

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-15, "General Provisions on Air Pollution Control"

Rule Number(s): OAC Rules 3745-15-01 to 3745-15-09

Date: July 1, 2014

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

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

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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.

The rules in OAC chapter 3745-15 set forth the general provisions used by Ohio EPA in the interpretation and enforcement of air pollution control rules. The general provisions include such things as: the authority of the director of Ohio EPA to request the collection and submission of emission information, the measurement of emissions of air contaminants, the requirements for the determination of a “De Minimis” source of air pollution, the requirements in the event of equipment shut down caused by malfunction or maintenance, air pollution nuisances, and other administrative rules.

These rules were originally promulgated at the founding of the agency in 1972 and have been a part of Ohio’s State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS) since that time. These rules are not specific to any one area of the air pollution control program, but are supportive of the program as a whole.

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

Rule Number	Authorizing Statute	Proposed Action
3745-15-01	3704.03(E)	Amended
3745-15-02	3704.03(E)	Amended
3745-15-03	3704.03(E)	Amended
3745-15-04	3704.03(E)	No Change
3745-15-05	3704.03(E)	Amended
3745-15-06	3704.03(E)	Amended
3745-15-07	3704.03(E)	Amended
3745-15-08	3704.03(E)	Amended
3745-15-09	3704.03(E)	Amended

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

Section 110 of the Clean Air Act (CAA) requires all states to develop a plan for attaining and maintaining the national ambient air quality standards (NAAQS). The rules in OAC chapter 3745-15 establish general provisions used throughout Ohio’s air pollution control program. These rules are not specific to any one area of the air pollution control program, but are supportive of the program as a whole. The rules are part of Ohio’s SIP and have been

effective at the federal level as a part of the plan since the original submission of the SIP in 1972.

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

The rules in this chapter do not exceed federal requirements. These rules address general subjects and provide clarification for topics which support the air pollution control program as a whole.

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

The rules in OAC Chapter 3745-15 provide general provisions utilized throughout the air pollution control program. These provisions identify and clarify topics which support the general operation of the air pollution control program.

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

The rules in OAC Chapter 3745-15 provide support and clarification to various topics useful to the air pollution control program as a whole. The continued, smooth operation of the air pollution control program can be attributed, at least indirectly, to the support offered by these rules.

Development of the Regulation

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

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

Ohio EPA established an initial 30-day public comment period ending November 15, 2013. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 1,250+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

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

Ohio EPA received several comments from stakeholders during the initial comment period and made changes where appropriate. A "Synopsis of changes" document has been prepared

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and is being distributed with the interested parties draft to outline to potential commenters what changes have been made to the rules. Upon the close of the interested parties draft comment period, Ohio EPA will consider any additional comments and prepare a “response to comments” document detailing Ohio EPA’s response to the comments and outlining any changes made to the draft language as a result of the comments.

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?

The rules in OAC Chapter 3745-15 are general in nature and primarily administrative. There are no changes being made based on scientific data during this rulemaking. When promulgated, rules such as odor nuisance (OAC rule 3745-15-07) and the “DeMinimus” exemption rule (OAC rule 3745-15-05) were based on the best available science at the time. Over time, changes have been made as new technology becomes available, or science indicates that lower or higher limits are justifiable. Upon review, Ohio EPA determined that there was no need to change any non-administrative rule language in the Chapter for this rulemaking.

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?

The rules in this chapter are very general and cover broad areas of the air pollution control program, supporting rules in many other chapters of the OAC. These rules have served the agency very well since the inception of the agency in 1972, and the agency does not see the need to develop alternates to these rules at this time.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don’t dictate the process the regulated stakeholders must use to achieve compliance.*

Ohio EPA considers the rules in this chapter to be performance based to the extent practicable. For rules in which reporting is required, the data requested is necessary for the performance of the air pollution control program. For rules such as the odor nuisance rule (OAC 3745-15-07), the rule simply says that sources must not cause an odor nuisance but does not dictate control strategies, leaving that to the individual facilities.

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

The Ohio EPA is the only agency having jurisdiction over the control of air pollution, and is specifically directed, under ORC 3704.03(E) to issue rules regulating air pollution. The rules

in this chapter are unique within the Ohio EPA and do not duplicate the rules of this or any other agency.

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.

Ohio EPA's general provisions rules have been in place and enforced since the inception of the agency in 1972. These rules provide regulation for issues applicable to all areas of the air pollution control program. These rules are used in conjunction with the other air pollution control rules in agency 3745 of the OAC to protect human health and the environment through the reduction of emissions of airborne pollutants.

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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

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

Most of the rules in this chapter are administrative and have no cost of compliance. Rules such as the definitions rule 3745-15-01, the purpose rule 3745-15-02, and the De-Minimum rule 3745-15-05 set limits or schedules and/or contain information which is helpful, but which do not require a cost of compliance.

Rules such as OAC rule 3745-15-03 and 3745-15-08 require the reporting of information, which can cause facilities to incur a cost of compliance. This reporting is, however, typically complimentary to reporting also required, in most cases, by air pollution control permits-to-install issued under OAC chapters 3745-31 and 3745-77. DAPC estimates that the cost of annual reporting for most facilities having an air pollution control permit is less than a few thousand dollars and the information collected in the reporting is necessary for the functioning of the air pollution control program.

OAC rule 3745-15-04 states that the director may require a facility to perform air contaminant testing as necessary to determine compliance with air pollution regulations. This testing is generally performed in conjunctions with the requirements of air pollution control permits issued under OAC chapters 3745-31 and 3745-77. This testing can cost anywhere

from a few hundred dollars for a short-term sampling to approx. \$20,000/year to establish and operate a sampling station.

OAC rule 3745-15-07 contains a requirement that facilities shall not cause an odor nuisance. This rule can have a cost of compliance in the form of fees and penalties assessed as part of a notice of violation and/or consent decree as part of an enforcement action. The range of cost of compliance can be from no-cost to millions of dollars. As with all enforcement cases, Ohio EPA prefers to work with the facilities to bring them into compliance, rather than simply enforcing a penalty which would lead to longer settlement times and lengthening of the problems. As noted in question #17 below, Ohio EPA has programs in place to help resolve matters quickly and efficiently to encourage maximum compliance among regulated facilities.

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

Ohio EPA has been directed by ORC 3704.03(E) to write rules for the control of air pollution in the state of Ohio. The rules in this chapter fulfill that requirements by providing basic rules that cover the general provisions of the air pollution control program.

Additionally, the state of Ohio is required by the Clean Air Act to prepare a plan to assist in the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The rules in this chapter also serve to outline the general provisions and general requirements of the federally enforceable state implementation plan (SIP) to fulfill this requirement.

Regulatory Flexibility

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

The rules in this chapter provide general provisions which are applicable to all parts of Ohio's air pollution control program. The De-Minimus rule (OAC rule 3745-15-05) does provide an exemption of sorts as it sets forth a minimum level of emissions beneath which Ohio EPA has determined that no controls are necessary. Both large and small businesses operate processes that benefit due to the De-Minimus rule.

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 Ohio EPA uses enforcement discretion regarding fines and penalties for facilities committing a first-time violation are typically waived. The procedures specified in the

agency's "Compliance Assurance through Enforcement" program are used to ensure implementation of the regulations.

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

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at <http://www.epa.ohio.gov/ocapp>.
- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.
- Ohio EPA's Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Paul Braun, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.