



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Air Quality Development Authority

Rule Contact Name and Contact Information:

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

Small Business Assistance Fund

Rule Number(s): 3706-2-01

Date of Submission for CSI Review: March 4, 2020

Public Comment Period End Date: March 18, 2020

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/_1___ rules (FYR? _1__)

Rescinded/___ rules (FYR?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 proposed rules amend the existing rules involving the awarding of grants from the small business assistance fund by the Ohio Air Quality Development Authority's ("Authority") office of the ombudsman, to eligible small businesses to offset the cost of compliance with the Clean Air Act. Amendments include a maximum total grant amount reflective of stakeholder feedback gathered by the Authority, which will allow for more businesses to be served with available grant funds.

- 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.**

Ohio Revised Code 3706.19.

- 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?**

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If yes, please briefly explain the source and substance of the federal requirement.

Yes, as described in section 3706.19 of the Revised Code, these rules are consistent with the work of the small business ombudsperson, which is described in the federal Clean Air Act Amendments of 1990, and whose purpose is to assist small businesses that are subject to the federal Clean Air Act to comply through technical and financial assistance.

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

These rules do not exceed, but comply with the federal requirement.

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)?

This program, as legislatively established under R.C. 3706.19, requires the Authority to create rules governing grants from the small business assistance fund to provide financial assistance to eligible small businesses to comply with the federal Clean Air Act. The reduction or elimination of air pollutants protects public health and the environment.

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

This program is designed to assist small businesses comply with the federal Clean Air Act. Success will be measured in program participation resulting in the reduction of regulated pollutants and the elimination of known carcinogens, i.e. perchloroethylene (PERC) and other toxic substances.

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.

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.

The Authority administered a survey of previous program awardees via an online platform between January 29 and February 12, 2020.

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

The survey measured awardee satisfaction with the program, along with minimum grant

award levels for the program to be effective. This feedback guided the amended language to the proposed rules.

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 Authority utilized financial analysis of past grant award cycles and determined a need for increased availability of funds to support additional air quality facilities by small businesses in Ohio. By increasing the number of program participants, there will be a greater positive impact on air pollution reduction and elimination of known carcinogens or toxic substances.

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?

The Authority considered different maximum grant levels. Due to survey responses, the Authority elected to propose the amended language as described in the proposed draft rules.

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 proposed rules do not regulate stakeholders. However, the proposed draft rules enable the successful performance of projects to serve as air quality facilities that achieve a measurable reduction or elimination of air pollution.

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

The proposed rules maintain an existing program under the Authority's office of the ombudsperson, which advocates on behalf of and provides assistance to small businesses to comply with federal regulation.

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.

The proposed rules maintain an existing program under the Authority's office of the ombudsperson, which advocates on behalf of and provides assistance to small businesses to comply with federal regulation.

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

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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.

This program, as legislatively established, is designed to assist Ohio eligible small businesses in complying with the federal Clean Air Act through financial assistance, including grant awards. A portion of the grant involves reimbursement of legal fees, closing fees, Authority fees and other fees associated with the Authority’s bond financing. Awardees are responsible for paying the fees upfront and are then reimbursed; potentially impacting short-term cashflow.

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

The overall net impact to the small businesses regulated by the federal Clean Act will be positive as a result of their participation in the Authority’s program.

Regulatory Flexibility

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

This program is designed to assist small business in complying with the costs of regulatory compliance of the federal Clean Air Act.

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 or penalties associated with this program.

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

The Authority and through the work of the small business ombudsperson provides technical and financial assistance through this program to small businesses to comply with the federal Clean Air Act.