



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis RESCINDED RULES

This form is intended for rules that are being permanently rescinded and not replaced by a new rule.

New, Amended, No Change, and Rescind/New rules must use the standard BIA.

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

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

Regulation/Package Title (a general description of the rules' substantive content):
Financial Assurance

Rule Number(s): 3745-92-01, 3745-92-02, 3745-92-03, 3745-92-04, 3745-92-05, 3745-92-06

Date of Submission for CSI Review: 7/12/22

Public Comment Period End Date: 8/12/22

Rule Type/Number of Rules:

Rescinded/ 6 rules (FYR? 6)

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.

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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 Please describe in plain language the regulation that is being rescinded.**

Ohio EPA's Division of Drinking and Ground Waters (DDAGW) has reviewed and is considering rescission of Rules 3745-92-01 through 3745-92-06 of the Ohio Administrative Code (OAC) to satisfy the five-year rule review requirements of section 106.03 of the Ohio Revised Code (ORC). These rules establish Financial Assurance (previously "escrow") requirements for certain small Community Water Systems (CWS), a classification of Public Water Systems (PWS).

DDAGW is proposing to rescind Chapter 3745-92, governing "Financial Assurance" rules. Rules 3745-92-02, 3745-92-03, 3745-92-04, and 3745-92-05 and 3745-92-06 which previously established the following requirements, will be rescinded:

- 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.

3. Why is the regulation being rescinded?

Please be specific (ORC change, request of stakeholders, etc.)

Given the recent passing of Senate Bill 9, requiring agencies to reduce their number of regulatory restrictions by 30% in 2025, the Ohio EPA Division of Drinking and Groundwater has been mindful to reduce the number of regulatory restrictions in each rule as they review them for required 5 Year Rule Reviews. The requirement for financial assurance is contained in section 6109.08 of the Revised Code and does not need to be codified in rule for implementation.

4. Please describe in general terms the adverse impacts to business, including currently impacted industries, in the existing rule(s).

3745-92-01: There are currently no adverse impacts caused by this rule, as it merely defines a “public entity” and that defined terms used in other rules, will hold their same meanings thru this chapter.

3745-92-02: The adverse impact currently caused by this rule is the requirement that a community water system serving 500 service connections or fewer must submit proof of financial assurance.

3745-92-03: The adverse impact currently caused by this rule is that the community water system must have financial assurance in the amount of at least \$100,000 dollars or if the cost of the project is projected to be less than \$666,666 then the amount of financial assurance required will be 15 percent of the projected cost.

3745-92-04: The adverse impact currently caused by this rule is that the financial assurance agreement will be irrevocable unless the water system no longer serves anyone, has been acquired and is being operated by a public entity or has come under regulation of the public utilities commission, or other circumstances that the director determines will no longer require financial assurance.

3745-92-05: The adverse impact currently caused by this rule is that an escrow agreement is irrevocable, unless it is released by the director for one of the reasons listed within the rule.

3745-92-06: There is no adverse impact felt by this rule as it just states that there is nothing within the rules that prohibits a bank or savings institution from adding a fee for its services.

- 5. Are there other regulations (either existing or to be created) which will replace the regulation being rescinded or which will now apply because this regulation is being rescinded? This can include rules, statute, federal regulations, agency policies, or industry standards etc.**

The financial assurance requirements are still required by section 6109.08 of the Revised Code. The Asset Management rules, OAC Chapter 3745-87 also ensure that Public Water Systems have the financial means to be viable well into the future.

- 6. Does the rescission of this regulation eliminate flexibility or create more adverse impacts for stakeholders? If yes, please describe stakeholder outreach and justify the impacts.**

No.