

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 3745-81-23

**Rule Type:** Amendment

**Rule Title/Tagline:** Inorganic chemical monitoring requirements.

**Agency Name:** Ohio Environmental Protection Agency

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

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#### I. Rule Summary

1. Is this a five year rule review? Yes
  - A. What is the rule's five year review date? 1/22/2020
2. Is this rule the result of recent legislation? No
3. What statute is this rule being promulgated under? 119.03
4. What statute(s) grant rule writing authority? 6109.04
5. What statute(s) does the rule implement or amplify? 6109.04
6. What are the reasons for proposing the rule?

The rule has been reviews pursuant to the five year rule review requirement of ORC Section 106.03 and the agency is proposing minor revisions.

7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

The rule requires all public water systems (PWS) to monitor their drinking water for nitrate and nitrite and all community and non transient non community PWSs to monitor for certain other inorganic contaminants and details the specific monitoring

requirements for each. The rule has been amended to make minor grammar corrections.

8. **Does the rule incorporate material by reference? Yes**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule contains references to the Ohio Administrative Code (OAC). While copies of these rules and statutes are generally available to the public through libraries and on-line sources, including the Ohio EPA website, ORC section 121.76 (A) exempts such references from the provisions of ORC sections 121.71 through 121.74. This rule also references EMSL94 methods 200.7, 200.8, and 200.9. Ohio EPA believes these references are exempt from sections 121.71 to 121.74 of the Revised Code because they are generally accepted industry standards that are readily available to persons who are reasonably expected to be affected by the rule.

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

1/4/2022: The changes that were made to OAC 3745-81-23 in the revised filing were to eliminate an extra space in the notation "HNO 3" in the preservative column of Table J, and to remain consistent with the wording of "nitrate/nitrite" and change it to "Nitrate+Nitrite" in both the table and footnote.

02/25/2020 *This revise filing has two minor changes. First to remove an erroneous space in a "HNO 3" in the preservative section, and to make Nitrate/Nitrite consistent with the footnote.*

## **II. Fiscal Analysis**

11. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

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Compliance with this rule will be established during normal work hours and there are no impacts on the expenditure or revenues for the agency.

**12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

The cost associated with this rule is the cost of conducting monitoring for inorganic contaminants to determine compliance with maximum contaminant levels. The rule includes provisions that would allow for reduced monitoring. See Attachment A for detailed costs.

**13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**

**14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**

**15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

No the rule does not impose a regulation fee.

### **III. Common Sense Initiative (CSI) Questions**

**16. Was this rule filed with the Common Sense Initiative Office? Yes**

**17. Does this rule have an adverse impact on business? Yes**

**A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**

**B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes**

Violation of this rule could subject the PWS to potential civil, administrative or criminal penalties in accordance with ORC Chapter 6109. Ohio EPA does not assign fines and penalties for first- time offenders, and prefers to obtain compliance through outreach and if needed, written notice of violations prior to any type of formal enforcement.

**C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

The PWSs are required to monitor for inorganics and install treatment if needed to obtain compliance with maximum contaminant levels.

**D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes**

The PWSs are required to monitor for inorganics and install treatment if needed to obtain compliance with maximum contaminant levels. The rule contains provisions to reduce monitoring. The cost of the rule is minor as compared to protecting public health. The proposed amendments have no impacts on costs and thus will have no effect on the revenues or expenditures.

## Rule Summary and Fiscal Analysis

### Part B - Local Governments Questions

**1. Does the rule increase costs for:**

<b>A. Public School Districts</b>	Yes
<b>B. County Government</b>	Yes
<b>C. Township Government</b>	Yes
<b>D. City and Village Governments</b>	Yes

**2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.**

Local government or school districts owning or operating a PWS will be required to monitor their drinking water for nitrate and nitrite and all community and non transient non community PWSs will be required to monitor for certain other inorganic contaminants. Please see Attachment A for details on costs.

**3. Is this rule the result of a federal government requirement? Yes**

- A. If yes, does this rule do more than the federal government requires? No**
- B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**

*Not Applicable*

**4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:**

**A. Personnel Costs**

none

**B. New Equipment or Other Capital Costs**

none

**C. Operating Costs**

none

**D. Any Indirect Central Service Costs**

none

**E. Other Costs**

The cost of conducting monitoring for inorganic contaminants to determine compliance with maximum contaminant levels and installing treatment to meet the maximum contaminant levels. See Attachment A for details.

**5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.**

The 1996 Amendment to the Safe Drinking Water Act provided capitalization grants to states with primary enforcement authority to help fund infrastructure improvements needed to comply with the new requirements. These grants fund the Water Supply Revolving Fund, which provides low-interest loans to community and not for profit water systems. Loans can provide support design work in addition to the capital improvements. Operating costs would be supported through conventional mechanisms such as collecting fees from customers based on the amount of water used or rental fees.

**6. What will be the impact on economic development, if any, as the result of this rule?**

The proposed revisions have no impact on the cost of the rule therefore this rulemaking will have no effect on the economic development. The cost associated with this rule is the cost of conducting monitoring for inorganic contaminants to determine compliance with maximum contaminant levels. The rule includes provisions that would allow for reduced monitoring.

## Rule Summary and Fiscal Analysis

### Part C - Environmental Rule Questions

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.**

Stakeholders were notified of DDAGW's plans to revise this rule on October 3, 2018 by electronic or regular mail in accordance with their request. The rules were placed into interested party review on September 4, 2019. No comments were received on the proposal to file this rule with minor amendments.

- (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.)**

40 CFR 141.23 was referred. The copy will be furnished upon request.

- (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?  
No *Not Applicable*

- (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? No



**Attachment A****Ohio Administrative Code Rule 3745-81-23****Estimated Cost of Compliance, Public Water Systems**

The rule requires PWSs to conduct monitoring for inorganic contaminants. Based on information gathered by Ohio EPA from various laboratories, the average costs of analysis of a single sample of inorganics, nitrate and nitrite are \$173.67, \$24.05 and \$18.99 respectively. The rule also requires monitoring for disinfection by products for PWSs that treat with ozone and chlorine dioxide. This cost estimate is based on an economic analysis conducted by USEPA. The federal economic analysis was published with the final Stage 2 Disinfectants/Disinfection Byproducts Rule (DBPR) on January 4, 2006 in Volume 71, Number 388 of the Federal Register. That cost estimate represented total annualized capital and operational costs to comply with all requirements of the Stage 2 DBPR. These costs include non-treatment costs of rule implementation, Initial Distribution System Evaluations (IDSEs), Stage 2 DBPR monitoring plans, additional routine monitoring, and operational evaluations. Systems required to install treatment to comply with the maximum contaminant levels (MCLs) will accrue the additional costs of treatment installation as well as operation and maintenance. Because the requirements associated with the Stage 2 DBPR are distributed among multiple rules, this cost estimate represents costs associated with OAC rules 3745-81-12, 3745-81-22, 3745-81-23, 3745-81-24, 3745-81-70 and 3745-81-77. This table provides a summary of the federal analysis broken down according to PWS size and type of source water (e.g., surface or ground water) as follows:

System Type, Source Water and Population Served	Cost per System by PWS Size and Type*
Community surface water >10,000	\$18,122.93
Community ground water >10,000	\$8,884.24
Community surface water <10,000	\$ 1379.64
Community ground water <10,000	\$645.65
Nontransient noncommunity surface water >10,000	\$16,359.39
Nontransient noncommunity ground water >10,000	\$7,270.11
Nontransient noncommunity surface water <10,000	\$1,187.69
Nontransient noncommunity ground water <10,000	\$358.82

U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar used to account for inflation from 2014-2019.

It should be noted that USEPA assigned an uncertainty factor of  $\pm 30$  per cent to their cost estimate. The uncertainty is associated with the anticipated number of affected systems, the unit costs estimates for different technologies as they are applied to individual systems, and monitoring costs. The cost per water system can only be considered a numerical average and not an accurate estimate of the actual cost per system. The actual costs per system will vary widely depending on technologies employed by each system and monitoring costs. The proposed amendment is not expected to have an effect on the current cost of the rule.