

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: DMWM-HW Biennial Set

Rule Number(s): 9 rules: 3745-50-46, 3745-50-58, 3745-52-40, 3745-52-41, 3745-54-75, 3745-54-77, 3745-65-75, 3745-65-77, 3745-65-94

Date: September 6, 2012

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☐ Rescinded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.

These 9 rules are part of the authorized hazardous waste management program, and each provides requirements for hazardous waste generators and/or treatment, storage, and disposal facilities. Each of these rules contains provisions regarding a requirement to submit to Ohio EPA a hazardous waste “annual” report. The reason for this rule package is to change that “annual” reporting requirement to a “biennial” reporting requirement. Other minor corrections are also being made to these rules as necessary.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

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

Ohio Revised Code (ORC) 3734.12 and 3734.121, as amended by Senate Bill 294 (SB294), provide the authority for these rules.

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?

Yes, these Ohio rules address similar requirements in the federal Resource Conservation and Recovery Act (RCRA) program, which appear at 40 CFR parts 260-270, 273, and 279. This is a program that is regularly reviewed and authorized by U.S. EPA. ("Authorization" is similar to the concept of "primacy" in other programs.) The Ohio hazardous waste management rules are required to be consistent with and equivalent to their federal counterpart provisions, with exceptions provided in the Ohio Revised Code. The cover sheet of each rule indicates which RCRA provision the Ohio rule is designed to be equivalent to.

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

These rules are specifically required by the federal government. The currently effective rules provide an annual reporting requirement pursuant to state statute, whereas the federal counterpart rules provide a biennial reporting requirement; the currently effective rules are more stringent than their federal counterpart rules under pre-SB294 statute. Ohio's rules required an annual report because the Director of Ohio EPA was required to submit an annual report about hazardous waste management to the Governor. SB294 changed the Director's reporting requirement to the Governor from an annual requirement to a biennial requirement, so Ohio EPA no longer needs to collect the hazardous waste management information every year under these rules. The amendments shown make the reporting frequency biennial, so the reporting requirement is now the same as the federal counterpart requirement. These currently more stringent rules will become equal in stringency with their federal counterpart rules with these amendments with respect to the reporting frequency.

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)?

This rule is required by the federal government as part of the authorized hazardous waste management program. As such, it is required in order to protect human health and the environment.

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

The success of these amendments will be evident in that the regulated community's reporting requirement will go from every year to every other year, thus reducing the burden for both the regulated community in compiling the reports, and for Ohio EPA in processing the reports received.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Interested parties may review these draft rules on the agency website. In addition, we send a hard-copy letter to a large mailing list of people, and we send electronic notification to a listserv group, who requested to be notified when there are draft hazardous waste management rules available to review. For this package, we send electronic notifications to the report filers as well. The mailing list is available upon request. All the comments we have received on these amendments to date have come from the regulated community, and are in support of the amendments.

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

The counterpart federal rules go through an extensive draft, proposal, and final rulemaking process that is similar to Ohio's process but longer when they are initially developed and when amended. Interested parties submit comments and work with U.S. EPA to develop the federal rules before they are finalized.

The Ohio rules' substantive amendments are designed to implement efficiencies designed into SB 294, which was developed with input from many stakeholders in the development of the legislation. We have received feedback from stakeholders that they wished our reporting rules (specifically these) had the same biennial requirement as their federal counterpart rules, and that was taken into account in SB294.

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.

Since these rules deal with reporting requirements, and the reporting frequency, scientific data was not a factor in developing these rule amendments. The measurable outcome of these draft rules is that the hazardous waste report needs to be submitted 50% less frequently than under the currently effective rules.

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?

Alternative provisions would not be appropriate for these rules, since they are required to be equivalent to their federal counterpart rules.

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.*

No. The Ohio hazardous waste rules are required by state and federal law to be equivalent to their federal counterpart rules, so they are minimally changed from their federal counterpart rules.

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

When they were originally promulgated, Ohio EPA worked with LSC and the regulated community to ensure that these rules did not duplicate any other Ohio rules. These rules and/or other Ohio EPA rules have been amended in the past to eliminate duplicative requirements.

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.

We have a database of the regulated community that is subject to these rules (they are required to notify us), and those who have submitted these reports in the past. We have already notified them to be on the lookout for these reporting frequency changes, and we will notify them again as the rulemaking process approaches completion. Our website has a reporting page which is already notifying folks that their reporting requirement is changing from annual to biennial. The reporting software is available online to simplify the report completion process, and it will be updated to provide for the amended requirements. In addition, the DMWM inspectors who deal with these facilities on a regular basis are keeping the facilities updated as to the changes to these reporting requirements.

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 rule changes will impact any facility that is required to submit an annual report of their hazardous waste generation.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

The impact of these rule changes is not adverse; these rule changes should help regulated community save money in that their employee(s) will need to compile this report only half as frequently as they did before these amendments.

- 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.

The adverse impact for these rule changes is 0. This should be a cost-saving set of rule changes for the regulated community.

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

Not applicable; there is no known adverse impact to the regulated community.

Regulatory Flexibility

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

No, a facility’s activity regarding hazardous waste generation determines whether the report submittal is required, regardless of the size of the facility. However, the volume of hazardous waste being managed by that facility (there are several volume categories) may determine that portions of the report form are required to be completed.

- 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 director will evaluate the applicability of ORC section 119.14 to hazardous waste management facilities regulated by these rules when assessing fines and penalties for paperwork violations and first-time offenders.

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 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>.