



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency (OEPA)

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Standards for Solid Waste Management Districts

Rule Number(s): Ohio Administrative Code (OAC) 3745-27-90

Date of Submission for CSI Review: March 13, 2020

Public Comment Period End Date: April 13, 2020

Rule Type/Number of Rules:

- | | |
|--|---|
| <input type="checkbox"/> New/OAC Rule | <input type="checkbox"/> No Change/____ rules (FYR? ____) |
| <input checked="" type="checkbox"/> Amended/ <u>1</u> rules (FYR? <u>Yes</u>) | <input type="checkbox"/> Rescinded/____ rules (FYR? ____) |

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- _____ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- _____ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ✓ c. Requires specific expenditures or the report of information as a condition of compliance.
- _____ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

This rule codifies the reduction and recycling goals that are established in the state solid waste management plan. Ohio's solid waste management districts must demonstrate achieving these goals in their solid waste management plans. Ohio EPA adopted a new state solid waste management plan, the 2020 State Solid Waste Management Plan, in November 2019. The 2020 State Solid Waste Management Plan establishes ten goals for solid waste management districts and incorporates additional flexibility to meet the goals. This flexibility allows solid waste management districts to adapt to changes in the solid waste industry.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

This regulation is promulgated under Ohio Revised Code (ORC) section 3734.50 (State Solid Waste Management Plan).

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- 4. 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.

This regulation does not implement a federal requirement.

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

This regulation does not implement a federal requirement but is necessary to fulfill the requirements of Ohio law.

- 6. 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 purpose of this regulation is to codify the goals established in the state solid waste management plan. These goals direct the types of programs solid waste management districts provide to their constituents to further waste reduction and recycling in Ohio. The rule primarily incorporates the language from the state solid waste management plan with some additional clarification regarding the intent of the goals. ORC section 3734.50 directs Ohio EPA working with the Materials Management Advisory Council to reduce Ohio's reliance on landfills to manage solid waste and to establish objectives for waste reduction, recycling, reuse, and minimization. The standards established in this rule help Ohio achieve those directives.

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

Ohio EPA annually calculates both the solid waste management districts' and the state's reduction and recycling rates. Those rates measure the effects derived from the efforts to implement programs to achieve the goals.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

The proposed rule in this package is not being submitted pursuant to any of the above sections of the Ohio Revised Code.

Development of the Regulation

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

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

Stakeholders were notified of the early stakeholder outreach period and were provided thirty days to comment on the concepts being considered in this review. Stakeholders include the following groups:

- Materials Management Advisory Council with members representing:
 - Municipalities
 - Townships
 - Health districts
 - Counties
 - Solid waste management districts
 - Environmental Advocacy organizations
 - General public
 - Private sector - 6 members representing industrial waste generators, private waste companies, and commercial business associations
- Organization of Solid Waste Management Districts of Ohio
- Ohio's waste industry, via the Ohio Chapter of the National Waste & Recycling Association.

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

The Organization of Solid Waste Management Districts provided initial recommendations for changes to the goals in the state solid waste management plan. The National Waste & Recycling Association provided countering recommendations. Through discussions with the Materials Management Advisory Council, all parties concurred on final changes to the goals. Those changes were incorporated into the 2020 State Solid Waste Management Plan and into the proposed rule. These changes provide solid waste management districts with additional flexibility for determining how best to achieve the goals of the state solid waste management plan at the local level.

11. 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?

Scientific data was not used in the development of this rule. Where the rule is proposed for amendment, the changes are primarily to incorporate statutory changes, Legislative Service Commission grammatical changes, and provide clarity and consistency with the State Plan.

12. 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?

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The changes to the goals in the 2020 State Solid Waste Management Plan and the incorporation of the changes into rule were agreed upon by all primary stakeholders. Given all primary stakeholders concurred on those changes, Ohio EPA did not consider alternative regulations.

13. 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.

Yes, the Agency did consider performance-based regulation and as such the 2020 State Solid Waste Management Plan and OAC 3745-27-90 dictate the goals solid waste management districts must achieve, yet neither dictate the programs solid waste management districts must implement to achieve those goals. Solid waste management districts have broad discretion to determine the best local strategy for achieving the goals. For example, the 2020 State Solid Waste Management Plan and the rule require solid waste management districts to address hard to manage wastes, such as household hazardous waste, scrap tires, and electronics. However, neither the 2020 State Solid Waste Management Plan nor the rule dictate the programs solid waste management districts provide to achieve that goal. The programs solid waste management districts provide to achieve that goal range from distributing information, such as brochures, to permanent collection options.

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

OAC rule 3745-27-90 is the only Ohio rule that incorporates the goals of the state solid waste management plan. Therefore, the proposed rule does not duplicate an existing Ohio regulation.

15. 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.

As required by ORC section 3734.53, Ohio EPA prescribes a format the solid waste management districts use to develop their solid waste management plans. That format prescribes the layout and contents of a solid waste management plan. The format is intended to make solid waste management district plans consistent among the 52 solid waste management districts in Ohio.

Adverse Impact to Business

16. 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; and

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

Compliance with this rule is limited to only solid waste management districts, of which there are 52 in Ohio. The cost of compliance is variable and depends upon the size, population, and complexity of the solid waste management district and whether the district prepares the plan in house or hires a consultant. Consultant costs can range from \$15,000 to \$100,000. ORC section 3734.50 requires Ohio EPA to promulgate this rule to implement the State Solid Waste Management Plan.

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

The regulations have been adopted to fulfill the statutory obligations of ORC section 3734.50. The Agency has determined with input from stakeholders that these requirements reasonably justify the adverse impact to the regulated business community. Further, compliance with this rule is limited to only solid waste management districts.

Regulatory Flexibility

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

OAC 3745-27-90 only applies to solid waste management districts, however the rule incorporates the ability for a solid waste management district to apply for a waiver from Ohio EPA to demonstrate meeting goals of the 2020 State Solid Waste Management Plan at a lower threshold than prescribed in rule.

19. 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 solid waste management districts when assessing fines and penalties for paperwork violations and first-time offenders. The Agency has not assessed fines or penalties on solid waste management districts.

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

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Compliance with this rule is limited to only solid waste management districts. Small businesses are not required to meet any provisions of the rule. Ohio EPA's Division of Materials and Waste Management has employees who are assigned to the solid waste management districts to provide technical assistance. Staff regularly visit the solid waste management districts and attend local meetings to support the solid waste management districts in front of their constituents.

The format prescribed by Ohio EPA, as mentioned in question 15 above, provides extensive direction on preparing a solid waste management plan. The format includes a module for leading solid waste management districts through a comprehensive strategic planning process for making decisions as the solid waste management district prepares its solid waste management plan. The format also provides numerous suggestions for factors to consider when evaluating how to address the local situation.

Ohio EPA also published several case studies describing successful programs solid waste management districts have implemented to achieve goals of the State Solid Waste Management Plan. These case studies are meant to help solid waste management districts implement programs that other solid waste management districts have found to be successful. Solid waste management districts are not required to implement these programs, but they are intended to save solid waste management districts time and resources when developing new programs.