



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: License to operate -No change

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

Date of Submission for CSI Review: July 15, 2019

Public Comment Period End Date: August 16, 2019

Rule Type/Number of Rules:

New/___ rules

No Change/ ☒ 6 rules (FYR? 6)

Amended/___ rules (FYR?)

Rescinded/___ rules (FYR?)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.

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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 briefly describe the draft regulation in plain language.**

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

Chapter 3745-84 contains license to operate (LTO) a public water system (PWS) rules. The chapter provides definitions of key components, requirements for application, expiration, renewal and display of LTO, fee required to maintain a LTO and details on how and when the LTO can be conditioned, denied, suspended or revoked.

Most Ohio PWSs are required to obtain a 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.

The rules have been reviewed pursuant to the five-year rule review requirements set forth in Section 106.03 and no changes have been proposed at this time.

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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.

Ohio Revised Code (ORC) Section 6109.04 authorizes 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.”

ORC section 6109.21 provides legislation that requires a PWS to obtain a LTO, as well as provides requirements for renewals, terms and conditions of LTOs. ORC section 6109.21 paragraph (H) allows the director to adopt rules 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. ORC section 6109.21 paragraph (I) exempts churches and schools that own or operate a PWS from obtaining a LTO.

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.

OAC rules in Chapter 3745-84 are required by the state statute. ORC section 6109.21 provides the legislation that requires a PWS to obtain a LTO, 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.

5. 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 Ohio Administrative Code (OAC) is not specifically covered in federal rules. However, Ohio EPA has statutory authority to license PWSs in ORC 6109.

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 these regulations is to ensure the availability of 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 PWS, ensuring that they are complying with safe drinking water regulations and obtaining their LTO.

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

The Agency will base success of all the rules in this package based on PWS compliance with the LTO and other safe drinking water regulations. PWS compliance rates are usually discovered during reported data or during sanitary surveys.

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 PWS owners and operators, consultants, environmental organizations, other state agencies, businesses and in general, the public at large. The only measure a person has to take to be notified of the Division of Drinking and Ground Water's (DDAGW) 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 rules in chapter 3745-84 as "no change" by electronic or regular mail on April 8, 2019. The rules were placed into interested party review on July 15, 2019, no comments were received on the intent to file these rules as "no change".

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

Stakeholders provided no comments on Ohio EPA's intent to file these rules with "no changes".

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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The LTO 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. ORC section 6109.21 provides the legislation that requires PWSs to obtain a LTO, 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.

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?

These regulations only govern PWSs in the state of Ohio, which is one of the obligations of the Director of Ohio EPA under Chapter 6109 of the Revised Code. No other State agency has authority to administer the Safe Drinking Water Act in Ohio therefore no alternate regulations were considered.

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.*

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 LTO may be conditioned, denied, suspended or revoked.

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 implementation of this rule 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.

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- Personal phone calls to PWSs that have not renewed their LTO.

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;

The requirements in Chapter 3745-84 impacts systems or businesses which maintain a PWS.

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

The cost to comply with the requirements in Chapter 3745-84 is the amount of 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.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Agency considers the costs for complying with the rules in this rule package minor in comparison with ensuring that public is supplied by 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.

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Exemptions for Chapter 3745-84 are listed in ORC Section 6109.21. PWS 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.

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?

The requirements in Chapter 3745-84 are administrative. Ohio EPA staff provides assistance to PWSs in regard to completion of the LTO application.