

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3745-31-09

Rule Type: Amendment

Rule Title/Tagline: Variances on operation.

Agency Name: Ohio Environmental Protection Agency

Division: Division of Air Pollution Control (DAPC)

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 11/30/2022
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(F), 3704.03(G), 3704.03(H)
5. **What statute(s) does the rule implement or amplify?** 3704.03(A), 3704.03(F), 3704.03(TG)
6. **What are the reasons for proposing the rule?**

This rule is being proposed after a review to fulfill the requirements of ORC 106.03 and 106.031.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule provides for cases where a source may be issued a variance in lieu of a traditional PTIO. In general, a variance is a type of PTIO issued to a source that emits an air pollutant in violation of an applicable law. If the source can meet the requirements

of this rule, the director may issue them the variance to operate in violation of an applicable law for a specified period of time. This rule specifically identifies the scenarios in which a variance may be issued, the standards which must be met for a variance and the requirements.

Amendments to this rule are minor for clarification and to comply with LSC formatting requirements.

- 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. 121.75, 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) and Ohio Revised Code (ORC). 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 United States Code (USC). These rules are generally available through libraries, Ohio EPA and Government Printing Office's websites. USC 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 rule OAC 3745-31-01 (AA).

- 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. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

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 provides for cases where a source may be issued a variance in lieu of a traditional PTIO. In general, a variance is a type of PTIO issued to a source that emits an air pollutant in violation of an applicable law. If the source can meet the requirements of this rule, the director may issue them the variance to operate in violation of an applicable law for a specified period of time. This rule specifically identifies the scenarios in which a variance may be issued, the standards which must be met for a variance and the requirements. Therefore, the costs for applying for a variance will be very similar to the cost for applying for a PTIO, which is identified above for OAC rule 3745-31-02.

- 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**

- 15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

III. Common Sense Initiative (CSI) Questions

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

- 17. Does this rule have an adverse impact on business? No**

- 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? No
- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

- A. How many new regulatory restrictions do you propose adding to this rule? 0
- B. How many existing regulatory restrictions do you propose removing from this rule? 3

Paragraph (E)(3)(a) (shall) : Solo (a) subparagraph removed to standard paragraph, "...in writing, and make the decision and reasons (shall) publicly available..."

Paragraph (F)(2) (shall): "...a significant difference (shall) includes any extension..."

Paragraph (F)(2) (shall): "...compliance schedule, but (shall) does not include

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

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.

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- (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 on July 29, 2021 for a 30-day public comment and review period. 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. Several comments were received as a result of the request for draft review.

- (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 reviewed various federal rules to determine changes needed as a result of federal language updates as well as comments from public and industry groups affected by these rules.

- (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