

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of Industrial Compliance

Regulation/Package Title: Backflow Technician Rules

Rule Number(s): 1301:3-7-01 to 1301:3-7-08

Date: 6/18/2014

Rule Type:

New

Amended

5-Year Review

Rescinded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.

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

The backflow technician rules, establish pursuant to R.C. 3703.21, regulate the individuals who inspect and ensure the safety of backflow prevention devices in Ohio. These rules set forth the certification requirements for backflow technicians, the required fees, the means by which certificates may be revoked, and the administrative hearing procedure. The rules also set forth the requirement for Division approval of backflow technician training agencies. The

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proposed amendments are small, with most correct typographical or grammatical errors, clarifying unclear language, and removing provisions that duplicate the language of the Revised Code. One amendment removes an unduly broad provision regarding the approval of training agencies, and instead substitutes clear language setting forth the means by which the Division could deny or revoke training agency approval.

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

R.C. 3703.21 and 119.03.

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.

N/A

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

N/A

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)?

Backflow technicians perform a crucial service in the plumbing industry. Backflow is the reverse flow of water in a plumbing pipe. It occurs when water is pulled backward due to a pressure loss in the utility main pipe or pushed back by a pressure source like a well pump. This backflow poses a serious health risk, as water supplies could be contaminated by the flow of unclean water. For this reason, building codes mandate a series of measures and backflow prevention devices to prevent the backflow from occurring. Further, the backflow technicians - those who inspect and service backflow prevention devices – must be experienced and fully trained in backflow measures in order to ensure water safety.

To prevent unsafe conditions from occurring, Ohio Revised Code Section 3703.21 requires that all backflow technicians be certified by the Superintendent of the Division of Industrial Compliance and receive the proper education and training by approved training agencies. The Code charges the Superintendent with promulgating rules to that effect. These rules are designed, in accordance with R.C. 3703.21, to ensure that every backflow technician has the experience and training necessary to work with the backflow prevention devices. The rules ensure the safety of Ohio’s potable water systems, while imposing minimal burdens upon the industry.

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

The Agency will deem these rules successful when backflow technicians are able to obtain and maintain certificates, while continuing to ensure that backflow prevention devices are properly installed and operated to keep Ohioans safe.

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.

See Attachment B for list of stakeholders. Stakeholders were contacted via e-mail on July 8, 2014.

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

The stakeholders suggested no changes.

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?

N/A.

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?

R.C. 3703.21 mandates that the Superintendent of the Division of Industrial Compliance promulgate rules regarding the certification of backflow technicians and the approval of training agencies. Therefore there are no alternative regulations to 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.*

These rules are not appropriate for performance-based regulatory review.

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

The Plumbing section consulted with the Board of Building Standards to ensure no duplication of rules.

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.

Because of the few changes to the existing rules, little outreach to the industry will be required. The Backflow Advisory Board and the plumbing section are easily accessible for questions via internet, phone and e-mail.

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 impacted business community consists of backflow technicians and training agencies.

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

The adverse impact consists of application, certification, and examination fees, tuitions costs, as well as personnel time to complete applications or approval requests.

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.

For backflow technicians, they will incur costs to become certified and to renew certification on a triennial basis. The initial application fee is \$50.00, the examination (or reexamination) fees are \$50.00 each, and the triennial certification fee is \$75.00. They will also incur the cost of training, which varies depending upon the training agency chosen, and of any personnel time in submitting the applications and forms. Approved training agencies will incur only the personnel costs associated with submitting a triennial request for approval as a backflow technician training agency.

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

R.C. 3703.21 mandates that the Superintendent of the Division of Industrial Compliance promulgate rules regarding the certification of backflow technicians and the approval of training agencies. The Agency is therefore required to adhere to these standards which, by necessity, impose a certain level of adverse impact to business. These expenses are minimal and are outweighed by the important safety interest ensured by the backflow technician rules.

Regulatory Flexibility

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

The rules are solely based on the type of work being performed without regard for the size of the business.

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?

The Backflow Advisory Board and the Division has a high compliance rate and in the extremely rare case where an issue arises, the Division works with the backflow technician to achieve compliance.

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

The plumbing section and the Backflow Advisory Board are easily accessible for questions via internet, phone and e-mail. The plumbing section strives to assist small businesses in achieving and maintaining compliance with requirements of R.C. Chapter 3703 and O.A.C. Chapters 1301:3-7.