

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: SERC Rule 3750-25-25, 5-year review

Rule Number(s): OAC Rule 3750-25-25

Date: August 22, 2016

**Rule Type:**

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 Rescinded                |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

Ohio Administrative Code (OAC) rule 3750-25-25 contains the requirements for facilities to report releases of hazardous and extremely hazardous substances and discharges of oil into the environment. The rule includes requirements for both verbal and written notifications and the telephone contact number for making verbal notifications.

The State Emergency Response Commission (SERC) has reviewed this rule to fulfill the requirements of Ohio Revised Code (ORC) 106.06 and 106.031 (5-yr review). The primary change is the listing of the new telephone contact number 1-844-OHCALL1. This is a one-stop shop number, established by the Governor's executive order 2016-04K, which makes all notifications required in this rule with one call, rather than the previous version of the rule which required a facility to make up to 4 individual reporting calls. The SERC is also making minor changes to repair typos and update agency and LSC formatting issues in the rule.

**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>
3750-25-25	3750.02(B)(1)(f)	Amended

**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.*

These rules are not based on federal requirements. These rules implement a state requirement in Ohio Revised Code (ORC) 3750.02(B)(1)(f) for the SERC to establish procedures for giving verbal and written notices of releases of hazardous substances under ORC 3750.06.

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

These rules are based on state requirements and 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 public purpose of these rules is to implement reporting requirements for hazardous substances.

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

The agency considers this rule a success when a report is made resulting in remediation of the release.

**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.*

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.

Ohio EPA did not receive any comments on this rule during the early stakeholder comment period.

**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 from potentially interested parties during the early stakeholder comment period. Upon the close of the upcoming interested parties draft comment period, Ohio EPA will consider any additional comments and prepare a "response to comments" document detailing Ohio EPA's response to the comments and outlining any changes made to the draft language as a result of the comments.

**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?**

This rule is administrative in nature regarding reporting. No scientific data was required for development of this rule.

**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 fulfill the state requirements in ORC 3750.06 and the Governor's executive order 2016-04K. There was no need to consider alternate regulations.

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**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.*

The reporting requirements contained in this rule are specifically spelled out in ORC 3750.06 and the Governor's executive order 2016-04K. The information provided and the methods by which the information is to be provided are spelled out in those document.

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

The changes being made to this rule allow for a combination of reporting efforts with ODNR through the new 1-844-OHCALL1 number. ODNR will then distribute information to other affected agencies. The establishment of the new number creates a new one-stop shop whereas a reporting entity was previously required to make up to 4 notifications for each release.

**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.**

Program adheres to the letter of the law and regulations to ensure fair and consistent application for all affected parties.

**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.*

There are minimal costs of compliance with this rule. The telephone notification is provided via a toll-free number. A few hours of an employee's time will be necessary for the follow-up written report, which is estimated at no more than a few hundred dollars.

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

These rules fulfill the state requirements in ORC 3750.06 and the Governor's executive order 2016-04K. This rule provides notification of releases which increase public safety and speed remediation of the release.

**Regulatory Flexibility**

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

No. Program staff routinely provides regulatory and technical assistance to regulated community to educate them and help them navigate through coming into compliance with requirements.

**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](mailto: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](mailto:paul.braun@epa.ohio.gov).