



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, 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):

Operational Requirements (Amend)

Rule Number(s): 3745-81-01, 3745-83-01

Date of Submission for CSI Review: \_\_\_\_\_

Public Comment Period End Date: \_\_\_\_\_

**Rule Type/Number of Rules:**

New/\_\_\_ rules

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

Amended/ 2 rules (FYR? 1)

Rescinded/\_\_\_ rules (FYR?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

### **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.***

Ohio EPA's Division of Drinking and Ground Waters (DDAGW) has reviewed and is considering revisions to rules 3745-83-01 and 3745-81-01 of the Ohio Administrative Code (OAC) to satisfy the five-year rule review requirements of section 106.03 of the Ohio Revised Code (ORC). Rule 3745-81-01 establishes definitions for terms used throughout all the rules that govern different aspects of drinking and ground water usage in Ohio. Rule 3745-83-01 establishes operational requirements for public water systems (PWS).

DDAGW is proposing that terms and definitions be added to rule 3745-81-01 so that technical terms used throughout 3745-83-01, as well as other rules, have established meanings so there is no confusion among PWS operators as to what the rule is requiring of them. Amendments have also been proposed to rule 3745-83-01 itself, proposing to add provisions meant to govern the testing requirements for PWS using chlorine to treat their water. Language has also been added to require PWS that use nanofiltration or reverse osmosis for treatment to report and record on the silt density index and the amount of total dissolved solids in the system. The amendments also propose to add language stating that conditions caused by line breaks, extreme fire flows and other extraordinary circumstances shall be handled in accordance with the provisions of rule 3745-83-02. Other clarifying

language has also been proposed to be added, and removed, to enhance understanding and increase the likelihood of compliance.

**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 authorize 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.*

OAC rules 3745-83-01 and 3745-81-01 do not specifically implement federal requirements, but they set forth monitoring and reporting requirements for several parameters used in the operation of a PWS and define terms used throughout primary drinking water standards, respectively.

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

OAC rules 3745-83-01 and 3745-81-01 do not exceed the scope of federal requirements.

**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 ensuring the availability of a safe and adequate supply of public drinking water. Rule 3745-83-01 helps to achieve this purpose by ensuring PWSs monitor operational parameters to ensure the water system is operating properly and meeting regulatory standards. Rule 3745-81-01 helps achieve this by ensuring all PWS and relevant industry workers are united by the same definitions for important terms used throughout the drinking and ground water rules.

**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 these rules in this package on public water system compliance rates within our various drinking and ground water programs. PWS compliance rates are typically discovered through reported data, during sanitary surveys of said system and by reviewing certified operator logbooks.

- 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 public water system owners and operators, consultants, environmental organizations, other state agencies 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 originally notified of the proposed changes on August 3<sup>rd</sup>, 2020, with an opportunity to comment until August 31<sup>st</sup>, 2020. Later, rule 81-01 was added to the rule package due to corresponding revisions that were needed. Because of this, Stakeholders were given a second opportunity to comment on these proposed changes on April 29<sup>th</sup>, 2021, by electronic mail. The secondary early stakeholder outreach period was from April 29<sup>th</sup>, 2021, until May 29<sup>th</sup>, 2021.

In addition, DDAGW will be seeking comment 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.

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

Stakeholders were notified of the DDAGW's intent to file these rules as Amended on April 29<sup>th</sup>, 2021, by electronic mail. The Ohio EPA received 1 comment from stakeholders during this period, asking for more details on why certain provisions were being changed. Specifically, regarding reporting requirements being altered in the rule and what, if any, additional conditions will be added that will be governed by 3745-83-02.

- 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 Chapters 3745-83 and 3745-81. References used include the latest revisions to 40 CFR Parts 141 and 142.

**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?**

The regulations within OAC rules 3745-83-01 and 3745-81-01 maintain consistency with existing industry and agency-wide standards and were therefore developed with limited alternatives.

**13. 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.***

Rule 3745-83-01 has a performance-based component in that it requires the maintaining of records that are performance based. Rule 3745-81-01 contains definitions and does not mandate any performance-based regulations.

**14. 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.

**15. 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 rules include 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

**16. 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; and**

All PWS within the state of Ohio will be impacted by rules 3745-83-01 and 3745-81-01.

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

**3745-81-01:** There will be no adverse impact felt from the proposal of this rule.

**3745-83-01:** The cost of compliance for these rules varies depending on the PWS size and type but may include cost to disinfect the PWS, finished storage water tanks and water mains, using NSF approved materials and chemicals, maintaining adequate pressure, and preparing and submitting monthly operational reports. These costs will fall to the owner of the PWS.

**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.*

**3745-81-01:** There is no cost of compliance associated with this rule as it only lists definitions referenced throughout the chapter.

**3745-83-01:** The cost of compliance with this rule is highly variable, depending on the public water system size, source of water and complexity of treatment. To provide an estimate, public water systems of different sizes were surveyed for the following: costs of disinfection including maintaining chlorine residuals, raising chlorine residual levels during an emergency, disinfecting finished water storage tanks and water mains, using NSF approved materials and chemicals, maintaining adequate pressure, covering finished water storage facilities, and submitting monthly operational reports. Costs also associated with the proposed amendments are for monitoring for chlorine residual prior to returning to service finished water storage facilities and water mains, and costs of operational analysis. The estimated cost of compliance ranges from \*\$3,832.00 to \$6,731,409.00 per year. In addition to the costs listed above, PWS owners and operators are required to ensure facilities and equipment used for the operation of their system is maintained. They

are also required to maintain records of operation reports. There are no additional costs to the system, as these requirements are not outside of the normal operation of PWSs, as established in other rules adopted under Chapter 6109. of the Revised Code.

\* All costs listed in the table below have been adjusted using U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar used to account for inflation 2015 - 2021.

Type	Ground water	Surface water	Ground water	Ground water	Surface water
Treatment	Chlorination only	Settling, filtration, fluoridation, chlorination	Lime softening, fluoridation, chlorination	Manganese greensand, filtration, fluoridation, chlorination	Settling, filtration, fluoridation, chlorination
Population	53	5900	21796	35600	983264
Maintaining chlorine residual at 0.2 mg/l free (cost per year)	\$680.00	\$2,451.00	\$14,477.00	\$28,581.00	\$326,629.00
Increase chlorine residual to 1.0 mg/l free or 6.0 combined during actual or threatened waterborne disease outbreak (cost per year)	\$680.00	\$3,402.00	Extra \$31.00/day	None	None
Disinfect finished water storage facilities per AWWA standard C652 prior to	\$204.00	\$4,763.00	\$4,562.00	\$9,527.00	\$27,219.00

Type	Ground water	Surface water	Ground water	Ground water	Surface water
Treatment	Chlorination only	Settling, filtration, fluoridation, chlorination	Lime softening, fluoridation, chlorination	Manganese greensand, filtration, fluoridation, chlorination	Settling, filtration, fluoridation, chlorination
Population	53	5900	21796	35600	983264
being placed into service or after repairs, inspections, painting, cleaning, or other activities that may lead to contamination (cost per year)					

Disinfecting water mains per AWWA standards C651 prior to being placed into service or after repairs or after repairs or inspections unless a minimum of 20 psi is maintained (cost per year)	\$272.00	\$2,722.00	\$4,083.00	\$4,763.00	\$230,450.00
Monitoring chlorine residual in finished water storage facilities and returning to 0.2 mg/l free prior to returning to service (cost per year)	\$748.00	\$8,165.00	\$5,717.00	\$9,527.00	\$408.00
Using only chemicals approved in accordance with ANSI/NSF standards 60/61 (cost per year)	None*	None*	None*	None*	None*
Maintaining a minimum pressure of 20 psi (cost per year)	N/A	\$43,550.00	\$485,00.00 +	\$238,167.00	\$6,804,771.00
Providing a cover of finished water storage	N/A	\$70,770.00	\$16,603.00	\$17,017.00	\$0.00

Type	Ground water	Surface water	Ground water	Ground water	Surface water
Treatment	Chlorination only	Settling, filtration, fluoridation, chlorination	Lime softening, fluoridation, chlorination	Manganese greensand, filtration, fluoridation, chlorination	Settling, filtration, fluoridation, chlorination
Population	53	5900	21796	35600	983264
facilities (cost per year)					
Operational Analysis (cost per year)					
Free chlorine or combined residual	\$431.00	\$2,042.00	\$9,090.00	\$10,207.00	

Fluoride	N/A	\$10,888.00	\$10,700.00	\$10,207.00	\$469,529.00
Total phosphate	N/A	N/A	\$649.00	N/A	
Orthophosphate	N/A	N/A	N/A	N/A	
pH	N/A	\$10,479.00	\$55,973.00	\$2,722.00	
Alkalinity	N/A	\$10,479.00	\$13,233.00	\$2,722.00	
Hardness	N/A	\$8,165.00	\$13,233.00	\$2,722.00	
Iron	N/A	N/A	N/A	\$10,888.00	
Manganese	N/A	N/A	N/A	\$10,888.00	
Copper	N/A	N/A	N/A	N/A	
Submit MOR's	\$817.00	\$1,167.00	\$3,763.00	\$1,633.00	
<b>Total annual cost</b>	<b>\$3,832.00</b>	<b>\$179,043.00</b>	<b>\$648,398.00</b>	<b>\$359,571.00</b>	<b>\$7,865,810.00</b>

**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 for 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.**

Rule 3745-83-01 potentially allows for alternative collection frequency and different methods from a test kit when collecting samples of both Iron and Manganese for split sampling requirements.

**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's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance, and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at <https://epa.ohio.gov/wps/portal/gov/epa/divisions-and-offices/environmental-financial-assistance/compliance-assistance/on-site-assistance>
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 pm to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.