

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: 2016 No Change - Secondary Drinking Water Standards and Emergency Loans

Rule Number(s): 3745-82-01 and 3745-86-01

Date: 9/02/2015

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 Rescinded |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. OAC Chapter 3745-82 contains the standards for secondary contaminants and Chapter 3745-86 contains the rule about emergency loans.

- OAC Rule 3745-82-01 defines terms used in OAC Chapter 3745-82, which are related to the secondary drinking water standards.

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- OAC Rule 3745-86-01 describes the application process and terms under which a public water system may apply for an emergency loan for the purpose of remediating a threat of contamination to that system.

These rules have been reviewed pursuant to the five-year rule requirements set forth in the Ohio Revised Code (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 OAC Chapter 3745-82 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.

The rule in OAC Chapter 3745-86 does not specifically implement federal requirements, but it does provide information on how public water systems (PWSs) can obtain a loan to be used for emergency remediation of threats of contamination to the PWS.
- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**
OAC Rule 3745-82-01 has a federal counterpart but does not exceed the federal requirement.
- 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 Section 6109.04) is ensuring the availability of a safe and adequate supply of public drinking water. These rules help achieve this purpose by helping PWSs understand terms related to secondary drinking water standards, which need to be upheld in order to provide adequate drinking water, and by providing information on how to obtain a loan that can be used for emergency remediation of threats of contamination.
- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**
Since OAC Rule 3745-82-01 contains definitions and OAC Rule 3745-86-01 contains instructions for emergency loans, neither rule has any measurable outputs or outcomes.

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 May 11, 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?**

During the Early Stakeholder Outreach period, Ohio EPA received a comment from the Greater Cincinnati Water Works about OAC Rule 3745-82-03 (monitoring for compliance with secondary maximum contaminant levels), which was originally included in this rule package. The organization commented that the Centers for Disease Control and Prevention (CDC) now recommends a level of 0.7 mg/L as the optimal level for fluoride in drinking water, but OAC Rule 3745-82-03 requires PWSs to keep fluoride levels between 0.8 mg/L and 1.3 mg/L. The organization recommended changing the rule so that compliance with the range can be determined with a monthly average. This will allow PWSs to operate with fluoride levels closer to 0.7 mg/L, but still maintain compliance with the fluoride range through the overall monthly average. Since changes are necessary, OAC Rule 3745-82-03 was removed from this no-change rule package and will be submitted with revisions in a different package.

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 Chapters 3745-82 and 3745-86. References used include the latest revisions to 40 CFR Parts 141, 142 and 143. 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 OAC Rule 3745-82-01.

The regulations in OAC Chapter 3745-86 maintain consistency with agency-wide standards.

- 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 Rule 3745-82-01 defines terms used in the secondary drinking water standards chapter and OAC Rule 3745-86-01 explains relevant definitions, the application, and the conditions of an emergency loan.

- 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**

3745-82-01: This rule does not place any requirements on the regulated community and as such, there is no cost of compliance.

3745-86-01: The only cost of compliance associated with this rule is the cost attributed to the amount of personnel time spent completing the loan application.

- 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.

3745-86-01: It is estimated that the cost associated with completing a loan application would be between \$50 and \$100.

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.