

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

Agency Name

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

Division

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3745-81-54

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Revised total coliform rule - violations.**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **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: **6109.04**5. Statute(s) the rule, as filed, amplifies or implements: **6109.03, 6109.04**

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

This rule is being filed to adopt provisions relevant to U.S. EPA's Revised Total Coliform Rule under the Safe Drinking Water Act and to complete five year rule review requirements set forth in ORC Section 106.03.

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 establishes what constitutes as violations of the Revised Total Coliform Rule.

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 Administrative Code. In accordance with section 121.76 of the Revised Code, these references are exempt from the requirements of sections 121.71 to 121.75 of the Revised Code.

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 If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation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. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) 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

Ohio EPA will determine compliance with the rule requirements and issue notices of violation as appropriate. These activities are within the normal operating business of the agency and are not expected to have an impact on the agency's current budget or require additional appropriations.

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:

Please see the attachment to this rule, Cost of Compliance for rules with Revised Total Coliform Rule provisions.

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.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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 a public water system to potential civil, administrative or criminal penalties, or suspension or revocation of their license to operate in accordance with Chapter 6109 of the Revised Code.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**

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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.

Please see the attachment to this rule, Cost of Compliance for rules with Revised Total Coliform Rule provisions.

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.

Please see the attachment to this rule, Cost of Compliance for rules with Revised Total Coliform Rule provisions.

(a) Personnel Costs

See above.

(b) New Equipment or Other Capital Costs

See above.

(c) Operating Costs

See above.

(d) Any Indirect Central Service Costs

See above.

(e) Other Costs

See above.

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.

The 1996 Amendments 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 Loan Fund, which provides low-interest loans to community and not for profit water systems. Loans can provide support for design work in addition to 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.

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

While there are some costs associated with the proposed rule which may have a negative effect on economic development, the availability of a safe, reliable and adequate water supply is essential to Ohio's economic success.

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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.

Ohio EPA invited interested parties to comment on this rule during the periods of February 10 to April 13, 2015 and November 18 to December 2, 2015. Comments received were considered and appropriate revisions to the rules were made. A list of interested parties will be furnished upon request.

- (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.)

The U.S. EPA issued the Revised Total Coliform Rule on February 13, 2013. It was published in Vol. 78, No. 30 of the Federal Register, pages 10270 to 10365 was

considered. A 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**

RSFA Part B Attachment for rules with Revised Total Coliform Rule provisions (3745-81-14, 3745-81-21, 3745-81-50 to 3745-81-55, and part of 3745-81-61)

Estimated Cost of Compliance

Summary of the Revised Total Coliform Rule Provisions Impacting the Cost of Compliance

The cost to comply with the proposed Revised Total Coliform Rule (RTCR) includes provisions that will result in both cost savings, as well as increases in cost for some public water systems (PWSs). Cost decreases will result from a reduction in the number of follow-up samples when a PWS has a total coliform (TC) positive routine sample. The number of repeat samples will decrease from four to three. For small systems that monitor with one sample per quarter, a TC positive sample currently requires five routine samples the following month. This number will also be reduced to three. The elimination of the maximum contaminant level (MCL) for total coliforms will result in a reduction in costs associated with required public notification for violations of the MCL.

While some PWSs will be sampling less, other systems will be required to conduct more frequent routine sampling. Small systems that usually monitor one time per quarter may be triggered to monitor once each month if they fail to do their regular monitoring two times in a year or if they have an *E. coli* positive sample. Some seasonal PWSs, such as amusement parks, campgrounds and fairgrounds will also have to sample once each month during the operating system.

Other provisions that will require activities are mostly related to specific new requirements for water systems to conduct assessments to find the reason they have had TC positive samples or look for the source of confirmed contamination. U.S. EPA calculated the increased costs for these assessments and any necessary corrective actions identified by the assessments without accounting for such activities currently being conducted. Also, new violations will be created for failure to perform the assessments or necessary corrective actions, which will require an expense for noncompliant systems to notify its customers.

Seasonal PWSs will have new requirements to ensure that the water in their systems is safe to drink at the start of each operating season. Some seasonal PWSs have been voluntarily following a recommended start-up procedure to ensure safe water, but it has not been required. PWSs will also be required to certify the completion of the start-up procedure.

Summary of Costs

U.S. EPA prepared an estimate of the total cost of compliance with the RTCR (based on net present values of costs in 2007). The portion of the national cost estimate attributable to Ohio water systems is shown in the table below.

Type of Water System	Number of Systems in Ohio	Ohio's Portion of National Inventory (percent)	Estimated Total Annualized Cost for Ohio Water Systems (2007 Dollars)
Community	1266	2.5	\$ 4,097,500
Nontransient Noncommunity	855	4.7	\$ 343,100
Transient Noncommunity	3018	3.6	\$ 927,300
Totals	5139	3.3	\$ 5,367,900

U.S. EPA's cost estimate focused on the incremental increase in costs over the current requirements for the Federal Total Coliform Rule that became effective in 1989. Using the national cost estimate and applying it to Ohio's public water systems results in the following breakdown of annualized incremental costs for RTCR.

Type of Water System	Number of Systems in Ohio	Ohio's Portion of National Inventory (percent)	Extrapolated Additional Cost to Ohio Systems (Dollars)
Community	1266	2.5	\$162,500
Nontransient Noncommunity	855	4.7	\$18,800
Transient Noncommunity	3018	3.6	\$262,800
Totals	5139	3.3	\$444,100

The net or incremental cost per year represents an average of about \$86 per PWS. For community PWSs it represents less than ten cents per household.

However, the incremental costs will not actually be spread out uniformly. In fact, the costs to many PWSs that stay in compliance will not change or may even decrease due to the reduction in the number of required follow-up samples when a system has a TC positive routine sample. According to U.S. EPA, the greatest portion of the incremental costs is attributed to corrective actions to fix problems discovered by the assessments triggered under the rule.

The increased costs will more realistically be borne by the PWSs that fail to comply with the rules or have a contamination problem that must be corrected. Based on past compliance data, Ohio EPA estimates between 350 to 450 of the approximately 3,500 small noncommunity PWSs in Ohio will be triggered to conduct an assessment or increased monitoring during each of the first few years of rule implementation. Using the total estimated additional costs for all noncommunity PWSs in the table above (\$18,800 + \$282,800 = \$281,600) and attributing it to those estimated 350 to 450 systems results in an annual cost to each of those systems of \$625 to \$804. Those annual costs are not expected to be incurred year after year by the same water systems because the triggered assessments and corrective actions should eliminate the contamination problems at those systems.

Ohio EPA intends to conduct all Level 2 Assessments and assist PWSs, especially small systems, in conducting Level 1 Assessments. This approach will mitigate some of the financial burden by sometimes eliminating the need to hire a consultant. This process should reduce costs to small PWSs by improving not only the effectiveness of the assessments, but also the rate of compliance for completing the assessments. The incidence and associated costs for PWSs being required to repeat an assessment or perform public notification for violations is also expected to be reduced.