



Common Sense Initiative

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Business Impact Analysis

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

Rule Contact Name and Contact Information: Amanda Payton, Ohio Environmental Protection Agency

Regulation/Package Title: Drinking Water State Revolving Fund 2020, Minor Amendments

Rule Number(s): 3745-88-01 and 3745-88-02

Date of Submission for CSI Review:

Public Comment Period End Date:

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ _x_2 rules (FYR? x_2)

Rescinded/___ rules (FYR?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.

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):

- a. **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. **Requires specific expenditures or the report of information as a condition of compliance.**
- d. **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.**

Please include the key provisions of the regulation as well as any proposed amendments.

Rules 3745-88-01 and 3745-88-02 of the OAC describe the criteria for an entity to be designated a disadvantaged community and requirements to receive a loan for their public water system. Proposed minor revisions to OAC Rules 3745-88-01 and 3745-88-02 include revising the definition of “Disadvantaged assistance” in OAC Rule 3745-88-01 to clarify that maximum term is consistent with what is allowed in the Safe Drinking Water Act, changing “Pre-application” to “Nomination” in OAC chapter 3745-88. removing the requirement to submit a complete application separate from the WSRLA loan application for designation as a disadvantaged community in OAC Rule 3745-88-02, Clarifying that the poverty rate in the area served by the applicant is determined by the most recent data of the US Census Bureau in OAC Rule 3745-88-02, and clarifying the percentage of capitalization grant that may be available to provide subsidies to disadvantaged communities in OAC Rule 3745-88-02. These revisions are proposed to make the rule consistent with the federal requirement.

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.**

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ORC Section 6109.04 authorize the Agency to adopt this regulation and states that the director shall “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 systems to protect the public welfare, including rules governing contaminants in water that may adversely affect the sustainability of the water for its intended uses or that may otherwise adversely affect the public health or welfare.”

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?

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. OAC rules 3745-88-01 and 3745-88-02 enable Ohio EPA to administer low interest loans to PWSs determined to be disadvantaged and needing to improve their infrastructure to meet SDWA requirements. The Federal counterpart to these rules can be found in Title 40 of the Code of Federal Regulations (CFR), Part 141 (National Primary Drinking Water Regulations).

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

These rules do not exceed the scope of federal requirements, but rather outline requirements to specify how federal money awarded to the state are to be used.

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 public 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 providing funds to disadvantaged PWSs, and developing a long term protection plan for a PWSs water source.

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

The loan recipient is responsible for meeting program requirements, managing a project and complying with the terms of the loan agreement. The success of the rules in Chapter 3745-88 will be measured on these terms. Chapter 3745-88 rules indirectly influence compliance with

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other rules that are performance-based such as those that protect public drinking water supplies and water of the state, therefore success of this regulation will also be measured based on resultant compliance rates.

- 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?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

- 9. 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. In fact, stakeholders may sign-up themselves up for this notification.

Stakeholders were notified of DDAGW's plans to revise these rules on October 15, 2019 by electronic or regular mail in accordance with their request.

In addition, DDAGW will be seeking comment from stakeholders during the division's interested party review period. 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.

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

Stakeholders were notified of DDAGW's plans to revise these rules on October 15, 2019 by electronic or regular mail in accordance with their request. No comments were received during early stakeholder outreach.

- 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?**

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Statutory authority for these rules is established in Section 6109 and 6111 of the Revised Code and Ohio EPA promulgated these rules under OAC Chapter 3745-88. References used include the latest revisions to 40 CFR Parts 141, 142, and 144. The federal counterparts, which include the SDWA Amendments of 1996 and the Clean Water Act, are the foundation for these rules.

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?

OAC Chapter 3745-88 establishes what would qualify PWSs disadvantaged communities and the requirements to apply for loans. There are no alternatives to consider because these requirements specify how federal money awarded to the state are to be used.

13. 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.*

OAC Chapter 3745-88 is not performance-based in and of itself, however, these rules indirectly influence compliance with other rules that are performance-based such as those that protect public drinking water supplies and water of the state.

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

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

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 provides draft rule revisions to staff for internal review and comment. Additionally, training may be provided, and all effective rule revisions are distributed to staff. Implementation of these rule includes the following:

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

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- Regularly notifying staff of rule changes.
- Giving presentations on rule updates.

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;

Public water systems determined to be disadvantaged and needing to improve their infrastructure to meet Safe Drinking Water Act requirements who choose to apply for a loan.

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

PWSs will only be affected by OAC rules in Chapter 3745-88 if they choose to apply for a loan. Adverse impact for those who choose to apply for a loan the amount of time it takes to complete the loan application multiplied by the cost of man hours. This cost can range depending on the complexity of application, and the experience of the personnel. PWSs who are approved for a loan will incur an interest cost, as well as loan administration fee.

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.

Adverse impact for those who choose to apply for a loan include employer time for application completion. The average time required to complete a loan application is approximately 24 hours (varying based on complexity and experience) multiplied by the average pay rate of \$26.16 per hour^{1,2}, equating to roughly \$627.84.

PWSs who are approved for a loan will incur an interest cost, as well as loan administration fee. This fee is automatically calculated based on the loan program selected and the loan amount requested from Ohio EPA. All fees are based on total loan

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amount, with a minimum charge of \$400. The Water Supply Revolving Loan (WSRLA) and Ohio Water Development Authority (OWDA) administration loan fee is 1.35% (OWDA (0.35%) / WSRLA (1.00%)). On a WSRLA loan, the fee may be included and paid over the term of the loan. It may be possible for the loan Borrower to pay the loan administration fee directly instead of including the fee in the loan amount ³.

Example below:

<i>Select Funding Sources From Dropdown Box Below</i>					
Estimated Costs		OPWC	Local Funds	Ohio EPA LOAN	Total Project Cost
Technical Services					
Administration				\$1,500.00	\$1,500.00
Engineering Services				\$45,000.00	\$45,000.00
Planning					
Design					
Force Account					
Planning or Design Payoff				\$150,000.00	\$150,000.00
Construction					
<i>(Please enter number of anticipated contractors below)</i>					
Contractor "A"					
Contractor "B"		\$1,000,000.00	\$250,000.00	\$2,000,000.00	\$3,250,000.00
Contractor "C"					
Equipment					
Other Costs					
Contingency	<i>(Contingency is typically 5% of the Projects Cost)</i>			\$109,825.00	\$109,825.00
Subtotal		\$1,000,000.00	\$250,000.00	\$2,306,325.00	\$3,556,325.00
Application Fee	<i>There is a 0.35% OWDA fee on WPLCF loans or a 1.35% OWDA (0.35%) / WSRLA (1.00%) fee on WSRLA loan. Fees are based on total loan amount. Both program have a minimum fee of \$400.</i>			<i>\$31,135.39 for WSRLA</i>	<i>\$8,072.14 for WPLCF</i>
Total Estimated Costs		\$1,000,000.00	\$250,000.00	\$2,306,325.00	\$3,556,325.00

Loan interest rates will be determined based on the term of the loan, size of the service area and the affordability needs of the water system users. WSRLA generally offers the following interest rates: standard long term, small system long term, any system long term that receives affordability ranking points, short term, negotiated linked deposit, and supplemental loan. Systems that may qualify for more than one of these interest rates will receive the lowest rate for which the system qualifies. Communities that qualify as

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"disadvantaged" are eligible for principal forgiveness and reduced interest rates (as low as 0%). These communities may also be eligible for loan terms up to 30 years ⁴.

¹ U.S. Department of Labor, Bureau of Labor Statistics, 2018 Modeled Wage Estimates (MWE) for Water and Wastewater Treatment Plant and System Operators (51-8031)

² U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar used to account for inflation from 2018 - 2019

³ Ohio Environmental Protection Agency - Division of Environmental and Financial Assistance (DEFA) Office of Financial Assistance (OFA) Loan Application Instructions

⁴ Ohio Environmental Protection Agency – Division of Environmental and Financial Assistance (DEFA) Drinking Water Assistance Fund (DWAFF) Final 2020 Program Management and Intended Use Plan (June 27, 2019).

17. 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 very minor in comparison with ensuring the public is supplied with a safe and reliable source of drinking water

Regulatory Flexibility

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

No exemptions or alternative means of compliance for small businesses have been written into these rules. The failure or inability of a disadvantaged community to obtain disadvantaged assistance or subsidy under this chapter of the Administrative Code in no way alters the obligation of the public water system serving a disadvantaged community to comply with all applicable Administrative Code rules governing public water systems.

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?

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.

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

PWSs will only be affected by OAC rules in Chapter 3745-88 if they choose to apply for a loan. Assistance with loan applications and compliance can be provided by Ohio EPA's Division of Financial Assistance.

Small businesses PWSs can also turn to their Ohio EPA District Office or Rural Community Assistance Program (RCAP) - 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.