

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-104, "Accidental Releases Prevention Program"

Rule Number(s): OAC Rules 3745-104-01 to 3745-104-53

Date: November 18, 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 Rescinded                |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.*

The rules in OAC chapter 3745-104 implements an Accidental Release Prevention Program, or Risk Management Plan (RMP) program in accordance with Section 112(r) of the federal Clean Air Act (CAA). The objective of section 112(r) is to prevent serious chemical accidents that have the potential to affect public health and the environment. The CAA required U.S. EPA to promulgate regulations for chemical accident prevention, which includes hazard assessments, a prevention program, and an emergency response program.

The Ohio EPA RMP rules, which are consistent with federal requirements, became effective August 13, 1999. Ohio EPA DAPC received delegation of authority for the Accidental Release Prevention Program, or Risk Management Plan (RMP) program, effective January 3, 2000.

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

<b>Rule Number</b>	<b>Authorizing Statute</b>	<b>Proposed Action</b>
3745-104-01	3753.02	No-Change
3745-104-02	3753.02	No-Change
3745-104-03	3753.02	No-Change
3745-104-04	3753.02	No-Change
3745-104-05	3753.02	No-Change
3745-104-06	3753.02	No-Change
3745-104-07	3753.02	No-Change
3745-104-08	3753.02	No-Change
3745-104-09	3753.02	No-Change
3745-104-10	3753.02	No-Change
3745-104-11	3753.02	No-Change
3745-104-12	3753.02	No-Change
3745-104-13	3753.02	No-Change
3745-104-14	3753.02	No-Change
3745-104-15	3753.02	No-Change
3745-104-16	3753.02	No-Change
3745-104-17	3753.02	No-Change
3745-104-18	3753.02	No-Change
3745-104-19	3753.02	No-Change
3745-104-20	3753.02	No-Change
3745-104-21	3753.02	No-Change
3745-104-22	3753.02	No-Change
3745-104-23	3753.02	No-Change

3745-104-24	3753.02	No-Change
3745-104-25	3753.02	No-Change
3745-104-26	3753.02	No-Change
3745-104-27	3753.02	No-Change
3745-104-28	3753.02	No-Change
3745-104-29	3753.02	No-Change
3745-104-30	3753.02	No-Change
3745-104-31	3753.02	No-Change
3745-104-32	3753.02	No-Change
3745-104-33	3753.02	No-Change
3745-104-34	3753.02	No-Change
3745-104-35	3753.02	No-Change
3745-104-36	3753.02	No-Change
3745-104-37	3753.02	No-Change
3745-104-38	3753.02	No-Change
3745-104-39	3753.02	No-Change
3745-104-40	3753.02	No-Change
3745-104-41	3753.02	No-Change
3745-104-42	3753.02	No-Change
3745-104-43	3753.02	No-Change
3745-104-44	3753.02	No-Change
3745-104-45	3753.02	No-Change
3745-104-46	3753.02	No-Change
3745-104-47	3753.02	No-Change
3745-104-48	3753.02	No-Change
3745-104-49	3753.02	No-Change
3745-104-50	3753.02	No-Change
3745-104-51	3753.02	No-Change
3745-104-52	3753.02	No-Change
3745-104-53	3753.02	No-Change

**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.*

The rules in this chapter implement section 112(r) of the Clean Air Act. The objective of section 112(r) is to prevent serious chemical accidents that have the potential to affect public health and the environment.

The Ohio EPA RMP rules, which are consistent with federal requirements, implement this section of the CAA and require the preparation of Risk management Plans (RMP) These rules originally became effective August 13, 1999. Ohio EPA received delegation of

authority to implement the state Accidental Release Prevention Program, Risk Management Plan (RMP) program, effective January 3, 2000. These rules are necessary for Ohio to retain primacy over the state program.

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

The rules in this chapter do not exceed federal requirements as required in ORC 3753.02. There have been no changes in the federal regulations and therefore, the rules are being submitted as no change rules, in accordance with Ohio Revised Code chapter 106.

**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 objective of section 112(r) of the CAA is to prevent serious chemical accidents that have the potential to affect public health and the environment. The CAA required U.S. EPA to promulgate regulations for chemical accident prevention, which includes hazard assessments, a prevention program, and an emergency response program. The rules in this chapter implement the state of Ohio's RMP program under the CAA. The plans assist responding agencies in the event of a catastrophic release.

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

The rules in this chapter require facilities to prepare and implement a release prevention program. Ohio considers these rules a success through the reduction of accidental releases of hazardous substances due to the existence of these plans.

**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.*

Ohio EPA established an initial 30-day public (early stakeholder outreach) comment period ending January 3, 2014. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 1,248 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?**

Ohio EPA did not receive any comments or suggestions for changes to be made to the rules during the early stakeholder outreach (ESO) period ending January 3, 2014.

**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 rules in OAC chapter 3745-104 implement the requirements of section 112(r) of the CAA which are promulgated in 40 CFR Part 68. Ohio's rules are equivalent to, and no more stringent than these requirements. The model rule in 40 CFR Part 68 was developed by USEPA and is used in other states as well.

**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?**

ORC 3753.02 requires Ohio EPA to develop rules equivalent to, but no more stringent than the federal requirements. The rules in this chapter were developed to be identical to the federal model rule in 40 CFR Part 68. For this reason there were no alternative regulations considered.

**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.***

These rules are considered performance based rules. The rules require facilities to comply with national codes and standards appropriate to their workplaces as part of their safety plans, but do not dictate how to implement these codes and standards, leaving this up to each facility to implement them in the way that best suits the facility.

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

Ohio's federally required RMP program rules are similar to Process Safety Management regulations required by the Occupational Safety and Health Administration (OSHA), however, OSHA's program focuses on protection of workers (inside the fence), whereas Ohio EPA's requirements are focused on effects to the environment and the public health in general (outside the fence). This actually works in a facility's favor as much of the information required for one program can be used for the other program.

**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.**

Ohio EPA reviews plans submitted by industry to determine that the plans comply with the requirements in the rules and performs facility inspection visits to ensure that the plans are being implemented.

**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 rules in this chapter implement section 112(r) of the Clean Air Act. The objective of section 112(r) is to prevent serious chemical accidents that have the potential to affect public health and the environment.

The cost to develop a RMP is dependent on the size of the facility and the number of compounds they store and utilize. A typical small business, such as a chemical retailer, with a single compound above threshold levels may be able to develop and implement a plan for a few hundred or a thousand dollars whereas a large facility with dozens or hundreds of compounds, such as a refinery, may spend \$20,000-\$30,000 to develop and implement a plan.

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

The rules require facilities to use appropriate hazard assessment techniques to identify hazards that may result from the accidental release of regulated substances, and to use these identified hazards to design and maintain a safe facility which prevents releases and minimizes the consequences of accidental releases that do occur.

## **Regulatory Flexibility**

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

The rules in this chapter provide for minimum quantity thresholds below which facilities are exempt from developing a plan.

### **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 Ohio EPA uses enforcement discretion regarding fines and penalties for facilities committing a first-time violation are typically waived. The procedures specified in the agency's "Compliance Assurance through Enforcement" program are used to ensure implementation of the regulations. Penalties are only for repeat violations from previous inspections.

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

The following resources are available:

- 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://www.epa.ohio.gov/ocapp>.
- Ohio EPA also has a compliance assistance web page specifically for RMP information (<http://www.epa.ohio.gov/dapc/atu/112r.aspx#125623903-compliance-information>) that contains links to several items to help businesses complete their prevention program documentation.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.

- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.
  - U.S. EPA has a website for compliance materials by industry sector: <http://www2.epa.gov/rmp/guidance-facilities-risk-management-programs-rmp>
- Ohio EPA's Division of Air Pollution Control (DAPC) rule writer for the rules in this chapter is Sherri Swihart. She can be reached by calling 614-644-3594 or by e-mail at [sherri.swihart@epa.ohio.gov](mailto:sherri.swihart@epa.ohio.gov).