

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Department of Public Safety, Division of Homeland Security

Regulation/Package Title: Scrap Metal Program

Rule Number(s): 4501:5-3-01 to 4501:5-3-05

Date: November 14, 2013

**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☐ Rescinded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.

OAC rules 4501:5-3-01 to 4501:5-3-05, "Scrap Metal Program – Administrative Standards," implement provisions of S.B. 193, 129<sup>th</sup> General Assembly that: 1) require scrap metal and bulk merchandise container dealers to: register with The Ohio Department of Public Safety (ODPS) prior to engaging in business, transmit daily reports detailing business transactions, and create and maintain specific business transaction records; 2) require law enforcement agencies to submit lists of persons with past convictions of theft or receiving stolen property offenses to registered dealers and ODPS; 3) require ODPS to create and maintain a secure database for use as a dealer registry; and 4) provide authority for inspections and disciplinary actions by the Department of Public Safety.

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

Section 4737.04 to Section 4737.045 of the Revised Code.

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

- NO

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

- N/A

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)?

The Ohio Department of Public Safety (ODPS) is required to adopt rules in order to comply with provisions of Senate Bill 193. These rules are to establish registration, reporting, and recordkeeping processes that achieve a balance between regulatory necessity and adverse impact. The rules also establish a standardized process for registering and reporting, which is consistent for all scrap dealers in the state.

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

The department will measure success by:

- Monitoring the obstacles that prevent dealers from effectively and efficient registering and renewing or reporting transactions;
- Reviewing daily transaction reports and results of record inspections; and
- Resolving reported issues with the SMBC website.

### Development of the Regulation

7. 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 stakeholders that participated in the initial review of the proposed OAC language included: law enforcement representatives from the Buckeye State Sheriff Association, Columbus Police Department, and the Ohio Association of Chiefs of Police; representatives

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from Cohen Brothers; Inc., Muskingum Iron & Metal; Mark Gray Enterprises; Resource Metal Recycling; City Scrap and Salvage; D&M Wrecking; Mill Iron & Metal; Marshall Recycling; a representative from the Institute of Scrap Recycling Industries; and a member of the Ohio Auto and Truck Recyclers Association.

In addition to ongoing discussions via telephone and email with these stakeholders and other members of the regulated community, ODPS hosted two stakeholder meetings. The first was held on October 1, 2013, at which, stakeholders were provided with the proposed language and given time to review, discuss, and offer comments and recommendations to ODPS representatives face-to-face. These recommendations/concerns were documented and *considered during ODPS' subsequent revisions to the proposed rules*. A second meeting was held on November 1, 2013, when stakeholders were provided with the revised rules and explanation as to how their recommendations were incorporated. Additional comments and recommendations were received.

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

A dealer voiced concerns regarding some of the personal identifiers that ODPS proposed to include in the searchable electronic list required by statute. ODPS noted the concerns and determined that as this list is to be generated by members of the law enforcement community, and law enforcement use these same personal identifiers in certain capacities, they would remain on the list of searchable information as the additional information will add to the accuracy of the descriptions of individuals placed on this list.

Concern was voiced by one of the members of the law enforcement community regarding the frequency of updates to the searchable electronic list. ODPS proposed that updates were to be submitted every time a change occurred. ODPS reassessed the language after the stakeholder meeting and revised the language to require the law enforcement agency to submit a new list once per month.

One member of the stakeholder group suggested that language in the rules more clearly reflect that in accordance with statute, ODPS is not charged with “*licensing*” authority, but as the facilitator for dealer registration/renewal, transaction reporting, and the database for searchable electronic lists. ODPS took this under advisement and revised the language to ensure that the *rules clearly articulate ODPS' scope of authority*.

**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?**

None – No scientific data was considered relevant to the development of these 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?

No alternative regulations were considered as these rules are stipulated by provisions of S.B. 193 and have been created solely to support the processes outlined in the statute.

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.*

Some provisions within the rules are performance-based. For example, pursuant to R.C. 4737.04, dealers are required to submit a daily report of transactions to the Scrap Metal and Bulk Merchandise Container Dealer website. Rule 4501:5-03 sets forth the information that shall be included in the report, but allows dealers to choose to submit the transactions manually or via a bulk upload *whichever option is most compatible with the dealer's business processes*. ODPS' database was developed to accommodate either option.

Rule 4501:5-04 also contains performance-based provisions. Section 4737.04 of the Revised Code requires dealers to maintain their transaction records. While rule 4501:5-04 sets forth how dealers must organize and store these records, dealers may choose how to comply by maintaining the records in hardcopy or electronic format, as well as the physical means in which these records are stored and located. This allows the dealers to select the method most conducive to their business practices.

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

*The Department is the sole agency responsible for adopting the rules the implement Ohio's new regulatory environment for scrap and bulk container dealers set forth in SB 193. The Department determined that none of its regulations are duplicative.*

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.

ODPS has employed a full-time analyst/program administrator to facilitate this program in all capacities such as program/database development and management, conducting training for staff and stakeholders, developing proposed OAC language, and administering the daily aspects of the program. In addition to a full-time employee dedicated to the program and the corresponding regulations, ODPS has developed a standard operating procedure that outlines the program *and administrator's responsibilities* that can be provided to new and existing staff. The program administrator is conducting ongoing cross-training with other professionals in the business unit, including supervisory staff, to ensure operational continuity

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in the event that the administrator is unable to perform their duties for reasons such as illness or time away from the office.

### **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 regulations apply to everyone within the state of Ohio who meets the definition of a “scrap metal dealer” in accordance with R.C. 4737.04. ODPS currently has nearly 400 registered dealers.

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

Based on stakeholder discussion, ODPS estimates that these rules will pose minimal adverse impact to scrap metal dealers in the form of time required to collect, organize, and report information in the format, and within the parameters, established in these rules. However, adverse impact may occur in the form of disciplinary action, if dealers fail to comply with OAC Chapter 4501:5-3. Additionally, R.C. 4737.045 requires dealers to pay an initial registration fee of \$200.00 and annual renewal fee of \$150.00

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.

ODPS assesses that the adverse impact resulting from these rules will be minimal. The time required to collect, organize, and submit information in accordance with the rule will be dependent on the business practices adopted by the individual dealers. However, failure to meet these requirements can result in disciplinary action including and up to revocation of the dealers business registration.

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

The time required to collect, organize, and report information as set forth in OAC Chapter 4501:5-3 is justified as the regulations create processes that allow scrap metal dealers to effectively comply with their statutory requirements to register with ODPS, pay registration fees, submit daily transaction reports, and maintain records, as well as build a repository of

information related to known scrap metal thieves to serve as a useful tool to the dealer and law enforcement communities.

### **Regulatory Flexibility**

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

These regulations contain no exemptions for any members of the regulated community as the statute did not provide ODPS with the authority to provide such exemptions.

**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?**

Senate Bill 193 did not provide for any waivers of fines and penalties and so the department did not include any provisions for such waivers in these rules. However, disciplinary actions *at the director's discretion*, such as the denial or suspension of a registration certificate, are expected to be decided on a case-by-case basis.

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

ODPS' *full time employee dedicated to this program is a standing asset available to small businesses*. This individual can offer information and insight on the program, provide technical solutions or recommendations for consideration regarding issues that the business may experience, and provide training to both small businesses and the law enforcement personnel serving the community in which these dealers exist. Further, informational materials will be made available via the website that all registered dealers use to register, renew, and report transactions, that will provide instructions on how to utilize/interact with parts of the database with relation to what is required.