

Ohio EPA Notice of Revised Filing

Adjudication Rule – Burden of Proof

Ohio EPA has made a small revision to proposed rule 3745-47-15 “Burden of proof.” This rule was originally proposed on November 30, 2011. The revised filing of this rule does not change any of the timeframes of the rule-making process. This rule is being revised to clarify in a potential conflict between the provision of the rule placing the burden on applicants to show that they are entitled to authorizations and the provision of the rule placing the burden on the agency when a proposed order is the subject of an adjudication hearing.

Attached to this revised filing notice is the proposed rule as revised. The original public notice can be viewed at: http://epa.ohio.gov/portals/0/general%20pdfs/adj_adm_proposal.pdf

3745-47-15

Burden of proof - evidence.

(A) The burden at all adjudication hearings with respect to applications for permits, licenses, variances, certificates, or other authorizing actions shall be upon the applicant to prove entitlement to the permit, license, variance, certificate, or authorizing action.

(B) Except as provided in paragraph (A) of this rule, the agency shall bear the burden of proof at all adjudication hearings relating to the following:

(1) Proposed modifications initiated by the agency.

(2) Proposed revocations.

(3) Proposed orders.

(4) Findings under division (B) of section 3714.12, division (B) of section 3734.13, division (C) of section 3745.08, division (B) of section 6109.05, section 6109.14, or division (C) of section 6111.06 of the Revised Code.

(5) Notice of the hearing under division (B) of section 3714.12, division (B) of section 3734.13, division (C) of section 3745.08, division (B) of section 6109.05, section 6109.14, or division (C) of section 6111.06 of the Revised Code.

(C) A party raising an issue of fact shall have the burden of presenting a prima facie case establishing that fact; thereafter, the burden of proof on such issue is allocated according to paragraphs (A) and (B) of this rule.

(D) Notwithstanding paragraph (A) of this rule, there shall be a legal presumption in favor of facts asserted by a party that can be disproved by evidence available to and under the control of an opposing party. In order to rebut this presumption, the party having control of such evidence shall show that the nonexistence of the presumed fact is more likely than the existence of such fact.

Replaces: Part of 3745-47-23

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3704.03, 3714.02, 3734.02, 3734.021, 3734.12,
3734.70, 3734.71, 3734.72, 3734.73, 3734.74,
3745.01, 3746.04, 3751.02, 3752.03, 3753.02,
6109.04, 6111.03, 6111.041
Rule Amplifies: 119.06, 119.07, 119.08, 119.09, 3745.07
Prior Effective Dates: 07/05/73, 06/30/81