Common Sense Initiative

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Business Impact Analysis

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

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

Cleveland Area Reclassification to Serious Ozone Nonattainment

Rule Number(s): OAC rules 3745-110-02, 3745-110-03, 3745-110-04, 3745-21-01, 3745-21-04, 3745-21-09, 3745-21-11, 3745-21-12, 3745-21-14, 3745-21-16, 3745-21-21, 3745-21-22, 3745-21-24, 3745-21-25, 3745-21-26, 3745-21-27, 3745-21-28, 3745-31-01, and 3745-31-21

Date of Submission for CSI Review: February 2, 2024

Public Comment Period End Date: March 5, 2024

Rule Type/Number of Rules:

New/___ rules
No Change/____ rules (FYR? ___)
Amended/_19__ rules (FYR? _N_)
Rescinded/____ rules (FYR?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.

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.

   Ohio Administrative Code (OAC) Chapter 3745-110 establishes requirements for emissions of nitrogen oxides (NOx) from very large, large, mid-size, and small boilers, stationary combustion turbines, stationary internal combustion engines, or reheat furnaces as defined in OAC rule 3745-110-01, or miscellaneous sources located at facilities that emit or have the potential to emit (PTE) a total of more than one hundred tons per year (TPY) of NOx emissions from all sources at that facility. The rules in OAC Chapter 3745-21 establish requirements for the control of emissions of volatile organic compounds (VOCs) and carbon monoxide (CO) from stationary emission sources. NOx and VOC are precursor compounds which can form ozone. Ozone is one of the six criteria pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under the Clean Air Act (CAA).

   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.

Ohio EPA has drafted revisions to OAC Chapters 3745-110, 3745-21 and 3745-31 to revise mandatory Reasonably Available Control Technology (RACT) and permitting requirements for the Cleveland 2015 ozone nonattainment area.

The Cleveland nonattainment area (Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit counties) is currently classified as moderate nonattainment for the 2015 ozone standard. The area is required to meet the ozone standard by August 3, 2024, based on ozone monitoring data collected during the 2021-2023 ozone monitoring seasons, which extends from March 1 to October 31 each year. Based on ozone monitoring data available to date, Ohio EPA anticipates that the Cleveland nonattainment area will fail to meet the ozone standard by August 3, 2024, and will be reclassified to serious nonattainment by U.S. EPA in accordance with the CAA.

Reclassification to serious nonattainment triggers additional CAA requirements for major stationary sources located in the serious nonattainment area. In this event, the threshold for sources subject to NOx and VOC Reasonably Available Control Technology (RACT) requirements in OAC Chapters 3745-110 and 3745-21 is lowered from a PTE of 100 TPY to 50 TPY. In addition, changes to the nonattainment new source review (NNSR) permitting requirements in OAC Chapter 3745-31 include lowering the major source threshold from 100 TPY to 50 TPY, lowering the major modification significance level from 40 TPY to 25 TPY and other special NNSR requirements for major modifications.

Ohio EPA has also included other clarifications and corrections to the RACT and permitting rules in OAC Chapters 3745-110, 3745-21 and 3745-31, including removing or updating outdated provisions.

In addition, Ohio EPA is rescinding the existing source-specific VOC RACT for Formica Corporation in OAC 3745-21-09(PP). These sources are now subject to OAC 3745-21-09(F), which is based on U.S. EPA's 2007 "Control Techniques Guidelines for Paper, Film, and Foil Coatings."

Please note: several other changes to permitting requirements are already incorporated into the existing rules without any revision needed and would become effective upon the date of reclassification to serious nonattainment. These include a change to the NNSR offset ratio from 1.15:1 to 1.2:1 (see OAC 3745-31-26(C)), as well as Title V permitting requirements in OAC Chapter 3745-77 which lowers the major source threshold to 50 TPY of NOx or VOC in serious nonattainment areas (see OAC 3745-77-01(X)(3)(a)).

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.**

   3745-110-02, 3745-110-03, 3745-110-04, 3745-21-01, 3745-21-04, 3745-21-09, 3745-21-11, 3745-21-12, 3745-21-14, 3745-21-16, 3745-21-21, 3745-21-22, 3745-21-24, 3745-21-25,

3745-21-26, 3745-21-27, 3745-21-28:
Authorized By: 3704.03(E)
Amplifies: 3704.03(A), 3704.03(E)

3745-31-01
Authorized By: 3704.03(F), 3704.03(G)
Amplifies: 3704.03(A), 3704.03(F), 3704.03(G)

3745-31-21
Authorized By: 3704.03(F)
Amplifies: 3704.03(A), 3704.03(F)

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 CAA requires all states to develop a plan for attaining and maintaining the NAAQS. The rules in OAC Chapters 3745-110 and 3745-21 establish RACT requirements for the control of NOx and VOC emissions from various industries and industrial processes. 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 certain new and modified sources of pollution are issued an air pollution permit. 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 implements a federal requirement, but 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 any federal requirements. The federal requirement which the rules in this chapter were designed to fulfill is the attainment and maintenance of the ozone NAAQS.

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)?**

These rules serve as part of Ohio's strategy for the attainment and maintenance of the ozone NAAQS. The public purpose of these rules is to assist in the attainment of the ozone NAAQS. Attainment of the NAAQS for ozone is mandated by the CAA and enforced by the U.S. EPA. If a state does not achieve attainment or maintain attainment within a certain mandated timeframe, U.S. EPA can begin a sanctions clock which can lead to, among other things, loss of federal highway funds in non-attaining areas.

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. The fact that Ohio is now attaining and maintaining the 2008 ozone NAAQS is, in part, a measure of the success these rules and Ohio's strategy for attaining the NAAQS in general. In 2015, a new more stringent NAAQS for ozone went into effect for which the Cleveland area was designated nonattainment. These rules will be necessary in order to aid Cleveland in attaining the 2015 ozone NAAQS.

   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.

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 statues.

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 a 30-day early stakeholder comment period, with an additional 10-day extension, and requested comments from potentially affected parties. The comment period ended as of October 12, 2023. Ohio EPA Division of Air Pollution Control (DAPC) sent notice 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?**

    One comment was received from the Ohio Manufacturing Association (OMA) requesting to be included in any meetings or future discussions pertaining to these rules. Ohio EPA has and will continue to include OMA in discussions regarding potential rulemakings and strategies to control ozone in the Cleveland nonattainment area, 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 OAC Chapter 3745-110 were initially based on rules developed for use in the state of New York, and on a model rule developed by the Ozone Transport Commission. In 2022, the presumptive NOx RACT emissions limitations and applicability criteria were revised based on an updated review of the pollution control technology that is currently reasonably available and both technologically and economically feasible. This review included a review of U.S. EPA's RACT/BACT Clearinghouse, consultation with industry experts, and benchmarking with NOx RACT provisions established in nearby states, including Wisconsin and Illinois.

The rules in OAC Chapter 3745-21 are based upon Control Technique Guidelines (CTG) and Alternative Control Technology (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.

The rules in OAC Chapter 3745-31 are based on the federal equivalent in 40 CFR Part 51, Subpart I and 40 CFR Appendix S to Part 51.

The draft amendments do not make any revisions to the emissions limits, but only expands the existing RACT and permitting requirements to cover additional sources of emissions, consistent with mandatory federal requirements for reclassification to serious nonattainment in the Cleveland ozone nonattainment area.

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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

Ohio EPA has drafted rule revisions consistent with the minimum federal mandatory requirements triggered by reclassification to serious nonattainment in the Cleveland ozone nonattainment area.

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

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 these chapters are unique within the Ohio EPA and do not duplicate the rules of this or any other agency.

14. 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 is currently and will be working with facilities newly subject to these rules to notify them of the changes, ensure that their permits reflect the appropriate emissions limitations, and that the facilities are applying these rules and complying with the appropriate emissions limitations.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).
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 3745-110

The rules in OAC Chapter 3745-110 are currently applicable to very large, large, mid-size, and small boilers, stationary combustion turbines, stationary internal combustion engines, or reheat furnaces as defined in OAC rule 3745-110-01, and miscellaneous NOx emission sources located at facilities that emit or have the PTE a total of more than one hundred TPY of NOx emissions from all sources at that facility; and the facility is located in Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, or Warren County, and new or modified units statewide. The draft amendments to these rules extend these requirements to facilities with a PTE of more than 50 TPY in Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit counties.

Typical facilities at which these rules would be applicable are facilities that burn fossil fuels in a boiler such as mills, steam generating facilities, large stationary engines and combustion turbines used in a variety of industrial applications including the gas and oil industry. These rules can also be applicable at facilities where NOx is a byproduct of the manufacturing process such as calcining facilities.

The cost of compliance with this chapter comes from the installation of control equipment and reporting for facilities which are required to meet the NOx emission limitations outlined in OAC rule 3745-110-03. Facilities may also choose to perform a NOx RACT Study under paragraph (I) of rule 3745-110-03 if the facility is subject to the emissions limitations specified in paragraphs (A) to (F) of rule 3745-110-03 but the owner or operator claims that the applicable emissions limitations is technically infeasible and/or economically unreasonable (i.e. not cost-effective) to achieve. Facilities that are not subject to the emissions limitations

specified in paragraphs (A) to (F) of rule 3745-110-03 are required to submit a NOx RACT Study to determine appropriate source-specific RACT.

It has been Ohio EPA's experience that controls for facilities to comply with these regulations can be installed for between $1,200 and $2,500 per ton of pollutant controlled. The cost for a typical control technology, such as low NOx burners is approximately $500,000 to $2 million per facility depending on the size and number of emission units to be retrofitted at the facility.

A facility may exercise the option of preparing a NOx RACT study to determine the technical and economic feasibility of installing NOx emission controls. In general, a RACT study would typically cost $5,000 to $30,000 depending upon the size and complexity of the facility, the number of sources for which RACT must be determined, the sizes of the sources (in terms of uncontrolled NOx emissions), and the number of various control techniques for which cost estimates must be prepared.

OAC Chapter 3745-21

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

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 or higher ozone non-attainment area. Facilities wishing to locate in these types of areas will need to meet these requirements in all states.

OAC Chapter 3745-31

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).

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 (SO2), NOx, and organic compounds (OC). The fee schedule is as follows:

- more than zero, but less than 10 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

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.

16. Are there any proposed changes to the rules that will <u>reduce</u> a regulatory burden imposed on the business community? Please identify. *(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).*

There is no reduction in regulatory burden with these amendments.

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

As mentioned above, these rules are a part of Ohio's strategies to attain and maintain the ozone NAAQS. Attaining the NAAQS is required under the CAA and can lead to potential fiscal sanctions if the NAAQS is not attained.

Additionally, reducing emissions benefits the state by providing a cost savings and economic benefit to the citizens through reduced pollution. Not only does reducing pollution provide for better enjoyment of the state's resources through cleaner air but also reduces property damage caused by pollution; reduces illnesses and reduces health care costs. These results, while impossible to quantify, are indeed much greater than the costs of compliance with these regulations.

Regulatory Flexibility

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

Yes. Paragraph (J) of OAC rule 3745-110-03 allows facilities to perform a NOx RACT study if there is not a pre-determined NOx emissions limitation for the facility type, or if the owner or operator claims that the applicable NOx emissions limitation is technically infeasible and/or economically unreasonable (i.e. not cost-effective) to achieve for their facility.

A list of applicable exemptions for affected facilities is included in paragraph (K) of OAC rule 3745-110-03.

The rules in OAC Chapter 3745-21 also 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.

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 https://epa.ohio.gov/divisions-and-offices/environmental-financial-assistance/compliance-assistance.

- Ohio EPA also has a permit assistance web page (https://epa.ohio.gov/stay-compliant/get-help/permit-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/ or by calling 202 566-2075 and a Small Business Ombudsman Hotline 800-368-5888.

- Ohio EPA's DAPC maintains an Air Quality Evaluation and Planning 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.