



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. 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 3745-21, "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards"

Rule Number(s): OAC Rules 3745-21-01, 3745-21-03, 3745-21-04, 3745-21-06 to 3745-21-29

Date of Submission for CSI Review: May 17, 2021

Public Comment Period End Date: June 18, 2021

Rule Type/Number of Rules:

New/_1_ rules

No Change/_9_ rules (FYR? X)

Amended/_17_ rules (FYR? X)

Rescinded/_0_ rules (FYR?)

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 3745-21 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. 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.

Ohio EPA has completed a review of the rules in Ohio Administrative Code (OAC) chapter 3745-21 to fulfill the requirements of Ohio Revised Code (ORC) 106.03 (5-year review). Upon review, Ohio EPA has determined that certain changes are needed and that all rules in the chapter remain necessary. The proposed amendments based on the 5-year review include minor changes needed for clarification and LSC formatting protocol. The review also included removal of unneeded restriction language in rules throughout the chapter. The removal of these restrictions will be utilized to fulfill the requirements of Ohio Revised Code (ORC) 121.95(F).

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In addition, Ohio EPA has drafted revisions to OAC chapter 3745-21 to adopt mandatory Reasonably Available Control Technology (RACT) requirements for Cincinnati and Cleveland 2015 ozone nonattainment areas. The Cleveland and Cincinnati nonattainment areas are currently classified as marginal nonattainment for the 2015 ozone standard. The areas are required to meet the ozone standard by August 3, 2021, based on ozone monitoring data collected during the 2018-2020 ozone monitoring seasons, which extend from March 1 to October 31 each year.

The Cleveland and Cincinnati areas have failed to meet the ozone standard during the 2018-2020 ozone monitoring seasons as required and Ohio EPA anticipates that the areas will be reclassified to moderate nonattainment by U.S. EPA in accordance with the Clean Air Act (CAA). Reclassification to moderate nonattainment triggers additional CAA requirements, including VOC RACT requirements. This includes adoption of U.S. EPA Control Technique Guidelines (CTGs) as well as non-CTG VOC RACT for major stationary sources located in the moderate nonattainment areas. Some CTGs and non-CTG VOC RACT were previously adopted under prior ozone standards.

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
3745-21-01	3704.03(E)	Amended
3745-21-03	3704.03(E)	No-change
3745-21-04	3704.03(E)	Amended
3745-21-06	3704.03(E)	No-change
3745-21-07	3704.03(E)	Amended
3745-21-08	3704.03(E)	No-change
3745-21-09	3704.03(E)	Amended
3745-21-10	3704.03(E)	Amended
3745-21-11	3704.03(E)	New
3745-21-12	3704.03(E)	No-change
3745-21-13	3704.03(E)	No-change
3745-21-14	3704.03(E)	No-change
3745-21-15	3704.03(E)	Amended
3745-21-16	3704.03(E)	No-change
3745-21-17	3704.03(E)	No-change
3745-21-18	3704.03(E)	Amended
3745-21-19	3704.03(E)	Amended
3745-21-20	3704.03(E)	Amended
3745-21-21	3704.03(E)	Amended
3745-21-22	3704.03(E)	Amended
3745-21-23	3704.03(E)	Amended
3745-21-24	3704.03(E)	Amended
3745-21-25	3704.03(E)	Amended
3745-21-26	3704.03(E)	Amended
3745-21-27	3704.03(E)	Amended
3745-21-28	3704.03(E)	Amended
3745-21-29	3704.03(E)	Amended

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- 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 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.

- 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. 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 Clean Air Act, to adopt rules for a CTG documents issued by U.S. EPA in moderate or worse non-attainment areas.

- 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 3745-21 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 Clean Air Act. The public purpose of this rule is to assist in the attainment of the NAAQS.

- 7. 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 2011, Ohio achieved statewide attainment of the 1997 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 environment 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.

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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 under these 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 early stakeholder outreach period regarding the 5-year review ending October 18, 2019. Ohio EPA established a separate initial 30-day early stakeholder outreach period regarding the moderate ozone RACT for Cincinnati and Cleveland ending February 3, 2021. For each of these, Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 3,000+ 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 received comments from stakeholders during the Early Stakeholder Comment Periods and made changes where appropriate. 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.

Comments regarding 5-year review:

Comment 1: Please add "or" at the end of OAC rule 3745-21-15(A)(2)(a).
[Bonnie Pray, Permits & Enforcement Area Supervisor, Hamilton County Department of Environmental Services]

Response 1: Ohio EPA acknowledges your comment. Instead of adding the word "or" at the end of OAC rule 3745-21-15(A)(2)(a), OAC rule 3745-15(A)(2) will be revised by using the following wording; **"Facilities are excluded from this rule if either of the following applies:"**

Comment 2: Requested change to the definition of "clear coating" in OAC rule 3745-21-01(D)(49) for inclusion of dyes.
[Bonnie Pray, Permits & Enforcement Area Supervisor, Hamilton County Department of Environmental Services]

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Response 2: Ohio EPA agrees with the recommended suggestion and the inclusion of dye's will be added to the definition.

Comment 3: Request removal of EUs P001, P022, and P048 from INEOS ABS (USA) PN 1431010054 listing in Table (M)(1) of OAC rule 3745-21-07. Pursuant to OAC rule 3745-21-07(M)(5)(f), the general control requirements established in accordance with paragraph (M) of OAC rule 3745-21-07 are not applicable since these emissions' unit are batch operations regulated by the RACT requirements for VOC in OAC rule 3745-21-14. The INEOS ABS Title V permit P0119317, issued 11/19/2018, contains sunset language to remove OAC rule 3745-21-07(M)(1) and (M)(2) applicability for emissions units P001, P022, and P048 once the OAC rule is amended and SIP is approved for this issue. The other listed INEOS EUs should be retained in the (M)(1) Table.

[Bonnie Pray, Permits & Enforcement Area Supervisor, Hamilton County Department of Environmental Services]

Response 3: Ohio EPA agrees with the commenter. The suggested revisions to OAC 3745-21-07(M)(1) as summarized above will be made.

Comment 4: Plaskolite, LLC. Appreciates this opportunity to provide Ohio EPA with the following stakeholder input on potential amendments to OAC Chapter 3745-21 (Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials). Specifically, Plaskolite is requesting two amendments to the OAC 3745-21-07(M)(1) table listing for Plaskolite: (1) Name change from "Plaskolite, Inc." to "Plaskolite, LLC.", and (2) remove emission units P015, P042, and R001.

In March of 2019, Plaskolite (Mickey Croxton and Time Ling) discussed the removal of emissions units P015 and P042 from OAC 3745-21-07(M)(1) with Ohio EPA (Zachary Peterson and Ben Halton). A letter dated March 29, 2019, to memorialize these discussions was then provided to Ohio EPA.

On October 30, 2013, Plaskolite submitted shutdown notification for Flowcoat Line 1 (R001) to Ohio EPA. Therefore, an administrative change to the OAC rule 3745-21-07(M)(1) table listing for Plaskolite is in order.

[Mickey Croxton, Environmental Specialist, Plaskolite, LLC.]

Response 4: Ohio EPA agrees with the commenter. The suggested revisions to OAC 3745-21-07(M)(1) as summarized above will be made.

Comments regarding moderate ozone RACT for Cincinnati and Cleveland:

Comment 1: "The OMA's members are impacted by Ohio EPA's rules pertaining to NOx and VOC emissions set forth within OAC Chapters 3745-21 and 3745-110. The OMA therefore respectfully requests to be included in any meetings or future

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discussions on amendments to these rules and looks forward to reviewing any draft proposed changes that are developed.”

[Rob Brundrett, Ohio Manufacturing Association (OMA)]

Response 1: Ohio EPA has and will continue to include OMA in discussions regarding potential rulemakings and strategies to control ozone in the Cincinnati and Cleveland nonattainment areas, including this rulemaking.

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 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.

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?

Ohio did not consider alternate regulations because Ohio is required under the CAA to adopt rules for VOC RACT based on Control Technique Guidance (CTG) documents in all moderate 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 (Cleveland) 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 was not required to adopt the CTG rules, however, some CTG based rules (OAC 3745-21-12 to 3745-21-16) were adopted in the Cincinnati area because they are based on tested science developed by U.S. EPA and readily available for adoption. Due to the assistance of these rules, all of Ohio has attained the 1997 ozone standard and are now designated as “in attainment of” the 1997 ozone standard.

In 2008, USEPA lowered the ozone standard to 0.075 parts per million (ppm). Because the Cleveland and Cincinnati areas were not designated as moderate non-attainment for this standard, no additional CTG based rulemaking was required at that time. The existing CTG based rules in effect in these areas allowed them to attain the standard and both areas as well as the entire state of Ohio has since been redesignated as “in attainment of” the 2008 ozone standard.

In 2015, USEPA lowered the ozone standard to a value of 0.070 ppm. The Cleveland and Cincinnati areas were originally designated as marginal non-attainment for this standard, meaning the adoption of new CTG rules was not required. However, the areas have not attained the standard in the required time period and so, as of August 3, 2021, Ohio EPA expects the

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areas to be bumped up to moderate non-attainment for the 2015 ozone standard. Because these areas will now be designated as moderate non-attainment, Ohio is required under the CAA to adopt rules for any un-adopted CTG based categories in these areas.

This rulemaking extends the applicability of the existing CTG and ACT based rules to moderate nonattainment areas where they are not already in place, such as the four counties in the Cincinnati area (Butler, Clermont, Hamilton and Warren counties). Extending these rules fulfills the requirement in the CAA to adopt CTG based rules in moderate non-attainment areas.

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.

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.

14. 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.

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.

Ohio EPA's VOC RACT rules have been in place since the late 1970's. 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

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.**

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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.

OAC Chapter 3745-21 has been in the OAC since 1972. The rules have evolved over the years to address requirements in the Clean Air Act 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 many and varied types 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 zero cost 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. As part of the permitting process, 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.

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.

17. 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 Clean Air Act 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. This rulemaking extends the applicability of the existing CTGs and ACTs to nonattainment areas expected to be reclassified as moderate for the 2015 ozone standard, where they are not already in place, in order to meet mandatory requirements under the CAA.

Regulatory Flexibility

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

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The rules in this chapter do provide some exemptions or alternatives, typically for de-minimis type emissions or to keep a facility from being subject to two rules for the same process. 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 Clean Air Act.

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 paperwork 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.
- 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.

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