

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Scrap Tire Rules

Rule Number(s): 3745-27-54, 3745-27-55, 3745-27-56, 3745-27-57, 3745-27-60,  
3745-27-61, 3745-27-62, 3745-27-63, 3745-27-65, 3745-27-66, 3745-27-67, 3745-27-78,  
3745-27-79 are proposed to be retained without change.

Date: June 5, 2014

**Rule Type:**

- |                                  |   |
|----------------------------------|---|
| <input type="checkbox"/> New     | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Rescinded                |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.

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

These rules outline the authorized management of scrap tires in Ohio. Specific requirements include scrap tire transporter registration certificates and standards; scrap tire shipping papers; handling of scrap tires; registration, permitting, operation, and final closure requirements for scrap tire collection, storage, and recovery facilities; the beneficial use of scrap tires, and the contamination characterization and remediation caused by open burning of scrap tires.

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

These rules are authorized under Ohio Revised Code sections 3734.02, 3734.03, 3734.70, 3734.71, 3734.73, 3734.74, 3734.83, and 3734.84.

**3. Does the regulation implement a federal requirement? No. 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.*

Not Applicable.

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

Not Applicable.

**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 purpose of this regulation is to fulfill the requirements of ORC 3734.02(A), 3734.03, 3734.70 through 3734.74, and 3734.83 which require the director to adopt rules governing scrap tire management and scrap tire facilities in order to ensure that the facilities will be located, maintained, and operated, and will undergo closure in a sanitary manner so as not to create a nuisance, cause or contribute to water pollution, or create a health hazard. The scrap tire rules provide alternative disposal mechanisms to divert this waste stream from illegal disposal at municipal solid waste landfills or through illegal open dumping.

**6. 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 continued compliance with the scrap tire rules in this package, and minimal occurrences of nuisance, fire or health hazards, or air or water pollution resulting from the operation of scrap tire facilities.

**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.*

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Ohio EPA posted an Early Stakeholder Outreach document seeking comment on the suggestion to retain the scrap tire rules without change and contacted stakeholders on the scrap tire listserv list via email on March 7, 2013 notifying them of the Early Stakeholder Outreach request for comment.

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

The Agency received no feedback from stakeholders regarding the draft rules package and the suggestion to retain the scrap tire rules without change.

**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?**

Pursuant to ORC 119.032, Ohio EPA has determined that these rules do not need to be amended or rescinded. A determination that these scrap tire rules are to be retained without change is to be filed with the Joint Agency on Rule Review (JCARR). Given that no rule amendments are being proposed, no scientific data was considered.

**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?**

The Agency did not consider regulatory alternatives since the Agency has determined in accordance with ORC 119.032 that these rules do not need to be amended or rescinded.

**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.***

The Agency did not consider performance-based regulations since the Agency has determined in accordance with ORC 119.032 that these rules do not need to be amended or rescinded.

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

Ohio EPA reviewed our own regulations and performed a search of regulations from other agencies to determine if duplication was being made. To our knowledge, Ohio EPA is not duplicating another existing Ohio regulation.

**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.**

Because these rules are already effective and Ohio EPA is to file a determination to retain these rules without change, the Agency plans to continue the current efforts to ensure consistent and predictable rule implementation.

**Adverse Impact to Business**

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**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;**

The scope of the impacted business community includes owners and operators of scrap tire collection, storage, and recovery facilities, as well as scrap tire transporters and those who wish to beneficially use scrap tires.

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

The nature of the adverse impact includes license, registration, and permitting fees, employer time for compliance, operational and closure costs, maintaining financial assurance for the cost of closure, and fines for non-compliance.

**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.*

ORC 3734 and ORC 3745 directly establishes various application fees and registration, permit, and license fees for scrap tire transporters, storage, and recovery facilities, therefore anyone choosing to operate a scrap tire facility, transport, or beneficially use scrap tires can anticipate an associated cost of compliance with these rules. The rules anticipate a wide range of types of scrap tire operations varying in the size and range of activities. Any estimate of the cost of compliance associated with this rule must account for this variability.

The cost of preparing a registration or license application may range from a simple renewal license or registration involving less than a couple hours to update basic information to potentially over a couple days for a complex facility’s initial application. The cost of preparing an initial permit application including closure plan may range from less than \$1,000 to more than \$5,000 and is highly dependent on the type and complexity of the facility.

The rules require scrap tire facilities, beneficial use, and transporters to control mosquitoes as necessary. The rules provide several methods of control including eliminating breeding by keeping tires dry or free of pooled water, cutting or shredding tires, or by spraying. Costs for spraying vary depending on number and acreage of tire piles. An illustration is a price quote for residential spraying of \$65 per ¼ acre.

The typical cost of compliance with financial assurance requirements for scrap tire transporters is about \$1,000 per year for a surety bond or trust mechanism. Due to the wide variety of facilities, number of scrap tires, and difference in financial institution rates and types of financial instruments, a scrap tire facility’s cost of compliance with financial assurance requirements may range from \$350 to \$3,500 per year.

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

The Agency determined that the regulatory intent justifies the adverse impact to the regulated business community because regulations for the safe disposal scrap tires are mandated by section

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3734.02 of the Ohio Revised Code. There are numerous and significant instances of uncontrolled scrap tire accumulations are known breeding sites for disease carrying mosquitos and represent significant fire hazards.

### **Regulatory Flexibility**

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

An owner or operator of a scrap tire facility and transporter subject to the scrap tire regulations contained in Ohio Administrative Code 3745-27 are also subject to the director's exemption authority established under 3734.02(G) of the Ohio Revised Code and variance authority under 3734.05 of the Revised Code that provides for consideration of alternative means of compliance. In various instances, such as mosquito control methods, the rule itself establishes a number of alternative means of compliance.

**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?**

The director or the approved health department will evaluate the applicability of ORC section 119.14 to scrap tire facilities regulated under OAC Chapter 3745-27 when assessing fines and penalties for paperwork violations and first-time offenders.

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

Ohio EPA's Division of Materials and Waste Management (DMWM) and approved local health departments offer general solid waste management regulatory assistance. DMWM staff offer technical assistance to permit, registration, and license applicants and facility operators and transporters, and DMWM maintains numerous documents and resources through an extensive website.

In addition, 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>.