

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection

Regulation/Package Title: State Emergency Response Commission

Rule Number(s): 3750-1-01; 3750-1-02; 3750-15-05; 3750-25-01; 3750-25-05;

3750-25-10; 3750-25-15; 3750-30-01; 3750-30-20; 3750-50-03;

3750-50-05; 3750-50-10 and 3750-50-20

Date: November 10, 2016

Rule Type:

☐ New

☒ 5-Year Review

☒ Amended

☐ Rescinded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.

No change

- a. OAC Rules 3750-1-02 – The rule in this chapter contain purpose.
- b. OAC Rule 3750-15-05 – This rule contains requirements the procedures the SERC will use for providing public notice of proposed rules.

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- c. OAC Rules 3750-25-(01, 05, 10, 15) – The rules in this chapter contain the requirements for emergency release notification including procedures for determining if a facility is subject to notification requirements and designation of hazardous substances.
- d. OAC Rules 3750-30-(01, 20) – These rules contain requirements for hazardous chemical reporting
- e. OAC Rules 3750-50-(03, 05, 10, 20) – The rules in this chapter address annual inventory filing fees and various fund utilized by the SERC.

Amended

- f. OAC Rule 3750-1-01- Amended to update CFR reference standard dates for 3750-1-01(Y)(2)(x) and (y).

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

Ohio Revised Code 3750, Emergency Planning.

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?

Yes. The regulations implement the federal Emergency Planning and Community Right-to-Know Act of 1986.

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

Not applicable. These rules do not exceed any federal requirements.

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 rules enable Ohio to administer the federal Emergency Planning and Community Right-to-Know Act (EPCRA) program; provides valuable annual chemical inventory information and release/spill notification and reporting to emergency responders statewide.

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

Total number of annual statewide chemical inventory reports received; spill/release notifications and 30-day reports received and grant dollars available maintain past funding levels.

Development of the Regulation

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

On behalf of the SERC, Ohio EPA established an initial 30-day public comment period ending July 1, 2015. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 3,000+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

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

During the early stakeholder comment period, Ohio EPA received two comments from the American Petroleum Institute (API) regarding OAC 3750-1-01(Y)(2)(w) & (y) needing CFR reference standard dates added to bring it up-to-date. Rule was amended. Ohio EPA incorporated those changes into this rulemaking.

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?

Not applicable. These are administrative rules. No scientific data was necessary to establish these rules.

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?

These rules contain specific administrative requirements pursuant to the federal EPCRA. There were no alternate regulations to consider.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

These rules contain specific administrative requirements pursuant to the federal EPCRA. There are no alternative regulations so this cannot be a performance based regulation.

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

These rules have been in place since 1988. The program does coordinate with members of the State Emergency Response Commission regarding rules under OAC 3750.

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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.

Annual outreach through presentations, web site, reporting manuals and the communication with statewide Local Emergency Planning Committees, emergency responders and state agencies and regulated industry. SERC meetings are open meetings and are held 6 times a year.

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.

Minimal impact expected as result of rules since they are either administrative in nature and/or reference required elements from the federal EPCRA law. The reporting rule does provide language enabling a facility to ease reporting obligations every three years if nothing changes from a chemical inventory reporting perspective. Filing fees are required and support the state and local emergency planning efforts statewide.

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

The regulations in these chapters implement the federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 in the state of Ohio. These rules enable Ohio to administer the federal EPCRA program; provides valuable annual chemical inventory information and release/spill notification and reporting to emergency responders statewide.

Regulatory Flexibility

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

These rules are primarily administrative in nature and provide no exemptions.

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 SERC uses enforcement discretion regarding fines and penalties for facilities committing a first-time reporting violation. In many cases, penalties are waived.

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

The following resources are available:

- The state emergency response commission (SERC), under Chapter 3750 of the Ohio Revised Code (ORC), provides for implementation of the federal Emergency Planning and Community Right-to-Know Act (EPCRA) in Ohio. The SERC operates an informational website at: <http://epa.ohio.gov/dapc/serc.aspx>. SERC program manager Jeff Beattie can be contact with questions at (614) 644-2269, or jeff.beattie@epa.ohio.gov.
- The SERC also operates a public information request website at: <http://epa.ohio.gov/dapc/serc.aspx#122454999-public-information-request> for information on releases or spills.
- Ohio EPA's Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP and DAPC related rulemaking is performed. DAPC also performs rulemaking activities on behalf of the SERC. DAPC rule writer Paul Braun, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.