

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-71, "Lead Emissions"

Rule Number(s): OAC Rules 3745-71-01, 3745-71-03

Date: May 20, 2016

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☐ Rescinded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 3745-71 contain the requirements for the measurement of lead in ambient air. Federal rules in 40 CFR Part 50 require that facilities with actual emissions of more than 0.5 tons of lead per year be monitored for lead emissions. When a facility triggers the federal threshold, the monitoring is performed according to the requirements of rule 3745-71-03 of the Administrative Code.

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

Rule Number	Authorizing Statute	Proposed Action
3745-71-01	3704.03(E)	Amended
3745-71-03	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 3745-71 contain the requirements for monitoring ambient concentrations of lead as part of Ohio's state implementation plan (SIP) under Section 110 of the CAA.

- 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. The rules reference federal requirements in Appendix G of 40 CFR Part 50 and require compliance with the federal standards.

- 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 3745-71 provide measures for determining ambient concentrations of lead. Lead is one of the seven criteria pollutants regulated under the CAA. Ohio is required to meet the NAAQS for lead and monitoring provides data on Ohio's attainment of the standard.

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

The rules in OAC Chapter 3745-71 set requirements for monitoring ambient concentrations of lead. By collecting the data, Ohio can determine if the state is attaining and maintaining the NAAQS for lead. Ohio EPA considers these rules a success in their contribution for determining the status of Ohio's attainment of the lead NAAQS.

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 December 1, 2015. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 2,800+ 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 did not receive any comments from stakeholders during the stakeholder comment period.

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 3745-71 require the use of ambient air sampling techniques contained in Appendix G of 40 CFR Part 50. These techniques have been developed by USEPA and are considered the state of the art for determining ambient concentrations of lead.

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?

There are no alternatives available to the rules in this chapter. Federal rules require the use of the methods contained in Appendix G of 40 CFR Part 50 for sampling of ambient concentrations of lead.

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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.

As noted in the answer to question #10, the federal rules require the use of the sampling methodology contained in Appendix G of 40 CFR Part 50. Appendix G of 40 CFR Part 50 sets out specific procedures to be followed so that sampling results are consistent and repeatable.

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. 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.

Federal rules in 40 CFR part 50 require that sampling for ambient levels of lead be initiated if a facility has actual emissions of lead exceeding 0.5 tons per year. The monitors are typically established and operated by Ohio EPA, although the monitored companies are allowed to operate their own monitors if they so desire and meet 40 CFR Part 50 requirements.

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.

The rules in this chapter outline the requirements for determining ambient levels of lead. These requirements are triggered when sampling is required under the federal rules in 40 CFR Part 50. The rules in Chapter 3745-71 of the Administrative Code are a part of Ohio's SIP for the attainment and maintenance of the NAAQS under Section 110 of the CAA and reflect the federal sampling requirements in Appendix G of 40 CFR Part 50.

There is typically no cost to the regulated community related to these rules. Ohio EPA typically establishes and operates ambient lead monitoring stations when they are required. If a company would desire to voluntarily establish their own monitor, the cost to establish and operate a station could be anywhere between \$5,000 and \$20,000 per year depending on various factors such as siting the monitor, building a secure housing for the monitor and extending utilities to operate the monitor.

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

As mentioned above, these rules fulfill a federal requirement in the CAA that requires all states to develop a plan for attaining and maintaining the NAAQS. The rules in OAC Chapter 3745-71 provide measures for determining ambient concentrations of lead and helps determine if Ohio is attaining and maintaining the NAAQS for lead.

Regulatory Flexibility

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

The rules in OAC Chapter 3745-71 do not provide exemptions. These rules provide the requirements for measurement of ambient levels of lead for facilities exceeding the federal threshold for emissions (0.5 tons per year of actual emissions, 40 CFR Part 50).

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

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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.