

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-79, 5-year review

Rule Number(s): OAC Rules 3745-79-01, 3745-79-02, and 3745-79-03

Date: July 7, 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Rescinded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.

Chapter 3745-79 of the Ohio Administrative Code (OAC) fulfills a mandate of Section 507 of the 1990 Clean Air Act Amendments for states to establish a small business assistance program. The program created by these rules and ORC 3704.18 helps small businesses understand and comply with air pollution regulations. In Ohio, the functions of this program

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

CSIOhio@governor.ohio.gov

are performed by the Office of Compliance Assistance and Pollution Prevention (OCAPP), located within Ohio EPA's Division of Environmental and Financial Assistance.

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

Rule Number	Authorizing Statute	Proposed Action
3745-79-01	3704.036(B)	Amended
3745-79-02	3704.036(B)	No-Change
3745-79-03	3704.036(B)	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 3745-79 fulfills a mandate of Section 507 of the 1990 Clean Air Act Amendments for states to establish a small business assistance program. These rules are administered through Ohio EPA's office of compliance assistance and pollution prevention (OCAPP).

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. These rules are based on Section 507 of the Clean Air Act and Ohio Revised Code (ORC) section 3704.18 and do not exceed the provisions in those 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)?

Numerous studies by the U.S. Small Business Administration and others continue to show that small businesses bear a disproportionate cost of regulatory compliance due to their limited resources as compared to large businesses. These rules establish procedures for owners of small businesses as defined in OAC rule 3745-79-01(B) to register with Ohio EPA's OCAPP to receive free notices and support pursuant to the small business technical and environmental compliance assistance program administered by the OCAPP

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

Ohio EPA considers these rules a success when small businesses are able to receive guidance and support on technical and environmental issues. OCAPP regularly conducts customer

satisfaction surveys to gauge the effectiveness of its assistance efforts and determine opportunities for improvement.

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 early stakeholder outreach period ending March 17, 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.

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

No comments were received from stakeholders on these rules.

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 in nature and no scientific data was necessary.

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 are based on Section 507 of the Clean Air Act and outline a required federal program. There are no alternate regulations.

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.*

OAC rule 3745-79-02 allows any owner or operator of a facility whose building, structure, facility, or installation meets the definition of a small business stationary source to register with Ohio EPA as a small business stationary source and receive notices from the small business assistance program. The rules in this chapter do not set forth the registration process and do not need to be performance based. OAC rule 3745-79-03 sets forth how Ohio EPA will make notices available to registered entities.

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.

The Office of Compliance Assistance and Pollution Prevention (OCAPP), housed within Ohio EPA, has been responsible for administering the small business assistance program since it was first implemented in 1995. The OCAPP provides free and confidential assistance to Ohio businesses to help them comply with Ohio's environmental requirements, focusing on the needs of small business. The office conducts regular outreach events statewide to help customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment.

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.

There is no cost of compliance to the regulated community related to these rules. Registration in the program as well as notices and assistance are provided free of charge through the OCAPP. The rules and services provided by OCAPP save the small business community countless hours of manpower and resources related to environmental compliance costs.

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

There is no adverse impact. OAC Chapter 3745-79 fulfills a mandate of Section 507 of the 1990 Clean Air Act Amendments for states to establish a small business assistance program. The ability for businesses to obtain free, confidential assistance with their environmental

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

CSIOhio@governor.ohio.gov

questions encourages more businesses to maintain compliance with Ohio EPA's environmental regulations.

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 provide any exemption. No exemptions are required for a zero cost, confidential environmental assistance program.

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, however, there should be no need to issue a fine or penalty regarding the application process for these rules.

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.

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

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.