



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

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

Operator Certification

Rule Number(s): 3745-7-01, 3745-7-02, 3745-7-03, 3745-7-04, 3745-7-05, 3745-7-06, 3745-7-07, 3745-7-09, 3745-7-10, 3745-7-11, 3745-7-12, 3745-7-13, 3745-7-15, 3745-7-17, 3745-7-18, 3745-7-19, 3745-7-20, 3745-7-21

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 18 rules (FYR? Y)

Rescinded/___ rules (FYR?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.

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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.

OAC rule 3745-7-01 covers definitions for the operator certification rules in OAC Chapter 3745-7. Proposed amendments include the addition of a definition for “facility specific certificate”, changed references from “wastewater treatment” to “water reclamation” throughout the rules, removed old implementation language, added a definition for “satellite collection system”, and added minor clarification language.

OAC rule 3745-7-02 requires each person owning or operating a public water system (PWS), treatment works or sewerage system to designate a professional operator of record to oversee the technical operation of said facility, each treatment plant or distribution system within a PWS or wastewater treatment facility with treatment works. Proposed amendments include clarifying language that the rule was intended for classified water and wastewater facilities, added language indicating operator of record notification forms must be submitted by contract operators, removed a provision regarding unclassified facilities, and removed a redundant provision.

OAC rule 3745-7-03 describes how each PWS or water treatment plant and distribution system within a PWS is classified, and the minimum staffing requirements for each classification. Proposed amendments include clarification of when continuous monitors for fluoride and chlorine are needed when requesting staffing reductions, provided clarification on backup operator provisions, added a provision to allow staffing flexibility on holidays by allowing a reduction in the minimum staffing requirements during a holiday week of 20%

(both in hours and days), added a provision to allow off-site meeting flexibility of up to 10% of a facility's minimum staffing requirement for off-site meetings related to operations or administration of a public water system/wastewater works and updated rule by reference material.

OAC rule 3745-7-04 outlines how treatment works, sewerage systems, and wastewater treatment facilities within a treatment works are classified and the minimum staffing requirements for each classification. Proposed to remove old implementation language, clarified the definitions of Class I and II sewerage systems, added a provision regarding "satellite collection system" classification, added a provision regarding the staffing time requirements for "satellite collection systems", provided clarification on backup operator provisions, added a provision to allow staffing flexibility on holidays by allowing a reduction in the minimum staffing requirements during a holiday week of 20% (both in hours and days), and added a provision to allow off-site meeting flexibility of up to 10% of a facility's minimum staffing requirement for off-site meetings related to operations or administration of a public water system/wastewater works.

OAC rule 3745-7-05 outlines the classifications for which professional operators may be certified under this chapter. It also outlines the classifications of PWSs, sewerage systems, or treatment works for which they can be the professional operator of record. Proposed amendments include updating operator classification titles, added title for facility specific operators, included a provision indicating facility specific operators may not operate other facilities or transfer their certificate, added clarification to the hierarchy tables, and added a provision that the facility specific certification does not supersede any professional operator certificate.

OAC rule 3745-7-06 details the application process for examination and certification, eligibility criteria and exam format. Proposed amendments include adding "facility specific" certificates, clarifying certification requirement language, reducing the amount of operating experience required for Class II and III certificates by 1 year each, reducing the amount of operating experience required for Class IV certification by 1 year, adding a provision to allow applicants to request a review of post-secondary education degrees and transcripts related to the field of water treatment and water reclamation, rearranged provisions to reduce redundancy and added requirements for facility specific certification.

OAC rule 3745-7-07 describes the eligibility and requirements of professional operators in training, which have passed the examination but are still working to fulfill the onsite operating experience requirements. Proposed amendments include allowing Class III applicants to be designated operators in training, increasing the amount of time an applicant can be an operator in training to 5 years.

OAC rule 3745-7-09 describes the recordkeeping requirements and responsibilities of owners, professional operators and professional operators of record. Proposed amendments include clarification that record keeping is for classified systems, addition of a provision that certified operators are required to document information required by this rule in the facility log book and the addition of a provision that one of a facility's operators of record must be

present during inspections/sanitary surveys.

OAC rule 3745-7-10 describes the membership requirements of the professional operator certification advisory council as well as the membership terms and reimbursement requirements. Proposed amendment to allow operators who have retired in the last 5 years to serve as council members.

OAC rule 3745-7-11 describes the responsibilities of the Professional Operator Certification Advisory Council. Minor clarifying language changes.

OAC rule 3745-7-12 outlines the instances in which a professional operator's certification may be suspended or revoked, the procedure for doing so, and the time periods for both. Minor clarifying language changes and updated mail delivery language to be consistent with state statute.

OAC rule 3745-7-13 explains how professional operators certified in another state or province may be able to receive certification by reciprocity in Ohio. Proposed amendments include adding a provision to at a minimum offer any operator applying for reciprocity a Class A certificate, adding additional flexibility to review an out of state operators, work history and compare it to Ohio facilities to determine an appropriate classification for reciprocity. A restriction on reciprocity was removed and minor grammatical changes were made.

OAC rule 3745-7-15 describes the expiration and renewal of certificates, the contact hour requirements, criteria for contact hour course approval and requirements for training providers. Minor grammatical changes throughout the rule and to certificate names, added provisions regarding the renewal of facility specific certificates, removed a paragraph regarding greenleaf training provider course attendance uploads and removed a provision regarding renewal auditing.

OAC rule 3745-7-17 describes the various fees associated with the professional operator certification process and to whom they must be made payable. Minor grammatical changes.

OAC rule 3745-7-18 describes the penalties for those persons who attempt to subvert the application, examination or review process. It also describes the actions that are considered to be subversive to the application, examination or review process. Minor grammatical changes and the addition of language prohibiting the use of computer based authoring programs.

OAC rule 3745-7-19 describes the standards for approving water and wastewater professional operator certification examination providers. Minor grammatical changes.

OAC rule 3745-7-20 describes the certification of professional operators who pass an examination from an approved exam provider. Minor grammatical changes that do not affect the meaning of the rule.

Ohio EPA is proposing new rule 3745-7-21, which will establish standards for contract operations companies and contracted professional operators. Minor grammatical changes that do not affect the meaning of the rule.

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.

3745-7-01, 3745-7-02, 3745-7-05, 3745-7-06, 3745-7-07, 3745-7-09, 3745-7-10, 3745-7-11, 3745-7-12, 3745-7-13, 3745-7-15, 3745-7-17, 3745-7-18, 3745-7-19, 3745-7-20, 3745-7-21

Authorized By: 6109.04, 6111.46

Amplifies: 6109.04, 6111.46

3745-7-03

Authorized By: 6109.04

Amplifies: 6109.04

3745-7-04

Authorized By: 6111.46

Amplifies: 6111.46

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.

Yes, these rules implement Section 1419 of the 1996 amendments to the Safe Drinking Water Act which allow Ohio EPA to administer the Safe Drinking Water Act (SDWA), as well as retain primary enforcement authority from the Federal Government and this rule is used to protect the public from potential contaminants found in drinking water as outlined in the SDWA.

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.

U.S. EPA does not have direct counterparts to these rules. However, they do require Ohio EPA to have an approved program for certifying operators. Failure to have a U.S. EPA approved program would result in Ohio EPA losing 20% of the money the federal government provides the state for Ohio's Revolving Fund Loan program.

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 for adopting such regulations is to ensure the availability of a safe and adequate supply of public drinking water and protect public health and the environment from untreated/poorly managed sewage. These rules help achieve this purpose by ensuring PWSs, treatment works and sewerage systems have the appropriate staffing with the technical expertise to operate and oversee the system.

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

The Agency will base success of all of the rules in this package on compliance rates, which are typically discovered through reported data, during sanitary surveys and by reviewing certified professional operator log books.

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/Wastewater Works owners and operators, consultants, contract operators, training providers, 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 not notified of DDAGW's plans to revise these rules. These amendments are minor in nature and were inadvertently left out of the recent filing effective on November 7, 2024. Stakeholders were aware of these changes and expected them to be included in the recent filing.

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

Ohio EPA held numerous stakeholder meetings and accepted comments from a number of individuals and organizations. Ohio EPA had intended to just clean up language and not propose major changes to these rules. All of the major changes in this package are a result of stakeholder input. All comments and suggestions were considered and these proposed revisions are a result of the comment process.

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?

The federal rules, which include the SDWA Amendments of 1996, are the foundation for these rules. Statutory authority for these rules is established in Section 6109. of the Revised Code. Ohio EPA promulgated these rules under OAC Chapter 3745-7. References used include U.S. EPA's "Operator Certification Guidelines, Implementation Guidance" and the latest revisions to 40 CFR Parts 141 and 142.

- 11. 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.

In order to retain primary enforcement authority and 20% of the money associated with the state revolving loan fund, Ohio EPA is required to maintain the existing US EPA approved operator certification program without "backsliding". Ohio EPA has reviewed other state's programs and the stakeholder comments from our early stakeholder outreach to develop the proposed changes to the rules.

- 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 provides draft rule revisions to staff for internal review and comment. Additionally, training may be provided, and all effective rule revisions are distributed to staff. 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 rule changes.
- Giving presentations on rule updates.

Adverse Impact to Business

- 14. 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**

The impacted business community includes owners of PWSs, treatment works and sewerage systems, professional operators, individuals applying for certification as professional operators, training providers, exam providers, entities applying to become exam providers, contract operations companies and contracted professional operators.

- 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.

- There will be little to no adverse impact felt by the PWS operators or the business community because of the proposed amendments within OAC 3745-7.
- OAC rule 3745-7-01: There are no adverse impacts associated with this rule because it only contains definitions. The amendment is to the supplemental information only.
- OAC rules 3745-7-02, 3745-7-03 and 3745-7-04: The cost of complying with these rules is the cost of employing professional operators. OAC rule 3745-7- 02 requires PWSs, treatment works and sewerage systems to have an appropriately certified professional operator. The cost of having a certified professional operator varies based on system classification and minimum staffing requirements, which are described in OAC rules 3745-7-03 and 3745- 7-04. Additionally, the cost to comply with OAC rules 3745-7-03 and 3745-7- 04 depend on the operator's wage.
- OAC rule 3745-7-05: This rule only lists the classifications for which professional operators can be certified. There are no adverse impacts associated with this rule. The amendment is to the supplemental information only.
- OAC rule 3745-7-06: The cost of compliance with this rule includes the cost of the examination fee and certification fee. The exam fee is \$112 and the certification fee is \$45.
- OAC rule 3745-7-07: There are no adverse impacts because there are no additional costs beyond the examination fee and certification fee, which have been accounted for in OAC rule 3745-7-06. The amendment is to the supplemental information only.
- OAC rule 3745-7-09: The cost of compliance with this rule will be the cost of whatever technology the facility chooses to utilize for the purposes of maintaining accurate and authentic operation and maintenance records as required by this rule. This includes the cost of a hard bound book or computer log. An associated cost may be the cost of a place to house the hard bound book on-site at the facility. Labor costs for complying with the recordkeeping and an operator being present at an inspection requirements in this rule are already accounted for in the fiscal analyses for OAC rule 3745-7-03 and 3745-7- 04.
- OAC rule 3745-7-10 and 3745-7-11: There are no adverse impacts associated with this rule because it does not place any requirements on the regulated community. The amendments are to the supplemental information only.
- OAC rule 3745-7-12: The only direct cost of compliance with this rule are the costs associated with submitting a request for reinstatement of a suspended license and submitting information regarding work activities during the period of suspension.

There may be some indirect costs associated with unemployment of the operator or during the suspension or revocation, or a cost to the employer to replace and retrain the suspended employee. These indirect costs are difficult to predict and quantify. In addition, during the period of suspension, the professional operator must acquire contact hours and pay all renewal fees. The costs associated with these requirements are accounted for in the fiscal analyses of OAC rules 3745-7-15 and 3745-7-17. The amendment is to the supplemental information only.

- OAC rule 3745-7-13: The cost of compliance with this rule is the reciprocity fee, which includes a one-time certification fee and one-time examination fee for the level of classification for which reciprocity is granted.
- OAC rule 3745-7-15: This rule affects certified professional operators and training providers. For certified professional operators, the cost of compliance with this rule includes the renewal fee, the cost of obtaining the required contact hours and the value of the professional operators' time when spent in the training. The cost of compliance for training providers includes the cost for all training providers to electronically prepare and submit the required paperwork and the cost of non-approved training providers to submit course approval paperwork. The proposed changes to these rules do not impact any costs associated with this rule. The amendment is to the supplemental information only.
- OAC rule 3745-7-17: Several of the fees referenced in this rule are for requirements established in other rules in this package and are therefore addressed in the fiscal analysis portions of those rules. The examination and certification fees have been addressed in the analysis for OAC rule 3745-7-06, the reciprocity fee has been addressed in the analysis for OAC rule 3745-7-13 and the renewal fee has been addressed in the analysis for OAC rule 3745-7-15. The only fee pertinent to this fiscal analysis is the fee for replacement of a certificate. Pursuant to Ohio Revised Code section 3745.11(O), the cost of a replacement certificate is \$25 and the agency typically replaces fewer than ten per year. The amendment is to the supplemental information only.
- OAC rule 3745-7-18: This rule describes acceptable conduct during the application and examination process. There are no adverse impacts associated with this rule. The amendment is to the supplemental information only.
- OAC rule 3745-7-19: Businesses wanting to become examination providers will have to pay an application fee and an annual fee. The amendment is to the supplemental information only.
- OAC rule 3745-7-20: This rule affects professional operators who pass an examination from an approved examination provider and are now applying for certification and the utilities who pay for their operators to take exams may be impacted by this rule. The financial impact includes the cost of the exam and the cost of the certification fee. The cost of the exam is dependent on the exam provider. The amendment is to the supplemental information only.

- OAC rule 3745-7-21: For contract operations companies and contracted professional operators, the cost of compliance with this rule includes the cost associated with preparing the application for approval and a sample contract. Labor costs for complying with the other requirements of this rule are already accounted for in the fiscal analyses for OAC rules 3745-7-03 and 3745-7-04. The amendment is to the supplemental information only.

15. 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 The changes to the rules do not reduce the regulatory burden, which was reduced significantly in the rule filing in 2024. This filing is to fix supplemental information and to correct language that was missed in the 2024 filing.

16. 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 and protected from untreated/poorly managed sewage.

Regulatory Flexibility

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

OAC rule 3745-7-02 includes an exemption for small PWSs to utilize an operator certified who holds a class A certificate and has passed the class I water supply certification examination but does not have the required experience be an operator of record for certain class I systems if specific conditions are met.

There are exceptions for minimum staffing requirements in OAC rules 3745-7-03 and 3745-7-04. In these rules, there are also provisions for PWSs, treatment works or sewerage systems to retain a backup operator with a lower certificate for a period of up to thirty consecutive days.

18. 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.

19. 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). OCAPP is a non-regulatory program that can help small businesses comply with regulations. Ohio EPA contracts with RCAP to provide assistance for PWS with a population of 10,000 or less. There are also several private organizations that assist small businesses and operators, they include the Ohio Rural Water Association, the Operator Training Committee of Ohio, Ohio Chapter of the American Water Works Association and the Ohio Water Environment Association.