



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: January 12, 2021

RE: CSI Review – SERC – Administrative Rules; 5-Year Review (OAC 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))

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This Ohio Environmental Protection Agency (EPA) rule package consists of 11 amended rules and 48 no change rules, submitted as part of the statutory five-year rule review requirement. The draft rules were submitted to the CSI Office on March 10, 2020, and the public comment period was open through April 10, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 10, 2020.

The rules proposed in this package cover OAC chapter 3750, rules of the State Emergency Response Commission (SERC), which provides the framework for the administration and implementation of emergency planning of the State Emergency Planning Committee, Local Emergency Planning Committees (LEPCs), and regulated industries (including oil and gas and those handling hazardous chemicals). Amendments are proposed to fix typographical errors, update language for readability and clarity, update terminology, and adopt updated federal language.

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During the period of early stakeholder outreach, the EPA sent a request for comment electronically to over 3,000 members of the EPA Division of Air Pollution Control interested party list. The notice of the rulemaking process was also posted to the EPA website and published in the Director's weekly review publication. No comments were received from stakeholders during this period. During the CSI public comment period, the rules received numerous comments. As a result of these comments, the EPA made updates to the rules to include a simplified reference to the most recent Code of Federal Regulations, corrections to references, and updates to grammar and wording.

Affected communities of the rules include Local Emergency Planning Committees (LEPCs), facilities required to prepare a Safety Data Sheet under the Occupational Safety and Health act of 1970 and that have hazardous chemicals exceeding threshold quantities outlined in OAC 3750-30-27, agricultural producers that comply with Section 302 of the Right-to-Know Act of 1986, retail gas stations, and owners and operators of oil and gas extraction and storage facilities.

Potential impacts include time for application submissions, meeting reporting requirements, maintaining an emergency response lock box when necessary, and maintaining proper inventory of hazardous chemicals for annual reporting. Impacts of the rules also include time required to set up Tier 2 software which is available for free on the EPA's website. The EPA has estimated that facilities with between 10 and 20 reportable chemicals can set up the required software in 12-14 hours at an estimated cost of staff time of \$1,000, with subsequent years' filings taking up to two to four hours of staff time. The EPA notes that this software has been in use since 2009, and the time associated with an initial set up would only effect new facilities. The submission of facility information through this software is a federal requirement.

Additionally, fees associated with the rules are outlined in ORC 3750.13 and include filing fees of \$150 annually for inventory filings, an additional \$20 for facilities with chemicals above threshold quantities, an additional \$150 for each "extremely hazardous chemical" reported, and a base fee of \$50 plus \$10 for every additional oil and gas extraction storage facility for operators in excess of 25 facilities. It should be noted that fees for single reporting facilities are capped at \$2,500 and owners and operators of facilities may, under certain circumstances, claim a credit against fees under these rules for fees paid to a municipal corporation.

The EPA states that the rules are necessary to administer and implement statutorily required (in ORC 3750.02), and federal emergency planning compliance, and the federal Emergency Planning and Community Right-to-Know act of 1986.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the EPA should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.