

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Rule 3745-20-01, "Definitions and incorporation by reference"

Rule Number(s): OAC Rule 3745-20-01

Date: January 30, 2013

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Rescinded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.

Ohio Administrative Code (OAC) Rule 3745-20-01 contains definitions for terms used throughout OAC Chapter 3745-20, “Asbestos Emission Control”. The rule also contains information on availability and version of documents referenced throughout the chapter.

The intent of OAC Chapter 3745-20 is the control of emissions of asbestos fibers and to establish Ohio’s primacy over the state’s program to enforce the Federal Asbestos Regulations.

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

Rule Number	Authorizing Statute	Proposed Action
3745-20-01	3704.03(E)	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.

The rules in OAC Chapter 3745-20 are intended to establish Ohio’s program to enforce the federal asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations in 40 CFR Part 61. OAC rule 3745-21-01 provides definitions for terms used throughout the chapter and information required by ORC 121.71 on the availability and version of documents referenced in the chapter.

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

The rule amendment proposed in this rulemaking action is intended to reverse a provision not specifically required in the federal rule. Ohio EPA had intended to clarify the definition of “Facility” in paragraph (B)(18) of this rule but has now determined that the clarification may interfere with the agency’s attempt to grant relief to municipalities and land banks utilizing publicly funded demolition programs to address urban blight. Therefore, the language is being removed from the rule and go back to the precise language of the federal NESHAP.

Secondly, with the removal of the language in paragraph (B)(18), the definition of “Residential Exempt Structure” in paragraph (B)(45) has become unnecessary as it was only

used as part of the definition for facility. Ohio EPA is, therefore, removing this definition from the rule.

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 rules in OAC Chapter 3745-20 are intended to establish Ohio's program to enforce the federal asbestos NESHAP regulations in 40 CFR Part 61, and are protective of the public health through the regulation of the releases of asbestos fibers into the atmosphere.

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

This rule contains definitions used throughout the chapter and information on referenced materials as required by ORC 121.71. Ohio EPA will measure the success of this rule through implementation of the chapter as a whole and by the success of Ohio's Asbestos Emission control program at reducing emissions of asbestos fibers.

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 ending August 13, 2012. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 1,248 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 has also been working with various stakeholder parties in the development of the proposed rule language.

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

The proposed draft language has been created through an iterative process with the exchange of draft language and comments between Ohio EPA, the Ohio Attorney General's Office, and potentially affected parties. The amended language included in this package has been agreed upon by all parties.

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?

The changes to this rulemaking were not based on scientific data. The changes are purely administrative to better clarify the intent of the definition of “facility” in paragraph (B)(18).

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?

The proposed amendments to this rule are the result of Ohio EPA choosing an alternative to the existing regulation during our review of the rules in 2012 to fulfill the requirements of ORC 119.032. The changes made to the definition of “facility” in paragraph (B)(18) in 2012 were intended to clarify the definition. Ohio EPA has now determined that the clarification may interfere with Ohio EPA’s attempt to grant relief to municipalities and land banks utilizing publicly funded demolition programs to address urban blight. We are therefore removing the language and reverting back to the previous wording of the definition.

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.*

This rule contains definitions used throughout the chapter and information on referenced materials as required by ORC 121.71. There is no way to make definitions a performance based regulation.

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 regulations from other agencies to determine if duplication was being made.

The Ohio Department of Health also has Asbestos program regulations, however, their regulations primarily address training and licensing of individuals and businesses, whereas Ohio EPA’s regulations deal with prevention of emissions and disposal of waste (landfill regulations). Ohio EPA has determined that there is no duplication of regulations between the two agencies.

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.

OAC rule 3745-20-01 contains definitions used throughout the chapter. The definitions facilitate a more effective implementation of Ohio’s asbestos emission control program

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

CSIOhio@governor.ohio.gov

overall. The changes proposed for this rulemaking will clarify a situation where the previous definition was determined to possibly interfere with Ohio EPA's attempt to grant relief to municipalities and land banks utilizing publicly funded demolition programs to address urban blight. The new definition will clear up some confusion among affected parties.

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.

OAC rule 3745-20-01 contains definitions used throughout the chapter and information on referenced materials as required by ORC 121.71. There is no direct cost of compliance with a definition, the costs are derived in the application of the definition in other rules in the chapter.

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

As mentioned above, the proposed changes to this rule are being made to be able to clear up some possible confusion among potentially affected parties. The proposed changes do not carry an adverse impact towards business and, without changing the environmental impact of the rules, the changes may actually result in a lessening of reporting requirements for municipalities and land banks addressing urban blight through publicly funded demolition programs.

Regulatory Flexibility

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

OAC rule 3745-20-01 contains definitions used throughout the chapter and information on referenced materials as required in ORC 121.71. There are no exemptions to the definitions.

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. 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 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.state.oh.us.

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

CSIOhio@governor.ohio.gov