



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency, DERR

Rule Contact Name and Contact Information:

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

Cessation of Regulated Operations

Rule Number(s): OAC rules 3745-352-01, 3745-352-05, 3745-352-10, 3745-352-15, 3745-352-20, 3745-352-25, 3745-352-30, 3745-352-35, 3745-352-40

Date of Submission for CSI Review: March 21, 2022

Public Comment Period End Date: April 18, 2022

Rule Type/Number of Rules:

New/___ rules

No Change/ 8 rules (FYR? Yes)

Amended/ 1 rules (FYR? Yes)

Rescinded/___ rules (FYR?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.

Cessation of Regulated Operations (CRO), chapter 3745-352 of the Administrative Code: The CRO rules were created to protect human health and the environment from hazards that arise when facilities where regulated substances were used, stored, or treated are abandoned without proper closure procedures. The CRO rules require responsible parties to secure said facilities until proper closure procedures can be followed and all regulated substances can be removed.

The proposed amendments to chapter 3745-352 of the Administrative Code are as follows:

Rule 3745-352-01 of the Administrative Code: Incorporated by reference.: This rule provides the federal statutes, references to the Code of Federal Regulations (CFR), and government literature websites that are incorporated by reference in chapter 3745-352 of the Administrative Code.

The draft amendments appear in the following locations: In (A), we are updating the date the CFR regulations listed in the same paragraph were published. We are changing this date from “July 1, 2015” to “July 1, 2021.” In (B), we are updating the date the federal statute

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references listed in the same paragraph were published. We are changing this date from “December 31, 2015” to “December 31, 2021.” In (C), we are updating the date the government literature listed in the same paragraph was last accessed. We are changing this date from “July 1, 2015” to “July 1, 2021.” Each of these changes was made to keep chapter 3745-352-01 of the Administrative Code as up to date as possible.

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.

Chapter 3745-352 of the Administrative Code is authorized by Ohio Revised Code (ORC) 3752.03 and it amplifies ORC 3752.03.

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.

No. Chapter 3745-352 of the Administrative Code is based in Ohio Revised Code, not federal provisions.

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

Not applicable—not federally-based provisions.

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 Cessation of Regulated Operations (CRO) rules were implemented to prevent the regulated community from abandoning facilities where regulated substances were used, stored, or treated. If not secured according to the CRO statute, these facilities can cause harm to human health and the environment.

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

The Agency will measure the success of these regulations through the degree of compliance with these regulations by the regulated community, and the minimal occurrences of hazards to human health and the environment.

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.

No.

Development of the Regulation

9. 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.

Early stakeholder outreach comment period occurred from 12/23/2020 to 01/22/2021. The notification of this review was sent to the Hazardous Waste and CRO rule listservs which are comprised of various interested stakeholders representing regulated entities, professional associations, environmental groups, consultants, and attorneys, and total about 1,500 parties. Interested parties include developers, municipalities, environmental professionals, and lawyers, as well as citizens and environmental groups. Interested Parties notices for these rules will also be posted on the DERR Interested Parties webpages.

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

No comments were received during the early stakeholder outreach comment period that occurred from 12/23/2020 to 01/22/2021. Stakeholders can provide input on this rules package during the interested party review period. After this period ends, Ohio EPA will adjust the rules as needed.

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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 were not used in the development of chapter 3745-352 of the Administrative Code as it is based on statutory requirements.

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?

Alternative regulations were not considered as chapter 3745-352 of the Administrative Code is based on statutory requirements.

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.*

Performance-based regulations were not considered as chapter 3745-352 of the Administrative Code is based on statutory requirements.

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

When each of these rules was originally promulgated, Ohio EPA worked with LSC and the regulated community to ensure that they did not duplicate any other Ohio rules. These rules have been amended in the past to eliminate duplicative requirements. Each of these rules has been subject to 5-year review since that review process was initiated, so they are reviewed periodically for this and other factors. Ohio EPA is the only agency that has jurisdiction to manage the CRO Program.

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.

Ohio EPA implementation of these amended rules will include notifying the regulated community of the rule amendments and providing guidance to the regulated community as needed. Ohio EPA inspectors and field staff will be briefed on these amendments, so they will be well equipped to assist as they interact with the regulated community.

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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

The impacted business community includes those who use regulated substances and who have ceased all regulated operations for more than one year and wish to seek a waiver for some CRO requirements.

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

The amendments to chapter 3745-352 of the Administrative Code do not include adverse impacts. The amendments made are those necessary to keep the chapter up to date. The cost of compliance with the CRO Program cannot be specifically quantified as it is site-specific. Factors influencing cost variation include the following: the type of regulated substances present on-site, the amount of regulated substances present on-site, the size of the site, the type of operations that occurred on-site, and other site-specific factors that are determined on a case-by-case basis upon site evaluation.

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.

Ohio EPA has identified no adverse impacts regarding these rule amendments. The rules in this package contain minor corrections that will have no adverse impact on cost of compliance.

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

Each of these rules is required by Ohio statute, and the Agency believes that the regulatory intent does not exceed the statutory intent. These rules help to ensure that regulated substances are not a threat to human health and the environment. The amendments in these rules are minor corrections that do not change the original regulatory intent.

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Regulatory Flexibility

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

No. Any facility that ceases to perform regulated operations for more than one year are subject to the same requirements outlined in chapter 3745-352 of the Administrative Code.

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 entities regulated by these rules when assessing fines and penalties for paperwork violations and first-time offenders.

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

Ohio EPA has numerous resources available to assist small business with compliance of the regulation:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a nonregulatory 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 <https://epa.ohio.gov/divisions-and-offices/environmental-financial-assistance/compliance-assistance>
- Ohio EPA also has a permit assistance web page <https://epa.ohio.gov/stay-compliant/get-help/permit-assistance> that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 1-800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m. Ohio EPA's Division of Environmental Response and Revitalization (DERR) Hazardous Waste Program offers free technical assistance to the regulated community.

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