

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: SERC Rules, 5-year Review

Rule Number(s): OAC Rules 3750-15-(01, 02, 05, 10), 3750-25-(12, 13, 20), 3750-30-(15, 25, 27), 3750-50-(01, 07, 08, 09, 15, 25), 3750-80-(01-03), and 3750-85-(01-03)

Date: October 23, 2015

**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 Rescinded                |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 chapters 3750-15, 3750-25, 3750-30, 3750-50, 3750-80, and 3750-85 establish basic administrative procedural matters for the State Emergency Response Commission (SERC), release reporting and emergency release notification requirements, establish a filing fee schedule; and establish criteria and procedures for granting variances to local emergency planning commissions (LEPCs) and local political subdivisions. These rules implement the requirements established by the Ohio legislature in ORC 3705.02 and fulfill the requirements of the federal Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA).

The SERC has reviewed these rules and determined that they remain necessary and are without need of amendment.

### **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>
3750-15-01	3750.02(B)(1)(j)	No-Change
3750-15-02	3750.02(B)(1)(j)	No-Change
3750-15-10	3750.02(B)(1)(j)	No-Change
3750-25-12	3750.02(B)(1)(c)	No-Change
3750-25-13	3750.02(B)(1)(c)	No-Change
3750-25-20	3750.02(B)(1)(f)	No-Change
3750-30-15	3750.02(B)(1)(d)	No-Change
3750-30-25	3750.02(B)(1)(b)	No-Change
3750-50-01	3750.02(B)(1)(j)	No-Change
3750-50-07	3750.02(B)(7)	No-Change
3750-50-08	3750.02(B)(7)	No-Change
3750-50-09	3750.02(B)(7)	No-Change
3750-50-15	3750.02	No-Change
3750-50-25	3750.02(B)(7)	No-Change
3750-80-01	3750.02(B)(2)(e)	No-Change
3750-80-02	3750.02(B)(2)(e)	No-Change
3750-80-03	3750.02(B)(2)(e)	No-Change
3750-85-01	3750.02(B)(2)(e)	No-Change
3750-85-02	3750.02(B)(2)(e)	No-Change
3750-85-03	3750.02(B)(2)(e)	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.**

These rules establish Ohio's SERC as required by the federal Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA).

- 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 these chapters implement federal EPCRA requirements, but do not exceed the 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 the federal EPCRA rules, to establish both the SERC and the local emergency planning committees according to the federal rules, and to provide for the safety and success of emergency responders in the state of Ohio.

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

The success of these regulations is determined through the continued operations of the SERC and the local emergency planning committees. Operating within the boundaries of these rules, these agencies continue their missions of emergency planning and preparedness, public awareness, public training/education, and support of local emergency responders.

### **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 February 13, 2015. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 1,300+ 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.

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Ohio EPA received several sets of comments during the early stakeholder process. As a result, the rules associated with the comments were separated from the rulemaking package to address the comments and will be included in a separate rulemaking package. No comments were received on the rules included in this rulemaking package.

**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?**

No scientific data was utilized in the development of these rules. These rules are administrative in nature and deal with items which do not have a scientific basis.

**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 federal EPCRA requirements and neither exceeds, nor falls short of the requirements. As such, there were no alternate regulations available.

**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 include items required in the federal rules. It is necessary, for consistency, that the reporting and variances required under these rules match the federal requirements so that they can be tracked among states.

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

SERC reviewed our own regulations and performed a search of regulation from other agencies to determine if duplication was being made. SERC determined that these rules do not duplicate any other regulations.

**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 associated with most of these rules. Facilities that are required to report a spill or release can make the notification verbally to 3 regulatory agencies. Most of the rules in this rulemaking package actually have no associated cost to the regulated community as they are internal to the SERC or contain definitions or other administrative types of language which do not required an expenditure of funds.

OAC rule 3750-50-01 addresses the annual filing fees required from all facilities subject to OAC rule 3750-30-01 (facilities subject to reporting). The rule contains an annual filing fee of \$150 per facility and a fee of \$20 for each hazardous substance at the facility or \$150 for each extremely hazardous substance. A typical small business facility will report, on average, 2 to 5 substances. The average annual filing fee is less than \$500 for a small business. For large facilities, such as refineries and chemical manufacturers, the annual fee is capped at \$2,500 per facility. The fees collected under this rule are used to provide funding to the various emergency planning and response groups in the state such as the 88 Local Emergency Planning Committees (LEPCs), the Ohio Emergency Management Agency, and Ohio EPA. The funds also provide training dollars to fire departments.

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

These rules fulfill federal requirements in the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA).

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## **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 Ohio EPA 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:

- 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 permit assistance web page ([http://www.epa.ohio.gov/dir/permit\\_assistance.aspx](http://www.epa.ohio.gov/dir/permit_assistance.aspx)) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- 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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- 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.
- Ohio EPA's Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. 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).