

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: License to Operate (LTO) Amendments

Rule Number(s): 3745-84-01, 3745-84-02, 3745-84-03, 3745-84-04, 3745-84-05 and 3745-84-06

Date: 10/09/2013

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☒ Amended ☐ Rescinded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). Chapter 3745-84 contains the license to operate (LTO) a public water system (PWS) rules. This chapter provides definitions of key components, requirements for application, expiration, renewal and display of the LTO, fees required to maintain an LTO, and details on how and when LTOs may be conditioned, denied, suspended or revoked.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Most Ohio PWSs are required to obtain an LTO from Ohio EPA. The LTO indicates that the PWS is approved by Ohio EPA to supply drinking water to the public. Ohio EPA issues different licenses, depending on the PWS's compliance with safe drinking water rules. Each type of license is color-coded as green, yellow or red to represent the status of the system's license as unconditioned, conditioned or not permitted to provide water for human consumption, respectively.

These rules have been reviewed pursuant to the five year rule requirements set forth in ORC 119.032, and the division is proposing changes. Proposed revisions to Chapter 3745-84 include the addition of the definition of "license to operate" as well as clarification of other definitions; adjusting terminology to match definition changes; clarification of how the director acts on LTO applications; public notice requirements; clarification of how fees are determined; and, allowing access to the public water system.

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."

ORC section 6109.21 provides the legislation necessary to require licenses to operate (LTO) public water systems, as well as provides for renewals, terms and conditions of LTOs and exemption of churches and schools. ORC section 6109.21 paragraph (H) allows the director to establish procedures and requirements regarding the information included on LTO and renewal applications, as well as how and when LTOs may be conditioned, denied, suspended or revoked.

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.

OAC rules in Chapter 3745-84 do not specifically implement federal requirements, but the license to operate is tied to compliance with the Safe Drinking Water Act (SDWA).

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

Chapter 3745-84 of the OAC is not specifically covered in federal rules. However, Ohio EPA has statutory authority to license public water systems in Ohio Revised Code (ORC)

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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 giving the agency the ability to annually evaluate each public water system, ensuring that they are complying with safe drinking water regulations and obtaining their license to operate.

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 (PWS) compliance with license to operate and other safe drinking water regulations. 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 6, 2013 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.

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 during early stakeholder outreach, held from February 6 – March 6, 2013.

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?

The License to Operate rules are not based on technical or scientific data. The basis for the information requested is to have accurate owner information and to assess the appropriate fee. The fee is set in ORC 3745.11. The information requested is necessary to determine ownership and administer the program.

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?

The Agency considered the local health department (i.e., City of Columbus) regulations of food service operators as an example for the green, yellow and red system. Ohio EPA's rules were expanded to include color-coded licenses in order to be similar to other State-regulating bodies.

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.

Most of the rules in this package are not performance-based. Rule 3745-84-06 is performance-based, in that if a PWS is not in compliance with safe drinking water regulations, the license to operate may be conditioned, denied, suspended or revoked.

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:

- Notifying the PWSs of the rule requirements.
- Providing guidance to the regulated community.
- Giving presentations on rule updates.
- Sending LTO pre-applications in early Fall.
- Personal phone calls to public water systems that have not renewed their LTO.

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 in Chapter 3745-84 impact systems or businesses which maintain a public water system.

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

The cost to comply with the requirements in Chapter 3745-84 is the amount of the fee the PWS is required to remit. Costs associated with Chapter 3745-81 of the OAC are also indirectly associated, as a PWS's compliance with the safe drinking water act requirements in Chapter 3745-81 is tied to the status of their LTO.

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, include the cost of the license itself and returning the application to Ohio EPA. License costs are established in ORC 3745.11.

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.

Exemptions for Chapter 3745-84 are listed in ORC Section 6109.21. Public water systems exempt from the requirements in Chapter 3745-84 are:

- a. Churches which provide water at the church or the church's campground, which is only for members of the church and their families and is not for profit of any person; and,
- b. Any accredited public or private school that provides water only for the school.

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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?

The requirements in Chapter 3745-84 are administrative. Other than assistance provided by Ohio EPA staff in regards to completion of the license to operate application, there are no resources available to assist small businesses with compliance of the regulations in Chapter 3745-84.