

3745-49-01

Administrative procedures - applicability and construction of rules.

- (A) This chapter shall govern public notices, public meetings, public records, trade secret claims, verified complaints, and other administrative functions performed by the agency.
- (B) This chapter shall be construed liberally to accomplish the purposes of the chapters of the Revised Code governing the functions and duties of the agency, and to afford maximum public involvement in the agency's efforts to protect public health, safety, and the environment.
- (C) For purposes of this chapter, license, permit, variance, certificate, registration, and authorization include at a minimum all provisions, terms, conditions, specifications, requirements, and limitations set forth in the document, appended thereto, or incorporated by reference.

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3745-49-02Administrative procedures - definitions.As used in this chapter:(A)

(1) "Action" means the issuance, modification, or revocation of an order; the issuance, denial, renewal, modification, suspension, or revocation of a license, permit, lease, variance, certificate, registration, or authorization; or the approval or disapproval of plans and specifications pursuant to law.

(2) "Agency" means the Ohio environmental protection agency.

(B) [Reserved.](C)

(1) "Claimant" means the person who claims that all or any portion of information submitted to the agency is confidential because the information constitutes a trade secret.

(2) "Complainant" means a person who has filed a verified complaint.

(D)

(1) "Director" means the director of environmental protection or the director's designee.

(2) "Draft action" means a written statement giving the director's intention with respect to an action and about which persons are authorized by law to file comments or request a public meeting, but which will not be the subject of an adjudication proceeding. A draft action that indicates an intent to issue an order, license, permit, variance, certificate, registration, or authorization shall include a draft of that order, license, permit, variance, certificate, registration, or authorization.

(E) [Reserved.]

(F) "Final action" means the written decision on any matter that is signed by the director and entered in the director's journal pursuant to rule 3745-49-14 of the Administrative Code.

(G) [Reserved.](H) [Reserved.]

(I) "Issue" or "issuance" means either of the following:

(1) In the case of a draft action or proposed action, to place the action into the United States mail, addressed to the person who is the subject of the action.

(2) In the case of a final action, to enter the action into the director's journal after it is signed by the director.

(J) [Reserved.]

(K) [Reserved.]

(L) [Reserved.]

(M) [Reserved.]

(N) [Reserved.]

(O) [Reserved.]

(P)

(1) "Person" means the state of Ohio or any agency thereof, the federal government or any agency thereof, any other state or agency thereof, any interstate agency, an individual, and any municipal corporation, political subdivision, public or private corporation, partnership, or other legal entity defined as a person under section 1.59 of the Revised Code.

(2) "Personal knowledge" means knowledge gained through first hand observation or experience, as distinguished from information obtained solely from another person or source.

(3) "Proposed action" means a written statement that gives the director's intention with respect to an action and allows persons to do one or more of the following:

(a) File comments or objections to the action.

(b) Request an adjudication hearing in accordance with Chapter 3745-47 of the Administrative Code.

(c) Request a public meeting regarding the action.

(4) "Proposed public copy" means a version of information submitted to the agency from which information claimed to constitute a trade secret has been omitted or withheld by a claimant.

- (5) "Public copy" means a version of information maintained by the agency from which information determined by the director to constitute a trade secret has been omitted or withheld by the agency.
- (6) "Public meeting" means a non-adversarial public forum where any person may present written or oral statements for the director's consideration pertaining to the application, draft action, or proposed action that is the subject of the meeting.
- (7) "Public record" has the same meaning as in section 149.43 of the Revised Code.
- (Q) [Reserved.]
- (R) [Reserved.]
- (S) [Reserved.]
- (T) "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, provided that the information conforms to the following:
- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- (3) Is not discharge or emission data.
- (U) "Unredacted copy" means the complete original version of information submitted to the agency from which information claimed to constitute a trade secret has not been omitted or withheld.
- (V) "Verified complaint" means a written complaint filed pursuant to and meeting the requirements of section 3745.08 of the Revised Code and rule 3745-49-12 of the Administrative Code.

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3745-49-05Draft actions and proposed actions.

(A) With respect to all actions of the agency that would require the agency to afford an opportunity for an adjudication hearing in accordance with sections 119.06 and 119.07 of the Revised Code and Chapter 3745-47 of the Administrative Code, the director shall prepare a proposed action.

(1) A proposed action shall be issued to the person who is the subject of the proposed action by certified mail, return receipt requested. Service shall be complete in accordance with section 119.07 of the Revised Code and the "Ohio Rules of Civil Procedure" (2011).

(2) All proposed actions, except amended proposed actions, shall be accompanied by a notice that states when and how a person may request an adjudication hearing in accordance with Chapter 3745-47 of the Administrative Code.

(B) In any instance in which the director is not obligated to afford an opportunity for an adjudication hearing in accordance with sections 119.06 and 119.07 of the Revised Code and Chapter 3745-47 of the Administrative Code, the director may issue a draft action to the person subject thereto. All draft actions shall be sent by certified mail or first class mail to the person subject thereto and shall be accompanied by a statement as to when a final action may be issued.

(C) Draft action or proposed action process determined by effective dates.

(1) A draft action or proposed action may bear a date upon which it will become effective as a final action, or it may be issued with no such date stated. If the draft action or proposed action bears an effective date, the date shall not be prior to the following:

(a) For a proposed action, the deadline for filing an adjudication hearing request and an objection set forth in rule 3745-47-03 of the Administrative Code.

(b) For a draft action, either of the following:

(i) The deadline for filing comments set forth in paragraph (D) of this rule.

(ii) The deadline for requesting a public meeting set forth in rule 3745-49-13 of the Administrative Code.

(2) If a draft action or proposed action is issued with an effective date, amendments thereto are issued, and the amended action is entered in the director's journal, the agency need not, at the time of entry, provide notice or a copy of the amended action to the person subject thereto.

(3) If a draft action or proposed action is issued without an effective date, amendments thereto are issued, and the agency later assigns an effective date and enters the amended action in the director's journal, the agency shall mail notice to the person subject thereto informing such person of the effective date.

(D) Public comments.

(1) Any person may submit written comments relating to a draft action or proposed action.

(2) All comments received by the agency not later than thirty days after public notice in accordance with rule 3745-49-07 of the Administrative Code, or such longer period as the public notice may specify, shall be considered by the director prior to issuance of a final action. This paragraph does not apply to amended draft actions or amended proposed actions unless the agency gives public notice of the amended draft action or amended proposed action pursuant to rule 3745-49-07 of the Administrative Code.

(3) All comments or statements presented to the agency at a public meeting held pursuant to rule 3745-49-13 of the Administrative Code shall be considered by the director prior to issuance of a final action.

(E) Amendment and withdrawal of a draft action or proposed action.

(1) If a draft action or proposed action is issued with an effective date, the director may amend the draft action or proposed action at any time prior to the stated effective date. A draft action or proposed action issued without an effective date may be amended at any time prior to entry in the director's journal as a final action.

(2) The director may withdraw a draft action or proposed action prior to the effective date stated, or if no date is stated, at any time. However, the director may not withdraw a proposed action after the initiation of an adjudication proceeding in accordance with Chapter 3745-47 of the Administrative Code unless objections made in accordance with section 3745.07 of the Revised Code and rule 3745-47-03 of the Administrative Code and all requests for an adjudication hearing have been withdrawn or dismissed.

(F) A draft action or proposed action shall be issued as a final action in accordance with rule 3745-49-06 of the Administrative Code.

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3745-49-06Issuance of final actions.

(A) The director shall not issue an action as a final action if an objection is received from the United States environmental protection agency and applicable law prohibits the issuance of a final action under such circumstances.

(B) Except as otherwise provided in paragraph (E)(1) or (E)(2) of rule 3745-49-05 of the Administrative Code, the director shall issue a draft action as the director's final action on the effective date stated or, if no effective date is included, on a date that shall not be sooner than either of the dates specified in paragraph (C)(1)(b) of rule 3745-49-05 of the Administrative Code.

(C) Unless an adjudication proceeding has been initiated, the director shall issue the proposed action as a final action on the effective date stated or after the deadline for filing an adjudication request or an objection, whichever date is later. After the initiation of an adjudication proceeding, the director shall not issue a final action until the adjudication proceeding has been completed in accordance with Chapter 3745-47 of the Administrative Code.

(D) Mailing.

(1) The agency shall mail a copy of the final action to the following:

(a) The person subject thereto.

(b) If the final action follows the completion of an adjudication proceeding in accordance with Chapter 3745-47 of the Administrative Code regarding a prior proposed action, all parties of record in the adjudication proceeding.

(c) If the final action follows the completion of an adjudication proceeding in accordance with Chapter 3745-47 of the Administrative Code regarding a prior proposed action, all attorneys of record in the adjudication proceeding.

(d) If the final action dismisses a verified complaint, the complainant and the person complained against.

(2) Not later than five days after a final action preceded by a proposed action is entered into the director's journal, a copy of the final action shall be sent by certified mail in accordance with paragraph (D)(1)(a) or (D)(1)(b) of this rule.

(3) Not later than five days after the final action preceded by a proposed action is entered into the director's journal, a copy of the final action shall be sent by first class mail in accordance with paragraph (D)(1)(c) or (D)(1)(d) of this rule.

(4) If applicable law grants a right to appeal the final action to the environmental review appeals commission, mailings required by this rule shall be accompanied by a notice stating when and how the appeal may be filed.

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3745-49-07

Public notice.

(A) The agency shall give public notice for the following:

- (1) Draft actions and proposed actions, except amended draft actions and amended proposed actions. The agency may give public notice of amended draft actions and amended proposed actions.
- (2) Final actions, except final actions preceded by proposed actions, unless the agency determines that the final action differs from the proposed action in a manner that affects the rights or duties of any person.
- (3) Withdrawals of actions.
- (4) Public meetings.
- (5) Verified complaints received.
- (6) Whenever the agency begins consideration of the issuance of a water quality certification under section 401 of the Federal Water Pollution Control Act, 33 USC 1251, et seq. (July 1, 2005).
- (7) The adoption, amendment, or rescission of a rule.

(B) Public notices shall be published as follows:

- (1) For all public notices required or authorized by this rule, except for public notices of rules, ~~and registrations,~~ and public notices related to Ohio's state implementation plan developed under section 110 of the Clean Air Act, 42 USC 7410, (November 15, 1990), in at least one newspaper of general circulation in the county in which the source, facility, or subject of the public notice is located.
- (2) For registrations and public notices related to Ohio's state implementation plan developed under section 110 of the Clean Air Act, 42 USC 7410, (November 15, 1990), once in the Ohio EPA "Weekly Review."
- (3) For the adoption, amendment, or rescission of a rule, in accordance with rule 3745-49-04 of the Administrative Code.
- (4) Not later than thirty days prior to a public meeting.
- (5) Not later than fifteen days after issuance of an action and initiation of consideration of the issuance of a water quality certification under section 401 of the Federal Water Pollution Control Act, 33 USC 1251, et seq. (July 1, 2005).

(6) Not later than fifteen days after receipt of a verified complaint.

Public notice is complete upon publication.

- (C) All public notices required or authorized by this chapter shall be mailed by first class mail to all persons on the mailing list of subscribers maintained pursuant to section 3745.07 of the Revised Code not later than seven days after issuance of an action, receipt of verified complaint, or initiation of consideration of the issuance of a water quality certification under section 401 of the Federal Water Pollution Control Act, 33 USC 1251, et seq. (July 1, 2005), and at least fourteen days prior to a public meeting. Failure to mail notice to any person on the mailing list of subscribers maintained pursuant to section 3745.07 of the Revised Code will not invalidate any action of the director under any circumstance.
- (D) Failure to give public notice of a draft action as required by this rule will invalidate the resulting final action only if such invalidation is expressly required by applicable law.
- (E) Failure to give public notice of a proposed action as required by this rule will invalidate the resulting final action only if the failure is raised by, and was relied upon to the detriment of, any person entitled to be a party to an adjudication proceeding before the agency.
- (F) If any action but a final action would issue or renew a permit to discharge sewage, industrial wastes, or other wastes to waters of the state under division (J) of section 6111.03 of the Revised Code, the agency shall, on or before the date of newspaper publication of the public notice, comply with rule 3745-49-10 of the Administrative Code.
- (G) If any person has requested to be notified of agency actions relating to an application or request for a permit, license, or variance for a particular source or facility and the agency later issues the permit, license, or variance, the agency shall send the notice required by paragraph (A)(2) of this rule to that person not later than fifteen days after issuance. Failure to do so will not invalidate the agency action.

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3745-49-08Contents of public notices.(A) Public notices of actions shall include the following:

- (1) The name of the agency.
- (2) The address and telephone number of the locations where agency files and records pertaining to the action are located and may be inspected and copied.
- (3) Instructions for persons desiring to obtain additional information, a copy of any fact sheet prepared, or a copy of the action.
- (4) Instructions to persons desiring to be included on the mailing list provided for in section 3745.07 of the Revised Code.
- (5) The name and address of the person to whom the action was issued.
- (6) A brief description of the activities or operations that are the subject of the action.
- (7) The location of the source, facility, or subject of the action, including a street address if one is known.
- (8) A statement summarizing the action.
- (9) The date of issuance of the action.

(B) If the public notice is for a draft action or proposed action, in addition to the information required by paragraph (A) of this rule, the public notice shall include the following:

- (1) A statement that any person may submit written comments regarding the action not later than thirty days after the publication of the public notice, or such longer period as the agency may specify.
- (2) A statement that any person may request a public meeting and that if the agency determines that significant public interest is shown, a public meeting may be held on the action prior to issuance of a final action.
- (3) If the draft action or proposed action specifies when the action will become final, a statement that the draft action or proposed action shall become final on an effective date or event specified therein unless any of the following occurs:
 - (a) The director withdraws or amends the action.
 - (b) The action is disapproved by the United States environmental protection agency.

(c) For proposed actions, an adjudication hearing is timely requested in accordance with Chapter 3745-47 of the Administrative Code.

(4) A statement as to when the action may become effective as a final action.

(C) If the public notice is for a final action, in addition to the information required by paragraph (A) of this rule, the public notice shall indicate that the final action may be appealed to the environmental review appeals commission and shall include a statement summarizing the rights to appeal, if applicable.

(D) Public notices of all public meetings relating to an action shall include the following:

(1) The name of the agency.

(2) The address and telephone number of the locations where agency files and records pertaining to the action are located and may be inspected and copied.

(3) Instructions for persons desiring to obtain additional information, a copy of any fact sheet prepared, or a copy of the action.

(4) Instructions to persons desiring to be included on the mailing list provided for in section 3745.07 of the Revised Code.

(5) The name and address of the person to whom the action was issued.

(6) The location of the source, facility, or subject of the action, including a street address if one is known.

(7) The date, time, and location of the public meeting.

(8) If the activities or operations that are the subject of the action are not otherwise included in the public notice, a brief statement of the issues to be addressed at the public meeting, if any.

(9) A statement that the purpose of the meeting is to obtain additional information that will be considered by the director prior to the director taking further action on the matter under consideration.

(E) Public notice of verified complaints filed pursuant to section 3745.08 of the Revised Code and rule 3745-49-12 of the Administrative Code shall include, to the extent known to the agency, the following:

(1) The name of the agency.

(2) The address and telephone number of the locations where further information may be obtained and agency files and records pertaining to the verified complaint may be inspected and copied.

(3) The name of the person who filed the complaint.

(4) The name of the person against whom the complaint was filed.

(5) A brief description of the location of the source, facility, or subject of the verified complaint, including a street address if one is known.

(6) A brief description of the activities or operations that are the subject of the verified complaint.

(7) A statement that any person may request notice concerning further actions pursuant to the verified complaint.

(F) All other public notices shall include, to the extent known to the agency, the following:

(1) The name of the agency.

(2) The address and telephone number where further information may be obtained and agency files and records pertaining to the source, facility, or subject may be inspected and copied.

(3) The name and address of the person responsible for the source, facility, or subject.

(4) The location of the source, facility, or subject, including a street address if one is known.

(5) A statement that any person, within thirty days of publication of the public notice, or such longer period as the agency may specify, may submit written comments to the director concerning the source, facility, or subject.

(6) A statement that any person may request notice concerning further actions or proceedings regarding the source, facility, or subject.

(G) Where duplicate information is required in multiple notices that are mailed or published together, any information that is required by this rule to be contained in more than one such notice need not be repeated in each notice but may be contained in a separate document mailed or published with and referred to in each notice to which it applies.

(H) Notwithstanding any other provision in this rule, notice of an action to modify any action of the director shall include a statement summarizing the modification together with references to the following:

(1) The action to be modified.

(2) Prior public notices or fact sheets relating to the action to be modified.

(I) All notices required by rule 3745-49-07 of the Administrative Code may be in summary form, specifying the source or facility; the name of the person to whom the action was issued; the type of action, if any; and the address of the office where further information, including the full notice, may be obtained.

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