

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio EPA

Regulation/Package Title: OAC Chapter 3745-101, Transportation Conformity

Rule Number(s): OAC Rules 3745-101-01 to 3745-101-06

Date: November 19, 2013

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Rescinded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.

Ohio Administrative Code Chapter 3745-101 contains Ohio's Transportation Conformity regulations. Transportation Conformity is established under Section 176(c) of the Clean

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Air Act (CAA) and prohibits Federal entities from taking actions in a nonattainment or maintenance area which do not conform to Ohio’s State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). Therefore, the purpose of conformity is to ensure Federal activities do not interfere with the SIP; ensure actions do not cause or contribute to new violations of the NAAQS; and ensure attainment and maintenance of the NAAQS.

In summary, Conformity regulations prohibit Federal agencies from spending monies on projects which will violate the Clean Air Act. Transportation conformity specifically addresses roadway (transportation) projects.

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

These rules are authorized under Ohio Revised Code 3704.03(E) and amplify Ohio Revised Code 3704.03(A) and 3704.03(E). The rules in this rulemaking are as follows:

| Rule Number | Authorizing Statute | Proposed Action |
|--------------------|----------------------------|------------------------|
| 3745-101-01 | 3704.03(E) | No Change |
| 3745-101-02 | 3704.03(E) | No Change |
| 3745-101-03 | 3704.03(E) | No Change |
| 3745-101-04 | 3704.03(E) | No Change |
| 3745-101-05 | 3704.03(E) | No Change |
| 3745-101-06 | 3704.03(E) | No Change |

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.

These rules implement the federal conformity regulations in Section 176 of the Clean Air Act. These rules are part of Ohio’s State Implementation Plan (SIP) for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) as required under Section 110 of the Clean Air Act. These rules are required for Ohio to maintain primacy over our air pollution control program.

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

These rules do not exceed federal requirements.

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 public purpose is to prevent federal agencies from expending monies on projects which would worsen ambient air quality and impact the air quality experienced by the general public.

The rules provide requirements by which agencies, both state and federal, interact to identify project impacts and mitigate the impacts prior to initiating the projects. These rules do not directly affect the general public or private businesses through any sort of regulation.

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

Ohio EPA measures the success of these rules by the number of public projects that are completed without impact to the air quality of the state of Ohio.

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 a 30-day early stakeholder comment period and requested comments from potentially affected parties. The comment period ended as of April 27, 2012. Ohio EPA Division of Air Pollution Control (DAPC) sent notice of our request for comments electronically to the 1,284 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.

No comments were received as a result of Ohio EPA's request for input.

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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 no input on our request. The lack of input is not surprising to Ohio EPA. These rules only affect specific federal, state and local agencies involved in the planning and execution of transportation projects. Ohio EPA is currently in the process of developing a series of memorandums of understanding to replace these rules and will then rescind the rules after the completion of the MOUs. The affected parties are aware of this and participating in the MOU development program and, as such, chose not to comment on these rules.

Based on the lack of input and the fact that these rules will soon be replaced, Ohio EPA chose to submit these rules as “no-change” to the JCARR.

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 implement the requirements of Section 176 of the Clean Air Act. The rules in this chapter were originally promulgated in 1995. These rules are administrative in nature and do not contain outcomes based on science or scientific data. These rules deal with how agencies (both state and federal) are to interact to identify projects and how they are to agree on mitigation efforts, if necessary. The rules in this chapter do not set any standards or require attainment of any emission limits.

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?

These rules implement the requirements of Section 176 of the Clean Air Act. There are no alternate regulations to consider in the case of these rules.

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 performance based regulations. The rules discuss interactions between agencies, but do not dictate how those interactions are to take place or the outcome of the interactions.

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

Ohio EPA reviewed our own regulations and performed a search of regulation from other agencies to determine if duplication was being made. To our knowledge, Ohio EPA is not duplicating another existing Ohio regulation.

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.

These rules have been in effect since 1995 and, since then, Ohio EPA has developed extremely effective working relationships with the cooperating agencies including the Ohio Department of Transportation, U.S. EPA and the Federal Transportation and Highway Administrations regarding transportation conformity. All agencies are very cooperative in these areas and Ohio EPA has never had to enforce any measures of these rules. The rules do, however, contain measures for conflict resolution among agencies up to, and including, naming the Governor as arbitrator in the case of state agency deadlock.

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.

There is a cost of compliance with the rules in this chapter. The cost of compliance is minimal compared to the overall cost of a project. Typical costs for collecting the information necessary to comply with this chapter is between a few thousand dollars and approximately \$50,000. The cost of a project for which the rules in this chapter would be applicable is typically greater than \$10 million and frequently in the range

of \$100 million to \$250 million or greater for some of the larger transportation infrastructure projects. It should be noted that none of these costs are an impact to business as the information is collected and prepared by the cooperating federal, state and local agencies involved in the project.

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

These rules have been in existence since 1995. They were promulgated so that Ohio could implement Section 176 of the Clean Air Act and maintain primacy over our State Implementation Plan. A good portion of the information that regulated entities supply to comply with these rules is information that is collected during the course of planning a major project such as those subject to these rules. In reality, the rules in this chapter do not add much, if any, regulatory burden to affected projects.

Regulatory Flexibility

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

The rules in this chapter do not affect small business. These rules apply to federally funded transportation projects. If anything, these rules assist small business in that they clear the way for federal funding to be provided for projects that employ small and mid-sized construction and engineering businesses.

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?

Violations of this rule would be treated as paperwork violations and would be addressed under the scope of ORC 119.14.

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

As noted in item #16 above, these rules would never be applied to an affected facility which could be considered a small business, however, 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 Paul Braun, the primary contact for the transportation conformity rules in OAC Chapter 3745-101, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.