

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-25, "Ambient Air Quality and
Emergency Episode Standards"

Rule Number(s): OAC Rules 3745-25-01 at 3745-25-05

Date: June 4, 2014

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. 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 3745-25 establish the ambient air quality standards and emergency episode standards which the state of Ohio will use to attain and maintain the national ambient air quality standard (NAAQS) as required under Section 110 of the Clean Air Act (CAA).

These rules are being modified after a review to fulfill the requirements of ORC 119.032 (5-year review). The changes being made are typically minor, for purposes of clarification, to fix typos, and to meet LSC rule formatting conventions. No changes were made that affected the intent or content of the rules.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule Number	Authorizing Statute	Proposed Action
3745-25-01	3704.03(E), 3704.032	Amended
3745-25-02	3704.03(E), 3704.032	Amended
3745-25-03	3704.03(E), 3704.032	Amended
3745-25-04	3704.03(E), 3704.032	Amended
3745-25-05	3704.03(E), 3704.032	Amended

3. 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 3745-25 establish Ohio's ambient air quality standards and emergency episode standards which the state of Ohio will use to attain and maintain the NAAQS. The rules in this chapter are a part of Ohio's state implementation plan (SIP) under Section 110 of the CAA.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The rules in this chapter do not exceed federal requirements. The rules implement the federal requirements in 40 CFR Part 50 ("National Primary and Secondary Ambient Air Quality Standards") and 40 CFR Part 51, Subpart H ("Prevention of Air Pollution Emergency Episodes") and are a part of Ohio's SIP under Section 110 of the CAA

5. 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 3745-25 establish the state's ambient air quality standards and the requirements for emergency episode plans and actions. The public purpose of this rule is to establish air quality standards and emergency episode requirements to protect air quality for the citizens of Ohio.

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

The rules in this chapter establish the state's ambient air quality standards and the requirements for emergency episode plans and actions. Ohio EPA considers these rules a success when Ohio EPA is able to identify an air pollution emergency situation and then implement the appropriate emergency control action plans to mitigate the emergency and protect the health and welfare of the citizens of the state of Ohio.

It should be noted that, due to the overall success of all of the various air pollution control programs implemented in Ohio under the CAA, Ohio EPA has not had to declare an air pollution "alert", "warning", or "emergency" in the state of Ohio since 1977, even though the NAAQS and emergency episode standards have continually been lowered since then.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio EPA established an initial 30-day public comment period ending October 14, 2013. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the approximately 1,300 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.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Ohio EPA did not receive any feedback from commenters during the early stakeholder outreach period mentioned above.

9. 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 the chapter are based on federal rule language. The NAAQS and emergency episode levels upon which Ohio's ambient air quality levels are based are developed by USEPA. Their establishment of these levels is based on extensive research into the attainability of the air quality level versus the savings in both improved health and reduced healthcare costs. The states, including the state of Ohio, are required by the CAA to adopt ambient air quality standards and emergency episode levels at least as stringent as the federal requirements.

10. 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?

There are no alternatives available. The state, including the state of Ohio, are required to adopt ambient air quality and emergency episode at least equivalent to the federal requirements. Ohio's ambient air quality standards and emergency episode levels are equivalent to, but do not exceed, the federal requirements.

11. 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 this chapter are considered performance based. OAC rule 3745-25-04 discusses the preparation of Air pollution emergency emission control action programs. These are plans prepared by industries which emit more than 0.25 tons per day of an air pollutant for which an emergency standard exists. The plans are required to be "...consistent with good industrial practices and safe operating procedures, for reducing the emission of air contaminants into the ambient air during periods of an air pollution "Alert", air pollution "Warning", and air pollution "Emergency"." The goal of the plan is to reduce emissions in the event of an air pollution emergency, but the methods which the facility may take to reduce emissions are at the discretion of the facility.

12. 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. The rules in this chapter are unique within the Ohio EPA and do not duplicate the rules of this or any other agency.

13. 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 ambient air quality standards and emergency episode standards rules were a part of Ohio EPA’s original SIP, first submitted to USEPA in 1972. The rules have evolved over the years to meet the changing requirements and air quality standards of USEPA.

The ambient air quality standards in this chapter are implemented through interaction with Ohio’s other air pollution control rules. For example, facilities applying for a major source Title V air pollution permit under OAC chapter 3745-77 are required to perform air quality modeling to demonstrate that the facility will not cause a violation of the standards.

Adverse Impact to Business

14. 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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The rules in OAC chapter 3745-25 establish the ambient air quality standards and emergency episode standards which the state of Ohio will use to attain and maintain the national ambient air quality standard (NAAQS) as required under Section 110 of the Clean Air Act (CAA). Two of the rules in this chapter can have a direct impact on the business community and are discussed below:

3745-25-04 “Air pollution emergency emission control action programs”

This rule contains the requirements for emission control action programs and requires that "Any person responsible for the operation of a source of air contaminants which emits 0.25 tons per day or more of air contaminants for which air quality standards have been adopted shall prepare...[a plan]". This rule requires sources that must obtain a permit-to-install and operate under OAC rule 3745-31-02 or a permit-to-operate under OAC Chapter 3745-77 to submit an emissions control action plan at the time they apply for their permit. Paragraph (E) of this rule also allows the director to request a copy be submitted within 30 days of the director's request from any facility meeting the requirements of paragraph (A) of this rule.

It is difficult to determine the exact cost of compliance with this rule. The cost for preparation of this report can vary from a few hundred dollars to a few thousand dollars,

depending on the size and the complexity of the facility. It should be noted that this cost is minimal when compared with the overall capital, installation, and operating costs for a process that would require the preparation of a plan. This cost would primarily be personnel cost associated with generating the report. The amendments made to this rule as part of this rulemaking do not affect these costs.

The most recent air pollution episode in the state of Ohio (an ozone "Alert") occurred over 35 years ago (1977). Due to the continuing efforts of Ohio's citizens and businesses to reduce pollutant emissions, the ambient air quality in the state of Ohio has increased significantly and Ohio EPA does not expect the state to experience another emergency episode at the current emergency criteria levels. For this reason, Ohio EPA currently exercises "Director's Discretion" and no longer requires facilities to prepare and submit a plan with their permit application, however, if an episode were to occur, Ohio EPA could still request a copy of the plan within 30 days as allowed in paragraph (E).

3745-25-05 Attainment Dates and Compliance Time Schedules

This rule contains emergency orders that may be issued by the director of Ohio EPA if an air pollution episode occurs. This rule is based on 40 CFR Part 51, Subpart H and is a required part of Ohio EPA's state implementation plan (SIP) for attaining and maintaining the national ambient air quality standards (NAAQS).

Orders that may be given range from warnings to avoid episode areas to the closure of businesses that may be causing and/or adding to the episode in the affected areas. Due to the range of orders that may be issued, it is not practical to try and determine a specific cost of compliance with this rule.

The greatest cost of compliance with this rule is not directly measurable as it is attributable to lost work time and/or productivity when an air pollution "emergency" dictates the shutdown of a business or part of a business. Although this situation may result in a sizeable cost of compliance, an air pollution "emergency" is an extreme circumstance affecting entire communities in which the airborne concentration of contaminants may be immediately dangerous to life and health, possibly resulting in permanent injury or death.

This rule was originally promulgated in 1972 and Ohio EPA is not proposing any changes to the rule at this time that would increase the cost of compliance. As noted above, it has been over 35 years since an air pollution emergency has been issued in the state of Ohio. Due to the continuing efforts of Ohio's citizens and businesses to reduce pollutant emissions, the ambient air quality in the state of Ohio has increased significantly and Ohio EPA does not expect the state to experience another emergency episode at the current emergency criteria levels.

15. 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 Clean Air Act. These rules were a part of Ohio's original SIP, submitted in 1972. It has been over 30 years since an air pollution emergency has been issued in the state of Ohio. Due to the continuing efforts of Ohio's citizens and businesses to reduce pollutant emissions, the ambient air quality in the state of Ohio has increased significantly and Ohio EPA does not expect the state to experience another emergency episode at the current emergency criteria levels.

Regulatory Flexibility

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

As mentioned above, Ohio EPA is currently exercising "director's discretion" regarding the preparation of emergency action plans and is waiving the requirements that facilities automatically provide these plans with their permit applications. Due to the nature of these rules and their application in emergency situations, there really are no other exemptions possible.

17. 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. The procedures specified in the agency's "Compliance Assurance through Enforcement" program are used to ensure implementation of the regulations.

18. What resources are available to assist small businesses with compliance of the regulation?

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing

permit application forms. Additional information is available at <http://www.epa.ohio.gov/ocapp>.

- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.
- Ohio EPA's Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Erica Fetty, the primary contact for this rulemaking, is available to answer questions. She can be reached by calling 614-644-2310 or by e-mail at erica.fetty@epa.ohio.gov.