



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Backflow Advisory Board

Rule Contact Name and Contact Information:

Aaron Johnston- (614) 644-3297; Aaron.Johnston@com.state.oh.us

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

Backflow Technician rules,

Rule Number(s): 1301:3-7-01; 1301:3-7-02; 1301:3-7-03; 1301:3-7-04; 1301:3-7-04;

1301:3-7-05; 1301:3-7-06; 1301:3-7-07; 1301:3-7-08

Date of Submission for CSI Review: 9/03/20

Public Comment Period End Date: 9/17/20

Rule Type/Number of Rules:

New/ X rules (1)

No Change/ X rules (FYR? 1)

Amended/ X rules (FYR? 6)

Rescinded/ X rules (FYR? 1)

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.

The rules establish the administrative process for the operation of the Backflow Advisory Board, as well as the Division of Industrial Compliance's oversight of certified backflow technicians, including the means by which individuals apply for and renew a backflow technician certificate, administration of the backflow technician examination and continuing education programming, and the conduct of disciplinary proceedings against certified backflow technicians and investigation of unlicensed backflow technician work.

In addition to various grammatical and stylistic changes, several of the proposed amendments to the regulations include elimination of regulatory restrictions pursuant to section 121.95 of the Revised Code. The proposed amendments also include designation of three classes of backflow technician certificates. This amendment is being proposed for two reasons. First, to better meet the needs of both the backflow industry as well as the construction industry generally by reducing the burden to obtain a certification for a narrowly tailored group of technicians. And second, to clarify other language contained in Division 1301:3-7 of the

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Ohio Administrative Code, specifically, what types of devices individuals with experience in the water purveyor industry may perform backflow prevention testing on.

- 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.**

Section 3703.21 of the Revised Code.

- 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.

No, the regulation does not implement a federal requirement or enable the state to obtain or maintain approval to administer and enforce a federal law or participate in a federal program.

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

N/A

- 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 this regulation is to promote the health and safety of the citizens of Ohio. Backflow prevention devices are used to protect potable water supplies from potential contamination or pollution that may be caused when backflow occurs. In order to ensure that backflow prevention devices are installed correctly and continue to function properly, such devices must be tested by individuals with sufficient education, training, and experience to ensure such tests are performed properly. Accordingly, the Revised Code provides, “No individual shall engage in the installation, testing, or repair of any isolation backflow prevention device unless that individual possesses a valid certification as a backflow technician.” R.C. 3703.21(C). The General Assembly, therefore, established the Backflow Advisory Board to assist the Superintendent of the Division of Industrial Compliance with his oversight of this certification process for backflow technicians. These regulations establish the necessary framework to carry out these responsibilities.

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

The agency will measure the success of these regulations by eliciting feedback and comment from members of the industry on the ease with which the regulations can be followed in the process of obtaining a backflow technician certificate, as well as by working to ensure that instances of backflow testing by uncertified individuals are reported and properly investigated.

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- 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, none of the proposed rules contained in this rule package are being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931.

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.

See attached spreadsheet.

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

The backflow advisory board reviewed the proposed amendments to the rules and approved the proposed rule package. At present, the only additional comment was received from a former member of the backflow advisory board who submitted an email comment to the proposed rule (see attached). As is explained in our response to his comment, the proposed change was made to ensure language within the rule conformed with language contained in the Revised Code.

- 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?**

These regulations deal with the administrative process of obtaining and renewing a backflow technician certificate, conducting disciplinary proceedings, and the establishment of continuing education requirements applicable to certified backflow technicians. While the educational programming required of applicants in order to sit for the backflow technician examination, the material contained within the examination, and the continuing education program materials are of a technical or scientific nature, and, therefore, were developed by industry experts with specialized education, training, and experience; the substantive provisions of these rules are administrative in nature. Therefore, no scientific data was relied upon to develop these rules.

As far as measurable outcomes of the rule, the Division and the Board will maintain an active dialogue with members of the industry to understand how the regulations are functioning in terms of facilitating ease of compliance with those effected by the regulations, as well as monitoring reports of backflow testing being performed by individuals that do not hold a

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backflow technician certificate to ensure that backflow prevention devices at issue are properly tested and functioning properly, thereby, protecting Ohio's potable water supplies.

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?

To begin, pursuant to section 3703.21 of the Revised Code, the Superintendent of the Division of Industrial Compliance is statutorily mandated to adopt rules to provide for the certification of backflow technicians, including seven specific subject areas that such rules must address. As a result, while the Division could consider eligibility criteria, for example, to sit for the backflow technician examination, it could not consider alternatives such as whether or not to have an examination or whether to have eligibility criteria generally. The Division selected the specifics of these criteria, and other subject areas of these rules, by balancing the likelihood that these rules would promote the health, safety, and welfare of the public by protecting potable water sources throughout the state, with the potential burden associated with obtaining compliance by individuals working within the industry.

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.*

Section 3703.21 of the Revised Code does not allow for a performance-based regulation given the subject matter that these rules are required to address.

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

The Agency reviewed other areas of the Ohio Administrative Code within its jurisdiction to evaluate whether existing regulations would touch upon the matters addressed in these rules and found no duplication of existing Ohio regulation. Moreover, section 3703.21 of the Revised Code only grants rule-making authority regarding the certification of backflow technicians to the Superintendent of the Division of Industrial Compliance.

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.

Because the Backflow Advisory Board's membership is generally appointed (and reappointed) on a staggered basis, institutional memory of the Board's prior recommendations to the Superintendent helps to ensure that the regulations are applied consistently and predictably. Moreover, the Backflow Advisory Board functions to *advise* the Superintendent on matters dealing with backflow device testing and certified backflow

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technicians. As a result, the regulations are applied consistently because the Superintendent remains involved in each decision as it concerns the backflow industry. Finally, Board meetings are open to the public and communicated on the Division's website to ensure that members of the regulated community are given an opportunity to attend and give feedback on the operations of both the Board and the Division. The Division's staff will also be available to answer questions and respond to the regulated community's concerns.

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; and

The scope of the impacted business community includes those individuals seeking to perform backflow technician testing specifically, as well as the plumbing industry generally.

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

The scope of the adverse impact includes the costs associated with meeting the educational and experience requirements to qualify to sit for the backflow technician examination, as well as fees for applying for and renewing the backflow technician certificate. It should be noted that the adverse impact associated with the requirement of becoming certified as a backflow technician generally was not imposed by the Division or these rules, but rather is a product of the requirements established upon certified backflow testing created by section 3703.21 of the Revised Code.

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.

In order to qualify to sit for the backflow technician examination, an applicant must demonstrate that they possess sufficient workplace experience. What constitutes sufficient experience varies based upon the field of practice that the applicant has worked in, but generally requires five years of experience. These rules, however, permit the Board to consider other acceptable experience if the applicant cannot meet the five-year requirement in one of the pre-defined areas of work experience. Furthermore, the addition of categories of technician make it easier to obtain a certification if the technician only performs work in smaller scopes like lawn and irrigation by adjusting relevant experience requirements. Applicants must also complete a 24-hour backflow course. Fees paid by

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applicants and certificate holders include the following: 1.) \$50.00 application fee; 2.) \$50.00 examination fee; 3.) \$50.00 reexamination fee; and 4.) \$75.00 certification fee (every three years). In order to renew a certificate, a backflow technician must complete a minimum of an eight-hour backflow course by an approved training agency.

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

Because of the potential for hazard should backflow into a potable water supply occur, it is imperative that backflow prevention devices function properly and, therefore, are installed and tested pursuant to industry standards. Accordingly, the adverse impact associated with meeting the eligibility criteria to become certified as a backflow technician, as well the requirements for maintaining the certification thereafter, are justified to ensure backflow prevention devices perform their important function of protecting potable water supplies. Moreover, it is the Revised Code's requirement that certified backflow technicians perform testing of backflow prevention devices. This requirement was not imposed by the Division or these rules.

Regulatory Flexibility

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

First, section 3703.21 of the Revised Code does not appear to provide for exemption of the backflow technician regulations for small businesses. Second, because the nature of the risk associated with preventing backflow is borne by all users of shared potable water systems generally—not merely small business users—an exemption for small businesses is not advisable.

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?

The Division has an extremely high compliance rate and in the rare instance where noncompliance is found, the Division, in conjunction with the Backflow Advisory Board, often works to promote compliance through nondisciplinary means.

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

The Division's staff, as well as members of the Backflow Advisory Board at meetings, is available to answer questions and provide guidance when needed on the operation of these regulations.

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BACKFLOW TECHNICIANS STAKEHOLDERS

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3. Plumbing-Heating-Cooling Contractors of Ohio
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6. Ohio Association of Plumbing Inspectors
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7. Association of Plumbing & Heating Contractors

684 Colony Drive
Westerville, OH 43081
Attn: Frank Czako
Email: flczako@sbcglobal.net

8. Mechanical Contractors Association

2077 Embury Park Rd.
Dayton, OH 45414
Attn: Megan Miller
Email: mmiller@assnsoffice.com

9. APHC Backflow School

684 Colony Drive
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Email: aphcbackflow@sbcglobal.net

10. Pacon Plumbing School

896 Kiley Place
Cincinnati OH 45217
Email: bventura2@cinci.rr.com

11. Keeping Score, Inc.

19111 Brookfield Drive
Auburn Township, Ohio 44023
mbohinc@keepingscorecpa.com

12. Chris Sinagra, Legislative Consultant

CEA
216-570-5190
Csinagra18@gmail.com

Evarson, Dawn

From: Bagi, Christopher
Sent: Friday, July 31, 2020 10:21 AM
To: 'flczako@sbcglobal.net'
Cc: Evarson, Dawn
Subject: FW: Five-Year Rule Review - proposed Backflow Rules (OAC 1301:3-7-01 - 1301:3-7-08)

Dear Mr. Czako,

Thank you for taking the time to review the backflow rules. It is evident you did so with great detail, and we appreciate that. After receiving your comment, I did some looking into the matter. It appears the common practice in the industry is to not require a certified backflow technician to perform the installation of backflow prevention devices, as you stated. However, the language of the rule was drafted to maintain consistency with the Revised Code, which provides, "No individual shall engage in the installation, testing, or repair of any isolation backflow prevention device, unless that individual possesses a valid certification as a backflow technician. This division does not apply with respect to the installation, testing, or repair of any containment backflow prevention device." R.C. 3703.21(C). While we have the ability to modify our rules, we lack authority to make changes to the Revised Code. Accordingly, the rules are drafted to maintain consistency with the statutory language from which our rule-making authority was derived. I want to make clear that by including "installation" into the rule's language, however, that this is not intended to represent a change in enforcement by the Division. This subject will merely remain a matter of discretionary enforcement going forward. Should you have any additional questions or comment, I'm available to discuss at your leisure.

Thanks,



Christopher L. Bagi
Assistant Division Counsel
Ohio Department of Commerce
Division of Industrial Compliance
6606 Tussing Road, Reynoldsburg, Ohio, 43068
614-644-3950
Christopher.Bagi@com.ohio.gov
com.ohio.gov

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From: Evarson, Dawn <Dawn.Evarson@com.state.oh.us>
Sent: Thursday, July 30, 2020 8:15 AM
To: Bagi, Christopher <Christopher.Bagi@com.state.oh.us>
Subject: FW: Five-Year Rule Review - proposed Backflow Rules (OAC 1301:3-7-01 - 1301:3-7-08)

Chris, see comment below from a stakeholder.



Dawn R. Evarson

Administrative Professional 4

Ohio Department of Commerce
Division of Industrial Compliance
6606 Tussing Road
Reynoldsburg, OH 43068
Desk: 614-752-7124

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From: Frank Czako <flczako@sbcglobal.net>

Sent: Wednesday, July 29, 2020 5:37 PM

To: Evarson, Dawn <Dawn.Evarson@com.state.oh.us>

Subject: RE: Five-Year Rule Review - proposed Backflow Rules (OAC 1301:3-7-01 - 1301:3-7-08)

Dawn,

You may want to consider the removal of the word installation in paragraph A of rule 1301:3-7-02.

The plumbing code requires a permit be obtained prior to installation and should be allowed to be installed by any employee of a licensed firm not necessarily a certified individual.

Of course after installation it would need to be certified by a backflow technician who is certified.

Frank Czako
APHC Backflow School

From: Dawn.Evarson@com.state.oh.us [<mailto:Dawn.Evarson@com.state.oh.us>]

Sent: Wednesday, July 29, 2020 4:41 PM

To: Undisclosed recipients:

Subject: Five-Year Rule Review - proposed Backflow Rules (OAC 1301:3-7-01 - 1301:3-7-08)

Dear Stakeholders

Attached please find proposed rules for five-year review of OAC 1301:3-7-01 through 1301:3-7-08. Please review these proposed rules and respond with any comments/changes by August 12, 2020.

Your input is greatly appreciated. Thank you,



Dawn R. Evarson

Administrative Professional 4

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