

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency/State Emergency Response Commission

Regulation/Package Title: SERC Rules, New Orders Rule

Rule Number(s): OAC Rules 3750-10-08 and 3750-30-27

Date: November 17, 2015

**Rule Type:**

New

5-Year Review

Amended

Rescinded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 two rules in this rulemaking package establish basic administrative procedural matters for the State Emergency Response Commission (SERC). Specifically, OAC rule 3750-10-08 is a new rule that establishes a mechanism for a local emergency planning committee (LEPC) to designate a facility as subject to the local emergency plan, and OAC rule 3750-30-27 incorporates federal reporting language when reporting extremely hazardous substances in mixtures. 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).

During the recent 5-year review of OAC chapters 3750-15, 3750-25, 3750-30, 3750-50, 3750-80 and 3750-85 which occurred in September, 2015, the SERC identified the need to establish an additional rule to establish a process through which facilities could be brought into the local emergency planning process by an LEPC. This rulemaking package contains the new rule, OAC rule 3750-10-08, and OAC rule 3750-30-27 which was identified during the review as necessary, but needing changes to add federal reporting language. The remaining rules in these chapters are being proposed in a separate rulemaking as “No-Change” rules to the Joint Committee on Agency Rule Review (JCARR) under ORC 106.031.

**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>
3750-10-08	3750.02(B)(9)	New
3750-30-27	3750.02(B)(1)(b)	Amend

**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 established under ORC Chapter 3750 enable the Ohio SERC to administer the emergency planning and community right-to-know program 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 and do not exceed the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

federal requirements. The new rule, OAC 3750-10-08, expands on the SERC's authorities under ORC 3750.02 and creates a mechanism for an LEPC to make a facility subject to the plan for emergency planning purposes.

**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.

The rules in this rulemaking provide for the public reporting of hazardous chemicals and the inclusion of facilities for the purposes of planning and exercises. Both rules contribute to the safety of the public and first responders (police, fire, rescue) when addressing accidents at the reporting facilities.

**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 state and local 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.

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 these rules. The reporting required under OAC 3750-30-27 provides guidance on how a facility reports an extremely hazardous substance as part of a mixture as stored or used at the facility. The initial completion of the report, on a form issued by the SERC, is anticipated to cost a facility a few hundred dollars of personnel time to complete the form. For subsequent years, the facility reporting becomes simpler as they need only report changes in the information.

There is a minimal cost of compliance to facilities with the new rule, OAC 3750-10-08. The rule establishes a mechanism through which the LEPC’s may request the SERC to issue an order to include a non-participating facility into their plan as a facility subject to the plan for the purposes of planning and exercises. The only anticipated cost shall be administrative cost for the facility to either agree with such order or to argue against such.

**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). In addition, the statewide LEPCs have asked the SERC to address such issue of how to handle adding a facility to being subject to the local plan so that they can exercise with such facility to enhance local emergency responders understanding of the facility.

## **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 SERC web page (<http://www.epa.ohio.gov/dapc/serc.aspx>) that contains links to several items to help businesses navigate the reporting process.
- Ohio EPA maintains the Compliance Assistance Hotline 888-644-2260, 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.

- 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).