



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 Rules 3745-15-01 to 3745-15-09, "General Provisions on Air Pollution Control", OAC rule 3745-14-11 "Portland cement kilns", and OAC rule 3745-17-07 "Control of visible particulate emissions from stationary sources"

Rule Number(s): OAC Rules 3745-15-01 to 3745-15-09, 3745-14-11 and 3745-17-07

Date of Submission for CSI Review: June 8, 2022

Public Comment Period End Date: July 8, 2022

Rule Type/Number of Rules:

New/___ rules

Amended/ 6 rules (FYR? Y)

No Change/ 5 rules (FYR? Y)

Rescinded/___ rules (FYR?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 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.

The rules in OAC chapter 3745-15 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.

OAC rule 3745-14-11 contains the requirements specific to emissions of nitrogen oxides from Portland cement kilns.

OAC rule 3745-17-07 contains the requirements for the control of visible particulate emissions from stationary sources.

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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
3745-15-01	3704.03(E)	Amended
3745-15-02	3704.03(E)	No Change
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)	No Change
3745-15-08	3704.03(E)	No Change
3745-15-09	3704.03(E)	No Change
3745-14-11	3704.03(E)	Amended
3745-17-07	3704.03(E)	Amended

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 3745-15 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 whole program. 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. A change that is being made with this rule package is that the provisions found in OAC 3745-15-06(A)(3) and 3745-15-06(C) will not be proposed to US EPA for inclusion as a part of Ohio's SIP.

OAC rules 3745-14-11 and 3745-17-07 are also a part of Ohio's SIP and set federally approved levels for emissions of nitrogen oxides and particulate matter respectively. Both rules have been a part of Ohio's SIP for 25+ years and are instrumental in Ohio's attainment of the federal NAAQS for nitrogen oxides and particulate matter.

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 these chapters do not exceed federal requirements. These rules address general subjects and provide clarification for topics which support the whole air pollution control program as well as provide clarification for the topics of Portland cement kilns and control of visible particulate emissions from stationary sources.

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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 3745-15 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. The provisions in OAC rule 3745-14-11 identify and clarify the topic of emissions of nitrogen oxides from Portland cement kilns while outlining requirements the units are subject to and the provisions in OAC rule 3745-17-07 identify and clarify the topic of the control of emissions of visible particulate emissions from stationary sources.

7. 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 whole air pollution control program. The continued, smooth operation of the air pollution control program can be attributed, at least indirectly, to the support offered by these rules.

OAC rules 3745-14-11 and 3745-17-07 are part of Ohio's SIP for attainment and maintaining the NAAQS for nitrogen oxides and particulate matter respectively. Ohio considers these rules a success in that Ohio is currently attaining and maintaining the NAAQS for particulate matter and nitrogen oxides.

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.

No, none of these rules are being submitted 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 stakeholder outreach comment period ending July 23, 2019. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 3,300+ 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.

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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 several comments from stakeholders during the Early Stakeholder Comment Period and made changes where appropriate. Further, Ohio EPA also reviewed how similar rule provisions were successfully established in other states. 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.

Comment 1: It is suggested that the phrase “but does not include water by itself” be added to the definition of “air pollutant” and “air contaminant” in OAC rule 3745-15-01(B) to be consistent with definition in OAC rule 3745-15-05(A)(2). (Chris Zeigler, American Petroleum Institute)

Response 1: Per OAC rule 3745-15-01, the OAC rule 3745-15-01(B) definition applies to all rules unless otherwise specifically provided, as is the case for the definition in OAC rule 3745-15-05(A)(2).

Comment 2: It is suggested that the phrase “or which interferes with the comfortable enjoyment of life or property” be revised to “or which unreasonably interferes...” in the definition of “air pollution” in OAC rule 3745-15-01(C) to be consistent with the definition of the same term in ORC 3704.01(D). (Chris Zeigler, American Petroleum Institute)

Response 2: The definition of “air pollution” in OAC rule 3745-15-01(C) is correct as written.

Comment 3: Suggest deleting the definition of “Area” in OAC rule 3745-15-01(H). That term is not used anywhere else in 3745-15, and even though these definitions are for terms “as used in all air pollution rules,” there are many occurrences in the other air rules of using the word “area” to mean something other than the entire state of OH. (Chris Zeigler, American Petroleum Institute)

Response 3: The definition of area as defined in this rule may be used in other OAC Chapters; therefore, it will be retained.

Comment 4: It is suggested to revise the definition of “emissions” in OAC rule 3745-15-01(M) from “means the act of releasing or discharging an air pollutant into the ambient air from any source” to “means the releasing of an air pollutant...” to be consistent with the definition of the same term in ORC 3704.01(H). (Chris Zeigler, American Petroleum Institute)

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Response 4: The definition of “emissions” in OAC rule 3745-15-01(M) is correct as written.

Comment 5: ORC 3704.01(J) contains a different definition of “facility” for purposes of Title V permitting, so if the 3745-15 definitions have any overlap or relevance with the Title V regulations, the potential inconsistencies in definition should be recognized and resolved. (Chris Zeigler, American Petroleum Institute)

Response 5: The Title V rules in OAC Chapter 3745-77 includes a Title V-specific definition of facility. Therefore, the definition of facility in OAC rule 3745-15-01(O) does not need to be revised or Title V purposes.

Comment 6: With respect to the definition of facility in OAC rule 3745-15-01(O), should consider defining “stationary source” given the similarity of the definition of “source” to this definition of “facility”. (Chris Zeigler, American Petroleum Institute)

Response 6: The terms “facility” and “source” are similar regardless of the term “stationary source.” The additional definition is not necessary.

Comment 7: A definition of “malfunction” is needed to ensure clarity with regard to the applicability of 3745-15-06. The definition suggested here is generally using language in 3745-15-06(B)(1) for consistency with that section. (Chris Zeigler, American Petroleum Institute)

Response 7: The definition of malfunction has been added to OAC rule 3745-15-01.

Comment 8: It is suggested to replace the term “location” with “source” in the definition of “modification” in OAC rule 3745-15-01(P). (Chris Zeigler, American Petroleum Institute)

Response 8: The term “location” is correctly included in this definition.

Comment 9: It is suggested phrase “the federal government or any agency thereof” be added to the definition of “person” in OAC rule 3745-15-01(U) to be consistent with the definition of the same term in ORC 3704.01(O). (Chris Zeigler, American Petroleum Institute)

Response 9: The additional term is not necessary as the definition already includes “or other entity”, which would include the federal government.

Comment 10: This definition of “source” is very similar to the definition of “facility.” Should consider whether the intended difference between those two terms could be made clearer. (Chris Zeigler, American Petroleum Institute)

Response 10: While the terms are similar, the definition for each term is accurate as written.

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Comment 11: With respect to OAC rule 3745-15-01(AA)(1) and (2), external information that is only available by purchase or at offsite locations for review should not be incorporated in regulations as requirements. (Chris Zeigler, American Petroleum Institute)

Response 11: As noted in the rule, the external referenced information is also available at public libraries and The State Library of Ohio.

Comment 12: The internet hyperlink to the Code of Federal Regulations is outdated and should be updated to a current correct link for CFRs. (Chris Zeigler, American Petroleum Institute)

Response 12: The hyperlink has been updated.

Comment 13: The date of publication of the Code of Federal Regulations in OAC rule 3745-15-01(AA)(2)(a) and (b) are outdated and should be updated to 2019. (Chris Zeigler, American Petroleum Institute)

Response 13: The publication date has been updated.

Comment 14: OAC rule 3745-15-03(C)(3) includes a reference to paragraphs (C)(1)(a) to (C)(1)(c); however, there is no paragraph (C)(1)(c). (Chris Zeigler, American Petroleum Institute)

Response 14: The reference to “paragraphs (C)(1)(a) to (C)(1)(c)” has been replaced “paragraph (C)(1)” in OAC rule 3745-15-03(C)(3).

Comment 15: It is suggested to add the phrase “specified in paragraph (D)(2) of this rule” with respect to the reporting period noted in OAC rule 3745-15-03(D)(1)(d). (Chris Zeigler, American Petroleum Institute)

Response 15: Thank you for your comment. We have reviewed the comment and the rule and determined the suggested change is not necessary at this time.

Comment 16: OAC rule 3745-15-03(D)(3) includes a reference to paragraphs (D)(1)(c) to (D)(1)(e); however, there is no paragraph (D)(1)(e). (Chris Zeigler, American Petroleum Institute)

Response 16: The reference to “paragraphs (D)(1)(c) to (D)(1)(e)” has been replaced “paragraph (D)(1)(c)” in OAC rule 3745-15-03(D)(3).

Comment 17: It is suggested to remove the definition of “air contaminant” in OAC rule 3745-15-05(A)(2) since the term already exists in OAC rule 3745-15-01(B). (Chris Zeigler, American Petroleum Institute)

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- Response 17: This comment is part of Comment 1 requesting the revision of the definition of “air contaminant” in OAC rule 3745-15-01(B). Both definitions are retained as-is. Per OAC rule 3745-15-01, the OAC rule 3745-15-01(B) definition applies to all rules unless otherwise specifically provided, as is the case for the definition in OAC rule 3745-15-05(A)(2).
- Comment 18: The definition of “source” in OAC rule 3745-15-05(A)(3) is different than the definition of “source” in OAC rule 3745-15-01(W). Suggest replacing the definition at 3745-15-01(W) with this definition and then deleting the definition here as unnecessary. (Chris Zeigler, American Petroleum Institute)
- Response 18: Per OAC rule 3745-15-01, the OAC rule 3745-15-01(W) definition applies to all rules unless otherwise specifically provided, as is the case for the definition in OAC rule 3745-15-05(A)(3).
- Comment 19: There should be some threshold above which the radionuclides provision applies in OAC rule 3745-15-05(C)(3). Naturally occurring radionuclides are somewhat ubiquitous and are generally present at very low concentrations or quantities and should still be eligible for the De Minimis exemption unless above some specified level of concern. (Chris Zeigler, American Petroleum Institute)
- Response 19: DAPC does not agree that there should be an automatic exemption for radionuclides.
- Comment 20: It is suggested that the exemption referenced OAC rule 3745-15-05(D) should include paragraph B of OAC rule 3745-15-05. (Chris Zeigler, American Petroleum Institute)
- Response 20: Thank you for your comment. We have reviewed the comment and the rule and determined the suggested change is not necessary at this time.
- Comment 21: In OAC rule 3745-15-05(E), either revise to “division (L) of section 3704.01”, or delete this wording as unnecessary since the term “hazardous air pollutant” is defined in this rule at 3745-15-05(A)(5). (Chris Zeigler, American Petroleum Institute)
- Response 21: DAPC has removed the reference to the definition of hazardous air pollutant as suggested.
- Comment 22: For OAC rule 3745-15-05(F) regarding records retention, it is suggested to add the phrase “or at an alternate location where the records are readily available” or similar as an option to accommodate facilities like well sites that are typically

unstaffed, have no offices, and at which retaining records onsite is somewhat infeasible. (Chris Zeigler, American Petroleum Institute)

Response 22: DAPC has updated the language to allow for the flexibility of maintaining records at an alternate location where they are readily available.

Comment 23: For OAC rule 3745-15-06(A)(1), recommend adding the qualifying phrase “if the maintenance activity or associated equipment shut down will cause the emission of air contaminants in violation of any applicable law, regulation, permit, or other enforceable emission limit.” (Chris Zeigler, American Petroleum Institute)

Response 23: As we have added the definition of malfunction to OAC rule 3745-15-01, this language will remain as-is.

Comment 24: For OAC rule 3745-15-06(A)(1), recommend adding the phrase “at the time the maintenance activity begins or the equipment is shut down” at the end of the paragraph. (Chris Zeigler, American Petroleum Institute)

Response 24: Ohio EPA appreciates the comment; however, Ohio EPA will retain current language.

Comment 25: For OAC rule 3745-15-06(A)(2), recommend adding the phrase “under paragraph (A)(1) of this rule” after the reference to scheduled maintenance of air pollution control equipment. (Chris Zeigler, American Petroleum Institute)

Response 25: The proposed revision limits the applicability of OAC rule 3745-15-06(A)(2) to only maintenance activities that are considered to be a malfunction, which is not the intent of the current rule language. OAC rule 3745-15-06(A)(2) is intended to apply to all scheduled maintenance that requires shutdown or bypassing of the air pollution control equipment. Therefore, the existing language will be retained.

Comment 26: Regarding OAC rule 3745-15-06(A)(3), per the language in OAC rule 3745-15-06(A)(1), these maintenance activities are for situations where a malfunction will occur within 2 weeks if the maintenance isn’t done, so the operator may not always be aware of these maintenance requirements more than 2 weeks in advance to allow sufficient time for a 2-week written request.. (Chris Zeigler, American Petroleum Institute)

Response 26: OAC rule 3745-15-06(A)(3) is intended to apply to all scheduled maintenance that requires shutdown or bypassing of the air pollution control equipment, not just those that meet the conditions of OAC rule 3745-15-06(A)(1). Therefore, the existing language will be retained.

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- Comment 27: The commenter added suggested language to 15-06(B), (C), and (D). (Chris Zeigler, American Petroleum Institute)
- Response 27: Ohio EPA thanks the commenter for their language suggestions to 15-06(B), (C), and (D); however, Ohio EPA is taking a new approach to the language. Please comment on the new draft language.
- Comment 28: The commenter added suggested language to 15-07. (Chris Zeigler, American Petroleum Institute)
- Response 28: Ohio EPA thanks the commenter for their language suggestions to 15-07; however, Ohio EPA is not making changes at this current time to the existing language in 15-07.
- Comment 29: The commenter deleted suggested language in 15-08. (Chris Zeigler, American Petroleum Institute)
- Response 29: Ohio EPA thanks the commenter for their language suggestions to 15-08; however, Ohio EPA is not making changes at this current time to the existing language in 15-08.
- Comment 30: The definitions in Rule 15-01 should be modified where necessary to reconcile them with the federal Clean Air Act definitions of those terms. For example, Paragraph (B) of Rule 15-01 provides the same definition for “air pollutant” and “air contaminant.” Instead, Ohio EPA should have separate definitions of “air pollutant” (which should be defined consistently with Clean Air Act § 302) and “air contaminant” (which is defined in section 3704.01 of the Revised Code). (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)
- Response 30: Ohio EPA appreciates the comment on the definition; however, Ohio EPA will retain current language.
- Comment 31: Similarly, the definition of “ambient air quality standards” in paragraph (E) should be modified to have the same definition as under the Clean Air Act, as is mandated by section 3704.03(D) of the Revised Code. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)
- Response 31: Ohio EPA appreciates the comment on the definition; however, Ohio EPA will retain current language.
- Comment 32: The definition of “facility” in paragraph (O) should be modified to be consistent with the federal definition for purposes of NSR and Title V, or it should be limited in context so as not to create conflicting definitions. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

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Response 32: Ohio EPA appreciates the comment on the definition; however, Ohio EPA will retain current language.

Comment 33: And the definition of “source” in paragraph (W) should be reconciled with the federal definition of “source.” (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 33: Ohio EPA appreciates the comment on the definition; however, Ohio EPA will retain current language.

Comment 34: Prior to the most recent amendments to Rule 15-01, paragraph (AA) (previously numbered as paragraph (BB)) was titled “Incorporation by reference” and explicitly stated that the referenced materials “are hereby made a part of the regulations in this chapter.” Ohio EPA modified the title to “Referenced materials” and removed the incorporation language from the paragraph. Moreover, Ohio EPA modified the sentence “Material is incorporated as it exists on the effective date of this rule” to instead say “Material is referenced as it exists on the effective date of this rule.” (Emphasis added.) This suggests the paragraph’s references to “incorporated” materials in paragraph (AA) and subparagraph (AA)(2) are errors. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 34: Ohio EPA appreciates the comment on the definition; however, Ohio EPA will retain current language.

Comment 35: Rule 15-03 contains a typographical error in subparagraph (D)(1)(b), which Ohio EPA should correct as follows:

(D) Permit evaluation report. * * *

(1) Pursuant to paragraph (A) of this rule, each permit described under paragraph (B)(2) of this rule shall require the owner or operator to submit a permit evaluation report, in a form and manner prescribed by the director, which identifies, at a minimum, the following: * * *

(b) Additional information or corrections to air contaminant sources identified in the permit evaluation permit report.*** (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 35: Ohio EPA corrected the typographical error.

Comment 36: Ohio EPA should amend paragraph (A) to specify that any testing requirements imposed under this rule must be consistent with test methods specified by applicable federal or Ohio rules. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 36: Ohio EPA appreciates the suggested amendment; however, Ohio EPA will be retaining existing language.

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Comment 37: Additionally, Ohio EPA should revise the “Rule Amplifies” citation at the bottom of this rule to cite R.C. 3704.03(I), (J), and (L), not R.C. 3704.03(F). (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 37: Ohio EPA appreciates the suggested amendment; however, Ohio EPA will be retaining existing language.

Comment 38: Rather than requiring regulated owners/operators to compare Section 3704.011 and Rule 15-05 to determine how they differ, Ohio EPA should remove the portions of Rule 15-05 that simply restate statutory law. However, it should retain the clarifications in paragraphs (C) and (D) and supplement them with cross-references to the statutory provisions they elucidate. Ohio EPA should, instead, rewrite Paragraph (B) to state: “This rule provides clarification regarding the manner in which the Ohio environmental protection agency applies the exemption described in section 3704.011 of the Revised Code.” (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 38: Ohio EPA appreciates the suggested amendment; however, Ohio EPA will be retaining existing language.

Comment 39: “Lastly, Paragraph (H) begins by stating that Rule 15-06 should not “be construed to exempt any source from requirements of the CAA, including its being considered for purposes of determining whether a facility constitutes a major source or is otherwise regulated under Chapter 3745-77 of the Administrative Code or any requirement to identify insignificant activities and emissions levels in a title V permit application.” This portion of paragraph (H) paraphrases the language in subparagraph (B)(2) of the statute. Paragraph (H) of the rule goes on to say that it “does not exempt any source that is a part of a major new source or major modification that would be required to meet any requirements under applicable state or federal regulations.” This second sentence is unlawful, to the extent that it would require an air contaminant source that is part of a major new source or major modification to comply with Section 3704.011 of the Revised Code or rules adopted under it. The plain language of R.C. 3704.011(A) exempts air contaminant sources with emissions of any air contaminant below 10 pounds/day, and emissions of hazardous air pollutants below 1 ton/year, from all air permitting obligations. We would amend paragraph (H) as follows:...” (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 39: Ohio EPA appreciates the comment and suggested amendment to 15-05(H); however, Ohio EPA will be retaining existing language.

Comment 40: We urge Ohio EPA to move forward with its amendments to Rule 15-06, so that “malfunctions” are not equated with “violations” and the rule is otherwise easier

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to interpret and follow. Ohio's malfunction rule was poorly drafted in 1971. Decades after it was promulgated, Ohio EPA has come to interpret it as equating all "malfunctions" with "violations" that must be immediately self-determined and immediately self-reported. This is often impracticable and unnecessary. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 40: Ohio EPA appreciates the commenter's support on the amendments to 15-06. Ohio EPA is going with a new approach and encourages the commenter to review the new draft language.

Comment 41: We ask Ohio EPA to take those prior comments into account as it moves forward with this rulemaking. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 41: Ohio EPA is going with a new approach to amending the language in 15-06 and encourages the commenter to review the new draft language.

Comment 42: Ohio EPA should revise the "Rule Amplifies" citation at the bottom of the rule to cite R.C. 3704.03(E), not R.C. 3704.03(F). Ohio EPA's authority to adopt "rules for the prevention or control of odors and air pollution nuisances" is set forth in R.C. 3704.03(E). (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 42: Ohio EPA appreciates the comment and suggested revision to the "Rule Amplifies" citation; however, Ohio EPA will be retaining existing language in 15-07.

Comment 43: We would also encourage Ohio EPA to add a comment to that Rule to clarify that Rule 15-07 does not fit any necessary State Implementation Plan element set forth in Clean Air Act § 110 or 40 CFR Part 51. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 43: Ohio EPA appreciates the comment and suggested language revision to 15-07; however, Ohio EPA will be retaining the existing language.

Comment 44: With respect to criteria air pollutants, at the very least, Ohio EPA should clarify that paragraph (A) does not include emissions authorized by and in compliance with rules, orders, or permit terms under the Clean Air Act or the Ohio Air Pollution Control Act, and does not include emissions or entities that are otherwise regulated under state and federal law. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 44: Ohio EPA appreciates the suggestion on clarifying 15-07(A); however, Ohio EPA will be retaining the existing language.

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Comment 45: Rule 15-08 currently prohibits the concealment or dilution of air contaminant emissions that “would otherwise violate Chapter 3704., 3714., 3734., 3745., 6109., or 6111. of the Revised Code or any rule adopted thereunder.” Chapters 3714 (construction and demolition debris), 3734 (solid and hazardous wastes), 6109 (safe drinking water), and 6111 (water pollution control) are irrelevant to the purposes of this Chapter. This is an air pollution program rule, promulgated under R.C. 3704.03. Accordingly, it should not apply beyond the Ohio Air Pollution Control Act, Chapter 3704 of the Revised Code. Ohio EPA should amend this rule to eliminate the references to Chapters 3714, 3734, 6109, and 6111. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 45: Ohio EPA appreciates the suggested amendment to 15-08; however, Ohio EPA will be retaining the existing language.

Comment 46: Section 106.03 of the Ohio Revised Code lists several factors that a state agency must consider before determining whether an “existing rule needs to be amended or rescinded.” R.C. 106.03(B). One of those factors is “[w]hether the rule duplicates, overlaps with, or conflicts with other rules *** .” R.C. 106.03(A)(5). Rule 15-09 does not duplicate another rule, but it does duplicate a statute. Section 1.50 of the Revised Code states that, “[i]f any provisions of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.” Section 1.41 of the Revised Code makes R.C. 1.50 equally applicable to agency regulations. See R.C. 1.41 (“Sections 1.41 to 1.59, inclusive, of the Revised Code apply to all statutes, subject to the conditions stated in section 1.51 of the Revised Code, and to rules adopted under them.”) (emphasis added). Rule 15-09 repeats the language of R.C. 1.50 almost word-for-word. Because Rule 15-09 is duplicative and unnecessary, Ohio EPA should rescind it. (Rob Brubaker and Eric Gallon, Porter Wright Morris & Arthur LLP)

Response 46: Ohio EPA appreciates the suggested rescinding of rule 15-09; however, Ohio EPA will be retaining the existing rule language.

Comment 47: When considering how to improve the current language of OAC 3745-15-07, the OMA urges Ohio EPA to consider and clarify the purpose of the rule, for example, how the rule relates to the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), and whether the rule is intended to regulate criteria air pollutants. (Robert A. Brundrett, The Ohio Manufacturers’ Association)

Response 47: Ohio EPA appreciates the commenter’s suggestion on revising and improving the current rule language of 15-07; however, Ohio EPA will be retaining the existing rule language.

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Comment 48: OAC 3745-15-07 is incorporated into Ohio EPA's state implementation plan ("SIP"), and measures to control non-criteria air pollutants may not legally be made part of a SIP. See EPA Memo from Michael James to EPA Regional Counsel, February 9, 1979. To the extent that OAC 3745-15-07 is intended to regulate criteria air pollutants, Ohio EPA should clarify how it relates to other limitations on criteria air pollutants, e.g., emissions authorized by rules, orders, or permit terms under the Clean Air Act or Ohio's Air Pollution Control laws and rules. OAC 3745-15-07(A) declares certain emissions to be a "public nuisance," and under longstanding Ohio law, "[w]hat the law sanctions cannot be held to be a public nuisance." *Allen Freight Lines v. Consol. Rail Corp.*, 64 Ohio St. 3d 274, 277, 595 N.E.2d 855, 857 (1992) (quoting *Mingo Junction v. Sheline*, 130 Ohio St. 34 (1935), at paragraph three of the syllabus). (Robert A. Brundrett, The Ohio Manufacturers' Association)

Response 48: Ohio EPA appreciates the commenter's suggestion on revising and improving the current rule language of 15-07; however, Ohio EPA will be retaining the existing rule language.

Comment 49: Similarly, the rule should provide more certainty to regulated entities on how to comply with the rule. It is well-established law that before a regulated entity is subject to civil or criminal sanctions, it must be clear how the entity is expected to comply. See *United States v. Trident Seafoods Corporation*, 60 F.3d 556 (9th Cir. 1995). However, as written, Ohio EPA's expectations for how a regulated entity is to comply with OAC 3745-15-07 are vague. For example, an entity that is in compliance with its emissions limits for criteria air pollutants should also be in compliance with the rule. However, the rule as written fails to provide clarity to regulated entities in this regard. This is particularly important because regulated entities can become unwitting targets of citizen suit actions for pollutants and activities that cannot legally be regulated under the nuisance rule by virtue of its inclusion in the SIP. (Robert A. Brundrett, The Ohio Manufacturers' Association)

Response 49: Ohio EPA appreciates the commenter's suggestion on revising and improving the current rule language of 15-07; however, Ohio EPA will be retaining the existing rule language.

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 3745-15 are general in nature and primarily administrative. There are no changes being made based on scientific data during this rulemaking. When originally promulgated, rules such as odor nuisance (OAC rule 3745-15-07) and the "De Minimis" 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

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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.

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 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 are well known in the regulated community. Ohio EPA does not see the need to develop alternates to these rules at this time.

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 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.

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 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.

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 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

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.

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-Minimus 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 3745-15-06 contains requirements for notification, recordkeeping, and work practices to be performed during any scheduled maintenance or malfunction of air pollution control equipment. The steps required in this rule are intended to document and diminish excess or unnecessary emissions of air contaminants during scheduled maintenance or malfunction of air pollution control equipment. Reporting required under this rule is generally straightforward and is estimated to cost a few hundred to a few thousand dollars per occurrence. Should a facility be required to prepare and maintain a preventive maintenance and malfunction abatement plan, the cost is estimated to be a few thousand to ten thousand dollars depending on the size and complexity of the facility. Operation and maintenance records required under this plan would be records that are typically maintained by facilities as part of their normal operations and, therefore, should not add to the cost of the plan.

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The benefits of the expenditure in OAC 3745-15-06 are to assist the facility in preparing for and executing planned maintenance or managing malfunctions with minimal excess emissions of air pollution. At the same time, the reporting and recordkeeping assist Ohio EPA in responding to excess emissions and protecting the air quality of the state of Ohio

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 #20 below, Ohio EPA has programs in place to help resolve matters quickly and efficiently to encourage maximum compliance among regulated facilities.

OAC rule 3745-14-11 outlines the requirements for certain cement kilns to reduce NOx emissions during the ozone season beginning in 2004 as part of the NOx SIP call program. This is typically accomplished through the addition of add-on emission controls. The cement kilns subject to this rule have, since 2004, been identified and installed control equipment so there are no new costs of compliance with this rule related to implementation of controls. The language added for this rulemaking does not affect the cost of compliance with this rule.

OAC rule 3745-17-07 identifies visible emission limitations for stationary sources. These limits are used to construct air pollution control permits for stationary sources with visible particulate emissions. There is no cost of compliance with this rule, the cost of compliance comes from complying with the permit issued under OAC Chapter 3745-31 or OAC Chapter 3745-77.

17. 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 requirement 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 NAAQS. The rules in this rulemaking also serve to outline the general provisions and general requirements of the federally enforceable SIP to fulfill this requirement.

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 provide general provisions which are applicable to all parts of Ohio's air pollution control program. The De Minimis 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 Minimis rule.

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 the amount of fines and penalties for small businesses committing a first-time paperwork violation.

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 <https://epa.ohio.gov/divisions-and-offices/environmental-financial-assistance/about-defa/office-of-compliance-assistance-and-pollution-prevention>.
- Ohio EPA also has a permit assistance web page (<https://epa.ohio.gov/divisions-and-offices/directors-office/regulatory-permitting-assistance>) 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 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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