



# Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

OAC Chapter 3745-26, "I/M Program Rules and Regulations", 5-Year Review

Rule Numbers:

OAC Rules 3745-26-01, 3745-26-10, and 3745-26-12 to 3745-26-16

Date of Submission for CSI Review: September 3, 2020

Public Comment Period End Date: October 6, 2020

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/ 7 rules (FYR? X)

Amended/\_\_\_ rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

- 2. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

The rules in OAC chapter 3745-26 implement a federally mandated vehicle inspection and maintenance (I/M) program in the Cleveland/Akron/Lorain metropolitan area. The Clean Air Act requires states to implement an I/M program in all areas that were at one time designated moderate or worse for non-attainment of the ozone national ambient air quality standard (NAAQS). Because the Cleveland/Akron/Lorain area was moderate non-attainment for the 1997 ozone NAAQS, Ohio is required by federal law to maintain the program in the area.

An I/M program is a program through which vehicles are required every 2 years to submit to a test to determine if the vehicle emissions are meeting the vehicle emissions standards outlined in the rules. Non-performing vehicles are required to be repaired and pass the test or obtain a waiver by spending up to \$300 or more toward vehicle emissions related repairs prior to being relicensed for operation on Ohio's roadways.

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- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

<b>Rule Number</b>	<b>Authorizing Statute</b>	<b>Proposed Action</b>
3745-26-01	3704.14	No-Change
3745-26-10	3704.14	No-Change
3745-26-12	3704.14	No-Change
3745-26-13	3704.14	No-Change
3745-26-14	3704.14	No-Change
3745-26-15	3704.14	No-Change
3745-26-16	3704.14	No-Change

- 4. 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.*

Section 110 of the Clean Air Act (CAA) requires all states to develop a plan for attaining and maintaining the national ambient air quality standards (NAAQS). Section 182(b)(4) of the CAA requires, as part of the plan, for states to develop an inspection and maintenance (I/M) program identifying excessively polluting vehicular sources in moderate non-attainment areas. The rules in OAC Chapter 3745-26 establish Ohio’s I/M program for the Cleveland-Akron-Lorain area as required by the CAA.

- 5. 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.

- 6. 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 3745-26 implement the federal requirements for states to establish and operate an I/M program in areas that once were or are designated as “moderate or above” non-attainment areas for ozone. This program assists the state of Ohio in attaining and maintaining the NAAQS.

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

The rules in this chapter assist the state of Ohio in attaining and maintaining the NAAQS for ozone. In 2009, the state of Ohio achieved success in that all areas of the state were classified by USEPA as being in attainment of the 1997 8-hr ozone standard of 0.84 parts per million. In 2008, USEPA lowered the 8-hr ozone standard to 0.75 parts per million, and in 2015, USEPA

again lowered the 8-hr ozone standard to 0.70 parts per million. The I/M program established by the rules in this chapter will be an integral part of Ohio's plan to attain both the 2008 and 2015 8-hr ozone standard.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No, the rules in this rulemaking are not being submitted pursuant to these statutes.

**Development of the Regulation**

**9. 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 December 4, 2019. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 3,400+ 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.

No stakeholder input was received regarding the request.

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

DAPC did not receive any stakeholder input on this outreach.

**11. 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 rules in OAC chapter 3745-26 fulfill a federal requirement for an I/M program in a moderate ozone non-attainment. In the Clean Air Act amendments of 1990, USEPA determined that tailpipe emissions from motor vehicles were a significant contributor to non-attainment of the NAAQS for ozone. The scientific background and research used to make this determination was performed by USEPA prior to issuing the requirements for the I/M program.

USEPA allows states to perform several different types of tests to confirm compliance with these requirements. These tests range from the complex testing of the vehicle tailpipe in older model vehicles to newer, much less expensive, on board diagnostic (OBD) test in newer model vehicles. The validity of these tests and the scientific research used to confirm these tests were also performed by USEPA, prior to certifying these methods for use with these rules.

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**12. 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?**

There are no practical alternatives to the federal rules for an I/M program in Ohio. The rules in OAC chapter 3745-26 fulfill the requirement for an I/M program and are approved as part of Ohio's SIP. The rules are based on federal models and are very inclusive of all testing methodologies allowed under the rules. It would not be practical for Ohio to develop our own program to fulfill the federal requirements.

**13. 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.***

The rules in this rulemaking package do dictate to an extent the process by limiting the types of tests which may be used to those allowed in the federal requirements. Before January 1, 2020, based on the vehicle model year, cars were required to either undergo an OBD test (on board diagnostics for model year 1996 and newer), or a tail-pipe test (model years 1995 and older). Vehicles built between 1996 and 2004 may undertake either test, depending on whether the vehicle is ready for an OBD test or not). However, beginning January 1, 2020, tailpipe testing ended and only the OBD test is offered.

**14. 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, and is specifically directed, under ORC 3704.14 to establish an I/M program according to federal requirements. The rules in this chapter are unique within the Ohio EPA and do not duplicate the rules of this or any other agency.

**15. 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 originally established Ohio's vehicle I/M program (commonly referred to as E-Check) in the mid-1990's. The program remains operational in the Cleveland/Akron area; however, testing is provided free-of-charge to these residents and waivers are available for vehicles where repairing a failed test would cost more than \$300.

## **Adverse Impact to Business**

**16. 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; and**
- b. Identify the nature of all adverse impact (e.g., 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.*

Collectively, the rules in this chapter establish a vehicle inspection and maintenance (I/M) program for the control of ozone pollution in the Cleveland/Akron/Lorain moderate ozone non-attainment area. This program is required in this area under Section 182 of the federal Clean Air Act and enacted under ORC 3704.14.

The program was originally established in Cleveland/Akron area in the mid 1990’s. Originally, the program cost was borne by the vehicle owner in the form of a charge per test. In the early 2000’s, the Ohio legislature determined that tests should be provided to owners free of charge and relieved the cost burden on the vehicle owner. This program is currently being funded with monies from the general revenue fund. The total cost of the program is approximately \$9 million per year to test on average 850,000 vehicles in the Cleveland/Akron/Lorain area, or approximately \$11.00 per test. This cost per test is significantly less expensive than the original cost to test of approximately \$20 per vehicle in the 1990’s and is anticipated to continue to decrease in future fiscal years with the continuing improvements in testing technology.

The program also includes the ability to obtain a waiver from testing if the cost to repair a vehicle to correct a failed test is greater than \$300.

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

As mentioned above, these rules fulfill a federal requirement in the Clean Air Act that requires states to maintain a vehicle I/M program in moderate or worse ozone non-attainment areas. The Clean Air Act establishes penalties for states not complying with the federal requirements. Should Ohio discontinue this program, or not comply completely with the requirements, USEPA could impose sanctions on the state of Ohio until the program was reinstated to the extent the federal law requires. Typical sanctions include withholding of federal highway funding in areas where programs are required, but not being implemented.

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## **Regulatory Flexibility**

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

The rules in this chapter are focused primarily on vehicle owners and not directly at businesses. Businesses owning motor vehicle fleets are, however, required to have their vehicles tested. As with individuals, tests are provided free of charge to business and require a time investment of 10 to 20 minutes per vehicle, maximum, once every 2 years. Because this program is federally mandated and includes allowance for every federally accepted testing method available, there is not really an alternate means of compliance available.

### **19. 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?**

There are no fines associated with not getting your vehicle tested. The enforcement mechanism is vehicle registration denial until the vehicle receives a passing certificate or waiver.

### **20. What resources are available to assist small businesses with compliance of the regulation?**

The following resources are available:

- Ohio EPA has a Mobile Sources Section that can help citizens and small businesses with issues getting vehicles tested.
- 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 tollfree 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](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.

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- Ohio EPA's DAPC maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC's rules coordinator, 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](mailto:paul.braun@epa.ohio.gov).

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