

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-21, "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards"

Rule Number(s): OAC Rules 3745-21-01, 3745-21-09, 3745-21-10, 3745-21-25, 3745-21-26, 3745-21-28 and 3745-21-29

Date: 1-30-18

Rule Type:

<input type="checkbox"/> New	<input type="checkbox"/> 5-Year Review
<input checked="" type="checkbox"/> Amended	<input type="checkbox"/> Rescinded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 Ohio Administrative Code (OAC) chapter 3745-21 establish requirements for the control of emissions of volatile organic compounds (VOCs) and carbon monoxide (CO) from stationary emission sources. VOCs are a precursor compound from which ozone is formed. Ozone is one of the six criteria pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under the Clean Air Act (CAA). CO is also one of the six criteria pollutants for which a NAAQS has been established. The intent of these rules is to limit emissions of VOCs and CO to allow the state of Ohio to attain and maintain the NAAQS for ozone and CO.

All of the proposed revisions and rules pertain to VOC emissions; there are no revisions to regulations on CO emissions. Ohio EPA will be making amendments to OAC rules 3745-21-01, 3745-21-09, 3745-21-10, 3745-21-26, 3745-21-28, and 3745-21-29. The potential amendments include the following:

- Typographical and reference corrections in OAC rules 3745-21-01, 3745-21-09 and 3745-21-29.
- Approval of an alternate monitoring, record keeping and reporting plan for a facility and adding an OAC rule 3745-21-29 exemption in OAC rule 3745-21-09.
- Adding an OAC rule 3745-21-29 test method in OAC rule 3745-21-10.
- Adding paragraph (F)(3)(c) of OAC rule 3745-21-25 as a compliant emissions estimation procedure in OAC rule 3745-21-25(F)(3).
- Adding an exemption to OAC rule 3745-21-26 for sources subject to OAC rule 3745-21-25.
- Revising OAC rule 3745-21-26(G)(2) to avoid confusion on record keeping and reporting requirements.
- Adding a provision to OAC rule 3745-21-28 to allow for alternative limits.

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

Rule Number	Authorizing Statute	Proposed Action
3745-21-01	3704.03(E)	Amended
3745-21-09	3704.03(E)	Amended

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3745-21-10	3704.03(E)	Amended
3745-21-25	3704.03(E)	Amended
3745-21-26	3704.03(E)	Amended
3745-21-28	3704.03(E)	Amended
3745-21-29	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 CAA requires all states to develop a plan for attaining and maintaining the NAAQS. The rules in OAC chapter 3745-21 establish reasonably available control technology (RACT) requirements for the control of VOC emissions from various industries and industrial processes. These rules are a part of Ohio's control strategies for the attainment and maintenance of the NAAQS for ozone and are a 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. These rules are based in part on federal requirements such as the federal "Control Techniques Guidance" (CTG) and "Alternative Control Techniques" (ACT) guidance documents and do not exceed the requirements therein. States are required, under the CAA, to adopt rules for all existing CTG documents issued by U.S. EPA in moderate or worse non-attainment areas.

- 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 3745-21 serve as part of Ohio's strategies for the control of VOC emissions and are a part of Ohio's strategy for the attainment and maintenance of the NAAQS for ozone and CO as required in the CAA. The public purpose of this rule is to assist in the attainment and maintenance of the NAAQS.

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

Ohio EPA measures the success of the rules in this chapter through the fact that ozone pollution in Ohio has been on the steady decline since the first of the rules in this chapter were promulgated in 1979. In fact, in 2016, Ohio achieved statewide attainment of the 2008 8-hr ozone NAAQS in particular through reductions in the emission of VOCs attributed to the rules in this chapter.

Additionally, the requirements in this chapter are utilized in environmental permits issued to industry throughout the state. These permits identify the applicable air pollution control rules and regulations under which the source must operate and establishes monitoring, record keeping, testing and reporting requirements by which the sources can demonstrate compliance with the rules and regulations. Ohio EPA considers the rules a success when a source is issued a permit and can, thereby, commence operations in compliance with the applicable air pollution rules and regulations, including the rules and regulations in this chapter.

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 early stakeholder outreach period ending July 28, 2017. 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?

DAPC receives comments and requests at any time, not just during five-year review periods. In order to prevent rules from undergoing constant revisions and re-openings, DAPC determines if a rule revision must occur at the that time or if it can be held until more substantial revisions are necessary. Since the last five-year review, DAPC has received a comment from the five-year review that DAPC received after the comment period closed, an approved alternative monitoring protocol for a facility, questions from a consultant, local air agencies and DAPC staff, and a request for relief from the requirements of OAC rule 3745-21-28. DAPC also deferred action on a comment received during the previous five-year review due to the complexity of the request. In addition, Ohio EPA received several comments from stakeholders during the Early Stakeholder Comment Period. A "Synopsis of changes" document has been prepared 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.

The following comments, questions or requests were received prior to the Early Stakeholder Comment Period:

Comment 1: The comment requested incorporation of an exemption from OAC rule 3745-21-29 into paragraph (C) of OAC rule 3745-21-09. OAC rule 3745-21-29 is a newer regulation governing surface coating of automobiles and light-duty trucks. The exemption is for aerosol coatings and coatings supplied in containers with a net volume of sixteen ounces or less, or a net weight of one pound or less. The comment also requested incorporation of the reactive adhesive test method from OAC rule 3745-21-29 into paragraph (B) of OAC rule 3745-21-10. OAC rule 3745-21-29 is a newer regulation governing surface coating of automobiles and light-duty trucks. (Rob Brundrett, Ohio Manufacturers' Association.)

Response 1: DAPC received this comment during the public comment period of the previous five-year rule review. Due to the complexity of the comment and the amount of time necessary to review the comment with U.S. EPA, DAPC decided it was best to move forward with finalizing the previous five-year review of OAC chapter 3745-21 and committed to addressing this comment in the next revision to OAC chapter 3745-21. Upon further review of the requests, the exemptions are now being added as new paragraph (C)(10) in OAC rule 3745-21-09. The requested test method has been added to paragraph (B) of OAC rule 3745-21-10.

Comment 2: The comment requested an exemption from OAC rule 3745-21-26 for gel coats applied to fiber-reinforced plastic (fiberglass composite) products removed from the mold or used as in-mold coatings in the production of fiberglass parts. (Dave Lipiro, ECRM Inc.)

Response 2: DAPC received this comment after the public comment period expired for the previous five-year rule review. Since the comment period was past, and due to the nature of the comment, DAPC felt it appropriate to address this comment in the next revision to OAC chapter 3745-21. The requested exemption is now being added as paragraph (A)(3)(a)(i)(p) of OAC rule 3745-21-26 to exempt surface coating of any metal or plastic parts or products for which the owner or operator is both subject to and required to comply with OAC rule 3745-21-25 for reinforced plastic composites production operations.

Request 3: As allowed by OAC rule 3745-21-09(T)(4), BP-Husky Refining LLC, Toledo Refinery requested and received an approval of alternate monitoring, recordkeeping and reporting program in lieu of the leak detection requirements specified in OAC rule 3745-21-09(T)(1).

Response 3: Per standard procedure, this approved plan should be referenced in OAC rule 3745-21-09(T)(4). DAPC is adding this approval to the end of paragraph (T)(4) of OAC rule 3745-21-09.

Question 4: With respect to paragraph (G)(2) of OAC rule 3745-21-26, the commenter questioned if paragraph (B)(3)(k) of OAC rule 3745-21-09, which specifies reporting, should be replaced with paragraph (B)(3)(l) of OAC rule 3745-21-09, which specifies record keeping. Paragraph (B)(3)(j) of OAC rule 3745-21-09 is analogous to paragraph (C)(2) of OAC rule 3745-21-26 and paragraph (B)(3)(l) of OAC rule 3745-21-09 is analogous to paragraph (C)(3) of OAC rule 3745-21-26 so this change would work. (Akron Regional Air Quality Management District)

Response 4: DAPC received this question from the Akron Regional Air Quality Management District regarding OAC rule 3745-21-26(G)(2) after the previous five-year review was complete. DAPC agrees with the commenter however, the opening phrase in paragraph (G)(2) of OAC rule 3745-21-26 that specifies the appropriate paragraphs in paragraph (B)(3) of OAC rule 3745-21-09 is not necessary. An owner/ operator would select the appropriate (B)(3) paragraphs of OAC rule 3745-21-09 in paragraph (G)(1) of OAC rule 3745-21-26. It was determined that the existing rule language was correct, but it could be revised for better clarity. Therefore, DAPC has now removed the opening phrase in paragraph (G)(2) of OAC rule 3745-21-26.

Question 5: DAPC received a question from internal staff if the phrase “plastic parts coated on the main (body) paint line in automobile and light duty truck assembly plants and truck assembly plants” in paragraph (D)(35) of OAC rule 3745-21-01 correctly includes the term “truck assembly plants.” (Ohio EPA)

Response 5: This phrase was erroneously included twice in this definition. DAPC corrected paragraph (D)(35) of OAC rule 3745-21-01 to state “plastic parts coated on the main (body) paint line in automobile and light duty truck assembly plants.”

Request 6: A facility has requested relief from the requirements of OAC rule 3745-21-28 (Miscellaneous Industrial Adhesives and Sealants rule) by establishing a site-specific reasonably available control technology (RACT) rule for their adhesive spray operations. (Accel Group, Inc.)

Response 6: This rule does not have a provision to allow facilities to request an alternate RACT emissions limit if the rule-based limit is technically or economically infeasible. Similar provisions exist in other rules in OAC chapter 3745-21.

Therefore, DAPC is adding paragraph (C)(4) to OAC rule 3745-21-28 to allow facilities to request an alternate RACT emissions limit.

The following comments were received during the Early Stakeholder Comment Period:

Comment 7: Commenter requests that paragraph (A)(3)(b) of OAC rule 3745-21-29 regarding aerosol coatings and coatings in containers with net volume less than sixteen ounces or a net weight of one pound or less be incorporated into paragraph (C) of OAC rule 3745-21-09.

Commenter also requests paragraph (F)(2) of OAC rule 3745-21-29 regarding inclusion of 40 CFR Part 63, Subpart PPPP, Appendix H as an analytical procedure for reactive adhesives be incorporated into paragraph (B)(12) of OAC rule 3745-21-10. (Rob Brubaker and Eric Gallon, Porter, Wright, Morris and Arthur LLP)

Response 7: The requested aerosol and small container exemptions are added as new paragraph (C)(10) in OAC rule 3745-21-09. The requested reactive adhesive test method has been added to paragraph (B) of OAC rule 3745-21-10.

Comment 8: As referenced in a December 2014 notice that addresses Gasoline Dispensing Facilities in Ohio, U.S. EPA required 2006 model year and newer vehicles to be equipped with onboard refueling vapor recovery systems. This requirement made Stage II controls on pumps unnecessary. Ohio EPA provided decommissioning guidelines in 2014 and all Gasoline Dispensing Facilities with Stage II controls were decommissioned by January 1, 2017. Thus, the Utilities recommend that Ohio EPA rescind 3745-21-09(DDD). (Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP on behalf of the Ohio Utility Group and its member companies)

Response 8: On April 29, 2013 and January 17, 2014, Ohio EPA adopted amendments to OAC rule 3745-21-09 allowing gasoline dispensing facilities (GDFs) to not install new and decommissioning existing Stage II vapor recovery systems. The amendments included deleting paragraph (DDD)(4)(g)(i)(b) from the rule and adding paragraphs (DDD)(5)(d) and (DDD)(5)(e). Paragraph (DDD)(5)(d) contains the requirements to be followed when decommissioning a Stage II system at an existing GDF. Paragraph (DDD)(5)(e) requires that, by January 1, 2017, all existing GDFs with a Stage II vapor control system will have decommissioned that system according to the requirements of paragraph (DDD)(5)(d). Paragraph (DDD)(5)(e) also allows exemptions from decommissioning for GDFs that can demonstrate that is either infeasible to remove their systems or a substantial economic hardship. This exemption allows an extension of one year to the deadline for these facilities. Since there

are decommissioning requirements, Ohio EPA cannot simply rescind paragraph (DDD) of OAC rule 3745-21-09. However, the aforementioned amendments do address the commenter's justification for removing the Stage II controls.

The following questions were received after the Early Stakeholder Comment Period:

Question 9: DAPC received a question regarding the applicability of OAC rule 3745-21-19 to a facility. (Southwest Ohio Air Quality Agency)

Response 9: While investigating this question, Ohio EPA determined that paragraphs (A), (U) and (HH) of OAC rule 3745-21-09 should be revised for clarity.

Question 10: DAPC received a question regarding OAC rule 3745-21-25(F)(3). Paragraph (F)(3) of this rule specifies the procedures for calculating emissions from subject facilities. There are three methods specified in three subparagraphs; however, paragraph (F)(3) states that emissions can be calculated using only two of the paragraphs. (Chuck Sisia, Labyrinth Management Group, Inc.)

Response 10: DAPC corrected this rule to specify all three paragraphs can be used for determining emissions.

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 this chapter are based upon CTG and ACT guidance documents prepared by U.S. EPA. U.S. EPA maintains a research and development facility at Research Triangle Park, North Carolina, where most of the CTG and ACT documents are developed. U.S. EPA considers not only the need for reduction of VOC emissions, but the emissions that can be achieved and the cost to the regulated parties on a cost per ton of VOC emissions reduced basis.

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 is required under the CAA to adopt rules for VOC RACT based on CTG documents in all moderate ozone non-attainment areas in the state. For the 1997 8-hr ozone standard, the only moderate non-attainment area in the state was the Cleveland/Akron/Lorain area, so in this area there were no alternate regulations available and Ohio EPA was required to establish the rules. For controlling VOCs in basic and marginal areas, such as the Cincinnati and Dayton/Springfield areas, Ohio is not required to adopt the CTG rules, however, the CTG rules are based on tested science developed by U.S. EPA and readily available for

adoption. For example, in 2005, Ohio was in need of control strategies in both the Cleveland and Cincinnati areas to attain the 1997 ozone standard. It was not cost effective to adopt a separate standard for both areas, so several CTG based rules, such as OAC rules 3745-21-12 and 3745-21-13 were adopted and made applicable in both non-attainment areas.

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 OAC chapter 3745-21 to be performance based. These rules discuss emission limits that must be met from the various processes, however, facilities are allowed to determine the various methods of controls they will use such as mechanical control, work practices, raw materials or a combination to attain the emission limits in the most economical and efficient way.

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 Section 3704.03 of the Revised Code to develop rules for the control of emissions of air pollutants. 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 VOC RACT rules have been in place since 1972. The VOC standards in this chapter are used in development of air pollution control permits issued under Ohio's New Source Review permitting program in OAC chapter 3745-31 and Title V permitting program in OAC chapter 3745-77. The permits list the emission standards that the facilities are required to achieve and the reporting and recordkeeping requirements to document that the standards are being achieved, all of which is included in OAC chapter 3745-21.

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.

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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.

Chapter 3745-21 has been in the OAC since 1972. The rules have evolved over the years to address requirements in the CAA to develop regulations as part of an effort to achieve the NAAQS for CO and ozone within the state. These rules and additional technical support were submitted to U.S. EPA for review and approval as part of the SIP.

This chapter has been modified over the years to incorporate requirements for categories of sources for which U.S. EPA has indicated that RACT should apply. In general, the levels of control that are available have been evaluated and presented in a series of CTGs issued by U.S. EPA. There are also rules based on information provided by U.S. EPA for other sources which were identified as non-CTG RACT.

Given the varied types and sizes, and therefore degree of potential air pollution, of processes that are regulated under OAC chapter 3745-21, it is difficult to give an exact cost of compliance with the rules in this chapter in a limited space. The cost of compliance with these rules can range from a few hundred dollars for a control technology such as a work practice or raw material change, to a few million dollars for the installation and operation of a mechanical control device. Many of the rules provide options for complying with the rule and in many cases, facilities can perform a RACT analysis which allows them to determine, based on all technologies available, the best and most cost-effective control strategy for their facility. Ultimately, the requirements imposed by these rules are incorporated into air pollution permits. These permits usually are already required under a different chapter of the revised code. However, many of the rules of this chapter identify the additional elements that will be required in the permits to address the requirements of these specific rules. 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.

It should be noted that CTG based rules similar to Ohio’s rules can also be found in Ohio’s neighbor states and in any state containing a moderate ozone non-attainment area. Facilities wishing to locate in these types of areas will need to meet these requirements in all states.

As noted above, the amendments being made to this rule do not add any additional requirements to affected facilities; however, there is one possible exception. Ohio EPA is adding a provision to a rule to allow facilities to request an alternate reasonable available control technology emissions limit if the rule-based limit is technically or economically infeasible. Similar provisions exist in other rules in Chapter 21. The costs for obtaining an exemption range from \$500 to \$10,000 for plant personnel or a consulting firm to assemble the documentation for an exemption.

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

The state of Ohio is required by the CAA to enact rules based on CTG documents in moderate non-attainment areas. For this reason, most if not all of the rules in this chapter are applicable in the Cleveland/Akron/Lorain moderate ozone non-attainment area as part of the state's strategy for attaining and maintaining the 1997 ozone standard. For areas of the state which were designated basic non-attainment, such as the Cincinnati/Dayton non-attainment area, Ohio EPA adopted a smaller sub-set of these rules in order to achieve attainment, and did not make new CTG based rules applicable in these areas once the standard had been achieved.

Regulatory Flexibility

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

The rules in this chapter do not provide exemptions or alternatives specifically for small businesses. Some rules include an exemption for facilities that use small amounts of VOC-containing materials or emit small quantities of VOCs. Otherwise, all facilities wishing to operate the regulated processes in the applicable areas must achieve the emission limits outlined in the rules as required by the CAA.

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,

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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 DAPC maintains a 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.