

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: 2015 No Change - Plan Approval and Consumer Confidence Reports (CCR)

Rule Number(s): 3745-91-01, 3745-91-04, 3745-91-05, 3745-91-06, 3745-91-07, 3745-96-03

Date: 8/10/2015

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 Rescinded |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.

Ohio EPA is proposing to file several rules in the Ohio Administrative Code (OAC) as no change. Chapter 3745-91 contains plan approval rules and Chapter 3745-96 contains CCR rules.

- Rule 3745-91-01 defines relevant plan approval terms.

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- Rule 3745-91-04 lists the requirements of specifications that need to be included in proposed plans.
- Rule 3745-91-05 explains the requirements of the data sheet that needs to be included with proposed plans.
- Rule 3745-91-06 lists the minimum requirements of supporting information that needs to be included with proposed plans.
- Rule 3745-91-07 lists the requirements of plan submittal letters.
- Rule 3745-96-03 lists additional health information that is required to be included in a CCR.

These rules have been reviewed pursuant to the five-year rule requirements set forth in ORC Section 106.031 and no changes are being proposed at this time.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.
ORC Section 6109.04 authorizes the Agency to adopt the regulations in this rules package.

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.
Yes, rules in Chapter 3745-96 enable Ohio EPA to administer the Safe Drinking Water Act (SDWA), as well as retain primary enforcement authority (40 CFR Part 142.10) from the Federal Government and implement the federal Consumer Confidence Rule.

OAC Rules in Chapter 3745-91 do not specifically implement federal requirements but they do protect public drinking water systems from contamination due to poor construction and treatment design.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.
OAC Rule 3745-96-03 exceeds the federal requirement. The federal counterpart permits community water systems to develop their own lead-specific, health information about lead in drinking water and its effects on children. Ohio EPA exceeds this requirement by requiring these systems to use the language that is in the rule.

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 for adopting such regulations (as stated in ORC 6109.04) is ensuring the availability of a safe and adequate supply of public drinking water. These rules help

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achieve this purpose by providing guidelines for proposed plans to construct water treatment and PWS infrastructure, as well as for informing the public of the quality of their drinking water.

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

The Agency will base success of all of the rules in this package on public water system compliance rates within our various drinking and ground water programs. PWS compliance rates will be discovered through reported data, specifically through submitted plans and CCRs.

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.

Stakeholders include PWS owners and operators, consultants, environmental organizations and the general public. The only measure a person has to take to be notified of DDAGW's potential rule activity is to request to be added to our electronic or hard-copy mailing list.

Stakeholders were notified of DDAGW's plans to file this rule package with no changes on April 1, 2015 by electronic or regular mail in accordance with their request.

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

One comment was provided during the Early Stakeholder Outreach period. Janet Barth, SEDO-DDAGW Manager, submitted a comment about Rule 3745-91-09, which was originally part of this no-change rule package. She noted that section B of the rule does not explicitly state that existing community water systems, which develop a new source, or change a source of water, are required to provide treatment for iron and manganese removal to meet the secondary maximum contaminant level (MCL). Section B of the rule only states that these types of systems should provide treatment when the levels of iron and manganese exceed the secondary MCL. Section A of the rule pertains to new community water systems but does state that treatment for removal of iron and manganese to meet the secondary MCL is required. Rule 3745-91-09 was removed from this no-change rule package and will be revised for clarification.

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?

Ohio EPA obtained statutory authority in Chapter 6109 of the Revised Code and promulgated these rules under OAC Chapter 3745-91 and Chapter 3745-96. References

used include the latest revisions to 40 CFR Parts 141 and 142. The federal counterparts, which include the SDWA Amendments of 1996, are the foundation for 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?

In order to retain primary enforcement authority, Ohio EPA is required to adopt the federal counterparts of rules. Therefore, Ohio EPA could not consider an alternative to Rule 3745-96-03.

The regulations in OAC Chapter 3745-91 maintain consistency with existing industry and agency-wide standards, and create some flexibility in rule to use approved alternatives.

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.*

No, the rules in this package are not performance-based. OAC Chapters 3745-91 and 3745-96 dictate the process the regulated stakeholders must use to submit acceptable plans and CCRs.

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

Ohio EPA reviewed internal regulations and determined there are no duplications.

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 provides draft rule revisions to staff for internal review and comment. When needed, procedures, guidance and policy are developed to support consistent application. Additionally, training may be provided and all effective rule revisions are distributed to staff.

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;**
PWSs in the state of Ohio of all population sizes and types are impacted by these rules.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

3745-91-01: There is no cost of compliance with this rule.

3745-91-04, 3745-91-05, 3745-91-06, and 3745-91-07: Costs incurred from these rules include the cost of preparing and submitting supporting information for Agency plan approval.

3745-96-03: Costs incurred from this rule include the cost to develop and deliver the CCRs to consumers.

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.

3745-91-04, 3745-91-05, 3745-91-06, and 3745-91-07: The formula for calculating detail plan approval fees authorized by Section 3745.11 of the Revised Code is \$150 plus 0.35% of the estimated project cost, not to exceed \$20,000. The fee varies commensurate with project size. The average cost of preparing and submitting copies of plans is estimated to be \$250.00 per project based the time and materials needed to prepare the submittal.

3745-96-03: The cost of developing and delivering CCRs is approximately \$793.68 per water system. The majority of the information used in these reports is data and education the water system already maintains or has access to.

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

The Agency considers the overall cost for complying with these regulations to be minor in comparison with ensuring the public is supplied with a safe and reliable source of drinking water.

Regulatory Flexibility

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

These rules do not provide any exemptions or alternative means of compliance for small businesses.

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?

Ohio EPA does not assign fines and penalties for first-time offenders, and prefers to obtain compliance through outreach first and, if needed, written notice of violations prior to any type of formal enforcement.

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

Small business PWSs can turn to the Office of Compliance Assistance and Pollution Prevention (OCAPP) or to their Ohio EPA District Office Inspector for technical assistance.