



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

## 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 (a general description of the rules' substantive content):

Public Water System Licenses

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

Date of Submission for CSI Review: 12/28/23

Public Comment Period End Date: 1/28/24

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_)

Amended/ X rules (FYR? 5)

Rescinded/\_\_\_ rules (FYR?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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

### **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 following provisions are being proposed:

- Adding additional clarification to the definition of “service connection” and how it relates to calculating fees in 3745-84-01.
- Adding “email address” as a method of contact for applications in 3745-84-02.
- Removing “color-coded” language in 3745-84-04.
- Removing the requirement for a public water system (PWS) to return a revoked or suspended license to the Director in 3745-84-04.
- Allowing shorter suspensions for correction of violations that require less time to complete in 3745-84-06.
- Removal of duplicative statutory language and regulatory restrictions.

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.**

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.”

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.*

There is no federal requirement implemented from these rules.

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

There is no federal requirement exceeded in these rules.

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 purpose of Ohio Administrative Code (OAC) Chapter 3745-84 is to ensure the safety of the general public that no one can operate a PWS without receiving a license to operate from the Director of Ohio EPA.

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

The agency will base the success of 3745-84 on the amount and types of licenses issued.

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, U.S. EPA and in general, the public at large. The only measure someone must take to be notified of DDAGW's potential rule activity is to request to be added to our electronic mailing list.

Stakeholders were notified of DDAGW's plans to revise these rules beginning on August 3, 2023, with a 30-day comment period ending on September 4, 2023. DDAGW received no comments during this time.

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

No input was given from stakeholders during the 30-day comment period.

**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?**

No scientific data was used in the revision of this rule package.

**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?**  
*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

Ohio EPA did not consider alternatives to rules in OAC Chapter 3745-84. In addition, the proposed regulation only governs 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.

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

Ohio EPA reviewed internal regulations and determined there are no duplications.

**14. 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.**

Implementation of these 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 effective rule revisions.
- Giving presentations and trainings on rule revisions.

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

All PWSs in the state of Ohio, excluding schools and churches, will be impacted by 3745-84.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

A person applying for a public water system license to operate or maintain a public water system under section 6109.21 of the Revised Code and this chapter shall pay the appropriate fee set forth in division (M) of section 3745.11 of the Revised Code at the time of submission of the application. Any person that fails to pay the fee at the time of submission will owe an additional amount equal to 10% of the required fee.

The adverse impact of this rule will be the cost of compliance of operating the public water system, followed by applying and or reapplying for a PWS license to operate.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Changes to the rule that reduce the regulatory burden include:

- Adding to the “service connection” definition improving readability in 3745-84-01.
- Adding email address to modernize the application process in 3745-84-02.
- Removing the requirement to return a revoked or suspended license in 3745-84-04.
- Allowing shorter suspensions for correction of violations that require less time to complete in 3745-84-06.

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

The Agency considers the overall cost of complying with these regulations to be minor in comparison with ensuring the public is supplied with 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.**

3745-84-05 allows for smaller businesses to pay lower fees regarding ORC 3745.11 (M). Smaller PWS will receive smaller application fees based on the number of service connections, population served, and number of wells and sources used.

**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 following resources are available: Ohio EPA has a webpage dedicated to Licenses to Operate. Small businesses can find information regarding invoices, fees, certificates, different types of licenses issues, and types of enforcement. Additional information can be

found at <https://epa.ohio.gov/divisions-and-offices/drinking-and-ground-waters/public-water-systems/license-to-operate>

PWSs will receive outreach via robocalls and emails on how to comply with these rules. Outreach will be done giving them instructions on how to apply and pay for their licenses. If a PWS is late to applying more outreach will occur with instructions on how to return to compliance and frequently asked questions.