

# CSI - Ohio

The Common Sense Initiative

## Business Regulation Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Open Burning Standards

Rule Number(s): 3745-19-01 to 3745-19-06

Date: 06/29/11

**Rule Type:**

☐ New

☒ X-Amended

☐ 5-Year Review

☐ Rescinded

Is this rule required to meet a deadline? (Yes or No): No

If yes, what is the nature of the deadline and by what date does the rule need to be filed with JCARR to meet the deadline?

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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## **Regulatory Intent**

### **1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

OAC Chapter 3745-19, “Open Burning Standards” is a part of Ohio’s State Implementation Plan (SIP) for attaining and maintaining the national ambient air quality standards (NAAQS) under the Clean Air Act. This chapter contains 6 rules regulating the open burning of materials in the state of Ohio.

DAPC is not recommending any changes to the scope or intent of the rules and most of the draft amendments are minor in nature, primarily for clarification, formatting and typographical corrections. One new purpose for an open burning activity was added to paragraphs (B)(5) and (B)(6) of OAC rules 3745-19-03 and 3745-19-04 respectively. This addition will facilitate the disposal of confiscated marijuana by law enforcement officials. In the past, this was performed via written permission under the emergency or extraordinary provisions requirements of these two rules. As this activity is infrequent, supervised and performed only by law enforcement officials, Ohio EPA has deemed it appropriate to expedite this open burning activity without notification or written permission.

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

Rule#	Statutory Authority - ORC
3745-19-01	3704.03(E)
3745-19-02	3704.03(E)
3745-19-03	3704.03(E)
3745-19-04	3704.03(E)
3745-19-05	3704.03(E)
3745-19-06	3704.03(E)

### **3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

OAC Chapter 3745-19, “Open Burning Standards” is a part of Ohio’s State Implementation Plan (SIP) for attaining and maintaining the national ambient air quality standards (NAAQS) under Section 110 of the Clean Air Act. The amendments to these rules will be submitted as a modification to Ohio’s SIP. Ohio is required by the Clean Air Act to develop rules to meet the NAAQS.

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**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for not incorporating the federal counterpart.**

There is no federal counterpart language for open burning. These rules were originally promulgated at the establishment of the Ohio EPA in the early 1970's and have been a part of our SIP since that time. These rules play a part in reducing and/or eliminating airborne quantities of particulate matter (pm10 and pm2.5) as required by the Clean Air Act.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

As mentioned above, the rules in this chapter are part of Ohio's strategy for attaining and maintaining the NAAQS under section 110 of the Clean Air Act. The amendments made to these rules as part of the 5-year review (ORC 119.032) were made for clarification and to reduce the burden of compliance on certain entities (law enforcement agencies).

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

As part of Ohio's SIP, Ohio's open burning rules assist in the maintenance of the NAAQS for particulate matter and visible haze.

The amendments being made to these rules through this rulemaking are intended to lessen the burden on the regulated community, specifically law enforcement departments, by eliminating a notification step that was deemed unnecessary while still fulfilling the goal of protecting the air quality of Ohio. Any reduction in regulatory requirements while maintaining protection of the environment is considered a success.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

On July 19, 2011, a copy of the rules with the draft amendments was sent to Ohio EPA's Air Pollution control (DAPC) electronic interested parties list for a 30 day draft comment period. The rules were also posted on DAPC's "Regulations" and "What's New" webpages with a request for public comment. An electronic notification was also sent out during the same period through Ohio's e-notification system.

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

Although comments were received, the changes made as a result did not change the intent and scope of Ohio EPA's amendments. Changes made as a result of comments included:

1. Various minor typographical and formatting changes pointed out by DAPC central office staff during the draft review were noted and corrected in these proposed rules.
2. Based on a comment submitted by The Regional Air Pollution Control Agency (RAPCA) suggesting that a size restriction be incorporated into the rules for the disposal of agricultural and residential waste in unrestricted areas, Ohio EPA has added a notification requirement for waste piles exceeding a certain size for these types of waste disposal activities and created new paragraph (B)(3)(f) in OAC rule 3745-19-04;

“Prior notification to the Ohio EPA in accordance with paragraph (B) of rule 3745-19-05 of the Administrative Code shall be required for the disposal of agricultural waste if the size of waste pile exceeds 20 feet in diameter by 10 feet in height (or 4,000 cubic feet) and for residential waste if the size of the waste pile exceeds 10 feet by 10 feet by 10 feet (or 1,000 cubic feet).”

3. Based on a comment that two additional health/medical agencies be referenced in OAC rule 3745-19-04(D) for the open burning for the control of disease or pests via notification to Ohio EPA, Ohio EPA has added the “Ohio Department of Health” and the “Centers for Disease Control and Prevention” to the list of agricultural agencies in that paragraph. These were also added to the equivalent rule for restricted areas found in OAC rule 3745-19-03(C)(1).

4. Based on a comment, additional clarification language, compared to the draft rule, was added to paragraph (A)(1) of OAC rule 3745-19-05 concerning the submittal and approval time frame requirements for written permission to open burn.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Ohio's open burning rules were originally promulgated in the 1970's and have been a part of Ohio's SIP since then. Ohio continues to use the most current modeling software in the preparation and examination of smoke plans being completed for large prescribed forest burns under these regulations.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

Ohio's open burning regulations were originally promulgated in the 1970's and are a part of Ohio's SIP. The rules have been very successful in helping to attain and maintain the NAAQS. Ohio EPA is not considering providing alternative regulations.

The amendments to these rules reduce the regulatory burden on the regulated community by adding an exemption which will aid law enforcement agencies seeking to destroy seized marijuana. The alternative was to not add the exemption, however, Ohio EPA determined that the exemption could be added without losing the rule's effects on air quality, so the change was made.

Minor changes were also made for clarification or to fix typos. There was no consideration of alternate language for these items.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

Ohio EPA considers these regulations to be performance based regulations. The rules establish just a few basic parameters upon which the regulated community can then plan and execute their open burning exercises as needed. By establishing the few parameters, Ohio EPA protects the environment, but still gives the regulated community the freedom to perform open burning as needed.

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

Ohio EPA performed a review of our internal regulations as well as a comparison with rules promulgated by the state fire marshal. In our opinion, similarities and differences between our rules and those of the Ohio Fire Code do not amount to a conflict between the two rules. The fact that we are specific on some additional points and the Fire Code is specific on other points results from the different authorities of each agency. Ohio EPA is regulating air pollution and therefore is primarily concerned with emissions and the resulting health issues; the Fire Marshall is primarily concerned with the fire itself and the resulting safety issues. Our authority in R.C. 3704.03(D) focuses on emissions and not safety concerns outside the boundary of emissions. In our opinion, these rules work to reinforce each other and are not at odds nor do they overlap with each other.

**13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

Implementation of Ohio’s open burning regulations is typically performed through Ohio EPA’s district offices and the local air agencies (DO/LAAs). The DO/LAAs help distribute educational materials which are prepared by Ohio EPA as well as respond to complaints and prepare enforcement documentation. DO/LAA staff also implement these rules in the course of regular inspections carried out in the normal course of business.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

Ohio’s open burning regulations in Chapter 3745-19 are not specifically targeted at the business community. The regulations prohibit the open burning of materials based on health and safety reasons and to prevent smoke nuisances. Businesses must comply with these rules in the same way as the general public.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

Ohio EPA anticipates any adverse impacts to be minimal. A short notification letter is required for some forms of open burning such as; prevention or control of pests, silvicultural purposes, ceremonial bonfires, and disposal of hazardous (explosive) materials for which there is no other practical disposal method.

Persons and businesses who are caught illegally burning can also be subject to fines according to the requirements of OAC rule 3745-19-06. The fines are \$250 per occurrence (per day) for residential wastes and \$1,000 per occurrence (per day) for non-residential wastes.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

The cost of compliance with these rules is minimal. In terms of time needed to comply, Ohio EPA has a simple, one page form on our website that can be completed

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by a party interested in giving notification, or the party can make a short telephone call and supply the information requested on the form to the appropriate District Office or Local Air Agency. Ohio EPA estimates that the notification process should take no longer than 30 minutes including collecting the required information to supply to OEPA.

It should be noted that the amendments being made to these rules eliminates the requirements for law enforcement agencies to notify Ohio EPA for certain types of burning scenarios (destruction of seized marijuana). For this reason, the amendments to these rules actually lessen the regulatory burden on regulated community.

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

Ohio's Open Burning regulations were originally promulgated over 40 years ago. At the time, the restrictions on open burning were necessary to reduce nuisances and improve the air quality in the state of Ohio. The rules were submitted to USEPA as part of our SIP and we are required by the Clean Air Act to maintain these rules as part of our plan for the maintenance of air quality in the state of Ohio.

The amendments to these rules actually reduce the burden on the regulated community by removing notification requirements for the scenarios listed in item #15c above. The removal of these requirements is justified because these types of burning activities are small and infrequent and notification is not necessary to preserve the air quality of Ohio.

**Regulatory Flexibility**

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

Ohio's open burning regulations provide a framework within which citizens and businesses can conduct necessary burns and still protect the air quality of the state of Ohio. The rules do contain exemptions from notifications for certain types of fires (such as training fires and the destruction of seized marijuana as discussed above), however, these fires still need to be performed within the parameters of the open burning regulations.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The Agency implements ORC section 119.14 in accordance with our internal Small Business Penalty Waiver Policy. The policy is available at:  
<http://www.epa.state.oh.us/dir/regulatoryombudsman.aspx>.



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

Ohio EPA's **Office of Compliance Assistance and Pollution Prevention (OCAPP)** is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at: <http://epa.ohio.gov/Default.aspx?alias=epa.ohio.gov/ocapp>.

Ohio EPA also has a permit assistance web page ([http://www.epa.ohio.gov/dir/permit\\_assistance.aspx](http://www.epa.ohio.gov/dir/permit_assistance.aspx)) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting, and eBusiness Center.

Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.

U.S. EPA Small Business Gateway also has information on environmental regulations for small businesses available at: <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5888.