

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Escrow Requirements (OAC Chapter 3745-92), No Changes

Rule Number(s): 3745-92-01 to 3745-92-06

Date: 11/16/2015

**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 Rescinded                |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.**

Rules in Chapter 3745-92 of the Ohio Administrative Code (OAC) set forth requirements for small community water systems applying to construct, install or make a substantial modification to their system, to deposit a percent cost of the system in an escrow account. These requirements apply to water systems which are not owned and operated by a public entity, do not supply water only to premises owned by the water supplier, and are not regulated by the public utilities commission. OAC rules in Chapter 3745-92 establishes the following requirements:

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- Chapter definitions.
- Requirements for an escrow deposit.
- The amount of funds to be deposited in escrow.
- The terms in which the escrow deposit is released.
- Orders issued by the Director to correct deficiencies and authorization to use funds in escrow to enable compliance with the Director's order.
- Qualification that these rules do not prohibit banks or savings institutions holding the escrow deposit from charging a fee for its services.

These rules have been reviewed pursuant to the five-year rule requirements set forth in 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.**

The Agency is authorized by ORC Section 6109.04 to propose rules in Chapter 3745-92 to be filed with no changes.

**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.*

The rules in Chapter 3745-92 do not implement a federal requirement nor enable the state to obtain or maintain primary enforcement authority of a federal program.

**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 Chapter 3745-92 do not implement a 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 is to ensure community public water systems that will serve or do serve a population of a certain size be able to fund construction, installation or substantial modification of their water system. These requirements apply to water systems which are not owned and operated by a public entity, do not supply water only to premises owned by the water supplier, and are not be regulated by the public utilities commission.

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

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The success of the rules in Chapter 3745-92 is based on the public water system's compliance with the construction, installation or substantial modification of their water system in accordance with the plans approved by the Agency.

### **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 public water system 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 minor amendments or no changes on August 8, 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?**

Stakeholders did not provide any comments on this rules package during early stakeholder outreach.

**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 Section 6109.04 of the Revised Code and OAC Chapter 3745-92 amplifies Section 6109.08 of the Revised Code.

**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?**

Chapter 3745-92 was adopted to give the Agency administrative code rules that amplify what is in Ohio Statute, Section 6109.08 of the Revised Code.

**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.**

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Yes, the rules in this package are performance-based in that they require compliance with construction, installation and substantial modification specifications in accordance with plans approved by the Agency.

**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 not 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 implementation of this rules package includes the following:

- Seeking input from staff on implementation problems and developing solutions.
- Reviewing internal procedures to determine if changes are needed.
- Regularly notifying staff of rule changes.
- Giving presentations on rule updates.

**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;**

The requirements apply to community public water systems in the State of Ohio that will or are serving fewer than 500 service connections, and that are not owned and operated by a public entity, do not supply water only to premises owned by the water supplier, and are not regulated by the public utilities commission.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

The costs to public water systems will be for making a deposit to an escrow account.

**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.*

**Chapter 3745-92:** The cost of compliance for this Chapter is captured in rules 3745-92-02 and 3745-92-03. These rules require that the community public water systems meeting the specifications as outlined in Question 14a to deposit an escrow and establish the monetary amount that must be deposited. The cost of compliance could be as much as \$50,000 plus any service charges for maintenance of the escrow. This cost is established by Section 6109.08 of the Revised Code. In addition, rule 3745-92-05 could require the replenishment of the escrow up to a maximum of \$50,000 if funds were withdrawn and used to correct deficiencies identified by an order of the Director.

**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.**

No, the rules in Chapter 3745-92 do not provide any specific 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 businesses PWSs can turn to their Ohio EPA District Office Inspector or Rural Community Assistance Program (RCAP) for technical assistance. Ohio EPA contracts with RCAP to provide assistance for PWSs with a population of 10,000 or less. RCAP can help small business PWSs with a number of tasks, such as:

- Preparing loan applications, including determining the ability to repay;
- Determining the most cost effective action for providing a safe drinking water supply;

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- Developing and/or completing their capability assurance plan.

RCAP also sponsors training seminars such as utility board training, financial management, asset management and budget and rate setting training. Ohio EPA also provides both administrative and technical training for PWSs at low to no-cost. In addition to these informational resources, financial assistance may be available through Ohio EPA's Drinking Water Assistance Fund (DWAF).

Ohio EPA also has the authority from the 1996 Amendments to the Safe Drinking Water Act to help fund infrastructure improvements, through capitalization grants, needed to comply with state requirements. These grants fund the Water Supply Revolving Fund, which provides low-interest loans to community and not for profit water systems. Loans can provide support design work in addition to capital improvements. Operating costs would be supported through conventional mechanisms such as collecting fees from customers based on the amount of water used or rental fees.