



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Environmental Protection

Rule Contact Name and Contact Information:

Mandi Payton, 614-644-3134 or Amanda.payton@epa.ohio.gov

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

OAC Chapter 3745-31/Interested Party Rulemaking

Rule Number(s): OAC Chapter 3745-31 (01 to 30, 32, 33)

Date of Submission for CSI Review: July 29, 2021

Public Comment Period End Date: August 31, 2021

Rule Type/Number of Rules:

New/ X rules

No Change/ X rules (FYR? Yes)

Amended/ X rules (FYR? Yes)

Rescinded/ X rules (FYR? Yes)

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

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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.

### **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 3745-31 require that all new and modified sources of air pollution apply for and obtain a permit-to-install (PTI) or a permit-to-install and operate (PTIO) before beginning installation and commencing operations. These permits identify the applicable air pollution control rules and regulations under which the source must operate and establish monitoring, record keeping, testing and reporting requirements by which the sources can demonstrate compliance with the rules and regulations.

The regulations are being modified in a number of ways. Ten new categories of activity are being proposed to qualify for exemption from air pollution permitting requirements. To qualify, the scale of activities must fall below a certain threshold. One category of exemption, for very small municipal waste incinerators, is to be eliminated, based on the fact that it is incompatible with federal requirements. New permit-by-rule categories are proposed for small

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and medium-sized dry-cleaning facilities that do not use perchloroethylene solvents, and for transloaders, which are conveyor devices used to transfer bulk material between trucks and rail cars. A permit-by-rule represents a streamlined process that eliminates nearly all the paperwork and delay of the conventional permit.

- 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.**

Authority (All Rules): Ohio Revised Code (ORC) 3704.03(F), 3704.03(G)

Amplifying (All Rules): ORC 3704.03(E), 3704.03(H), 3704.03(T), 3704.03(W).

- 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 3745-31 establish Ohio's New Source Review (NSR) permitting program as required by the CAA and the Code of Federal Regulations (CFR) Title 40, Chapter 52.21 to ensure that all new and modified sources of pollution are issued an air pollution permit. The rules in this chapter 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. The proposed changes generally reduce the burdens of obtaining and complying with permits for affected facilities.

- 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 3745-31 implement the federal NSR requirements under the CAA to verify that all new and modified sources of air pollution obtain permits and meet all applicable air pollution control rules and regulations. The modifications involve providing for additional permanent exemptions and permits-by-rule which will exempt insignificant sources from the need to obtain a permit or, for more significant sources, provide an efficient process for obtaining a permit.

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

The rules in OAC Chapter 3745-31 require that all new and modified sources of air pollution apply for and obtain a PTI or a PTIO before beginning installation and commencing operations. These permits identify the applicable air pollution control rules and regulations under which

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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.

**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.*

These rules are not being submitted pursuant to 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.*

An early stakeholder outreach was performed on June 22, 2018, distributed to the 3,500+ members of Division of Air Pollution Control's (DAPC's) electronic mailing list. A comment period was provided, with appropriate postal and email addresses for receipt of responses. 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?**

Comments were received from the American Petroleum Institute, Ohio; NiSource (for Columbia Gas of Ohio); and the local office of Porter, Wright, Morris & Arthur. The comments generally recognized that the burdens of compliance were being reduced and were supportive. Porter, Wright, Morris, and Arthur was favorable to the proposed extension of the welding exemption to production as well as maintenance operations but stated that a limit on welding rod consumption was unnecessary. Our response is that a limit is essential to assure that emission rates of pollutants remain below appropriate thresholds.

**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?**

Appropriate emission factors for estimation of emissions from the categories of activity being offered permit exemptions or permits-by-rule were found in U. S. EPA publications or in the technical support documents accompanying similar exemptions or permits-by-rule offered by other states. These quantitative estimates allow us to judge that our proposed regulatory actions are allowable under federal rules and will protect the public health.

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**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?**

Appropriate emission factors for estimation of emissions from the categories of activity being offered permit exemptions or permits-by-rule were found in U. S. EPA publications or in the technical support documents accompanying similar exemptions or permits-by-rule offered by other states. These quantitative estimates allow us to judge that our proposed regulatory actions are allowable under federal rules and will protect the public health.

**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 rules in OAC Chapter 3745-31 establish an administrative program through which air pollution control PTI's and PTIO's are prepared and issued to air pollution sources. The process is dictated through federal requirements and there are very few, if any, ways by which this program can deviate. Ohio EPA does not feel it would be possible to operate this program efficiently and effectively as a performance-based program.

**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(F) to issue air pollution control permits. 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 air pollution permitting program was originally implemented in 1974 and the rules in OAC Chapter 3745-31 have existed since that time. The amendments to the rules in this rulemaking will be implemented, once the amended rules become effective, through inclusion of the requirements in permits. The proposed new and revised permanent exemptions and permit-by-rule categories will be published in the OAC rules that specifically address permitting procedures, which are generally known to the business community and other affected parties. All of Ohio EPA's district and local permitting offices are expected to enforce the Ohio Administrative Code in a consistent and uniform manner.

### **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**

The impacted business community for the rules in this chapter is any facility intending to install a source of air pollution. This can range from small facilities (e.g. dry cleaners, gasoline dispensing facilities) to large manufacturing plants (e.g. power plants, automobile assembly facilities).

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance); and**

Collectively, the rules in this chapter contain the requirements that a PTI or PTIO must be obtained prior to installing a source of air pollution, the requirements for completing the permit application, and the requirements for the contents and issuance of the permit.

It is very difficult to estimate in dollars the cost of compliance with obtaining a PTI or PTIO. A facility needs to prepare an application first. Applications may be prepared and submitted by staff on-site or a facility may hire a consultant to prepare and submit their application. This often depends on the size of the facility, type of facility, and how complicated the project is for which a PTI or PTIO is needed. A facility may request a PTIO for one new source (emissions unit (EU)) or numerous EUs. Depending on the applicable rules, the requirements can be very simple (e.g., minor NSR) to very complicated (e.g., major NSR that requires modeling). An application may take a facility a few hours to prepare and comprise thirty pages or it could take months to prepare and contain hundreds of pages of documents. Therefore, the cost can vary across a wide range being as little as \$100 to \$30,000 (typical estimated cost to have a larger project application completed by a consulting firm).

When the applied-for permit is issued final, a fee also is paid to obtain the installation permit portion of the PTI or PTIO. The fee varies depending on the type of facility and project. Fee requirements are contained in ORC 3745.11 and range from \$50 to thousands of dollars. Sources issued a PTIO pay fees based on the tons of annual emissions at the facility for operation. Operational fee requirements are contained in ORC 3745.11(D) and range from \$50 to thousands of dollars. The following pollutants are assessed a fee: particulate matter (PM), sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and organic compounds (OC). The fee schedule is as follows:

- more than zero, but less than 10 tons per year (TPY) - \$100.00 per year
- 10 or more, but less than 50 TPY - \$200.00 per year
- greater than or equal to 50 TPY but less than 100 TPY - \$300.00 per year
- greater than or equal to 100 TPY - \$700.00 per year

NOTE: The annual fee is per facility, not per emissions unit or source

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The requirements in this chapter also require that a PTIO be renewed and reissued every 10 years. While this does involve some cost to the facility, the renewal process involves less effort than obtaining the initial permit and would not exceed the initial estimate of between \$100 and \$30,000 per facility per permit. Typically, the cost of renewing a permit is substantially less (half the cost or less) than obtaining the initial permit.

The net effect of the proposed changes is likely to be favorable to the impacted business community, inasmuch as most of them are directed toward reduction of paperwork burden, with its associated delays and consumption of company resources.

The one possible adverse effect concerns the removal of the very small municipal incinerator exemption. Very small municipal incinerators are incinerators like the apartment house incinerators that were commonplace many years ago. Ohio EPA is not aware of any owner/operators continuing to use these types of incinerators as waste services companies have displaced the need. The exemption says that no installation permit is required for the installation of these types of incinerators. However, federal rules require owner/operators of these incinerators to obtain Title V permits so it does not make sense to exempt them from state permitting.

If an owner/operator was still operating one of these incinerators and thought they did not need a permit because of Ohio's exemption, then eliminating the exemption might bring to their attention that they need a federal-based permit. At that point they will need to decide to either apply for and obtain a federal-based permit or cease operation of the incinerator.

**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.*

As explained above, the overall impact of these changes is likely to be favorable to affected businesses.

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

As mentioned above, these rules fulfill a federal requirement in the CAA that requires all states to develop a plan for attaining and maintaining the NAAQS. The rules in OAC chapter 3745-31 establish Ohio's NSR permitting program, as required by the CAA and the CFR Title 40, Chapter 52.21, to ensure that all new and modified sources of pollution are issued an air pollution permit (PTI or PTIO).

Also as mentioned above, the alternative to these rules is allowing U.S. EPA to operate the permitting program. Allowing U.S. EPA to administer the program would not be in the best interest of facilities in the state of Ohio, both in terms of the fiscal cost of the program to facilities and in the time that would be required to obtain a permit. Ohio EPA currently issues

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90+ percent of the permits within the statutory 180-day deadline. In states where U.S. EPA operates the permitting program, issuance of permits can take 3 to 5 times longer than this which results in uncertainty in the business community as well as higher costs due to delays. For this reason, Ohio EPA feels that implementing the rules in OAC Chapter 3745-31 justifies the fiscal impact to businesses.

The overall impact of the proposed changes is likely to be favorable to affected businesses.

### **Regulatory Flexibility**

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

The regulations being changed don't explicitly address small businesses, but due to the purpose of most of the paragraphs in question (to alleviate the permitting burden upon facilities that emit pollutants only in small amounts), the benefits of an enlarged set of permanent exemption and permit-by-rule categories will go disproportionately to smaller companies.

#### **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](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.

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- U.S. 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'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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