

**Rule Summary and Fiscal Analysis (Part A)****Ohio Environmental Protection Agency**

Agency Name

**Division of Drinking and Ground Water  
(DDAGW)**

Division

**Holly Kaloz**

Contact

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Phone

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Fax

**3745-7-06**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Certification of operators.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **RC Sections 6111.46 and 6109.04(C)(1)(b)**

5. Statute(s) the rule, as filed, amplifies or implements: **RC Sections 6111.46 and 6109.04(C)(1)(b)**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being filed to fulfill the five year rule review requirements of section 119.032 of the Revised Code.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule provides for the examination of individuals to be certified operators and establishes eligibility and application criteria for examination and exam format.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule references rule 3745-7-07 and 3745-7-18 of the Administrative Code and Chapters 6109 and 6111 and section 3745.11 of the Revised Code. Pursuant to section 121.76 of the Revised Code, these references are exempt from the requirements of sections 121.71 to 121.74.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

No changes were made from the previously filed version of this rule. The entire rule package is being refiled to incorporate changes to other rules in the package.

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No

Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

0.00

This rule provides revenues of approximately \$220,000 per year. The funds generated are used to help fund the operator certification program. However, the Agency has also proposed to rescind an existing rule of the same number as part of this package and does not expect the proposed rule to have an impact on Agency revenues or expenditures.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

The Agency estimates that the cost of compliance with this rule is comprised of the cost of the application and examination. These costs are set by Ohio Revised Code section 3745.11(O) and differ depending upon the level of examination being completed. The total cost by classification is: Class A = \$80, Class I = \$105, Class II = \$120, Class III = \$130, Class IV = \$145. An estimated total cost for this rule was calculated by multiplying the number of people taking each classification of exam during the last calendar year and estimated numbers of Class A examinees by the values above. Based on these numbers, the Agency estimates the total statewide cost of compliance for this rule each year is \$222,000. This estimate does not include miscellaneous costs that would be incurred by the examinee (i.e. time to study for the exam, take the exam, travel time, etc.) The Agency does anticipate the less stringent eligibility criteria for the Class IV exam will result in a greater number of Class IV examinees. Additionally, while the proposed rule will require operators to take and pass the Class II examination in order to be eligible to take the Class III examination, we do not anticipate that this will result in a marked increase in the cost of compliance as compared to the current rule. We anticipate that the

proposed exam structure will result in a decline in the current trend of operators having to take the Class III examination multiple times prior to passing. As such, we anticipate the actual amount of exams the average operator will be required to take will stay about the same, resulting in no net change in the cost of compliance.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

**Rule Summary and Fiscal Analysis (Part B)**

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School  
Districts

(b) Counties

(c) Townships

(d) Municipal  
Corporations

**Yes**

**Yes**

**Yes**

**Yes**

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

There is not necessarily a direct cost of compliance with this rule for school districts, counties, townships, or municipal corporations. The rule has the potential to impact either the examinee or the employer, depending on whether or not an employer chooses to pay for or reimburse employees for certain costs. Should an entity choose to reimburse an operator fully for the cost their certification costs the cost of compliance is between \$80 and \$145 per operator per examination depending on the level of the examination being completed.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

*Not Applicable.*

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

The Agency estimates that the cost of compliance with this rule is comprised of the cost of the application and examination. These costs are set by Ohio Revised Code

section 3745.11(O) and differ depending upon the level of examination being completed. The total cost by classification is: Class A = \$80, Class I = \$105, Class II = \$120, Class III = \$130, Class IV = \$145. An estimated total cost for this rule was calculated by multiplying the number of people taking each classification of exam during the last calendar year and estimated numbers of Class A examinees by the values above. Based on these numbers, the Agency estimates the total cost of compliance for this rule each year is \$222,000. This estimate does not include miscellaneous costs that would be incurred by the examinee (i.e. time to study for the exam, take the exam, travel time, etc.)

The Agency does anticipate the less stringent eligibility criteria for the Class IV exam will result in a greater number of Class IV examinees which may result in a slight increase in the cost of compliance, as the Class IV testing fees are higher. The agency does not know how many operators will choose to take the exam under the proposed rule, and so cannot estimate how much the cost of compliance will change. Additionally, while the proposed rule will require operators to take and pass the Class II examination in order to be eligible to take the Class III examination, we do not anticipate that this will result in a marked increase in the cost of compliance as compared to the current rule. We anticipate that the proposed exam structure will result in a decline in the current trend of operators having to take the Class III examination multiple times prior to passing. As such, we anticipate the actual amount of exams the average operator will be required to take will stay about the same, resulting in no net change in the cost of compliance.

(a) Personnel Costs

Not applicable.

(b) New Equipment or Other Capital Costs

Not applicable.

(c) Operating Costs

Not applicable.

(d) Any Indirect Central Service Costs

Not applicable.

(e) Other Costs

Approximately \$222,000 per year for application and exam fees.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

As the cost of compliance for this rule is not expected to change significantly as compared to the current rule that the Agency proposed to rescind as part of this package, the Agency and local government's ability to pay has already been established.

7. Please provide a statement on the proposed rule's impact on economic development.

Again, as the cost of compliance for this rule is not expected to change significantly from the current rule that is proposed for rescission, this rule is not expected to have any impact on economic development.

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Rule Number: 3745-7-06

**Environmental Rule Adoption/Amendment Form**

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
  - (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
  - (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
  - (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.
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- (A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted ? **Yes**

Please list each contact.

A list of those consulted during interested party review can be found in Attachment A. In addition, Ohio EPA initiated an early involvement review process and formed a stakeholder group prior to interested party review in order to allow more direct stakeholder input early in the rule making process. The stakeholder group consists of representatives of the major cities, water and wastewater organizations, contract operators, and select individuals. The stakeholder group began meeting in January 2005 and held seven meetings before coming to common ground on most of the main issues.

- (B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered ? **Yes**

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED



IN LIEU OF THE ACTUAL DOCUMENTATION.)

Please see Attachment B, List of Documents Considered.

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program ?

**Yes**

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **Yes**

What is the rationale for not incorporating the federal counterpart?

U.S. EPA has not promulgated rules for an operator certification program, but rather has issued guidelines for the certification of public water system operators. Any state that does not implement an operator certification program at least as stringent as the guidelines is subject to lose 20% of the state's Drinking Water State Revolving Fund capitalization grant. This would amount to approximately \$5 million dollars for Ohio. The federal guidelines also prohibit states from backsliding existing program requirements to make them less stringent even if they would meet the federal guidelines. While there are not equivalent guidelines for treatment works and sewerage systems, Ohio maintains an operator certification program to maintain consistency with other states and to comply with the anti-backsliding provisions of the federal guidelines. Ohio's rules may be perceived as more stringent because we are more detailed than the federal guidelines. Establishing this additional level of detail is not only necessary to implement the program, but is also the expectation of U.S. EPA as indicated in the guidelines. In this rule, detail has been established as necessary to implement the program and as directed by U.S. EPA. In particular, the U.S. EPA guidelines direct states to develop an exam that best measures the knowledge, skills, ability, and judgment of an operator for particular classification levels and to determine the type of operator training necessary for each classification level.

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **Yes**

Please explain why?

The proposed rule clarifies the application process, eligibility criteria, examination format and criteria for the certification of operators in order to ensure the integrity and accountability of the professional being relied upon to protect human health

and the environment. Areas where the proposed rule is more stringent than the rule it is proposed to replace are provisions that an applicant is not eligible for examination if: they have been convicted or plead guilty to criminal charges involving falsification, fraud or terrorism; they have demonstrated an inability to operate and maintain public water systems, treatment works or sewerage systems; or currently have suspended or revoked certificates in any state. In addition, a semi-sequential examination process for Class IV operators is proposed which requires that applicants requesting examination as a class III operator have had a certification for 12 months as a class II in order to ensure the validity of the Class III exam.

## **Attachment A**

Operator Certification Interested Parties List

## **Interested Parties List: DDAGW**

### **Notices sent via mail:**

ADR & ASSOCIATES  
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50 WEST BROAD ST SUITE 1614  
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ASSE NATIONAL OFFICE  
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WESTLAKE, OHIO 44145

ASWAN INTERNATIONAL CUISINE & CAFÉ  
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AKRON, OHIO 44309

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CLEVELAND OH 44113

CITY OF LIMA  
UTILITIES DEPARTMENT  
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LIMA, OH 45801

CITY OF NORWOOD  
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ARLINGTON HEIGHTS OH 45215

CITY OF MOUNT VERNON  
WATER AND WASTEWATER DEPARTMENT  
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MOUNT VERNON, OH 43050

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LEAGUE OF WOMEN VOTERS OF OHIO  
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**Attachment B**  
**OAC Chapter 3745-7 - Operator Certification**  
**List of documents considered**

1. Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Notice, 64 FR 5915 (February 5, 1999).
2. Final Additions to the Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Final Allocation Methodology for Funding to States for the Operator Certification Expense Reimbursement Grants Program, 66 FR 19939 (April 18, 2001).
3. Ohio Revised Code sections 6109.04(C)(1)(b) and 6111.46
4. Water and Wastewater Operator Certification rules from the following states:
  - Alabama
  - Arizona
  - California
  - Florida
  - Illinois
  - Indiana
  - Iowa
  - Kentucky
  - New Jersey
  - New York
  - North Carolina
  - Michigan
  - Pennsylvania
  - South Carolina
  - Tennessee
  - Texas
  - Washington
  - West Virginia
  - Wisconsin
5. USEPA Community Water Systems Survey, 2000
6. Ohio EPA 1999 Water and Sewer Rate Survey
7. Association of Boards of Certification (ABC)
  - Certification Program Standards
  - Certification Program Guide
  - Validating Your Certification Exam
  - Guidance for the Evaluation and Accreditation of Distance Education
8. *Certifier Newsletter* (May/June 2002)

9. Water Treatment Plant Operation and Management, ANSI/AWWA Standard G100-05 (Draft), January 2005.
10. Operator Training Committee of Ohio Employment opportunities website:  
[www.ohiowater.org/otco/jobs/job%20postings.htm](http://www.ohiowater.org/otco/jobs/job%20postings.htm)
11. Ohio Water Environment Association Employment opportunities website:  
[www.ohiowater.org/owea/Career Opportunities/](http://www.ohiowater.org/owea/Career_Opportunities/)