

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Emission Statement and Air Pollution Control Fee Rules,  
5-year review

Rule Number(s): OAC Rules 3745-24-01 to 3745-24-04, 3745-78-01 and 3745-78-02

Date: March 15, 2016

**Rule Type:**

New

5-Year Review

Amended

Rescinded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.*

Chapters 3745-24 and 3745-78 of the Ohio Administrative Code (OAC) are closely related. OAC Chapter 3745-24 contains the requirements for annual emission reporting of total nitrogen oxides and volatile organic compounds emissions if they are greater than 25 tons per year by all facilities. OAC Chapter 3745-78 contains the requirements for annual fee emission reports that quantify the actual emission data for particulate matter, sulfur dioxide, organic compounds, nitrogen oxides, and lead for facilities. The fee charged and the level of detail required in the fee emissions report is determined by the permitting requirements the facility is subject to pursuant to Chapters 3745-77 and 3745-31.

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

<b>Rule Number</b>	<b>Authorizing Statute</b>	<b>Proposed Action</b>
3745-24-01	3704.03(E)	Amended
3745-24-02	3704.03(E)	Amended
3745-24-03	3704.03(E)	Amended
3745-24-04	3704.03(E)	Amended
3745-78-01	3704.03(E)	Amended
3745-78-02	3704.03(E)	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.*

The rules in OAC Chapter 3745-24 fulfill a requirement in Section 182(a)(3) of the Clean Air Act and are a part of Ohio's state implementation plan for attainment and maintenance of the national ambient air quality standards (NAAQS). The rules in OAC Chapter 3745-78 are related to Ohio's Title V permitting program as required under Title V of the Clean Air Act.

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

These rules fulfill and do not exceed federal requirements for these programs.

**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)?**

As well as fulfilling federal requirements, the annual reporting allows Ohio EPA to track the annual actual emissions of air contaminants in the state of Ohio. This data is critical in doing studies on specific air pollution sources in order determine if future regulations would be needed to bring Ohio's air quality into compliance with NAAQS. In addition, this data can be an indicator of violations of other regulations triggering enforcement as necessary.

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

The emissions data collected from these reports is utilized by Ohio EPA and USEPA for a variety of reasons including: establishing emissions inventories by operations performed, computer air quality modeling, and establishing emissions related fees. Ohio EPA considers these rules a success when the various programs depending on the data also operate successfully.

**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 February 6, 2015. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 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. Ohio EPA received one comment which is discussed in question #8 below.

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

Ohio EPA received one set of comments from Canton Local Air Agency. The comment suggests that Ohio EPA change from using the term "organic compounds" to the term "Volatile organic compounds" in OAC rule 3745-78-02. Ohio EPA is not able to make the change at this time as this language mirrors the Ohio Revised Code (ORC). ORC 3745.11(B) allows Ohio EPA to assess fees "...on the total actual emissions from a source in tons per year of the regulated pollutants particulate matter, sulfur dioxide, nitrogen oxides, organic compounds, and lead." ORC 3745.11 would need to be changed before Ohio EPA could amend the term "organic compounds" in OAC rule 3745-78-02.

**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?**

These rules are administrative and only require collection and reporting of data. Both Ohio's rules and the federal rules on which they are based require a specific set of data be collected.

**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?**

The data collection requirements in the Clean Air Act and the federal Title V program are specific. There are not any alternate regulations possible.

**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 require the use of a form and manner prescribed by the Director. For consistency, Ohio EPA establishes and provides to each facility the necessary reporting forms to complete and return. For Title V and Synthetic minor facilities, the form is completed electronically through Ohio EPA's electronic eBusiness center. For non-Title V facilities, the form is a hardcopy form, mailed to the facility biannually.

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

Ohio EPA performed a review of our internal regulations as well as rules of other Ohio EPA divisions and outside agencies. These rules do not duplicate any other state rules.

**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.**

As noted above, Ohio EPA provides a form for facilities (electronic and hard copy) to use to ensure that data received is consistent and accurate.

## **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 cost of compliance with these rules varies with the size of the facility doing the reporting and the number of emissions units at the facility. Annual reporting for both OAC Chapter 3745-24 and OAC Chapter 3745-78 is reported on the same form, and the data reported on the form is used for these programs and many other programs such as annual emissions inventories and computer emissions modeling.

For minor facilities (facilities with potential emissions under 100 tons of pollutants per year) reporting involves completing a single page form supplied to the facility by Ohio EPA. Reporting for these facilities is as simple as checking a box indicating the range in which your emissions fall, such as 0-10 tons per year, 10-25 tons per year, etc. For first time reporters, it may take several hours to determine into which range they fall, however, for a long time reporting facility whose emissions have not changed, reporting takes very little time to complete.

For major facilities, facilities with a potential to emit over 100 tons of pollutants per year, reporting is more complex. Reporting for these facilities is performed on line through Ohio EPA’s eBusiness Center: Air Services. Reporting requires the facility to separate emissions for each pollutant and each emissions unit. Ohio EPA estimates that collecting the data to report can take from several hours to several days and can cost from several hundred to several thousand dollars annually, depending on the size of the facility.

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

The rules in OAC Chapter 3745-24 fulfill a requirement in Section 182(a)(3) of the Clean Air Act and are a part of Ohio’s state implementation plan for attainment and maintenance of the NAAQS. The rules in OAC Chapter 3745-78 are related to Ohio’s Title V permitting program as required under Title V of the Clean Air Act. The data collected through the regulations in these chapters is also used throughout the DAPC in various programs like air pollution emissions inventories and computerized air pollution modeling. This maximizes the value of the data collected by utilizing it in multiple programs.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

## **Regulatory Flexibility**

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

Because the data required for this program is set by federal rules, Ohio EPA cannot provide any exemptions or alternate methods of compliance for these rules.

### **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 reporting violation. In many cases, penalties are waived.

### **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](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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

- 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 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](mailto:paul.braun@epa.ohio.gov).