Needed and Are Not Legally Required**

ArcelorMittal reiterates its comments in the Phase 1 rules that CEMS are not legally required and not needed to monitor non-EGUs. Part 75 CEMS was integral for trading allowances and will continue to be integral for EGUs. With implementation of the Phase 1 rules, there is no allowance trading program for NOx emissions for non-EGUs, therefore, the need to require stringent data obligations associated Part 75 CEMS monitoring does not exist. With the Phase 1 rules, Ohio EPA properly concluded that the NOx budget for non-EGUs is significantly higher than the maximum ozone-season NOx rate from all non-EGUs boilers. Therefore, there is no need to require minute-by-minute NOx emissions information when the relevant compliance measure is the entire ozone season.

CEMS are no longer legally required for non-EGUs because these units can meet the budget in Chapter 14 even if operated every hour of the ozone season. The maximum mass emission rate for all affected non-EGUS is 1,817 tons per ozone season, which is 45% of the 4,028 ton NOx ozone season budget for non-EGUs. Federal Rule 40 CFR §51.121(i)(4) only requires Part 75 monitoring if the SIP revision contains "measures to control fossil fuel-fired NOx" as a means to staying below budget. Because no controls are needed to stay below budget, federal rules do not legally require CEMS monitoring under Part 75.

Removal of CEMS for non-EGUs will not trigger anti-backsliding under CAA §110(I) because a change in monitoring requirements does not result in additional emissions. See, *Kentucky Resources Council v. EPA*, 467 F.3d 986, 995 (6<sup>th</sup> Circuit 2006).

Pursuant to R.C. §3704.03(I), Ohio EPA is required to consider economic reasonableness when deciding what monitoring to include in the rules. ArcelorMittal will be required to spend over \$1.4 million dollars to replace these units, which are nearing the end of their useful life. In addition, ArcelorMittal will spend \$220,000 per year to operate Part 75 CEMS to generate NOx data for units that are incapable of exceeding their non-EGU NOx budget. Due to the fact there are more cost-effective options that are as reliable as CEMS, the Agency has a legal obligation under Ohio law to drop CEMS for non-EGUs from the proposed rules.

### Phase 2 Rule- Case-By-Case Alternative Monitoring

Ohio EPA's Phase 2 rules would address concerns expressed by ArcelorMittal and other owners/operators of non-EGUs regarding removal of the CEMS requirement and allowance for alternative monitoring to be approved on a case-by-case basis. The Phase 2 rules would allow elimination of CEMS on non-EGU boilers on a case-by-case basis. Under the draft Phase 2 rules, any entity seeking alternative monitoring must submit a modification to its operating permit. The operating permit modification request would require approval from both Ohio EPA and U.S. EPA.

Ohio EPA's proposed strategy to allow for alternative monitoring on a case-by-case basis will result in significant delays in finalizing the removal of CEMS for these units. First, a permit modification request must be submitted. Second, both Ohio EPA and U.S. EPA must review and approve the alternative monitoring as a federally enforceable permit condition in the operating permit. This case-by-case process could take months and there is no certainty that the proposed permit modification will be accepted.

ArcelorMittal has attached specific proposed revisions to Ohio EPA draft rule that would allow for alternative monitoring- OAC 3745-14-08. Below is an explanation for the specific proposed revisions:

1. **Deletion of "Designated Representative"**- The references to Designated Representative should be replaced with "Owner and Operator" since the non-EGU units subject to alternative monitoring are opting out of the trading program. There is no need for formal certification of monitoring data by a designated representative now that these units are no longer participating in the trading program.
2. **Operating Permit**- Please explain the process for incorporating alternative monitoring in OAC 3745-14-08(H)(2). How long would this process take? What approvals would be needed before the owner and/or operator could remove CEMS. ArcelorMittal is concerned the permit would need approval by both Ohio EPA and U.S. EPA before alternative monitoring could be implemented. Would it be possible to have the alternative monitoring approved as part of a plan approval submitted to Ohio EPA?
3. **Fuel Blend**- Proposed adding "or representative fuel blend" to OAC 3745-14-08(H)(3)(a) because the fuel blend used by the Cleveland Works is primarily blast furnace gas with natural gas pilots/supplemental fuel for which the Company has years of Part 75 certified NOx CEMS data.

4. **Frequency of Stack Test Requirement for Certain Alternative Monitoring-** There is no need for frequent stack tests if emission data is based upon years of CEMS data. ArcelorMittal submits that a once every five years should be sufficient stack testing for units still in operation. A stack test can be performed for units shutdown once the unit resumes operations. Also, a stack test should be allowed to be used for sources with similar operations (i.e. “representative sources”).
5. **Heat Input-** Changes to OAC 3745-14-08(H)(6) and (7)(C) are designed to provide flexibility to monitor fuel use and measure heat content instead of monitoring heat input.

**Proposed Inclusion of Specific Exemption for Blast Furnace Gas Fired Non-EGU Boilers**

Blast furnace gas is a low-NOx fuel that allows ArcelorMittal’s boilers in Indiana and the Cleveland Works to maintain consistently low NOx emissions generating less NOx per MMBtu of heat input than natural gas or other fossil fuels. These boilers are not large NOx sources that could justify the expensive Part 75 monitoring systems.

To expedite much needed relief from continued operation of the CEMS after implementation of the Phase 1 rule package, ArcelorMittal supports specifically allowing removal of CEMS in the Phase 2 rule package for certain non-EGU boilers. ArcelorMittal seeks inclusion of language in the Phase 2 rule package that exempts blast furnace gas fired non-EGUs from continuing to utilize CEMS. As discussed below, this alternative has already been implemented by the Indiana Department of Environmental Management (IDEM).

Please find attached proposed rule language that would incorporate this specific exemption in the Phase 2 rule package. The proposed revisions to OAC 3745-14-11 establish a NOx emission limit of 0.17 pound of NOx per million BTUs (lb/MMBtu) averaged over the ozone season. The rule language also requires greater than 50% of the heat input be derived from blast furnace gas averaged over the ozone season. By establishing a NOx emission limit for these units by rule, coupled with a SIP revision eliminating reductions from these units to meet the NOx SIP Call Non-EGU budget (as discussed below), CEMS can be an eliminated for these units.

**Elimination of Emission Reductions from Blast Furnace Gas Fired Boilers from the Non-EGU NOx SIP Call Budget**

Ohio EPA adopted the EGU and non-EGU budgets for Ohio in Appendix A and Appendix B of the NOx Budget Trading Rule at OAC Rule 3745-14-05 and adopted a NOx budget trading program as the control measure to demonstrate that Ohio met these budgets and, therefore, was no longer significantly contributing to nonattainment in downwind states. The trading program allocated NOx allowances from the EGU budget to EGU sources and from the non-EGU budget to non-EGU sources.

U.S. EPA has provided comments that any sources that are included within a state’s NOx budget must continue to monitor emissions under the PART 75 CEMS requirements. U.S. EPA states CEMS is required for any controlled source under the NOx SIP Call budget for that state.

While ArcelorMittal disagrees with U.S. EPA that Part 75 CEMS are legally required for units that remain in the NOx SIP Call budget, the Company believes U.S. EPA’s concerns can be addressed with

regard to blast furnace gas fired non-EGU units without negatively impacting remaining non-EGU units. Similar to the approach utilized by IDEM with regard to these units, Ohio EPA should revise the overall NOx SIP Call budget for non-EGUs, by projecting uncontrolled emissions from blast furnace gas fired non-EGU boilers. If uncontrolled emissions are utilized for blast furnace gas units in the non-EGU budget, Ohio EPA would no longer be relying on emission reductions from these specific sources to meet the NOx SIP Call budget. Consistent with U.S. EPA guidance, since emission reductions are no longer being relied upon to meet the budget, CEMS would no longer be required for these units. This is the same approach IDEM used with regard to blast furnace gas fired non-EGUs. U.S. EPA has not raised any legal objections to discontinuation of CEMS for these specific units in IDEM's recent rulemaking revisions to Indiana Administrative Code (IAC) 10-3-3, including blast furnace gas units that had CEMS but were requesting elimination of CEMS.

Currently, the maximum mass NOx emission rate for all affected non-EGUs is 1,817 tons per ozone season, which is 45% of the 4,028 ton NOx ozone season budget for non-EGUs. If the NOx emission rate was revised for blast furnace gas fired non-EGU units to reflect uncontrolled emissions in the non-EGU NOx SIP Call budget there would be minimal impact to the remaining non-EGU units in NOx SIP Call budget. Therefore, eliminating reliance on emission reductions from blast furnace gas fired non-EGU units to meet the NOx SIP Call budget will not negatively impact other non-EGU units. If this modification is made to the budget, U.S. EPA has indicated in its public comments on IDEM's recent rulemaking it would allow discontinuation of CEMS for blast furnace gas fired Non-EGU boilers.

### **Consistency with U.S. EPA's Approval of SIP Revisions in Other States**

Elimination of CEMS for blast furnace gas fired Non-EGUs in the Phase 2 rule package is consistent with IDEM's recent rulemaking which received positive comments from U.S. EPA. The timing of the Phase 2 rule package should not be a reason for U.S. EPA to differentiate the Phase 2 rules from the recent IDEM rulemaking.

IDEM originally did not include blast furnace gas-fired units in the state's NOx budget trading program. Rather, emissions from these units were explicitly represented at projected uncontrolled emission levels in the state's overall NOx SIP Call budget. IDEM did not require Part 75 monitoring for these units. U.S. EPA approved Indiana's SIP with this unique treatment of blast furnace gas-fired units.

While IDEM originally excluded all blast furnace gas-fired units from the NOx budget trading program, IDEM later allowed non-EGU blast furnace gas-fired units to opt-in to the State's NOx budget trading program. Those units included in the state's NOx budget were required to maintain Part 75 monitoring while units not included in the budget continued to use alternative monitoring. U.S. EPA, again, approved the State's SIP.

Recently, IDEM has proposed rules to remove the blast furnace gas fired units included in the NOx budget back out of the program and to remove the requirement to maintain Part 75 CEMS for these same units. U.S. EPA commented on IDEM's proposal that removal of CEMS would be permissible so long as the state adjusted the NOx budget to reflect removal of all blast furnace gas-fired units. Thus, U.S. EPA's actions in Indiana demonstrate U.S. EPA has the flexibility to approve state regulations and SIP revisions that move units in and out of the NOx SIP Call budget and to remove CEMS from units no longer in the NOx SIP Call budget.

ArcelorMittal requests Ohio EPA to adopt the IDEM approach to non-EGU blast furnace gas-fired units. Removal of blast furnace gas-fired units from the NOx Budget Trading Program and elimination of CEMS for such units should not raise concerns regarding approval of Ohio's SIP based upon the prior precedent established in Indiana. In addition, there will be no increase in NOx emissions as a result of this SIP revision. Therefore, there is no reason to delay adoption of this unique treatment of blast furnace gas-fired units by only allowing case-by-case demonstrations in the Phase 2 rule package.

**Conclusion**

While ArcelorMittal supports Ohio EPA's proposed rules Phase 2 rule package, it requests Ohio EPA include a specific exemption for blast furnace gas fired non-EGU boilers in order to provide certainty that CEMS can be discontinued for these low NOx emitting units. If you have any questions or if you need additional support for ArcelorMittal's proposed approach, please contact me at (216) 696-2373.

Sincerely,

TUCKER ELLIS LLP



Joseph P. Koncelik

cc: Craig Butler  
Robert Hodanbosi  
Jennifer Van Vlerah  
Keith Nagel  
Julianne Kurdila  
Rich Zavoda

3745-14-11 Portland cement kilns and Blast Furnace Gas Fired Non-EGU Boilers.

[For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the "Incorporation by Reference" section at the end of rule 3745-14-01 of the Administrative Code.]

(A) The requirements of this rule shall apply only to following types of portland cement kilns with process rates of at least that indicated below:

- (1) For long dry kilns, twelve tons per hour;
- (2) For long wet kilns, ten tons per hour;
- (3) For preheater kilns, sixteen tons per hour; and
- (4) For precalciner and preheater/precalciner kilns, twenty-two tons per hour.

(B) After April 30, 2004, an owner or operator of any portland cement kiln subject to this rule shall not operate the kiln during May first through September thirtieth unless the kiln has installed and operates during May first through September thirtieth with low-NOx burners, mid-kiln system firing, or alternative control techniques, subject to approval by the administrator, that achieve at least the same emissions decreases as low-NOx burners or mid-kiln system firing.

(C) This following affected blast furnace gas fired non-EGU boilers subject to this rule during May first through September thirtieth shall limit NOx emissions to seventeen-hundredths (0.17) pound of NOx per million Btus (lb/MMBtu) of heat input averaged over the period of May first through September thirtieth and ensure that greater than fifty percent (50%) of the heat input is derived from blast furnace gas averaged over May first through September thirtieth.

(1) ArcelorMittal Cleveland Works Units are B001, B002, B003, B004 and B007

(D) Reporting, monitoring and record keeping requirements.

(1) Any owner or operator subject to the requirements of paragraph (B) of this rule shall comply with the following requirements:

(a) By May 1, 2004, submit to the director and administrator the identification number and type of each unit subject to the rule, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating the compliance of the unit with this rule; and

(b) Submit a report documenting for each unit the total NOx emissions from May first through September thirtieth of each year to the director and administrator by October thirty-first of each year, beginning in 2004.



(2) Any owner or operator of a unit subject to paragraph (B) of this rule shall complete an initial performance test and subsequent annual testing consistent with the requirements of Methods 1, 2, 3 and 4 of 40 CFR Part 60, Appendix A and Method 7, 7A, 7C, 7D, or 7E of 40 CFR Part 60.

(3) Any owner or operator of a unit subject to paragraph (B) of this rule shall produce and maintain records which shall include, but are not limited to:

(a) The emissions, in pounds of NO<sub>x</sub> per ton of clinker produced from each affected cement kiln;

(b) The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

(c) The results of any performance testing; and

(d) Daily cement kiln production records.

(4) All records required to be produced or maintained shall be retained on site for a minimum of two years and be made available to the director or administrator upon request.

(5) Any owner or operator subject to the requirements of paragraph (C) of this rule shall comply with the following requirements:

(a) By May 1, 2019, submit to the director and administrator a compliance plan for approval by the director and administrator which includes the following:

(i) Baseline stack test data, or proposed testing, for establishment of fuel specific emission factors, or emission factors for the type of boiler from U.S. EPA's "AP-42 Compilation of Emission Factors" for each fuel or fuel blend to be combusted. The specific emission factor must be developed from representative emission testing, pursuant to 40 CFR 60, Appendix A, Method 7\*, 7A\*, 7D\*, or 7E\*, or 40 CFR 75\*, based on a range of typical operating conditions. The owner or operator must establish these operating conditions are representative, subject to approval by the department and certify that the emissions testing is being conducted under representative conditions.

(ii) Anticipated fuel usage and combination of fuels.

(iii) If desired by the source, a proposal for averaging the emission limit and fuel allocation among commonly owned units, including the proposed methodology for determining compliance.

(iv) Baseline ozone control period emissions determined by using the site-specific emission factor developed from representative emission testing, pursuant to 40 CFR 60, Appendix A, Method 7\*, 7A\*, 7D\*, or 7E\*, or 40 CFR 75\*, based on a range of typical operating conditions. The owner or operator must establish that these operating conditions are representative, subject to the approval by the director, and certify that the emission testing is being conducted under representative conditions. The owner or operator may request approval

of an alternate method for establishing emission factors using supporting data to substantiate the emission factor and approved by the director and administrator.

(E~~D~~) The requirements of this rule shall not apply to the following periods of operation:

(1) Start-up and shutdown periods and periods of malfunction, not to exceed thirty-six consecutive hours; and

(2) Regularly scheduled maintenance activities.

(3) For units subject to the requirements of paragraph (C) of this rule, during periods of blast furnace reline, startup, and periods of malfunction, the affected boilers are not required to meet the requirement of greater than fifty percent (50%) of the heat input from blast furnace gas

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(H) Alternative monitoring and reporting.

- (1) Upon request, the director may approve alternative monitoring and reporting requirements in lieu of the requirements of paragraphs (A) to (G) of this rule.
- (2) The ~~designated representative~~ owner and operator of a NOx budget unit requesting alternative monitoring and reporting shall submit an application for an operating permit or an application for a modification to an operating permit in accordance with the following:
  - (a) For sources subject to the Title V program, Chapter 3745-77 of the Administrative Code.
  - (b) For sources not subject to the Title V program, Chapter 3745-31 of the Administrative Code.
- (3) The application for an operating permit requesting alternative monitoring and reporting shall include all of the following:
  - (a) An emission factor analysis evaluating potential emission factors in pounds of NOx emitted per unit of fuel and heat input, for each fuel type or representative fuel blend, based on each of the following:
    - (i) U S. EPA's "AP-42 Compilation of Emission Factors".
    - (ii) A valid stack test using USEPA Method 3, USEPA Method 7 and USEPA Method 19 conducted ~~within the previous two years from the date of the application submittal~~, if available.
    - (iii) An analysis of continuous emission monitoring data representative of current operating conditions.
    - (iv) An analysis of other relevant data or emission factors, if available (for example, an emission factor used for compliance with an existing NOx emission limitation for the NOx budget unit, or an emission factor developed for similar sources).
  - (b) A description of the proposed monitoring procedures for fuel use ~~and heat input~~, ~~proposed measurement or recording of fuel heat content~~ ~~input~~, including how monitoring data will be obtained, recorded and quality assured, and how NOx emissions will be accounted for during periods of missing or inaccurate data, such as periods of maintenance or disruption.
- (4) Prior to the use of alternative monitoring and reporting, an approved emission

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factor, monitoring procedures for fuel use and heat input, and associated terms and conditions shall be specified in an operating permit issued in accordance with the following:

(a) For sources subject to the Title V program, Chapter 3745-77 of the Administrative Code.

(b) For sources not subject to the Title V program, Chapter 3745-31 of the Administrative Code.

(5) When approved by the director, the owners and operators, and to the extent applicable, the ~~designated representative~~ owner and operator of a NOx budget unit, shall comply with the monitoring and reporting requirements as provided during the control period.

(6) Alternative monitoring must include monitoring of ~~heat input and~~ fuel use for each control period and, an approved emission factor for current operating conditions.

(7) ~~The owners and operators, and to the extent applicable, the designated representative,~~ of a NOx budget unit approved for alternative monitoring and reporting under paragraph (H) of this rule shall meet all of the following:

(a) Comply with all terms and conditions specified in the operating permit.

(b) Install all monitoring systems required to monitor ~~heat input and~~ fuel use for alternative monitoring. Maintain records of fuel heat content to determine heat input based on fuel use.

(c) Record and report the data from the monitoring systems required under paragraph (H) of this rule in accordance with the terms and conditions in the operating permit. By April fifteenth of each year, report actual NOx emissions, as determined using ~~monitored~~ heat input records, fuel use and the approved emission factor, for the previous control period in the fee emissions report required in accordance with rule 3745-78-02 of the Administrative Code.

(d) Conduct stack tests to demonstrate the approved emission factor continues to be representative of current operating conditions. If the emissions factor analysis submitted in accordance with (H)(3)(a) of this rule did not include a stack test ~~r~~ as not used in continuous emission monitoring data, an initial stack test shall be conducted within ninety days of permit issuance or within ~~90~~ days of resuming operation during the control period. Ongoing stack tests shall be conducted at least once every five years from the date of the previous stack test for units still in operation or within 9 days of a unit resuming operation during the control period. Stack tests shall be conducted in accordance with a test method specified in the operating permit and reported to the director within thirty days of the test. Stack tests results can be used for similar representative sources.

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3745-14-08 If a stack test indicates an emission factor may require adjustment, the director may require submission of an application in accordance with paragraph (H)(2) of this rule. The owner and operator ~~designated representative~~ shall submit an application in accordance with paragraph (H) of this rule within sixty days of notification by the director.

(e) Maintain records for each fuel type of daily heat input and fuel use, and actual daily NOx emissions, as determined using the approved emission factor, during the control period for a period of five years from the date the records are created. These records shall be made available to the director or his representative upon request.

(8) Prohibitions.

(a) No owner or operator of a NOx budget unit shall operate the unit so as to discharge, or allow to be discharged, NOx emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of paragraphs (H) of this rule.

(b) No owner or operator of a NOx budget unit shall retire or permanently discontinue use of the monitoring system, or any component thereof, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under paragraph (C)(2) of rule 3745-14-01 of the Administrative Code that is in effect.

(ii) When discontinuing use of alternative monitoring and reporting in accordance with paragraph (H) of this rule and resuming compliance with monitoring and reporting requirements in accordance with paragraphs (A) to (G) of this rule.



## Division of Air Pollution Control Response to Comments

### Rules: OAC Chapter 3745-14 “NOx Budget Program” (Phase 2)

#### Agency Contact for this Package

Division Contact: Holly Kaloz, Division of Air Pollution Control, 614-644-3632, holly.kaloz@epa.ohio.gov

Ohio EPA held an interested party comment period on June 6 regarding draft amended rules in Ohio Administrative Code (OAC) Chapter 3745-14, "NOx Budget Program" (Phase 2). This document summarizes the comments and questions received during the comment period, which ended on February 7, 2018.

Ohio EPA held a public comment period on June 6, 2019 regarding proposed amended rules in Ohio Administrative Code (OAC) Chapter 3745-14, "NOx Budget Program" (Phase 2). This document summarizes the comments and questions received during the comment period, which ended on July 16, 2019.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment

#### OAC Rule 3745-14-08

**Comment 1:** Comments were received from ArcelorMittal requesting clarification on two issues related to the approval of alternative monitoring and reporting requirements in OAC 3745-14-08(H), specifically: 1) the use of CEMS data in developing an emission factor, and 2) requirements for stack testing. The full comment letter can be found at the end of this response to comments document. (Joseph P. Koncelik, Tucker Ellis LLP on behalf of ArcelorMittal)

**Response 2:** Proposed rule 3745-14-08(H)(3)(b) establishes the framework for the emission factor analysis. Essentially, the facility should evaluate potential emission factors for each of the four methods listed in the rule (i.e., AP-42, stack test, continuous emission monitoring (CEMS) data, and other available data) and identify which of these is the recommended emission factor and the reason why the emission factor is most representative for the specific fuel type.

Ohio EPA is not restricting all applications to use of only AP-42 as stated in the comments, but rather expects AP-42 to be considered as one part of the evaluation, in addition to all other available options. For facilities with many years of high-quality CEMS data such as ArcelorMittal's

facilities, Ohio EPA expects the emission factor(s) would ultimately be developed using the CEMS data but believes a thorough assessment of all options is warranted.

For facilities that use variable mixtures of multiple fuels such as those at ArcelorMittal, fuel-specific emission factors are preferred, if possible. However, if sufficient historical data are not available while burning single fuels (or using only a supplementary fuel in minimal quantities, such as a pilot, which may be considered a single fuel type), one or more emission factors may be derived using typical mixtures or typical ranges of mixtures. Such a method could take into consideration any variability in heat content that might arise when looking at ranges of mixtures. Ohio EPA may consider such a method as still developing an emission factor for each "fuel type" as a specific mixture could be considered a "fuel type". Because of the complexities that can be encountered due to unique factors at individual facilities, Ohio EPA will work with each applicant on a case-by-case basis to determine the suitability of such an approach.

As noted above, a stack test is also one of the four elements to be considered as part of the emission factor analysis, if one is available that was conducted within the previous two years. If stack testing data was considered during the emission factor analysis, an initial stack test within 90 days is not required. Testing completed during Part 75 relative accuracy test audits (RATA) for the specific fuel type may be acceptable for this purpose.

Ohio EPA has been and will continue to work closely with the facility to develop approvable alternative monitoring and reporting requirements.

**End of Response to Comments**

July 15, 2019

DIRECT DIAL: 216.696.2373 | joseph.koncelik@tuckerellis.com

**VIA FEDEX**

Mr. Paul Braun  
Ohio EPA Division of Air Pollution Control  
P.O. Box 1049  
Columbus, OH 43216-1049

*Re: ArcelorMittal Cleveland LLC's Comments on the Proposed Rules on OAC Chapter 3745-14 (Phase 2- NOx Budget Trading Program)*

Dear Mr. Braun:

Thank you for the opportunity to submit comments on Ohio EPA's proposed Phase 2 rule revisions to the NOx Budget Trading Program (Chapter 14). ArcelorMittal Cleveland LLC operates an integrated iron and steel-making plant in Cleveland, and its subsidiary ArcelorMittal Warren operates a coke plant in Warren ("ArcelorMittal"), both of which include large industrial boilers affected by this rulemaking.

The Phase 1 rules for the NOx Budget Trading Program retired the trading program for non-EGUs. In its comments on the Phase 1 rules, ArcelorMittal objected to Ohio EPA's proposed use of continuous emission monitors ("CEMS") for NOx to meet the monitoring requirements set forth in 40 CFR Part 75 ("Part 75") in the proposed rules. In Ohio EPA proposed Phase 2 rules, the Agency would allow for an alternative to the existing Part 75 monitoring and reporting requirements.

On March 8, 2019, U.S. EPA finalized amendments to 40 CFR 51.121(i)(4) which allows states to include alternate forms of monitoring requirements in their State Implementation Plans (SIPs). ArcelorMittal strongly supports both Ohio EPA's and U.S. EPA's efforts to provide greater flexibility in terms of alternative monitoring to CEMS to meet the Part 75 requirements. However, as set forth below, ArcelorMittal questions whether the proposed rules adequately account for available CEMS data in the application for alternative monitoring. Also, Ohio EPA appears to require costly initial stack testing either in the initial permit application or within ninety (90) day of permit issuance even when reliable CEMS data is available for the unit and a relative accuracy test audit (RATA) that includes stack testing was completed. Therefore, ArcelorMittal requests clarification on these two issues.

**Alternative Monitoring Permit Application Requirements**

OAC 3745-14-08(H)(3)(b)(i) continues to restricts all applications to use of only U.S. EPA's "AP-42 Compilation of Emissions Factors" for determining emissions from the non-EGU for purposes of monitoring and reporting. In its response to Interested Party Comments (Response 5), Ohio EPA states that "an emission factor for each fuel type, rather than for a representative blend of fuels, is



necessary due to variability in the heat content of the fuels as well as variability in the amount of each type of fuel in a blend...use of an emissions factor based on a representative blend of fuels is not expected to provide an accurate accounting of NOx emissions.”

ArcelorMittal respectfully submits that CEMs data is substantially more reliable than an AP-42 emission factor in producing an accurate accounting of NOx emissions. Each non-EGU has years of certified NOx CEMS data suitable for use in developing a reliable NOx emission factor (i.e. pounds of NOx per unit of routine fuel blend that is representative during ozone season). ArcelorMittal Cleveland has more than eight years of CEMS ozone season data representative of the routine blend of only blast furnace gas, as the primary and majority fuel, and a much smaller percentage of natural gas pilots/secondary fuel. The blended fuel rate at Cleveland has averaged 0.019 pounds per MMBtu over the last eight years, which is less than 12% of the NOx budget allowance of 0.17 pounds per MMBtu. ArcelorMittal Warren has more than five years of CEMS ozone season data representative of the routine blend of only coke oven gas, as the primary majority fuel, and a much smaller percentage of natural gas pilots/secondary fuel. One of the three Warren boilers also has a Title V permit obligation to use a NOx CEMs on an annual basis to satisfy Part 60 that will not be revised by this rule. This Part 60 NOx CEMs will continue to provide quality data of the blended fuel of coke oven gas and natural gas.

The years of quality ozone season data account for routine variability in each type of fuel in a blend. Using an emission factor for each fuel type, as Ohio EPA proposes, will not necessarily be as accurate when historical CEMS data accounts for the representative variability of the routine fuel blend. Based on this additional information, ArcelorMittal reiterates its request that OAC 3745-14-08(H)(3)(b)(i) be amended or clarified so as to allow options in lieu of AP-42 emission factors if reliable and sufficient CEMS data exists for a routine fuel blend that is representative during ozone season.

### **Use of Stack Test Data**

ArcelorMittal supports Ohio EPA’s amendment OAC 3745-14-08(H)(6)(d) to require stack testing only on operating units as well as the amendment to allow for a stack test within ninety (90) days of resuming operation as suggested in the Company’s Interested Party Comments. The change adds needed clarity and flexibility to this provision of the rules.

Ohio EPA rejected ArcelorMittal’s proposed change to use CEMs data in lieu of an initial stack test when submitting an initial application for alternative monitoring. Rather, in OAC 3745-14-08(H)(6)(d) Ohio EPA requires a stack test within ninety (90) days of permit issuance approving alternative monitoring if a recent stack test is not included in the application for alternative monitoring. However, ArcelorMittal would like to highlight that the existing applicable Part 75 regulations require the NOx CEMs units to conduct annual relative accuracy test audit (RATA) stack tests to ensure the accurate data. Therefore, so long as the Company verifies in its alternative monitoring permit application that the most recent CEMS data was preceded by a RATA stack test, an additional stack test should not be necessary.

**Conclusion**

ArcelorMittal strongly supports Ohio EPA's proposed rules Phase 2 rule package. The additional changes/clarifications suggested in this comment letter would allow companies to leverage the costly and highly accurate CEMS data that has been collected, in most cases for years, which are most representative of actual ozone season operating conditions. If you have any questions, please contact me at (216) 696-2373.

Sincerely,

TUCKER ELLIS LLP

Joseph P. Korcelik

cc: Jennifer Van Vlerah  
Keith Nagel  
Julianne Kurdila  
Rich Zavoda

# 110(I) Demonstration

## **Revision to Ohio's State Implementation Plan (SIP) regarding NOx Budget Program Rules (Phase 2)**

### 110(l) Demonstration

Ohio requests revision of Ohio's State Implementation Plan (SIP) regarding the NOx Budget Program rules in Ohio Administrative Code (OAC) Chapter 3745-14. These rules were revised to add an alternative to the existing Part 75 monitoring and reporting requirements.

### **Background**

The NOx SIP Call promulgated by U.S. EPA on October 27, 1998 required 22 states and the District of Columbia to submit SIPs to set statewide NOx budgets [63 FR 57356]. In fulfillment of this rulemaking, the Ohio Environmental Protection Agency (Ohio EPA) promulgated OAC Chapter 3745-14, the NOx Budget Trading Program. These rules created an ozone season NOx allowance and trading program for electric generating units (EGUs) and large non-EGUs.

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

In July 2008, the D.C. Circuit court vacated CAIR, and issued a subsequent remand without vacatur of CAIR in December 2008. The court then 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 SO<sub>2</sub> and annual NOx, and May 1, 2015 for ozone season NOx. 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 under the NOx SIP Call.

Ohio EPA initiated rulemaking to revise OAC Chapter 3745-14 to demonstrate continued compliance by large non-Electric Generating Units (non-EGUs) with the NOx SIP Call following U.S. EPA's discontinuation of compliance trading options. During the comment period for the rulemaking, Ohio EPA received comments requesting an alternative to continuous monitoring and reporting of emissions under 40 CFR Part 75 (commonly referred to as Part 75 monitoring and reporting). Ohio EPA agreed to pursue this alternative as a second phase of rulemaking. This SIP submittal is for the second phase of rulemaking to incorporate requested alternatives to the existing Part 75 monitoring and reporting requirements.

On September 27, 2018, U.S. EPA proposed amendments to the NOx SIP Call requirements in 40 CFR 51.121(i)(4) which would allow states to include alternate forms of monitoring requirements in their SIPs [83 FR 48751]. On March 8, 2019, U.S. EPA finalized these amendments [84 FR 8422].

This document demonstrates that the revised rules will not interfere with the attainment of the National Ambient Air Quality Standards (NAAQS) or violate the requirements of Section 110(l) of the Clean Air Act (CAA). Therefore, Ohio EPA is requesting U.S. EPA approve Ohio's request for the revision of Ohio's SIP regarding the NOx Budget Program rules in Ohio Administrative Code (OAC) Chapter 3745-14.

### **Revisions to Ohio Administrative Code (OAC) Chapter 3745-14**

Table 1 below identifies rules in OAC Chapter 3745-14 which were amended as part of the Phase 2 rulemaking on August 12, 2019 (effective August 22, 2019).

**Table 1. Revisions to OAC Chapter 3745-14**

<b>Rule Number</b>	<b>Rule Title</b>	<b>Action</b>
3745-14-01	Definitions and General Provisions	Amended
3745-14-04	Compliance Certification	Amended
3745-14-08	Monitoring and Reporting	Amended

Under the revised rules, facilities can request approval for alternative monitoring and reporting requirements in lieu of the Part 75 requirements. The alternative monitoring shall be based on the best available data, provide for reporting the nature and amount of emissions of a NOx budget unit, and shall be sufficient to determine compliance with NOx SIP Call. Alternative monitoring and reporting must include either monitoring and reporting under 40 CFR Part 60 or monitoring of heat input or fuel use and an approved emission factor for current operating conditions.

Request for the alternative is made via an application for an installation or operating permit which includes a description of the proposed alternative and, if monitoring of heat input and fuel use along with an approved emission factor is requested as the alternative, an emission factor analysis and description of the proposed monitoring procedures for fuel use or heat input. If the alternative is requested to begin within a control period, a description of the transition process must be included in the application ensuring there will not be gaps in data monitoring and reporting.

The alternative monitoring and reporting requirements and associated terms and conditions must be approved in the applicable installation or operating permit prior to use. Ozone season NOx emissions data will be reported as part of the Fee Emissions Reports which are currently required under OAC Chapter 3745-78. If alternative monitoring is based on an approved emissions factor, stack tests must be conducted to demonstrate the approved emission factor continues to be representative of current operating conditions. If the emissions factor analysis submitted with the permit application did not include a stack test, an initial stack test is required within ninety days of permit issuance. Ongoing stack tests are required at least once every five years from the date of the previous stack test. Records must be maintained and made available to Ohio EPA upon request in accordance with the terms and conditions of the installation or operating permit.

This provision does not authorize exceptions or alternatives to any 40 CFR Part 75 monitoring requirements that might apply to a source under a different legal authority. Ohio EPA will report

annually to U.S. EPA Region 5 all NOx emissions reported under approved alternative monitoring in accordance with 40 CFR 51.122 (C)(1)(i).

### **CAA 110(l) Demonstration**

States wishing to revise SIP-approved rules must submit a SIP revision to U.S. EPA demonstrating that the revision does not interfere with progress towards any area in the state achieving compliance with any NAAQS. U.S. EPA's draft guidance "Demonstrating Noninterference Under Section 110(l) of the Clean Air Act When Revising a State Implementation Plan", (hereinafter referred to as the "110(l) guidance") dated June 8, 2005<sup>1</sup> was used as the basis for the following demonstration.

Under CAA section 110(l), U.S. EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the CAA. Therefore, a SIP revision requesting revisions to SIP-approved rules may only be approved if the state has demonstrated that the revision will not interfere with attainment or maintenance with any NAAQS. In evaluating whether a given SIP revision would interfere with attainment or maintenance, as required by section 110(l), U.S. EPA generally considers whether the SIP revision will preserve or improve the status quo in air quality. In accordance with section 110(l) of the CAA, the analysis below demonstrates that the revision of the NOx Budget Program rules in OAC Chapter 3745-14 will not interfere with the attainment or maintenance of the NAAQS.

The Phase 2 rule revisions affect only the monitoring provisions. No changes were made to the statewide NOx budget. Section 7.2 (Compliance assurance requirements) of the 110(l) guidance states:

"Other SIP requirements such as monitoring, record keeping, reporting and additional compliance assurance requirements, may have an impact on the amount of pollutants emitted because they are instrumental in detecting violations of emissions limits. However, it may be difficult to quantify the effects of revising these SIP elements or to use either of the options for demonstrating noninterference described above."

In this case, the rules do not establish emissions limits on individual sources but rather rely on compliance with a statewide emissions budget. Compliance with the statewide NOx budget will preserve the status quo in air quality and ensure there is no interference with the attainment or maintenance of the NAAQS. The statewide NOx and SO<sub>2</sub> budgets established under the NOx SIP Call, CAIR and CSAPR are presented in Table 3.

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<sup>1</sup> <http://www.4cleanair.org/Oldmembers/members/committee/criteria/110STAPPA.pdf>

**Table 3. Statewide Budgets under NOx SIP Call, CAIR and CSAPR (tons)**

Sector	Budget	NOx SIP Call <sup>2</sup>	CAIR	CSAPR
EGUs	NOx annual	N/A	90,556 <sup>3</sup>	90,258 <sup>4</sup>
	SO <sub>2</sub> annual	N/A	233,464 <sup>5</sup>	142,240 <sup>6</sup>
	NOx ozone season	45,432	39,945 <sup>7</sup>	19,522 <sup>8</sup>
Large Non-EGUs	NOx ozone season	4,028	4,030 <sup>9</sup>	N/A

Ohio EPA will continue to demonstrate that large non-EGUs will meet the statewide NOx ozone season budget established under the NOx SIP Call. As the non-EGU CAIR budget was slightly higher, compliance with the NOx SIP Call budget will provide even greater emission reductions across the state and therefore will not interfere with attainment or maintenance of any NAAQS.

EGUs will continue to demonstrate compliance with the NOx SIP Call through the CSAPR trading program. The EGU NOx annual, SO<sub>2</sub> annual and NOx ozone season budgets under CSAPR are each less than that under either NBT or CAIR. Therefore, the CSAPR budgets will provide even greater emission reductions across the state and the SIP revision will not interfere with attainment or maintenance of any NAAQS.

In addition, several provisions are included in the rules to ensure all NOx emissions are accurately accounted for under the alternative monitoring and reporting provisions:

- The approved emission factor will be based on best available information, including many years of continuous emissions monitoring system data which is not commonly available when establishing an emission factor.
- Periodic stack tests are required to ensure the approved emission factor continues to be representative of current operating conditions.
- The facility is required to accurately account for all NOx emissions, including during periods of missing or inaccurate heat input or fuel use data, such as periods of maintenance or disruption.
- The approved alternative monitoring and reporting requirements and associated terms and conditions are established in an installation or operating permit and are enforceable.

Failure of the monitoring system to detect increased emissions due to failure of control equipment is not an issue. None of the non-EGU units subject to these rules currently have NOx controls, except for the two auxiliary boilers at Zimmer which have low NOx burners. Each of these units only emit approximately one ton per year. Therefore, NOx emissions are expected to be directly related to measured heat input or fuel use.

Finally, even if there were a slight increase in emissions under the alternative monitoring and reporting requirements, which is not anticipated due to the provisions for accurately accounting

<sup>2</sup> OAC rule 3745-14-01(D)(1) ([https://epa.ohio.gov/portals/27/regs/3745-14/3745-14-01\\_Final.pdf](https://epa.ohio.gov/portals/27/regs/3745-14/3745-14-01_Final.pdf))

<sup>3</sup> 40 CFR §51.123(e)(1)(iii)(B)(2)

<sup>4</sup> 40 CFR §97.410(a)(16)(iv)

<sup>5</sup> 40 CFR §51.124(e)(1)(iii)(B)(2)

<sup>6</sup> 40 CFR §97.610(a)(11)(iv)

<sup>7</sup> 40 CFR §51.123(q)(1)(iii)(B)(2)

<sup>8</sup> 40 CFR §97.810(a)(16)(i), as amended in CSAPR Update rule (81 FR 74631, October 26, 2016)

<sup>9</sup> OAC rule 3745-109-17(A) (Rescinded)

for NOx emissions discussed above, total emissions from the affected non-EGUs are significantly less than the statewide budget. Actual total NOx emissions in 2018 were 523 tons, 13% of the annual statewide budget of 4,028 tons. Emissions would have to more than quadruple to exceed the budget.

For the Phase 1 rulemaking, Ohio EPA submitted a very conservative demonstration that non-EGUs will continue to comply with the NOx SIP Call. In this demonstration, Ohio EPA showed a theoretical maximum<sup>10</sup> ozone season emission total of 1,817 tons for 2015. This value is well under Ohio's NOx budget of 4,028 tons (45%). A more conservative summation of the theoretical maximum emissions for each unit from amongst the 2013-2015 period showed a highly conservative estimate of 3,285 tons. Even with this highly conservative approach, emissions would have to increase by 30% to exceed the budget. Ohio EPA does not anticipate any emissions increase due only to a change in the monitoring and reporting requirements, let alone an increase of this level.

U.S.EPA's September 27, 2018 Proposed Rule which would allow states to include alternate forms of monitoring requirements in their SIPs states "EPA believes that under current circumstances, allowing states to establish alternate monitoring requirements for large EGUs and large non-EGU boilers and turbines would not pose a risk to the permanence and enforceability of the Rule's emissions reductions. The first relevant current circumstance is the substantial margins by which all NOx SIP Call states are now complying with the portions of their statewide emissions budgets assigned to large EGUs and large non-EGU boilers and turbines."

The Proposed Rule shows that, in 2017, seasonal NOx emissions from Ohio sources that would have been subject to the NOx Budget Trading Program were approximately 21,000 tons, which is 42% of the statewide final NOx budget for both EGUs and large non-EGUs. This demonstrates that "the Rule's required emissions reductions would continue to be achieved even with substantial increases in emissions from current levels. EPA views the possibility of such large increases as remote because of requirements under other state and federal environmental programs and changes to the fleet of affected sources since 2008."

U.S. EPA's Proposed Rule further states "The second relevant current circumstance is that even with the amendments proposed in this action, Part 75 monitoring requirements would remain in effect for most NOx SIP Call large EGUs pursuant to other regulatory requirements, including the Acid Rain Program and the CSAPR trading programs, and these large EGUs are responsible for most of the collective emissions of NOx SIP Call large EGUs and large non-EGU boilers and turbines." The Proposed Rule shows that Ohio sources that would continue to report under Part 75 account for over 95% of the overall emissions.

The Proposed Rule further states "the SIP would still have to include provisions requiring all large EGUs and large non-EGU boilers and turbines subject to control measures for purposes of the NOx SIP Call to submit other forms of information on their seasonal NOx emissions sufficient to ensure compliance with the control measures. EPA believes that in the context of the substantial compliance margins discussed above, and given the continued availability of Part 75 monitoring data from sources responsible for most of the relevant emissions, emissions data from the remaining sources submitted pursuant to other forms of monitoring requirements can

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<sup>10</sup> Essentially, assuming each unit operated at its average emission rate during each hour of the ozone season



provide sufficient assurance that the Rule's overall required emissions reductions will continue to be achieved."

As discussed above, current NOx emissions are only a small fraction of Ohio's NOx SIP Call state budget, and significant fluctuations in emissions (although not expected with this change) would not lead to exceedances of the NOx SIP Call budget. This indicates that the NOx SIP Call budget is not the driving force behind the current low levels of NOx emissions. Therefore, since the budgets themselves are not a key factor limiting emissions, changes in monitoring requirements used to determine compliance with those budgets is not expected to impact emissions.

NOx emissions contribute to the formation of ozone and particulate matter (PM). While Ohio does have some areas in nonattainment of the ozone and PM<sub>2.5</sub> NAAQS, the above demonstration shows continued compliance with the statewide NOx budget which will preserve the status quo in air quality. Therefore, Ohio EPA has determined that the revision of the NOx Budget Program rules in OAC Chapter 3745-14 will not interfere with the attainment or maintenance of the 8-hour ozone or PM<sub>2.5</sub> NAAQS, or any other applicable requirement of the CAA. In addition, the SIP revision does not affect attainment or maintenance of the sulfur dioxide or lead NAAQS, as SO<sub>2</sub> and lead emissions are not affected by this revision. The SIP revision also does not affect attainment or maintenance of the carbon monoxide or nitrogen dioxide NAAQS, as Ohio is currently attaining or designated attainment for these standards. Finally, this SIP revision does not affect monitoring and reporting required under any requirement other than the NOx SIP Call.

### **Summary**

Ohio EPA hereby requests the revision of Ohio's State Implementation Plan (SIP) regarding the NOx Budget Program rules in Ohio Administrative Code (OAC) Chapter 3745-14. In accordance with section 110(l) of the CAA, Ohio EPA has also demonstrated the SIP revision will not interfere with the attainment or maintenance of the 8-hour ozone or PM<sub>2.5</sub> NAAQS, or any other applicable requirement of the CAA.