

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Universal Waste Rules – Hazardous Non-Empty Aerosol Containers, Antifreeze and Paint and Paint-related Wastes

Rule Number(s): 3745-50-45, 3745-51-09, 3745-54-01, 3745-65-01, 3745-270-01, 3745-273-01, 3745-273-09, 3745-273-13, 3745-273-14, 3745-273-15, 3745-273-32, 3745-273-33, 3745-273-34, 3745-273-35, 3745-273-39, 3745-273-60, 3745-273-62, 3745-273-89

Date: October 18, 2016

Rule Type:

☒ New; 3745-273-89, 3745-273-13, 3745-273-33

☒ Amended

☒ 5-Year Review; 3745-273-60

☒ Rescinded; 3745-273-13,
3745-273-33

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.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio EPA proposes to designate hazardous non-empty aerosol containers, hazardous antifreeze and hazardous paint and paint related wastes as universal wastes. The rules in Chapter 3745-273 of the Administrative Code contain the provisions for the “universal waste” rules.

The purpose of designating a hazardous waste as a universal waste is to promote the proper handling, recycling or disposal of the hazardous waste by streamlining the regulations that apply to the management of the waste. The hazardous wastes currently designated as universal wastes are batteries, mercury containing equipment, certain pesticides and lamps. The universal waste rules are optional; a generator or handler of a waste designated as a universal waste has the option of handling the waste according to the universal waste rules or the traditional hazardous waste rules.

Each new universal waste will be subject to streamlined provisions that are tailored to address the risks the wastes may pose. The requirements include: labeling, tank and container standards, limited treatment provisions, accumulation time limits, employee training requirements, emergency response requirements and transportation according to Department of Transportation rules.

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

Sections 119.3 and 3734.12 of the Ohio 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, the rule amendments do not implement federal requirements nor do they enable the state to obtain or maintain approval to enforce federal provisions.

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

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The rule amendments do not exceed any federal requirements and are optional for the generator to follow. These proposed state-specific provisions reduce the regulatory burden on generators associated with the management, storage, transportation, treatment and disposal of three hazardous waste streams. The waste streams are non-empty aerosol containers, antifreeze and paint and paint-related wastes which can be classified as hazardous wastes. These waste streams will be classified as universal wastes in Ohio. Ohio EPA's core universal waste rules which are equivalent to the federal universal waste rules provide for the opportunity for Ohio EPA to adopt state-specific universal wastes.

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 public purpose of the rule is to streamline the hazardous waste rules management rules for the three specified wastes to promote proper waste management, divert the wastes from improper solid waste landfill disposal, encourage recycling and increase compliance with the hazardous waste rules.

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

Using the federal database called RCRAInfo, the success of this regulation can be evaluated by the agency by tracking the number of violations cited regarding the mismanagement and disposal of the waste streams. Also, the number of generators that notify the agency that they are using the rule can be an indication of its success. And lastly, an increase in the recycling of antifreeze, and paint and paint-related wastes would indicate that the rule is encouraging recycling.

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.*

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

The Early Stakeholder Outreach notice regarding this rulemaking effort was issued December 20, 2012. The following entities provided input: Mark Baumgardner Management Consulting LLC, ALS Tribology, Crown Solutions, Ford Motor Company, Ohio Manufacturers Association, American Electric Power, General Motors, Navistar, Inc.,

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Ohio Utility Group, the American Coatings Association and the Ohio Environmental Service Industries.

External stakeholders were consulted during the development of the conceptual draft rules. The stakeholders that provided suggested rule language included Ohio Department of Transportation and the Ohio Manufacturers Association. The agency met with or received specific information from the following stakeholders regarding their experiences pertaining to the management of the specific waste streams and their ideas for appropriate management standards: National Guard, American Coatings Association, Ohio Manufacturers Association, Ohio Paint Council and Resource One Consulting.

From the input provided by the stakeholders, the agency gained knowledge regarding the challenges companies face complying with the standard hazardous waste rules applicable to the hazardous non-empty aerosol containers, hazardous antifreeze, and hazardous paint and paint-related wastes and what management changes would improve compliance or increase recycling of the wastes. These aspects were considered during Ohio EPA's development of the conceptual rule language.

8. 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?

The draft rules are not based on scientific data. The rules establish a streamlined management program to promote the proper handling, treatment and disposal of hazardous non-empty aerosol containers, hazardous antifreeze and hazardous paint and paint-related wastes.

9. 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?

These rules are the alternative regulations for the management of hazardous non-empty aerosol containers, hazardous antifreeze and hazardous paint and paint-related wastes. The rules are less burdensome by removing un-needed management requirements and streamlining the requirements to address relevant management concerns for each waste stream hence, encouraging the proper management, treatment and disposal of the wastes. The universal waste rules are optional; a generator or handler of a waste designated as a universal waste has the option of handling the waste according to the universal waste rules or the traditional hazardous waste rules.

10. 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.

The regulation incorporates some performance-based regulations such as container labeling and employee training requirements, the use of a universal waste satellite accumulation area, spill response and cleanup procedures and container storage requirements.

More non-performance based standards are applied to the puncturing of aerosol containers and storage of bulk volumes of universal wastes in tanks. The more specific provisions make it more clear for the generator and the inspector as to what equipment or activity is required to meet the intent of the provision. It also makes the provision easier for the generator to understand and ensures the provision will be applied consistently and predictably for the regulated community.

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

The Ohio EPA is the only agency that has jurisdiction to adopt regulations governing the management of hazardous wastes. These rules do not duplicate the existing hazardous wastes but instead are a streamlined regulatory approach to for the management of hazardous non-empty aerosol containers, hazardous antifreeze and hazardous paint and paint-related wastes. The universal waste rules are optional; a generator or handler of a waste designated as a universal waste has the option of handling the waste according to the universal waste rules or the traditional hazardous waste rules.

12. 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.

The Ohio EPA will develop guidance for internal and external stakeholders and train its hazardous waste inspectors regarding the new provisions prior to the rule becoming final. Also, a regulatory assistance unit is available to inspectors and the regulated community to answer regulatory questions or help work through complex hazardous waste issues. The regulatory assistance unit also works with inspectors to ensure provisions are consistently applied throughout the state.

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Adverse Impact to Business

13. 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;

The scope of the impacted community is very broad and diverse, and can include operations in the following areas: agriculture, mining, government, manufacturing, transportation, retail and commercial.

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

As compared to the hazardous waste generator rules that these facilities would otherwise need to comply, the proposed universal waste rules do not have adverse impacts on the business community. Actually the provisions reduce the regulatory burden and impacts on the facilities by streamlining the management standards pertaining to these wastes.

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 proposed regulations are not expected to adversely impact the business community. The rules are intended to reduce regulatory burden regarding the management of hazardous non-empty aerosol containers, hazardous antifreeze and hazardous paint and paint-related wastes. The rules do not impose any fees or permits.

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

The proposed regulations are not expected to adversely impact the business community.

Regulatory Flexibility

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

These rules are the alternative regulations for the management of hazardous non-empty aerosol containers, hazardous antifreeze and hazardous paint and paint-related wastes. The universal waste rules are optional; a generator or handler of a waste designated as a universal waste has the option of handling the waste according to the universal waste rules or the traditional hazardous waste rules.

16. 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 facilities regulated under OAC Chapter 3745-273 when assessing fines and penalties for paperwork violations and first-time offenders.

17. 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>.