



Ohio Revised Code

Section 3745.30 Policies of agency.

Effective: October 3, 2023

Legislation: House Bill 33

(A)(1) As used in this section, "policy" means a clarification, explanation, or interpretation of a statute or rule that is initiated or used by the environmental protection agency for regulatory purposes and not adopted in accordance with rules adoption procedures consistent with this chapter and Chapter 119. of the Revised Code. "Policy" includes documents, manuals, advisories, protocols, forms, and other written or electronic materials provided to the public, a regulated party, or agency personnel regarding the substance, requirements, procedures, or interpretation of a statute or rule. "Policy" does not include any of the following:

- (a) Matters relating only to the agency's internal management functions;
 - (b) Any final adjudicatory order or action issued in accordance with this chapter and Chapter 119. of the Revised Code applicable only to specific parties to an adjudication proceeding;
 - (c) An emergency order issued in accordance with section 3710.13, division (B) of section 3714.12, division (B) of section 3734.13, division (B) of section 6109.05, or division (C) of section 6111.06 of the Revised Code.
- (2) A policy does not have the force or effect of law.
- (3) The environmental protection agency may exercise quasi-legislative, quasi-judicial, permitting, enforcement, or other regulatory functions based only on an applicable statute or valid rule. The application of a policy by the environmental protection agency in a manner that makes the policy the functional equivalent of, or a substitute for, a statute or rule, or that effectively alters or amends a statute or rule, or that assumes powers not plainly delegated to the agency by statute, is prohibited.

(B) Policies established by the agency shall be subject to all of the following requirements:

- (1) A policy shall comply with the statutes and rules that are in existence at the time the policy is



established;

(2) A policy shall not establish any new requirement, substantive duty, obligation, prohibition, or regulatory burden not imposed by a statute or rule, or impair any right or permitted conduct;

(3) A policy shall be established only at the headquarters of the agency;

(4) The first page of each policy shall have printed on it the following statement in uppercase letters:
"this policy is not law ; "

(5) Each policy shall be displayed on, and searchable through, the agency's web site.

(C) Every five years the agency shall review each policy that it established prior to the effective date of this section or that it establishes after the effective date of this section and shall prepare written documentation certifying that the policy has been reviewed. The documentation is a public record under section 149.43 of the Revised Code. A policy that has not been so reviewed is void.

(D) In addition to any other remedy provided by law, including rights to appeal any final agency action and defenses to an enforcement action, a person may file a written complaint at any time with the director of environmental protection alleging that a policy established by the agency does not comply with the requirements established under divisions (A)(3), (B)(1) to (5), or (C) of this section. Not later than ninety days after receiving the complaint, the director shall review the policy and issue a determination as to whether the policy complies with those requirements. A determination issued by the director under this division is not a final action that is appealable under this chapter.

(E) The agency's proposed policies shall be advertised on its web site.

(F) Notwithstanding section 149.43 of the Revised Code, not later than ninety days after the effective date of this section, the agency shall compile at its headquarters a copy of all its policies. The copy of policies shall be kept current and made available for public inspection and copying.