



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

OAC Chapter 3745-104, "Accidental Release Prevention Program"

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

Date of Submission for CSI Review: August 18, 2020

Public Comment Period End Date: September 18, 2020

Rule Type/Number of Rules:

New/___ rules

No Change/ 13 rules (FYR? X)

Amended/ 40 rules (FYR? X)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

The rules in Ohio Administrative Code (OAC) chapter 3745-104 implement 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 hazards 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 RMP program, effective January 3, 2000.

Nine rules are being amended to correlate with U.S. EPA's Final Risk Management Program Reconsideration Rule issued on December 19, 2019. The following is a summary of amendments:

OAC Rule 3745-104-01 (Definitions) had the following definitions added: Confidential business information and LEPC (local emergency planning committee).

OAC Rule 3745-104-05 (Applicability) has been amended to include applicability requirements, along with dates, for facilities to comply with the additional emergency response provisions. The provisions include notification drills for all stationary sources and tabletop and field exercises for those facilities that have their own emergency response team ("Responding Facilities"). Facilities which have releases of RMP chemicals that go offsite will be required to have a public meeting within 90 days of the incident.

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OAC Rule 3745-104-06 (General requirements) are being amended to require facilities to coordinate with local emergency responders or to develop an emergency response program for facilities with processes that could affect public and environmental receptors.

OAC Rule 3745-104-17 (Program two prevention program: safety information) is being amended to change the terminology for material safety data sheet (MSDS) to correspond with OSHA terminology, safety data sheet (SDS).

OAC Rule 3745-104-24 (Program three prevention program: process safety information) is being amended to change the terminology for material safety data sheet (MSDS) to correspond with OSHA terminology, safety data sheet (SDS).

OAC Rule 3745-104-36 (Emergency response: applicability and coordination) has had the title changed to include coordination efforts with local emergency planning agencies to correlate with U.S. EPA requirements. Coordination with local emergency responders have always been obligatory but U.S. EPA has added an annual requirement for both coordination efforts and notification drills.

OAC Rule 3745-104-37 (Emergency response program and exercises) has had the title changed to include the term “exercises.” The rule has been amended to outline the responsibilities for Responding Facilities to conduct tabletop and field exercises, including frequencies, scope, and documentation requirements.

OAC Rule 3745-104-42 (Risk management plan: registration) is being amended to include the date of any public meetings held within 90 days of an RMP reportable release. The public meeting is only for those releases that have had offsite impacts.

OAC Rule 3745-104-47 (Risk management plan: emergency response program) is being amended to clarify facility’s response capabilities in the submitted RMP. Dates will be provided in the plan as to when the facility last coordination with the local response agencies and conducted a notification drill. In addition, Responding Facilities will include the date of field and tabletop exercises.

OAC Rule 3745-104-41 (Availability of information to the public) is being amended to include the public meeting requirements for any facility that had an RMP reportable release that had offsite impacts.

Ohio EPA is also making minor changes to rules throughout the chapter to fix typos and update the rules to match agency and LSC formatting standards. Additionally, 19 rules remain necessary, but are not in need of change.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

| Rule Number | Authorizing Statute | Proposed Action |
|--------------------|----------------------------|------------------------|
| 3745-104-01 | 3753.02 | Amend |
| 3745-104-02 | 3753.02 | Amend |
| 3745-104-03 | 3753.02 | No-Change |

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| 3745-104-04 | 3753.02 | No-Change |
| 3745-104-05 | 3753.02 | Amend |
| 3745-104-06 | 3753.02 | Amend |
| 3745-104-07 | 3753.02 | No-Change |
| 3745-104-08 | 3753.02 | Amend |
| 3745-104-09 | 3753.02 | No-Change |
| 3745-104-10 | 3753.02 | Amend |
| 3745-104-11 | 3753.02 | Amend |
| 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 | Amend |
| 3745-104-17 | 3753.02 | Amend |
| 3745-104-18 | 3753.02 | Amend |
| 3745-104-19 | 3753.02 | Amend |
| 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 | Amend |
| 3745-104-24 | 3753.02 | Amend |
| 3745-104-25 | 3753.02 | Amend |
| 3745-104-26 | 3753.02 | Amend |
| 3745-104-27 | 3753.02 | No-Change |
| 3745-104-28 | 3753.02 | Amend |
| 3745-104-29 | 3753.02 | Amend |
| 3745-104-30 | 3753.02 | Amend |
| 3745-104-31 | 3753.02 | Amend |
| 3745-104-32 | 3753.02 | Amend |
| 3745-104-33 | 3753.02 | No-Change |
| 3745-104-34 | 3753.02 | No-Change |
| 3745-104-35 | 3753.02 | Amend |
| 3745-104-36 | 3753.02 | Amend |
| 3745-104-37 | 3753.02 | Amend |
| 3745-104-38 | 3753.02 | Amend |
| 3745-104-39 | 3753.02 | No-Change |
| 3745-104-40 | 3753.02 | No-Change |
| 3745-104-41 | 3753.02 | Amend |
| 3745-104-42 | 3753.02 | Amend |

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|-------------|---------|-----------|
| 3745-104-43 | 3753.02 | Amend |
| 3745-104-44 | 3753.02 | No-Change |
| 3745-104-45 | 3753.02 | Amend |
| 3745-104-46 | 3753.02 | Amend |
| 3745-104-47 | 3753.02 | Amend |
| 3745-104-48 | 3753.02 | No-Change |
| 3745-104-49 | 3753.02 | Amend |
| 3745-104-50 | 3753.02 | No-Change |
| 3745-104-51 | 3753.02 | Amend |
| 3745-104-52 | 3753.02 | Amend |
| 3745-104-53 | 3753.02 | Amend |

4. 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?

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 RMP. These rules originally became effective August 13, 1999. Ohio EPA received delegation of authority to implement the state RMP program, effective January 3, 2000. These rules are necessary for Ohio to retain primacy over the state program.

5. 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 changes to the federal regulations (Final RMP Reconsideration Rule effective December 19, 2019); therefore, there are nine rule amendments. The remaining rules are being submitted as no change rules, in accordance with Ohio Revised Code chapter 119.032.

6. 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 CAA.

7. 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.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

The rules in this rulemaking are not being proposed under any of these statutes.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Ohio EPA established an initial 30-day public (early stakeholder outreach) comment period ending June 26, 2019. Ohio EPA Division of Air Pollution Control (DAPC) sent the noticed of our request for comments electronically to the 3,500+ 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.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

DAPC received one comment requesting that OEPA suspend the adoption of the January 2017 final federal Accidental Release Prevention RMP rule amendments due to the delay of U.S. EPA finalizing their regulation. However, U.S. EPA finalized the RMP Reconsideration Rule in November 2019 and this is the rule on which Ohio EPA DAPC has based the amendments for the nine regulations.

11. 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 U.S.EPA and is used nationwide in other states as well.

12. 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.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

These rules are considered performance-based regulations. The rules require facilities to comply with national codes and standards appropriate to their workplace 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.

14. 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 a risk management program 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 works in the facility's favor as much of the information required for one program can be used for the other programs.

15. 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 to the requirements in the rules and performs facility inspection visits to ensure that the plans are being implemented.

Adverse Impact to Business

16. 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; and**
- b. Identify the nature of all adverse impact (e.g., 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 an anhydrous ammonia 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 of compounds, such as a refinery, may spend \$20,000-\$30,000 to develop and implement a plan.

17. 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

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hazards to design and maintain a safe facility which prevents releases and minimizes the consequences of accidental releases that do occur.

Regulatory Flexibility

18. 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.

19. 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 to typically wave penalties for facilities committing a first-time paperwork violation.

20. What resources are available to assist small businesses with compliance of the regulation?

The following resource are available:

- (1) 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.
- (2) Ohio EPA also has an RMP compliance assistance web page: <https://epa.ohio.gov/dapc/atu/112r#125623903-compliance-information> which provides examples of the key elements of the RMP program.
- (3) Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- (4) U.S. EPA has guidance documents for facilities in various sectors including chemical distributors and warehouses, agricultural retailers, and water and wastewater treatment plants that entail small businesses. These documentations can be found at the following web page: <https://www.epa.gov/rmp/guidance-facilities-risk-management-programs-rmp>.