

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-80, Statewide Motor Vehicle Anti-Tampering Program

Rule Number(s): OAC Rules 3745-80-01 to 3745-80-03

Date: March 27, 2015

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Rescinded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.

OAC Chapter 3745-80, “Statewide Motor Vehicle Anti-Tampering Program” is a part of Ohio’s State Implementation Plan (SIP) for attaining and maintaining the national ambient air quality standards (NAAQS) under the Clean Air Act. This chapter contains 3 rules relating to the prohibition on tampering with or disabling emission control equipment on motor vehicles and the requirements for inspections of vehicles to determine if tampering has occurred. These rules implement a portion of Title II of the Clean Air Act in the state of Ohio.

The main purpose in this rulemaking is to make minor changes and update information on the version and availability of items referenced in this chapter as part of a review to fulfill the requirements of Ohio Revised Code (ORC) 119.032 (5-year review).

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

Rule Number	Authorizing Statute	Proposed Action
3745-80-01	3704.03	Amended
3745-80-02	3704.03	No change
3745-80-03	3704.03	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.

OAC Chapter 3745-80, “Statewide Motor Vehicle Anti-Tampering Program” is a part of Ohio’s State Implementation Plan (SIP) for attaining and maintaining the national ambient air quality standards (NAAQS) under Section 110 of the Clean Air Act. These rules are complimentary to the rules in OAC chapter 3745-26 in helping to reduce emissions of air contaminants from mobile sources such as automobiles and trucks. Ohio is required by the Clean Air Act to develop rules to meet the NAAQS.

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 federal requirements in Title II of the Clean Air Act and 40 CFR Part 85 and are no more stringent than the federal requirements. The rules in this chapter were originally promulgated in 1994, however, federal vehicle emission anti-tampering

requirements have existed since the 1970's. The amended language in this rulemaking is intended for clarification and neither adds, nor removes any requirements to these rules.

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 mentioned above, the rules in this chapter are part of Ohio's strategy for attaining and maintaining the NAAQS under section 110 of the Clean Air Act. The amended language in this rulemaking is intended for clarification and neither adds, nor removes any requirements to these rules.

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

As part of Ohio's SIP, these rules assist in the maintenance of the NAAQS for particulate matter and ozone. The success of these rules is measured when Ohio EPA is able designate areas in Ohio as being in attainment of these NAAQS. Most recently, these rules have helped the Cleveland/Akron/Lorain metropolitan area and the Cincinnati/Dayton metropolitan area to achieve attainment of the federal 1997 8-hr ozone standard, and are assisting these areas, as well as the Columbus metropolitan area in making progress toward attainment of the federal 2008 8-hr ozone standard.

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 July 30, 2014. 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 did not receive any comments on these rules during the comment period.

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 comments from potentially interested parties during the early stakeholder comment period. Upon the close of the upcoming interested parties draft comment period, Ohio EPA will consider any additional comments and prepare a "response

to comments” document detailing Ohio EPA’s response to the comments (if any) and outlining any changes made to the draft language as a result of the comments.

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?

Federal anti-tampering requirements have existed since the 1970’s and Ohio’s rules have existed since 1994. These rules require that those who sell, lease, own, or operate a vehicle not tamper with the emission control devices installed on the vehicles. These devices are designed to reduce emissions of air contaminants from the vehicles under normal operating conditions. Tampering with these devices may lead to increased emissions from and possibly damage to the vehicle.

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?

As mentioned, federal anti-tampering requirements have existed since the 1970’s. These rules are based on tested and proven emission control techniques for reducing emissions of air contaminants from motor vehicles. These methods are cost effective and federally required and, therefore, Ohio did not consider alternate control strategies for these vehicles.

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.*

It is a federal requirement that vehicles sold, rented, or leased in the United States come equipped with these pollution control devices. The rules required that persons selling, leasing, owning, or operating the vehicles not tamper with, or remove the devices from the vehicles.

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 a comparison with rules promulgated by other state agencies. Jurisdiction given to Ohio EPA by ORC 3704.03 makes Ohio EPA the sole agency responsible for controlling emissions of air contaminants from mobile sources. Ohio EPA is confident that these rules do not duplicate any other Ohio regulations.

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 has identified three scenarios where these rules may be enforced. First, if a vehicle owner/operator purchases, rents or leases a vehicle and finds that the dealer has tampered with the vehicle prior to the sale, the purchaser may, under these rules, require the dealer to make any necessary repairs to the vehicle restore the emission control system. Second, if a vehicle owner/operator is seeking a long-term waiver from vehicle emission testing, an inspection is performed and any tampering with the emission control system must be fixed prior to issuance of the waiver. Third, if a vehicle owner/operator fails a vehicle emission test in a testing area (such as the E-Check program in the Cleveland/Akron area), the vehicle owner/operator is responsible for repairing the vehicle prior to issuance of a valid test certificate.

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 3745-80 do have a cost of compliance, however, the cost is minimal. The rules in this chapter prevents anyone who sells, rents, leases, owns, or operates a motor vehicle from tampering with the emission control devices on the vehicle. In the event that tampering occurs, the rules require that the tampering be fixed. This cost may be borne by a private citizen or it may be borne by the seller of the vehicle, for example an automobile sales establishment. The cost to repair a vehicle’s emission control devices is typically in a range of between \$100 and \$500.

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

These rules fulfill a federal requirement and are a part of Ohio’s SIP. If Ohio did not adopt these rules, or rule similar to it, the state could be liable under the Clean Air Act and could be sanctioned up to, and including the loss of federal highway funds in non-attainment areas.

Regulatory Flexibility

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

There is really no alternatives to these rules where exemptions are possible. It is a federal requirement that vehicles are equipped with pollution control devices and, as such, these devices must be maintained. This is the basis of these rules. There do not exist, practical alternatives to these devices.

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?

Ohio EPA may not assign fines and penalties for first-time offenders, and prefers to obtain compliance through outreach first and if needed, written notice of violations prior to any type of formal enforcement.

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 Mike Riggleman, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3590 or by e-mail at michael.riggleman@epa.ohio.gov.