

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-100, "Toxic Chemical Release Reporting (TRI)"

Rule Number(s): OAC Rules 3745-100-01 to 3745-100-17

Date: April 14, 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 Rescinded |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.

Ohio Administrative Code (OAC) Chapter 3745-100, “Toxic Chemical Release Reporting (TRI),” is authorized by Chapter 3751 of the Ohio Revised Code (ORC). These rules are the state equivalent of Code of Federal Regulations (CFR) 40 Chapter 1 subchapter J part 372 as authorized by Section 313 of the federal Superfund Amendments and Reauthorization Act, (SARA), also known as the Emergency Planning and Community Right to Know Act, (EPCRA).

Section 313 of EPCRA requires facilities which manufacture, process, or otherwise use listed toxic chemicals to annually summarize and report their toxic chemical usages and environmental releases and waste management activities. This is known as Toxic Release Inventory (TRI), Section 313 Reporting. TRI reporting was first required for the 1987 reporting year. The Pollution Prevention Act of 1990 expanded and redefined the scope of TRI reporting. Beginning with the 1991 reporting year, reporting facilities also must report source reduction and recycling data for reportable toxic chemicals. Prior to recent revisions of federal rulemaking, this reporting requirement was limited to owners and operators of facilities that had 10 or more full time employees in a covered Standard Industrial Classification (SIC).

The Ohio legislature enacted chapter 3751 of the ORC shortly after Congress enacted federal TRI reporting. This reinforced the federal rule within the Ohio EPA to provide oversight of the reporting and provided a fee system to support the program.

Facilities which are subject to the reporting requirements must report toxic chemical releases, transfers, waste managements, and pollution prevention activities to both Ohio EPA and U.S. EPA on or before July 1 for the previous calendar year. A separate report is required for each reportable chemical.

The changes being considered for these rules are being made after a review to fulfill the requirements of ORC 106.03 and 106.031 (5-yr review).

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

Rule Number	Authorizing Statute	Proposed Action
3745-100-01	3751.02	“Amended”
3745-100-02	3751.02	“Amended”
3745-100-03	3751.02	“No Change”
3745-100-04	3751.02	“No Change”
3745-100-05	3751.02	“Amended”

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3745-100-06	3751.02	"Amended"
3745-100-07	3751.02	"Amended"
3745-100-08	3751.02	"Amended"
3745-100-09	3751.02	"Amended"
3745-100-10	3751.02	"Amended"
3745-100-11	3751.02	"Amended"
3745-100-12	3751.02	"No Change"
3745-100-13	3751.02	"Amended"
3745-100-14	3751.02	"Amended"
3745-100-15	3751.02	"Amended"
3745-100-16	3751.02	"Amended"
3745-100-17	3751.02	"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 the state equivalent of 40 CFR Chapter 1 subchapter J part 372 as authorized by Section 313 of the federal Superfund Amendments and Reauthorization Act, (SARA), also known as the Emergency Planning and Community Right to Know Act, (EPCRA).

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

These rules mirror the federal language and do not exceed any of the limits set in the federal rules.

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 and to provide valued information regarding the annual releases into air, water and land and waste management activities of the designated 600 plus TRI chemicals 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 statewide reporting from our estimated 1,300 plus facilities; conducting quality control checks on the information being reported and the production of the annual report that includes past historic trends of the reporting data.

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 comment period ending February 2, 2016. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 2,800+ 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 during the 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 during the early stakeholder comment period.

- 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?**

These rules are modeled closely after the federal EPRCA and 40 CFR Chapter 1 subchapter J part 372. These rules cover reporting/recordkeeping and are administrative in nature. There was no scientific basis for developing these rules.

- 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 are based on federal regulations in 40 CFR Chapter 1 subchapter J part 372. There are no alternative regulations to consider.

- 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 strictly based on federal rules which require the reporting of specific substances on specific forms developed by USEPA. This must be done so reporting is uniform and consistent.

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

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Ohio EPA performed a review of our internal regulations as well as rules of other OEPA divisions and outside agencies. These rules do not duplicate any other state rules.

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 notifies facilities of the annual reporting deadline date and how to comply accordingly through the interaction with the USEPA Central Data Exchange reporting software tool.

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.

OAC rule 3745-100-12 contains the fee system required of all facilities subject to the reporting requirements. The rule requires a base filing fee of \$50 per facility and fifteen dollars per release form filed with a cap of \$500 in total fees. Fees are submitted along with the reporting forms. Late filers, more than 30 days overdue, are subject to a penalty of 15% in addition to the filing fees due under this rule. Fees collected are credited to the "Toxic Chemical Release Reporting Fund" created in ORC 3751.05. These monies are used for the purposes of implementing, administering, and enforcing these rules and orders issued under them.

OAC rule 3745-100-07 contains the reporting requirements for this chapter. USEPA estimated in the federal register (61 FR 33587-33618) the basic cost of reporting to an average facility as \$4,330 per form R and \$2,947 per form A for the first reporting year (Table 3, pg 33617), and \$2,946 per form R and \$2,006 per Form A (Table 4, pg 33618) for subsequent reporting years. These costs have gone down over the years as electronic reporting has increased the ease and efficiency of the process.

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

These rules fulfill the requirements under federal regulations in 40 CFR Chapter 1 subchapter J part 372. The rules provide valued information regarding the annual releases into air, water and land and waste management activities of the designated 600 plus TRI chemicals in the state of Ohio.

Regulatory Flexibility

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

Reporting facilities must have 10 or more full-time employees before they are required to submit under these rules.

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) 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.