

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio EPA

Regulation/Package Title: Ambient Air Quality Rules

Rule Number(s): 3745-25-01, 3745-25-02

Date: 1/26/12

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Rescinded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 3745-25-02 contains the ambient air quality standards which Ohio EPA will attain and maintain through our State Implementation Plan (SIP) as

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required in Section 110 of the Clean Air Act. OAC rule 3745-25-01 contains definitions and information on items referenced throughout the chapter.

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

These rules are promulgated under the authority of Ohio Revised Code (ORC) 3704.03(E), and 3704.032.

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 rules 3745-25-01 and 3745-25-02 are a part of Ohio's State Implementation Plan (SIP) for attaining and maintaining the national ambient air quality standards (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.

Ohio is required under the Clean Air Act to adopt the standards contained in OAC rule 3745-25-02 as a part of our SIP. The standards are equivalent to, but no more stringent than, their federal counterparts. There are no provisions in these rules that are not part of a federal requirement.

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 strategy for attaining and maintaining the NAAQS under section 110 of the Clean Air Act and are part of our SIP. The amendments being made to these rules are intended to bring the rules in line with, and make them equivalent to their federal counterparts.

Several changes have also been made to OAC rule 3745-25-01 for clarity and to update information on items referenced in the chapter.

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

The language of these rules, as written, cannot be measured directly in terms of outcomes as the language only sets the standards. Ohio EPA does, however, consider it a success when the state of Ohio achieves attainment of these standards through the application of associated air pollution control rules.

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.

On March 16, 2011, a copy of the rules with the draft amendments was sent to Ohio EPA's Air Pollution control (DAPC) electronic interested parties list for a 30 day draft comment period. The rules were also posted on DAPC's "Regulations" and "What's New" webpages with a request for public comment. An electronic notification was also sent out during the same period through Ohio's e-notification system.

- 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 or testimony 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?**

OAC rules 3745-25-01 and 3745-25-02 are based on federally mandated rule language and did not involve the use of any scientific data on the part of Ohio EPA. A discussion and analysis of the scientific data utilized by USEPA in developing the standards can be found on USEPA's website at: <http://www.epa.gov/air/criteria.html#4>

- 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 is required to adopt these standards into our Administrative Code to maintain primacy over our SIP. Ohio's Ambient Air Quality standards must be at least as stringent but not more stringent than the Federal limits, therefore, there are no alternative regulations to consider.

The definitions contained in OAC rule 3745-25-01 are necessary and designed to define and clarify terms used within the chapter. Ohio EPA does not consider there to be alternatives to these definitions, however, minor changes to the definitions and information on referenced materials were made to clarify and update the rule language.

- 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.***

The rules in this rulemaking package contain standards and definitions. The standards do define the required outcome, namely the concentration at which attainment of an air quality

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standard is reached, however, attainment of the standard is obtained through compliance with associated air pollution control rules, some of which are performance based. Discussion of the associated rules will be performed in separate rulemaking events.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

In April, 2009, Ohio EPA completed a rulemaking in which we collected all of the separate ambient air quality standards which were spread throughout the air pollution control rules and promulgated them in a single rule, OAC rule 3745-25-02. This action was done at the suggestion of potentially affected parties in an effort to centralize, and thereby simplify, searching for the standards. The rules containing the individual standards were then amended to remove the standards so that they would not be duplicated.

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 contains ambient air quality standards that Ohio is required to attain under the Clean Air Act. Ohio's plan for attaining and maintaining these standards is contained in our SIP and comprises such items as rule language, monitoring plans, memorandums of understanding with other state agencies, and permitting requirements for air pollution sources. Through implementation and enforcement of our SIP and its many parts, Ohio will attain the ambient air quality standards contained in these rules, thereby providing clean air and reducing potential breathing related diseases for the citizens of Ohio.

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;

These rules set the ambient air quality standards that Ohio is required to meet under the Clean Air Act. These standards are enforced statewide and therefore affect the entire citizenry of the state of Ohio.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

These rules do not have a direct impact on business, however, when an air quality standard is made more stringent, it is necessary to find additional control strategies to reduce airborne pollutants to attain the standards. When developing these strategies, Ohio EPA pays close attention to the potential cost to businesses and uses it as one of the criteria in determining which strategies are implemented. The implementation on

a new strategy is performed through promulgation of rule language outside of this rule.

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.

As noted above, there is a potential that changing a standard may have a fiscal impact on the regulated community, however, the impact is not directly related to this rule, and is more directly tied to the strategies chosen to attain the standard. It should also be noted that these standards are equivalent to the federal standards; therefore, this rule does not add any additional impact above and beyond what would be required to comply with the federal standards.

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

Ohio is required by federal law and the Clean Air Act to adopt these standards as part of our SIP. Ohio is adopting standards that are equivalent and no more stringent than the federal standards.

Regulatory Flexibility

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

These ambient air quality standards in these rules do not contain any exemptions or alternative means of compliance. The state of Ohio, as a whole, must attain and maintain this standard.

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 rules in this rulemaking package contain definitions and standards that do not lend themselves to the levying of fines and/or penalties to the regulated community. Therefore, ORC 119.14 would not apply to these rules.

18. What resources are available to assist small businesses with compliance of the regulation?

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

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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://epa.ohio.gov/Default.aspx?alias=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.

U.S. 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 800-368-5888.