

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency (Ohio EPA)

Regulation/Package Title: Plastic Bottle Labeling Rule

Rule Number(s): 3745-27-91

Date: _____

Rule Type:

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 Rescinded |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

Ohio Administrative Code (OAC) rule 3745-27-91 prescribes the label required on plastics manufactured and distributed in the state of Ohio. The label typically consists of an equilateral triangle

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formed by three curved arrows. In the center of the triangle is a code number, which identifies the type of plastic used to create the container.

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

Ohio Revised Code (ORC) 3734.60.

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, 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 public purpose for this regulation is to create a uniform recycling code for any person manufacturing or distributing in this state any new unfilled plastic bottle or rigid plastic containers. This requirement is also in ORC 3734.60. Given the duplicative statutory regulations, the Agency has made the determination that this regulation is no longer needed, and plans to rescind the rule.

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

The Agency will measure success of the rescission of this regulation through continued compliance with ORC 3734.60 requirements.

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 Agency contacted stakeholders via our listserv service notifying them of the ESO comment period. Plastic bottle manufacturers and distributors in Ohio were specifically targeted in this outreach effort.

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 input from stakeholders during the ESO comment period.

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?

The Agency did not use scientific data in making the determination to rescind this rule. The determination was based on this rule's unnecessary duplication of ORC 3734.60.

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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 consider alternative regulations in making the determination to rescind this rule. Since this rule is unnecessarily duplicative of ORC 3734.60, the alternative is to rescind OAC 3745-27-91. ORC 3734.60 is sufficient to directly enforce the statute's plastic bottle labeling requirements.

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.

Since the Agency seeks to rescind this rule, no performance based regulation was considered.

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

Rescission of this rule will remove this rule's unnecessary duplication of ORC 3734.60.

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.

The Agency plans to rely directly on ORC 3734.60 for consistent implementation of the statutory obligations.

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;**
- b. Identify the nature of the adverse impact (e.g., license 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.

The scope of the impacted business community includes any person manufacturing or distributing in this state any new unfilled plastic bottles or rigid plastic containers.

The Agency anticipates minimal adverse impacts on the business community with the rescission of this rule. However, any bottle manufacturer or distributor will still be required to comply with the provisions in ORC 3734.60. Any cost of compliance is determined by ORC 3734.60 and not associated with the rescission of OAC rule 3745-27-91. It should be noted that ORC 3734.60 requirements are consistent with current national industry practices.

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

The Agency has made the determination to rescind this rule. Bottle manufacturers and distributors will still be required to comply with the direct statutory intent of ORC 3734.60. There are no adverse impacts associated with the rescission of OAC rule 3745-27-91.

Regulatory Flexibility

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

Any person manufacturing or distributing in this state any new unfilled plastic bottles or rigid plastic containers subject to ORC 3734.60 are also subject to the director's exemption authority established under ORC 3734.02(G). This section pertains to exemptions that allow for 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 will evaluate the applicability of ORC section 119.14 to any person manufacturing or distributing in this state any new unfilled plastic bottles or rigid plastic containers subject to ORC 3734.60 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 maintains numerous documents and resources through an extensive DMWM 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>.