

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: 2012 Miscellaneous Rule Amendments

Rule Number(s): 3745-91-12, 3745-95-01, 3745-95-02, 3745-95-03, 3745-95-05, 3745-95-06, 3745-95-07, 3745-96-01 and 3745-96-04

Date: 10/21/14

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Rescinded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.

Ohio EPA is proposing to amend several rules in the Ohio Administrative Code (OAC). Rule 3745-91-12 outlines the circumstances under which a political subdivision or investor-owned public utility may have a professional engineer licensed by the state of Ohio certify certain types of plans which the Director will then agree to approve without further review.

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Rules 3745-95-01, 3745-95-02, 3745-95-03, 3745-95-05, 3745-95-06 and 3745-95-07 include requirements for a backflow prevention and cross-connection control program. Finally, OAC rules 3745-96-01 and 3745-96-04 define what is needed in a consumer confidence report, and establishes acceptable delivery and recordkeeping methods.

These rules have been reviewed pursuant to the five year rule requirements set forth in ORC 119.032 and the division is proposing changes. Following interested party review, rules 3745-95-01, 3745-95-05 and 3745-95-07 were identified as needing revisions so they were added to this rules package. Proposed revisions to 3745-91-12 include self-certification provisions, requiring submittal of a project summary and annual report.

Proposed revisions to rules in Chapter 3745-95 include revising and adding new definitions, clarifying requirements for surveys and investigation of water use practices; adding a provision allowing a pressure vacuum breaker be installed in place of a backflow preventer device or reduced pressure detector check assembly where there is an air gap separation; and updating requirements for booster pumps.

Proposed revisions to rules in Chapter 3745-96 include defining PWS satellite system requirements and adding in condominium complexes to the list of facilities for delivery of consumer confidence reports.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

ORC section 6109.04 paragraph (B)(2), “Adopt, amend, and rescind such rules in accordance with Chapter 119. Of the Revised Code as may be necessary or desirable to... Govern public water system to protect the public welfare, including rules governing contaminants in water that may adversely affect the suitability of the water for its intended uses or that may otherwise adversely affect the public health or welfare.”

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, these regulations enable Ohio EPA to administer the Safe Drinking Water Act (SDWA), as well as retain primary enforcement authority from the Federal Government. These rules are used by Ohio EPA to protect drinking water sources from potential contaminants as outlined in the SDWA. Rules 3745-96-01 and 3745-96-04 also allow Ohio EPA to implement the federal Consumer Confidence Rule.

The OAC Rules in Chapters 3745-91 and 3745-95 do not specifically implement federal requirements, but they do protect public drinking water systems from contamination due to

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poor well construction and treatment design, as well as backflow and/or cross-connections.

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 this rules package do not exceed the scope of 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 purpose for adopting such regulations is ensuring the availability of a safe and adequate supply of public drinking water. These rules help to achieve this purpose by ensuring PWSs have drinking water sources that are protected from contaminants by the establishment and oversight of public water system design, construction and repairs made, and by establishing backflow prevention devices and cross-connection control requirements. Additionally, the implementation of the Consumer Confidence Rule provides the public at large with information about 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 are typically discovered through reported data and during sanitary surveys of said system.

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, other state agencies and in general, the public at large. The only measure someone 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 revise rules on February 1, 2012 by electronic or regular mail in accordance with their request. In addition, DDAGW sought comment from stakeholders during the division's interested party review period held March

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15 – April 26, 2013. During this review, additional revisions were identified as necessary and rules 3745-95-01, 3745-95-05 and 3745-95-07 of the OAC were included in this filing package. Lastly, DDAGW is holding a second round of review, seeking comments from stakeholders. The interested party review period occurs before the rules are filed with JCARR and is used to address any concerns or questions from staff and our stakeholders.

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

The division did not receive any comments during early stakeholder outreach, held from February 1 – March 2, 2012 and January 6 – February 7, 2014. However, several comments were received on the backflow prevention and cross-connection control rules and manual during the interested party review period held in 2013. DDAGW participated in several meetings with stakeholders and more specifically, the Ohio Department of Commerce, in order to discuss their comments; content and intent of our rules, as well as their rules and program; and the agreed-upon revisions to our rules and manual. A copy of the revised rules, manual and a response to comments summary were directly provided to the Ohio Department of Commerce and are readily available to all stakeholders.

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?

Statutory authority for these rules is established in Section 6109. of the Revised Code. Ohio EPA promulgated these rules under OAC Chapters 3745-91, 3745-95 and 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.

The OAC Rules in Chapter 3745-95 were developed using the backflow case histories from the Florida Department of Environmental Protection. The backflow incidents described in these cases were used when developing the backflow requirements described in OAC Chapter 3745-95.

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 alternatives to rules in Chapter 3745-96.

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The regulations in OAC Chapter 3745-95 maintain consistency with existing plumbing and fire codes and were, therefore, developed with limited alternatives. Alternatives were added to the requirements in OAC rule 3745-95-03 which allow a water supplier to use a questionnaire or information obtained from other licensing agents and/or an ongoing educational campaign to limit the number of onsite investigations necessary.

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.

Yes, most of the rules in this package are performance-based. The Consumer Confidence Rule (Chapter 3745-96 of the OAC) establishes the required outcome for notifying consumer of the drinking water quality in their community.

The backflow prevention rules in OAC Chapter 3745-95 are performance-based in that they define when backflow prevention devices are required, but they allow the PWS to determine the appropriate device to use for the degree of hazard.

The plan approval rules (Chapter 3745-91) are performance-based in that they establish guidelines in which to measure the design, construction and repairs of PWSs against.

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 rule package includes the following:

- Seeking input from staff on implementation problems and developing solutions.
- Involving staff in developing rule amendments.
- Developing internal procedures and guidance documents for staff to use in implementing rules.
- 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;

3745-91-12: The impact is only to political subdivisions or investor-owned public utilities that voluntarily enter into contract with the Director to have a state licensed professional engineer certify specific types of plans that the Director would agree to approve without further review.

3745-95-01: There is no cost of compliance associated with this rule.

3745-95-02: The impact would be to persons that have installed cross-connections in violation of this rule.

3745-95-03: The impact of this rule would likely be to the public water system, whether they perform the inspection to identify cross-connections or contract the service.

3745-95-05: The impact of this rule is to systems required to install backflow prevention and cross-connection protection. Depending on whether it is a residential property and the need, the cost may be to the consumer.

3745-95-06: The impact of this rule is primarily to the consumer.

3745-95-07: Depending on the need, the cost could be to consumers who install booster pumps at their premises.

3745-96-01, 3745-96-04: The impact of these rules primarily falls to the public water system.

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

3745-91-12: The costs related to voluntarily entering into contract would include paying for the administrative service fee for each set of plans being reviewed.

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3745-95-02: Any costs incurred would be to persons that have installed cross-connections in violation of this rule, which would include eliminating the cross-connection or mitigating the hazard associated with it.

3745-95-03: The costs incurred would be for the onsite investigation of all premises at least every five years to identify and mitigate backflow hazards. In lieu of conducting onsite investigations of each premise, the water supplier may opt to implement a program to identify potential hazards through a questionnaire or information obtained from other licensing agencies and conduct onsite investigations only of those premises determined to have a potential new or increased hazard. In addition, the water supplier may opt to institute an ongoing educational campaign in lieu of conducting onsite investigations of each residential premise.

3745-95-05: Costs incurred from this rule is to systems required to install backflow prevention and cross-connection protection. This rule describes the type of protection required and also provides an exception in certain circumstances, allowing for a different type of protection.

3745-95-06: The costs incurred from this rule would include the cost to install a backflow prevention device and/or have inspections of the device or to ensure an unauthorized cross-connection to an auxiliary water supply does not exist.

3745-95-07: The costs incurred would be for the minimum pressure sustaining method when a booster pump is installed.

3745-96-01, 3745-96-04: The costs incurred from these rules include the cost to develop and deliver the reports 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.

The cost to comply with the rules in this rules package is not affected by the proposed revisions, except for rule 3745-95-03.

3745-91-12: The administrative service fee is currently \$150 plus 0.35% times the estimated project cost, not to exceed \$20,000.

3745-95-02: The cost of eliminating the cross-connection or mitigating the hazard at the service connection using a containment principle backflow preventer could range from approximately \$100 (for plumbing modification) to \$13,000 (for installation of a backflow preventer, depending on type and size).

3745-95-03: Ohio EPA gathered the information for the new and existing provisions to this rule during research of backflow prevention and cross-connection control programs implemented by other state agencies. The cost of complying with this rule is difficult to quantify based on the information available to Ohio EPA and we are requesting feedback from PWSs about their program successes, hardships and costs to comply with this requirement.

In the American Water Works Association journal, the annual costs for smaller public water systems (serving a population of 5,000 or less) to run a cross-connection control program approximately ranged from \$11,000 to \$15,000.¹ This breakdown includes elements that Ohio does not require the PWS to cover financially (e.g., testing and repairing backflow prevention assembly devices).

Costs to Ohio PWSs would include an onsite investigation of all service connections every five years for changes in water use practices at a consumer's property. An average cost for a Class I or Class II Certified Operator to perform an inspection is approximately \$30.38 - \$32.43 per hour, per service connection. At the least, an inspection would take approximately twenty minutes.

In lieu of conducting onsite investigations of each premise, the water supplier may opt to implement a program to identify potential hazards through a questionnaire or information obtained from other licensing agencies and conduct onsite investigations only of those premises determined with a potential new or increased hazard. The questionnaire could be included in the PWSs water bill, so costs for a questionnaire would primarily include the printing and compiling information as it is provided to the supplier. This would decrease the number and costs associated with onsite investigations.

In addition, the water supplier may opt to institute an ongoing educational campaign in lieu of conducting onsite investigations of each residential premise. The costs associated with this option would consist of preparing and sending an electronic or hard copy notice to these consumers.

¹ Fredrick W. Pontius and William B. Evans, [An analysis of potential costs for small](#)

community cross-connection control. Journal AWWA (American Water Works Association), July 2008.

3745-95-05: The cost of compliance varies directly with the size and number of devices required. For a consumer with a small auxiliary system, typical costs for the purchase and installation of an approved backflow prevention device are approximately \$452. Annual costs for maintenance and testing are approximately \$194. However, this cost may be less if a residential property meets the new exemption specifications which permit a pressure vacuum breaker in place of a backflow prevention device. For a large consumer, such as a sewage treatment plant or hospital, typical costs for the purchase and installation of an approved backflow prevention device are approximately \$16,805. Annual costs for maintenance and testing are approximately \$259 or more. When a local government or school district is not required to install backflow prevention, the cost of compliance results from an annual inspection to prevent unauthorized cross-connections. The average cost for this inspection is expected to be approximately \$129. This cost may be borne by the public water system or the water system may charge the consumer for the inspection or require them to hire a third party inspector.*

* U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar used to account for inflation from 2003 – 2014.

3745-95-06: For a consumer with a smaller service connection, typical costs for purchase and installation of an approved backflow prevention device are approx. \$452. Annual costs for maintenance and testing are approximately \$194. For a large consumer, such as a manufacturing business or hospital, typical costs for purchase and installation of an approved backflow prevention device are approximately \$16,805. Annual costs for maintenance and testing are approx. \$259 or more. These estimates are based on price lists of approved devices and prevailing wages for plumbers and backflow prevention specialists.*

* U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar used to account for inflation from 2003 – 2014.

3745-95-07: The costs for this rule affect consumers who need to install backflow prevention devices for booster pumps. Costs to consumers would only involve the cost of a low pressure cut-off switch or a low suction throttling valve in the pump design. A low pressure cut-off device would add a moderate cost. A low suction

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throttling valve would add a cost of approximately \$1,500 to \$2,000. A variable speed suction limiting control would be integral to the pump cost. Annual costs for maintenance and testing of the selected minimum suction pressure sustaining method are approximately \$150.

3745-96-01, 3745-96-04: The cost of developing and delivering these reports 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.

Alternatives were added to the requirements in OAC rule 3745-95-03 which allow a water supplier to use a questionnaire or information obtained from other licensing agents and/or an ongoing educational campaign to limit the number of onsite investigations necessary.

OAC rule 3745-91-12 provides the option to investor-owned public utilities or political subdivisions to have a professional engineer licensed by the state of Ohio certify certain types of plans which the Director will then agree to approve without further review.

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;
- 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).