

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: 2016 Contingency Plans

Rule Number(s): 3745-85-01

Date: 8/29/2016

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Rescinded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 rule 3745-85-01 of the Ohio Administrative Code (OAC), which requires each community water system to prepare and maintain a written contingency plan for providing safe drinking water to its service area at all times. The rule also contains provisions for minimum content and periodic updating of the plan, as well as outlining where the plan is to be located.

This rule has been reviewed pursuant to the five-year rule requirements set forth in Ohio Revised Code (ORC) Section 106.03 and the division is proposing changes.

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Substantial changes were made to OAC Rule 3745-85-01 that clarify and expand the contingency plan requirements. Proposed revisions include adding and/or removing language to:

- Establish that wholesale systems are required to prepare and maintain a contingency plan in addition to community water systems;
- Expand the definition and purpose of the contingency plan;
- Expand the availability of the contingency plan;
- Clarify and expand the required contents of the contingency plan;
- Establish a requirement to exercise the contingency plan;
- Revise the contingency plan revision requirements;
- Establish the steps a public water system (PWS) needs to take if a circumstance triggers the activation of their contingency plan;
- Clarify that contingency plans submitted in accordance with the rule are not public records; and,
- Establish a requirement to supply the emergency contact information of a designated water system representative who will respond to an emergency within thirty minutes.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

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.”

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.

No, OAC Rule 3745-85-01 does not implement a federal requirement and it is not required for Ohio EPA to retain primary enforcement authority from the Federal Government. However, this rule is used to help enable Ohio EPA to administer the Safe Drinking Water Act and ensure the provision of water even in emergency situations.

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

OAC Rule 3745-85-01 does not have a federal counterpart and therefore does not exceed any federal requirements.

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 public purpose for adopting this regulation is to ensure the availability of a safe and adequate supply of public drinking water. This rule helps achieve this purpose by requiring each community water system and wholesale system to prepare and maintain a written contingency plan that will ensure the delivery of safe drinking water to its customers at all times.

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

The Agency will measure the success of this regulation on PWS compliance rates discovered during sanitary surveys or when reviewing requested contingency plans.

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 community and wholesale PWS owners and operators, consultants, environmental organizations and the general public. 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 OAC Rule 3745-85-01 with changes on May 6, 2015 by electronic or regular mail in accordance with their request. In addition, DDAGW will be seeking comments 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?

No comments were received during the Early Stakeholder Outreach period, which was held from May 6 to June 3, 2015.

Upon the close of the interested parties review period, Ohio EPA will consider comments and prepare a summary detailing the agency's response to the comments and outlining any changes made to the rule.

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?

Statutory authority for this rule is established in ORC Chapter 6109 and promulgated under OAC Chapter 3745-85. Ohio EPA reviewed the State of Ohio's emergency response plan in preparation for reviewing and revising the rule.

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?

No regulatory alternatives were considered for this rule review. OAC Rule 3745-85-01 is an established rule that was adjusted and revised for clarification. Any alternative regulations suggested during the interested party review period will be considered.

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.*

OAC Rule 3745-85-01 is performance-based because it specifies a required outcome. The rule requires each community water system and wholesale system to develop and maintain a contingency plan.

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

Ohio EPA reviewed current regulations and determined there are no 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 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.
- Regularly notifying staff of rule changes.
- Giving presentations on rule updates.

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;

Community water systems and wholesale systems are impacted by this rule.

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

The adverse impacts of this rule are the costs associated with developing and implementing a contingency plan, which can vary among PWSs.

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.

Ohio EPA provides public water systems with a contingency plan template, which can be used to meet the minimum requirements of the rule. Based on agency staff and public water system personnel information, it is estimated that it would take a water operator approximately two hours to fill out the template, so it costs approximately \$68 to produce a contingency plan in accordance with this rule. However, many larger public water systems may choose to develop more detailed contingency plans that cost considerably more. Some systems may also choose to house multiple copies of the contingency plan at a number of locations. This may cost up to \$17,642 if the system is very large and has elected to develop a plan that is above the minimum requirements of the rule. Therefore, depending on the size of the PWS and how detailed they are in their plan, the contingency plan may cost as little as \$68 or as much as \$17,642. Some of the anticipated costs, such as the cost of providing bottled water to affected persons after an incident or conducting annual exercises of the contingency plan, may be covered by local emergency management agencies.

Note: Dollar figures have been adjusted to account for inflation using the U.S. Department of Labor, Bureau of Labor Statistics Inflation Calculator.

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 this regulation 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.

This rule primarily affects community and wholesale PWSs and does not provide any exemptions or alternative means of compliance for small businesses.

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?

For technical assistance, small business PWSs can turn to Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP), their Ohio EPA District Office Inspector, or the Rural Community Assistance Program (RCAP). Ohio EPA contracts with RCAP to provide assistance for PWS with a population of 10,000 or less.