

Rule Summary and Fiscal Analysis (Part A)**Ohio Environmental Protection Agency**

Agency Name

**Division of Materials and Waste
Management (DMWM)**

Division

Kit Arthur

Contact

**50 West Town Street, Suite 700 PO Box 1049
Columbus OH 43216-1049**

Agency Mailing Address (Plus Zip)

614-644-2621

Phone

614-728-5315

Fax

Katherine.Arthur@epa.ohio.gov

Email

3745-279-43

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Used oil transportation.**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **Yes**2. Are you proposing this rule as a result of recent legislation? **No**3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**4. Statute(s) authorizing agency to adopt the rule: **3734.12**5. Statute(s) the rule, as filed, amplifies or implements: **3734.12**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Stylistic and non-substantive corrections are proposed, and references to other state and federal programs are corrected.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule provides requirements regarding used oil transportation, including deliveries, U.S. DOT requirements, what to do in case of a discharge of used oil.

Proposed changes to this rule include corrections to word choice, punctuation, and upper/lower case use (LSC requirement), acronyms are defined, unnecessary text is removed, and references to state and federal programs are updated. A detailed list of the specific changes to this rule is provided in Attachment A to this RSFA. This rule is currently exempt from 5-year review, but we consider it to be sufficiently different from its federal counterpart provision (40 CFR 279.43) that 5-year review is appropriate. A review date will be assigned.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule contains referenced materials which may include federal statute, federal regulation, government documents, private documents, or references to other Ohio Administrative Code (OAC) rules. All of these materials are generally available on the worldwide web, through libraries, or from other sources. Ohio Revised Code (ORC) 121.75 (A), (D), and (E) exempt federal codes, a regulation in the Code of Federal Regulations, and generally available text or other material, respectively, from the requirements of ORC 121.71 to 121.74. All citations in this rule that meet the definition of a rule by reference, their dates, and their availability are listed in OAC rule 3745-50-11 titled Incorporated by reference.

ORC sections and OAC rules that meet the definition of a rule by reference are generally available to the public either online or through libraries. Additionally, ORC 121.76(A)(1) and (A)(3) exempt such sections and rules from the requirements of ORC 121.71 to 121.75.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not Applicable

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

This rule is being revised to correct an error in the response to question number 19 of the RSFA.

12. Five Year Review (FYR) Date: **7/1/2015**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

0.00

This proposed rule will have no impact on revenues or expenditures. It will not change the projected budget of Ohio EPA during the current biennium.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not Applicable

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Although there is a cost of compliance associated with this rule, we cannot develop

an accurate cost of compliance estimate for this rule due to the number of variables involved. The cost will vary depending on the specific circumstances, including the amount and types of hazardous waste that is managed, and the methods used to manage them. These proposed amendments do not add to the cost of compliance with this rule. Compliance is already required by federal regulation.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

This rule does not directly require a license, permit, or prior authorization to operate. However, an owner or operator of a hazardous waste management facility subject to this rule is also required to comply with additional applicable rules in OAC Chapters 3745-50 to 3745-69, 3745-205, 3745-256, 3745-266, 3745-270, 3745-273, and 3745-279 which may require a license or permit to operate.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

This rule does not directly impose a criminal penalty, civil penalty, or another sanction, or create a cause of action for failure to comply. However, an owner or operator of a hazardous waste management facility subject to this rule is also required to comply with additional applicable rules in OAC Chapters 3745-50 to 3745-69, 3745-205, 3745-256, 3745-266, 3745-270, 3745-273, and 3745-279 which may impose consequences for non-compliance.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

This rule requires expenditures associated with the transportation, delivery, and inadvertent discharge of used oil.

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School
Districts

(b) Counties

(c) Townships

(d) Municipal
Corporations

Yes

Yes

Yes

Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

We cannot provide an estimate of the cost of compliance with this rule. We do not have information on the types and amounts of hazardous wastes that are generated by local governments and schools.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

We do not have an estimate of the cost to school districts, counties, townships, or municipal corporations that may have disposed of their hazardous waste by the methods discussed in this rule. The costs would be some subset of the costs described in the answer to #15 and would be related to the amount of hazardous waste disposed of at the location.

(a) Personnel Costs

Not available.

(b) New Equipment or Other Capital Costs

Not available.

(c) Operating Costs

Not available.

(d) Any Indirect Central Service Costs

Not available.

(e) Other Costs

Not available.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

There are no new requirements imposed by the proposed amendments to this rule.

7. Please provide a statement on the proposed rule's impact on economic development.

We expect this proposed rule to have no impact on economic development.

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Environmental Rule Adoption/Amendment Form

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
 - (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
 - (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
 - (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.
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- (A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted ? **Yes**

Please list each contact.

The draft rules were available on our website from 12/29/2014 to 01/28/2015 for anyone to access, review, and comment on, and we sent electronic notification to a large number of people regarding the availability of the draft hazardous waste rule changes. The hazardous waste general interest Interested Parties mailing list (U.S. mail) is extensive (9 pages), and includes regulated entities, consultants and attorneys, public interest groups, citizens, and governmental entities. They received the same Interested Parties letter that we posted on-line. A copy of the Interested Parties mailing list is available upon request.

- (B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered ? **Yes**

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED

IN LIEU OF THE ACTUAL DOCUMENTATION.)

The documents considered in the development of this rule include the equivalent federal counterpart regulation (40 CFR 279.43), the Federal Registers documenting the changes to that federal regulation, the LSC Manual, and the Ohio Revised Code, particularly 3734.12.

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program ?

Yes

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **No**

Not Applicable

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **No**

RSFA Attachment A

Rule 3745-279-43 is amended as follows:		
Location	Change	Reason
(A)	remove “must” and add “shall”	a
	add “one of the following” before the colon	b
(A)(1)	remove the ending semicolon and add a period	c
(A)(2)	-remove “processing/re-refining” and add “processing or re-refining” -remove “who” and add “that”	d
	remove the ending semicolon and add a period	c
(A)(3)	remove “who” and add “that”	d
	remove the ending “; or” and add a period	d, e
(B)	at beginning, add “U.S.” before “DOT”	f
	[2 times] remove “must” and add “shall”	a
	after “transportation” add “(U.S. DOT)”	g
	add quotation marks around the defined term “hazardous material”	h
(C)(1)	remove “must” and add “shall”	a
(C)(3)	remove “must” and add “shall”	a
(C)(3)(a)	remove “national response center (800-424-8802 or 202-426-2675); and” and add ‘ “National Response Center” at 800/424-8802. ‘	i
(C)(3)(a) [Comment] [new]	add this new bracketed comment: [Comment: The public utilities commission of Ohio, which has adopted 49 CFR 171.15 by reference, also requires notice of such discharge.]	j
(C)(3)(b)	remove “to the director, office of hazardous materials regulations, materials transportation bureau, department of transportation, Washington, DC 20590; and” and add a period	k
(C)(3)(c)	remove “Ohio EPA's division of emergency and remedial response at 800-282-9378” and add ‘ the Ohio EPA “Emergency Response Unit” at 800/282-9378 ‘	m
(C)(4)	remove “must” and add “shall”	a
(C)(5)	remove “must” and add “shall”	a

RSFA Attachment A

Rule 3745-279-43 is amended as follows:		
Location	Change	Reason

- a The change of “must” to “shall” is an LSC requirement.
- b This amendment adds specificity to the provision.
- c Punctuation correction.
- d Word choice correction.
- e Unnecessary text is removed.
- f Add text to properly use and define the acronym.
- g This amendment adds the acronym at the first use of the text that defines it.
- h This punctuation correction (adding quotation marks around defined terms) is made in all hazardous waste rules, as they are amended, at locations of defined terms that are designated as such in the text.
- i This amendment corrects the punctuation needed to maintain the upper case title, and corrects the telephone number and its punctuation (both are LSC requirements).
- j This comment is added to mirror the same information that is provided in other rules at references to the same federal provision (49 CFR 171.15).
- k The address being removed appears in the corresponding federal provision (see 40 CFR 279.43), but the address is incorrect, so the federal error is being removed from the Ohio rule.
- L This amendment makes the use of the upper case consistent with other locations of the same reference.
- m This amendment corrects the name of the party to be notified

The addition of language and a comment to this rule make it different enough from its federal counterpart provision (40 CFR 279.43) to make it subject to 5-year review. However, these changes do not make the Ohio rule more stringent, or less stringent, than its federal counterpart. This rule is submitted for 5-year review upon proposal. A new review date will be assigned.