



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: State Emergency Response Commission (SERC)

Rule Contact Name and Contact Information:

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

SERC – Administrative Rules; 5-Year Review

Rule Number(s): 3750-1-(01, 02), 3750-10-(01, 03, 05, 07-09), 3750-15-(01, 02, 05, 10), 3750-20-(10, 60, 70, 72, 74, 76, 78, 80, 82, 84), 3750-25-(01, 05, 10, 12, 13, 15, 20, 25), 3750-30-(01, 15, 20, 25, 27), 3750-50-(01, 03, 05, 07-10, 15, 20, 25), 3750-75-(02-05, 07-10), 3750-80-(01-03), and 3750-85-(01-03)

Date of Submission for CSI Review: 3/10/20

Public Comment Period End Date: 4/10/20

Rule Type/Number of Rules:

New/___ rules

No Change/_48 rules (FYR? _Y_)

Amended/_11 rules (FYR? _Y_)

Rescinded/___ rules (FYR?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.

The rules establish the framework to administer and implement Ohio Revised Code (ORC) Chapter 3750, Emergency Planning to the State Emergency Planning Committee, Local Emergency Planning Committees (LEPCs) and regulated industry.

Amendments are being made after a review to fulfill the requirements of ORC 106.03 (5-yr review). Of the 58 rules in this rulemaking, eleven rules are being amended to fix typos, make terminology changes and/or add federal language due to federal rule changes that affected the state rule. The remaining rules remain necessary and are without need of change and will be proposed as no-change rules.

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.**

These rules are authorized under ORC 3750.02.

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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.

The rules follow the intent of the federal Emergency Planning and Community Right-to-Know Act (EPCRA).

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

The rule language does not exceed any federal requirements.

- 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)?**

Ohio Administrative Code (OAC) Chapter 3750 ensures for the administration and implementation of emergency planning and community right-to-know activities in order to stay compliant with the federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.

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

The agency measures the success of the rules by continuing to co-chair the State Emergency Response Commission with the Ohio Department of Public Safety and continued outreach and communication with statewide Local Emergency Planning Committees and regulated industries.

- 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?**

These rules are not being proposed to address any of these statutes.

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.

The SERC and Ohio EPA established a 30-day early stakeholder comment period and requested comments from potentially affected parties. The comment period ended January 4, 2019. DAPC sent notice of our request for comments electronically to the 3,000+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking and the statewide LEPC's. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

No comments were received from potentially affected entities during early stakeholders' outreach.

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

No input or comments were received from stakeholders.

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?

This rule is primarily administrative and establishes a process for implementing the statute.

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?

Alternatives were not appropriate because the rules are intended to implement ORC 3750, Emergency Planning.

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.*

No. The rules established have been in effect since 1989 and updates have been made over the years with input from interested parties.

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

The SERC is the only agency regulated under ORC 3750.02. These rules do not duplicate any other Ohio regulations.

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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.

Administration and implementation of the rules have been taking place dating back to 1988-89. The SERC continues to meet bi-monthly and Ohio EPA and Ohio EMA continue to work with and interact with the county LEPCs and regulated industries.

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**
- 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.

The SERC does not anticipate any adverse impact by rules. These rules have been in place since 1988-89 and regulated industry and county LEPCs are aware of the program and rules associated therewith. Industry reporting is much improved with the SERC encouraging the use of the Tier2 Submit software for reporting.

There is some minor overall cost for compliance with these rules. While the Tier 2 software is free to download from the USEPA website (<https://www.epa.gov/epcra/tier2-submit-software>), there is some cost associated with the initial setup for a facility to use the software. Ohio EPA estimates that a medium sized facility with 10-20 reportable chemicals can set up their facility data in the software for approximately \$1,000 (\$75/hour for a technician working 12-14 hours). Costs for succeeding years would be far less as the data entered in the initial year can be resubmitted from the previous year. Potential costs would be \$150-\$300 (\$75/hr. for a technician to double check and update existing data as necessary, approximately 2-4 hours).

The Tier 2 software has been in use by USEPA since 2009 and most facilities have already performed initial setup in the software package. Only new facilities would be required to go through the initial setup at this time.

It should also be noted that completing and submitting facility information through the Tier 2 software is a federal requirement which is administered through Ohio's rules. Ohio's rules add no costs that would not be required by the federal rules.

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

ORC 3750.02(B)(2)(c) contains a requirement that the SERC shall develop this program. The SERC has adopted the rules to administer and implement ORC 3750, Emergency Planning and be compliant with implementing the federal Emergency Planning and Community Right-to-Know Act of 1986.

Regulatory Flexibility

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

No, but the program does offer regulatory reporting compliance either by using software that can be downloaded free off the internet which allows the facility to manage their reports from year to year without much duplicate data entry effort or report hard copy which some industry finds easier.

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 SERC Executive Committee can use enforcement discretion regarding fines and penalties for small businesses involving paperwork violations that are first time offenses which do not have the potential to cause serious environmental harm and/or which does not present a direct danger to public health or safety. The Committee continues to work with a non-compliant facility to bring them into compliance as a first approach with no enforcement initially. Companies can also use the agency's Office of Compliance Assistance for additional assistance.

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

The following resources are available:

- Ohio EPA's Division of Air Pollution Control (DAPC) has staffing available to assist with regulatory program information and compliance assistance, weekdays from 8:00 a.m. to 5:00 p.m. by calling 1-888-644-2260 or at <http://epa.ohio.gov/dapc/serc.aspx>
- 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. Additional information is available at <http://www.epa.ohio.gov/ocapp>.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.

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- DAPC's rules coordinator, 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 .

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