



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

OAC Chapter 3745-71, Lead Emissions

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

Date of Submission for CSI Review: September 16, 2021

Public Comment Period End Date: October 19, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? __)

Amended/___ rules (FYR? __)

Rescinded/ 2 rules (FYR? Y)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **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 3745-71 contain 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.

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 contained requirements for regulating lead air emissions as a part of Ohio's state implementation plan (SIP) under Section 110 of the CAA. On August 31, 2020, Ohio EPA submitted a request to the United States Environmental Protection Agency (USEPA) for the removal of the rules in OAC Chapter 3745-71, "Lead emissions" from Ohio's SIP, specifically OAC rules 3745-71-01, 3745-71-03, 3745-71-05, and 3745-71-06. Ohio EPA requested that these rules be removed from the SIP because the facility that they were promulgated to regulate was permanently shut down and the sampling requirements remaining in the chapter were duplicated in other SIP approved rules. The rescission of these rules from the SIP was final and effective as of July 16, 2021 (86 FR 31926).

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The rules involved in this rulemaking are as follows:

Ohio EPA will be rescinding OAC rule 3745-71-03 to prevent confusion with OAC rule 3745-25-02 regarding which rule to follow for ambient air sampling for lead.

Ohio EPA will also be rescinding OAC rule 3745-71-01 because the rule contains only definitions and information on referenced documents which are not necessary with the rescission of the other rules in this chapter.

OAC rules 3745-71-05 and 3745-71-06, mentioned above, were rescinded as part of a previous rulemaking and are mentioned for historical purposes, but are not a part of this rulemaking.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Rule Number	Authorizing Statute	Proposed Action
3745-71-01)	3704.03(E)	Rescind
3745-71-03	3704.03(E)	Rescind

4. 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 requirements for monitoring ambient concentrations of lead as part of Ohio's state implementation plan (SIP) under Section 110 of the CAA.

Ohio submitted a request for the removal of the rules in OAC Chapter 3745-71 from Ohio's SIP, specifically OAC rules 3745-71-01, 3745-71-03, 3745-71-05, and 3745-71-06 on August 31, 2020. The rescission of these rules from the SIP was effective at the federal level as of July 16, 2021 (86 FR 31926). As a result of the removal of the rules in this chapter from the SIP, the rules in this chapter are no longer necessary and are being rescinded. Please see question #2 for a discussion of the rules in this rulemaking.

5. 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 required compliance with the federal standards.

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6. 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 requirements for determining ambient airborne 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. Please see the answer to question #2 for a discussion of the rules in this rulemaking.

7. 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 airborne concentrations of lead. By collecting the data, Ohio determined if the state was attaining and maintaining the NAAQS for lead. Ohio EPA considered these rules a success in their contribution for determining the status of Ohio's attainment of the lead NAAQS while they were effective. Please see the answer to question #2 for a discussion of the rules in this rulemaking.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

None of these rules are being proposed pursuant to the listed statutes.

Development of the Regulation

9. 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 May 13, 2021. 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.

10. 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.

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11. 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.

12. 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 sampling requirements in OAC rule 3745-71-03 are duplicated in OAC rule 3745-25-02, which is already a SIP approved rule. Ohio EPA will be rescinding OAC rule 3745-71-03 to prevent confusion with OAC rule 3745-25-02 regarding which rule to follow for ambient air sampling for lead.

13. 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.*

The sampling requirements in OAC rule 3745-71-03 are duplicated in OAC rule 3745-25-02, which is already a SIP approved rule. Ohio EPA will be rescinding OAC rule 3745-71-03 to prevent confusion with OAC rule 3745-25-02 regarding which rule to follow for ambient air sampling for lead.

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

The sampling requirements in OAC rule 3745-71-03 are duplicated in OAC rule 3745-25-02. Ohio EPA will be rescinding OAC rule 3745-71-03 to prevent confusion with OAC rule 3745-25-02 regarding which rule to follow for ambient air sampling for lead.

15. 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.

The sampling requirements in OAC rule 3745-71-03 are duplicated in OAC rule 3745-25-02. Ohio EPA will be rescinding OAC rule 3745-71-03 to prevent confusion with OAC rule 3745-25-02 regarding which rule to follow for ambient air sampling for lead.

Adverse Impact to Business

16. 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; and**
- b. Identify the nature of all adverse impact (e.g., 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 outlined the requirements for determining ambient airborne levels of lead. These requirements were triggered when sampling was required under the federal rules in 40 CFR Part 50. The rules in Chapter 3745-71 of the Administrative Code were 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 was typically no cost to the regulated community related to these rules. Ohio EPA typically established and operated ambient lead monitoring stations when they were required. If a company would desire to voluntarily establish their own monitor, the cost to establish and operate a station would 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.

The ambient sampling requirements are duplicated in OAC rule 3745-25-02. Ohio EPA is rescinding the rules in this chapter to prevent confusion regarding which rule to follow when performing sampling for lead. There is no longer a cost of compliance with the rules in this chapter.

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

As mentioned above, these rules fulfilled 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 provided measures for determining ambient concentrations of lead and helped determine if Ohio was attaining and maintaining the NAAQS for lead.

These rules are duplicated in OAC rule 3745-25-02. Ohio EPA will be rescinding OAC rule 3745-71-03 to prevent confusion with OAC rule 3745-25-02 regarding which rule to follow for ambient air sampling for lead. The requirements in OAC 3745-25-02 ensure that the community is still protected even with the rescission of the rules in OAC Chapter 3745-71.

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Regulatory Flexibility

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

The rules in OAC Chapter 3745-71 did not provide exemptions. These rules provided 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).

19. 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.

20. 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.

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- Ohio EPA's DAPC maintains a SIP Development section through which SIP related rulemaking is performed. DAPC's rules coordinator, 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.

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