

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-19 - Open Burning Standards,
5-yr Review

Rule Number(s): OAC Rules 3745-19-01 to 3745-19-06

Date: May 18, 2017

Rule Type:

New

5-Year Review

Amended/No-Change

Rescinded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 (OAC) Chapter 3745-19, “Open Burning Standards” 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 6 rules regulating the open burning of materials in the state of Ohio.

The purpose of this rulemaking is to make changes identified after a review of the rules to fulfill the requirements of Ohio Revised Code (ORC) 106.03 and 106.031, 5-yr review. Along with various minor changes for clarification and to fix typographical errors, Ohio EPA is adding a new definition of “building materials” for clarification and moving fires for recognized horticultural, silvicultural, and prairie management purposes from permission required to notification required status.

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

Rule Number	Authorizing Statute	Proposed Action
3745-19-01	3704.03(E)	Amended
3745-19-02	3704.03(E)	No-change
3745-19-03	3704.03(E)	Amended
3745-19-04	3704.03(E)	Amended
3745-19-05	3704.03(E)	Amended
3745-19-06	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.

OAC Chapter 3745-19, “Open Burning Standards” is a part of Ohio’s SIP for attaining and maintaining the NAAQS under Section 110 of the Clean Air Act. The amendments to these rules will be submitted as a modification to Ohio’s SIP. 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.

There is no federal counterpart language for open burning. These rules were originally promulgated at the establishment of the Ohio EPA in the early 1970’s and have been a part of

Ohio's SIP since that time. These rules play a part in reducing airborne quantities of particulate matter.

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 SIP for attaining and maintaining the NAAQS under Section 110 of the Clean Air Act.

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

As part of Ohio's SIP, Ohio's open burning rules assist in the maintenance of the NAAQS for particulate matter. The success of these rules is measured when Ohio EPA is able to issue a permit for an allowable fire, which will be performed in a manner which minimizes environmental impacts so that the health and safety of the general public is maintained, while allowing the applicant to accomplish their intended goals.

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 7, 2016. Ohio EPA Division of Air Pollution Control (DAPC) sent notices 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. 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 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?

Ohio's open burning rules were originally promulgated in the 1970's and have been a part of Ohio's SIP since then. These rules are intended to help Ohio achieve the NAAQS for particulate matter by reducing emissions of smoke and other particulates that could cause health problems, reduced visibility on roadways and transportation systems, and other related problems.

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?

Ohio's open burning regulations were originally promulgated in the 1970's and are a part of Ohio's SIP. The amendments being proposed in this rulemaking remove the requirement for obtaining permission to perform a burn for recognized horticultural, silvicultural (forestry), range management, prairie and grassland management, invasive species management, or wildlife management practices and replace it with a notification requirement. A person or group interested in performing one of these burns must meet the requirements being added to the notifications portion of these rules (OAC rules 3745-19-03 and -04).

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.*

Ohio EPA considers these regulations to be performance based regulations. The rules establish basic parameters upon which the regulated community can then plan and execute their open burning exercises as needed. By establishing the basic parameters, Ohio EPA protects impact on the environment, but still gives the regulated community the ability to perform open burning as needed.

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 the state Fire Marshal. In our opinion, similarities and differences between our rules and those of the Ohio Fire Code do not amount to a conflict between the two rules. The fact that we are specific on some additional points and the Ohio Fire Code is specific on other points results from the different authorities of each agency. Ohio EPA is regulating air pollution and therefore is primarily concerned with emissions and the resulting health issues; the Fire Marshal is primarily concerned with the fire itself and the resulting safety issues. Our authority in ORC 3704.03(D) focuses on emissions and not safety concerns outside the

boundary of emissions. In our opinion, these rules work to reinforce each other and are not at odds nor do they overlap with each other.

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.

Implementation of Ohio’s open burning regulations is typically performed through Ohio EPA’s district offices and the local air agencies (DO/LAAs). The DO/LAAs help distribute educational materials which are prepared by Ohio EPA as well as respond to complaints and prepare enforcement documentation. DO/LAA staff also issue permissions and implement these rules in the course of regular inspections carried out in the normal course of business.

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.

Ohio’s open burning regulations in Chapter 3745-19 are not specifically targeted at the business community. The regulations prohibit the open burning of materials based on health and safety reasons and to prevent excess pollution and smoke nuisances. Businesses must comply with these rules in the same way as the general public.

Ohio EPA anticipates any adverse impacts to be minimal. A short notification letter is required for some forms of open burning such as; prevention or control of pests, horticultural, silvicultural and prairie management purposes, ceremonial bonfires, and disposal of hazardous (explosive) materials for which there is no other practical disposal method.

Ohio EPA does not anticipate a change in the cost of compliance with OAC rules 3745-19-03 and 3745-19-04 as a result of the amendments to these rules. Other than no longer having to wait for Ohio EPA to issue a permission to open burn for recognized horticultural, silvicultural (forestry), range management, prairie and grassland management, invasive species management, or wildlife management practices, the amendments still require the parties performing the burn to take the necessary steps to limit emissions that were required through the general conditions in the permission.

Finally, OAC rule 3745-19-06 contains language allowing the director to levy fines of \$250 or \$1,000 for open burning violations. Ohio EPA typically uses enforcement discretion regarding fines. Penalties for persons and facilities committing a first-time violation are typically waived.

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

The intent of this rulemaking is to provide clarity and prevent miscommunication between Ohio EPA, stakeholders and the regulated community. There is no adverse impact with this rulemaking.

Regulatory Flexibility

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

Ohio's open burning regulations provide a framework within which citizens and businesses can conduct necessary burns and still protect the air quality of the State of Ohio. The rules do contain exemptions from notifications for certain types of fires (such as training fires and the destruction of seized marijuana), however, these fires still need to be performed within the parameters of the open burning regulations.

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. 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

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

CSIOhio@governor.ohio.gov

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 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.