CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: 2014 Revised Total Coliform Rule Package

Rule Number(s): 3745-81-01, 3745-81-12, 3745-81-14, 3745-81-21, 3745-81-32, 3745-81-41, 3745-81-42, 3745-81-43, 3745-81-44, 3745-81-45, 3745-81-50, 3745-81-51, 3745-81-52, 3745-81-53, 3745-81-54, 3745-81-55, 3745-81-60, 3745-81-61, 3745-81-70, 3745-81-74, 3745-96-02

Date: 9/23/15

Rule Type:

- X New
- X Amended
- X 5-Year Review
- ☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Ohio EPA is proposing to adopt seven new rules and amend thirteen existing rules in Chapter 3745-81 of the Administrative Code, and amend one rule in Chapter 3745-96 of the Administrative Code. The new and most of the amended content of these rules will adopt relevant portions of U.S. EPA's Revised Total Coliform Rule (RTCR) under the Safe Drinking Water Act (SDWA), which will become effective on April 1, 2016. Adoption of

regulations at least as stringent as the Federal rule is required for Ohio EPA to maintain primary enforcement authority for the SDWA.

The RTCR is a major update to the existing framework for ensuring the microbiological safety of public drinking water supplies. It applies to every public water system and has the overall goal of improving public health protection by reducing fecal pathogens to minimal levels through a combination of strategies. Regular monitoring for total coliform bacteria will remain the primary means of warning of possible microbiological contamination; however the rule changes will require public water systems to investigate conditions more rapidly than in the past to look for potential sources of contamination.

In addition, a new rule, OAC 3745-81-61, is proposed to collect and coordinate the response requirements for significant deficiencies that may be identified at water systems under various rule provisions. Additional amendments are proposed to make clarifications in existing rules and conform to the current LSC style preferences.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** ORC section 6109.04 paragraph (B)(2), "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 suitability of the water for its intended uses or that may otherwise adversely affect the public health or welfare."

3. **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 are intended to adopt the Revised Total Coliform Rule (RTCR) that was issued by U.S. EPA as a Final Rule on February 13, 2013 with an effective date of April 1, 2016. The RTCR is part of the National Primary Drinking Water Regulations in 40 CFR Part 141 promulgated under the authority of the Safe Drinking Water Act Amendments of 1996. The Ohio EPA is required to adopt regulations at least as stringent as the Federal regulations in order to retain primary enforcement authority for the Safe Drinking Water Act.

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

   a. OAC rule 3745-81-01 - The definition for "seasonal system" is given an expanded meaning compared to the Federal definition. The Federal definition is "a noncommunity water system that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and at the end each operating season". U.S.

EPA interprets this definition to exclude systems that operate any portion of the water system on a year-round basis. For example, a campground that keeps a small portion of the water system active for a caretaker but shuts down the majority of the system.

Water systems that operate seasonally are of particular concern because the period of inactivity creates an opportunity for bacteria to enter the system when it is drained or to grow in the water sitting in the system if it is not drained. At the beginning of each season, those portions of a water system that were not operated or were drained are susceptible to being contaminated regardless of whether it falls under the Federal definition or not. Ohio EPA believes the definition should encompass a system that partially shuts down as well as a system that completely shuts down so that the former is required to perform start-up procedures to ensure the safety of the drinking water just as the systems meeting the Federal definition.

Therefore, Ohio EPA has proposed the definition of "Seasonal system" to mean "a noncommunity water system that has distinct seasonal fluctuations in its operations and population served during the course of a year such that all or most of the system is not operated on a year-round basis."

b. OAC rule 3745-81-51(B)(4) – This paragraph specifies criteria that a small ground water system must meet to be able to return to a baseline routine monitoring schedule of one sample per quarter after it has triggered an increase to one sample per month. Ohio EPA is proposing some additional criteria to the Federal requirements to ensure that these systems are also compliant in other important health-related program areas. For example, the Ohio EPA rule includes compliance with requirements for nitrate and nitrite MCLs and monitoring requirements. Nitrate levels in excess of the MCL present an acute risk to infants. Ohio EPA believes it is appropriate to coordinate compliance efforts and expectations in these program areas.

c. OAC rule 3745-81-51(D)(1) – This paragraph provides a routine total coliform (TC) monitoring requirement of four samples per month for all water systems using a surface water source and serving four thousand or fewer persons. This is the same as Ohio's current requirement for these systems. However, for systems that serve between 1,001 and 3,300 persons, it is more stringent than the Federal rule. The RTCR requires one sample per month for systems serving fewer than 1,001, two samples per month for systems serving 1,001 to 2,500, and three samples per month for those serving 2,501 to 3,300. Public water systems using a surface water source, regardless of population, are required to use a combination of filtration and disinfection processes to meet a standard of 99.99 per cent inactivation of viruses and bacteria to ensure the biological safety of the distributed water. Ohio EPA believes four total coliform samples per month in the

distribution system are appropriate to monitor the continuing effectiveness of the treatment processes.

5. **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 public purpose is simply to decrease the risk of acute waterborne illnesses. The use of total coliform and E. coli monitoring has been a cornerstone of the Safe Drinking Water Act's purpose of ensuring that public water systems provide biologically safe water to consumers.

Total coliforms are a group of closely related bacteria that, with a few exceptions, are not harmful to humans. On the other hand, E. coli is a more restricted group of coliform bacteria that almost always originate in the human or animal gut (Edberg et al. 2000). Thus, E. coli is a better indicator of fecal contamination than total coliforms. The provisions of the RTCR reflect the improved understanding of the value of total coliforms and E. coli as indicators.

The updates to these regulations are intended to place less emphasis on total coliforms as an indicator of public health risk. The maximum contaminant level for total coliforms is being eliminated. However, total coliforms are still useful as an indicator that a water system may be compromised and warrants an assessment or investigation to ensure the system is not susceptible to harmful microorganisms.

A new maximum contaminant level for E. coli, some strains of which are harmful, is being enacted. This will improve communication with consumers because there will be public notifications only when E. coli is present, which represents a true health risk, and not when total coliforms are detected without E. coli.

In addition, current regulations do not always require or encourage a water system to quickly assess the reason that total coliforms are detected. Even though total coliforms are not necessarily harmful in themselves, they may indicate vulnerabilities in a water systems' barriers to contamination. Therefore, these amendments are intended to provide greater health protection by requiring water systems to assess the condition of the system when total coliforms are confirmed to be present.

These rule changes for the first time also directly address seasonal water systems, which have a significant risk of contamination entering their systems when they are not operated. The Federal rule requires each state to develop a start-up procedure to ensure seasonal systems have safe water at the beginning of each operating season. This is expected to prevent illnesses that are sometimes associated with seasonal systems such as campgrounds, fairgrounds, amusement parks and schools.

6. **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 public water system compliance rates with the new and revised requirements. Another measure, which won't be reflected in violations data, will be comparing the number of systems that have a recurrence of TC-positive samples within a one or two year period of time. The new requirements to conduct assessments and take corrective action should result in a decline in the number of such recurrences. A decline in such recurrences should also be reflected in fewer instances of E. coli contamination, which will reduce the number of cases of related illnesses. U.S EPA was not able to quantify the expected reduction in illness largely because the occurrence of waterborne illness is believed to be greatly under-reported.

Development of the Regulation

7. **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, businesses and in general, the public at large. Anyone can be added to DDAGW's list of interested parties by asking to be included either by completing an on-line form or by calling.

   Initial outreach efforts were in the form of presentations to several stakeholder groups after the U.S. EPA issued the RTCR as final on February 13, 2013. These presentations included:

   - Ohio-Kentucky-Indiana (OKI) Regional Council of Governments, September 9, 2013
   - Ohio American Water Works Association (AWWA) Southwest District Fall Meeting, October 11, 2013
   - Ohio Section AWWA Conference, November 4, 2013
   - Ohio Campground Owners Association, March 6, 2014.

   The Ohio Campground Owners Association was provided a draft version of a start-up procedure for seasonal water systems on June 11, 2014, and invited to provide feedback.

   DDAGW sought comments from stakeholders during the division's first round of interested party review, which was February 10, 2015 to April 13, 2015. A second round of interested party review to seek comment from stakeholders will occur in fall 2015.

The interested party review period occurs before the rules are filed with JCARR and is used to address any concerns or questions from our stakeholders.

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

Stakeholders did not provide any comments on the rules in this rule-making package during early stakeholder outreach, held from January 6 – February 7, 2014. However, a comment was made during the first round of interested party review (February 10, 2015 to April 13, 2015).

9. 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 revisions to the Federal 1989 Total Coliform Rule are the result of a lengthy rule review process required by the Safe Drinking Water Act and primarily based on the recommendations of the Total Coliform Rule Distribution System Advisory Committee (''TCRDSAC'' or the ''advisory committee''). EPA established the TCRDSAC in June 2007 in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, 9(c), to provide recommendations to EPA on revisions to the 1989 TCR and on research and information needed to better understand and address public health risks from contamination of distribution systems. The advisory committee consisted of representatives of EPA, State and local public health and regulatory agencies, consumer organizations, environmental organizations, local elected officials, Indian Tribes, and drinking water suppliers. Ohio EPA participated in the Federal advisory committee. A technical workgroup was also formed to provide the advisory committee with necessary technical support and analysis to facilitate the committee's discussions.

A great deal of research and analyses focusing on water quality in distribution systems were conducted to support the deliberations of the advisory committee. Also, U.S EPA's Science Advisory Board Drinking Water Committee was asked to review and provide input on the draft rule based, in part, on the following documents:

- Baseline Conditions Draft for SAB DWC 05.1.09
- Occurrence and Predictive Model Draft for SAB DWC 05.1.09
- Benefits Analysis Draft for SAB DWC 05.1.09
- Cost Analysis Draft for SAB DWC 05.1.09
- Draft RTCR Technology and Cost Doc Draft for SAB DWC 05.1.09

The supporting appendices for these analyses included the following:

- Appendix A Public Water System Counts
- Appendix B Modeled Total Coliform Occurrence
- Appendix C RTCR Costs
- Appendix D Compliance Forecast

Statutory authority for these rules is established in Section 6109. of the Revised Code. Section 6109.03 states the purpose of the chapter is to assume and retain primary enforcement responsibility under the Safe Drinking Water Act. Section 6109.04 requires the Director of Ohio EPA to adopt rules to govern public water systems to protect public health and welfare.

10. 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?

As stated in the response to Question 3, the RTCR is part of the National Primary Drinking Water Regulations in 40 CFR Part 141 promulgated under the authority of the Safe Drinking Water Act Amendments of 1996. The Ohio EPA is required to adopt regulations at least as stringent as the Federal regulations in order to retain primary enforcement authority for the Safe Drinking Water Act.

The Federal RCTR provides flexibility in several areas so each state can adopt an approach to implementing the requirements that better integrates with its regulatory framework. The response to Question 4 describes areas where the Agency is proposing alternatives more stringent than the baseline Federal requirement.

The following specific provisions are areas where the Agency is proposing to adopt rules that provide latitude to be more flexible than the baseline Federal requirement under certain circumstances.

a. OAC rule 3745-81-51(B)(5) – This paragraph provides routine monitoring requirements and start-up procedures for seasonal systems. While Ohio EPA believes it is appropriate to use a definition of seasonal system that is more inclusive than the Federal definition, this paragraph includes discretionary authority to allow reduced monitoring and modified start-up procedures for seasonal systems that maintain a pressurized system all year. The Federal RTCR does not require states to adopt this discretionary authority. Ohio EPA believes this authority (along with the proposed definition) will enable the Agency to apply start-up and monitoring requirements to appropriately address the risks at seasonal systems based on their operational practices.

b. OAC rule 3745-81-51(B)(7) – This paragraph includes discretionary authority to postpone the requirement of paragraph (B)(6) of the same rule for a small ground water system to take three routine TC samples in the month following a TC-positive sample. The Federal RTCR does not require states to adopt this discretionary authority. However, Ohio EPA has included it because it will provide flexibility to not require sampling during a period of time when a system is taking measures to eliminate contamination, but has not completed them. TC samples taken at that time are likely to be positive and, therefore, would not provide useful information. Ohio EPA believes this provision will allow some systems to avoid unnecessary expense.

c. OAC rule 3745-81-52(A)(1)(b) to (d) – When a water system learns that it has a routine sample that is TC-positive, it must take repeat (follow-up) samples within 24 hours. These paragraphs describe circumstances of unavoidable delays for extending the 24 hour time limit without incurring a violation. States are not required to adopt these provisions but Ohio EPA believes it is infeasible at times for water systems to meet the 24 hour deadline.

The following optional provisions under the RTCR have not been proposed for adoption by Ohio EPA.

d. 40 CFR 141.854(a)(4) – The Federal rule allows, but does not require, a state to adopt a provision to not count a missed sample as a violation in determining whether a small system using ground water qualifies for a monitoring frequency of 1 per quarter instead of 1 per month, if the system takes a make-up sample before the end of the next monitoring period. DDAGW believes this provision is infeasible to administer fairly because in many cases the Agency is required by the Federal rule to adjust a water system's monitoring schedule (that is, increase it from quarterly to monthly) before the period for taking a "make-up" sample has elapsed.

e. 40 CFR 141.854(e) – The Federal RTCR includes a provision to reduce the routine monitoring frequency for small (serving less than 1,001) noncommunity systems using ground water to one per calendar year. Use of this provision requires the state to conduct an inspection of the system every year. This is useful for some states that employ circuit riders to conduct monitoring and inspections. Ohio EPA does not have the personnel resources to perform an inspection every year for the large number of water systems that may qualify for such reduced monitoring (over 3,000 systems). Furthermore, DDAGW believes that one sample each quarter at approximately $30 per sample is not overly burdensome to monitor the biological integrity of a system serving water to the public.

f. 40 CFR 141.855(d) - The Federal RTCR also includes a provision to reduce the routine monitoring frequency for small community systems using ground water from a baseline frequency of one per month to one per calendar quarter. Ohio's current rules require one

sample each month and do not provide for a reduction. The reduced frequency under the Federal rule carries with it the requirement for the Agency to conduct an annual inspection as well as other extra requirements for the water system to meet. DDAGW believes that keeping the sampling frequency at one per month is highly appropriate for all community systems to ensure the microbiological safety of the water being served.

11. **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.***

    Ohio's regulations governing safe drinking water are performance-based to a large extent. The proposed rules establish compliance standards for indicators of water system integrity, microbiological safety (E. coli MCL) and reduction of D/DBPs of delivered water.

    The Federal RTCR does require states to develop a start-up procedure for seasonal water system owners to prepare their systems before serving water at the beginning of each season. Many instances of waterborne illnesses at seasonal systems indicate that a required process for these systems is appropriate to protect public health.

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

    The proposed regulations only govern public water systems 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. **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 implementation of this rule package includes the following measures to ensure consistency:

    - DDAGW staff members in each district office were involved with developing the rule amendments and implementation procedures.
    - DDAGW will conduct staff training throughout the state before and continuing after the rule changes become effective.
    - DDAGW plans to guide smaller systems in conducting Level 1 Assessments. A Level 1 Assessment is an evaluation of a water system to identify possible presence of deficiencies that could allow contamination to enter the system. It is a less intensive evaluation than a Level 2 Assessment and intended by the Federal rule to be conducted by the system owner or operator. We believe the Agency's assistance will help ensure consistent standards are maintained with fewer comment letters and multiple iterations of Level 1 Assessment Reports.

- DDAGW plans on conducting all Level 2 Assessments in consultation with the water system operator or owner to help ensure consistency and rapid response to E. coli occurrences.
- Developing internal procedures and guidance documents for staff to use in implementing rules.
- Regularly notifying staff of rule changes, rule interpretations and adjustments to implementation procedures.
- DDAGW's enforcement procedures include review and discussion of water systems having compliance problems by a committee of District Office and Central Office staff to help ensure compliance assistance efforts have been offered and that the regulations are being applied uniformly.

Adverse Impact to Business

14. 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;

Businesses that will be affected by these rules are those that operate their own water system and serve more than 25 persons on a regular basis. Such businesses are already regulated as public water systems. Examples include restaurants, gas stations, schools, shopping centers, manufacturers, food processors, campgrounds, mobile home parks and retirement communities. Among these, small water systems are expected to be more highly impacted. Seasonally operated water systems, such as campgrounds, amusement parks, fairgrounds and schools, will be most affected.

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

The proposed rule changes include provisions that will result in cost savings as well as other provisions that will increase the cost of compliance for some systems. Cost reductions will result from a reduction in the number of follow-up samples when a system has a 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+ sample currently requires five routine samples the following month. That number will also be reduced to three. The elimination of the MCL for total coliforms will result in a reduction in costs associated with required public notification for violations of the MCL.

On the other hand, some 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. As mentioned above, some seasonal systems will also have to sample once each month during the operating season.

Other provisions that will require activities or expenses are mostly related to specific new requirements for water systems to conduct assessments to find the reason they have had TC positive samples or to 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 systems 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 systems have been voluntarily following a recommended start-up procedure to ensure safe water, but it has not been required. Systems will also be required to certify the completion of the start-up procedure.

Revisions to rule 3745-81-12 will indirectly be the cost of installing best available technologies the community and nontransient noncommunity systems are not already using.

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.

U.S. EPA prepared an estimate of the total cost of compliance with the Revised Total Coliform Rule (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 (per cent)**	**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 the Revised Total Coliform Rule.

Type of Water System	**Number of Systems in Ohio**	**Ohio's Portion of National Inventory (per cent)**	**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 water system. For community water systems 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 water systems 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 are 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 systems that fail to comply or have a contamination problem that must be corrected. Based on past compliance data, Ohio EPA estimates that between 350 to 450 of the approximately 3,500 small

noncommunity systems 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 systems in the table above ($18,800+ $262,800 = $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 water systems, especially smaller 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 systems 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 systems being required to repeat an assessment or perform public notification for violations is also expected to be reduced.

Costs associated with OAC rule 3745-81-12

The proposed revisions to OAC rule 3745-81-12 have no costs associated with them as they primarily remove outdated requirements. However, this rule, which became effective on 1/1/2010, establishes best available treatment (BAT) requirements for water systems that are unable to prevent the formation of disinfection byproducts in excess of the maximum contaminant levels. The costs estimated for the 2010 rule filing ranged from $300 for small systems up to about $15,000 for a large municipal system. The estimates included costs for treatment that would meet engineering standards established in rules (Chapter 3745-91 of the OAC), which are no more stringent than industry standards for similar projects that involve the practice of engineering, and for plan review by the Ohio EPA.

Costs associated with OAC rule 3745-96-02

The cost of compliance with all the rules in Chapter 3745-96 is derived from the fiscal analysis published in the federal register, 40 CFR Part 141 and 142 "Consumer Confidence Reports, Final Rule" on August 19, 1998. The fiscal analysis estimates that the annual cost of developing and delivering the consumer confidence report (with inflation from $793.68 in 2009) is $881.65 per public water system. This rule concerns the development of consumer confidence reports, but not the delivery. The Ohio EPA approximates that the development of the report represents about half of

the total cost, therefore the cost to each system to comply with this rule, and other rules in this chapter is estimated (with inflation) at $440.83 annually.

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

Section 6109.03 of the Ohio Revised Code (Purpose of chapter) states "The purpose of Chapter 6109. of the Revised Code is to protect the public health and welfare and to enable the state to assume and retain primary enforcement responsibility under the Safe Drinking Water Act."

Section 6109.03 of the Ohio Revised Code requires the Director of Ohio EPA to administer Chapter 6109 and to "adopt, amend, and rescind such rules in accordance with Chapter 119. of the Revised Code as may be necessary or desirable to do both of the following:

(1) Govern public water systems in order to protect the public health;

(2) Govern public water systems to protect the public welfare, including rules governing contaminants in water that may adversely affect the suitability of the water for its intended uses or that may otherwise adversely affect the public health or welfare."

The Safe Drinking Water Act requires a state that has primary enforcement authority for administering the Act to adopt regulations at least as stringent as the RTCR in order to retain that authority. For the rule requirements that are more stringent that the RTCR, the Director believes those requirements are necessary to protect public health and welfare as described in the responses to Question numbers 4 and 10.

Regulatory Flexibility

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

OAC rule 3745-81-42 allows small systems using ground water and not having a treatment system to use a repeat TC sample taken to comply with new rule 3745-81-52 to also satisfy the requirement of this rule to take a source water sample.

OAC rule 3745-81-51(B)(5) – This paragraph provides routine monitoring requirements and start-up procedures for seasonal systems. This paragraph includes discretionary authority to allow reduced monitoring and modified start-up procedures for seasonal systems that maintain a pressurized system all year. The Federal RTCR does not require states to adopt this discretionary authority.

OAC rule 3745-81-51(B)(7) – This paragraph includes discretionary authority to postpone the requirement of paragraph (B)(6) of the same rule for a small ground water system to take three routine TC samples in the month following a TC-positive sample. The Federal RTCR

does not require states to adopt this discretionary authority. However, Ohio EPA has included it because it will provide flexibility to not require sampling during a period of time when a system is taking measures to eliminate contamination, but has not completed them. Ohio EPA believes this provision will allow some systems to avoid unnecessary expense.

OAC rule 3745-81-52(A)(1)(b) to (d) – When a water system learns that it has a routine sample that is TC positive, it must take repeat (follow-up) samples within 24 hours. These paragraphs describe circumstances of unavoidable delays for extending the 24 hour time limit without incurring a violation. States are not required to adopt these provisions but Ohio EPA believes it is infeasible at times for water systems to meet the 24 hour deadline.

17. 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 and technical assistance and, if needed, written notice of violations prior to any type of formal enforcement. As one of the obligations as the primary enforcement authority for the SDWA, Ohio EPA is required to issue a notice of violation for noncompliance that qualifies as a Federal violation. However, a penalty is never issued for an initial offense.

18. What resources are available to assist small businesses with compliance of the regulation?

The SDWA is structured to be a self-administered program, (i.e., each owner and operator of a public water system has an obligation to follow the regulations). However, operating a public water system is an adjunct to many small businesses' main activity. Ohio EPA's District Office inspectors encourage small water systems to call on them for technical or compliance assistance at any time. The proposed rules will require systems to conduct a Level 1 Assessment when it has a certain number TC-positive samples. While these are intended by the rules to be done by the owner or operator of the PWS, Ohio EPA intends to actively offer assistance to any system that wants help in completing the assessment.

Small mobile home parks can obtain assistance from the Rural Community Assistance Program (RCAP). Ohio EPA contracts with RCAP to provide assistance for PWSs with a population of 10,000 or less. RCAP can help small community PWSs with a number of tasks, such as:

- Preparing loan applications, including determining the ability to repay;
- Determining the most cost effective action for providing a safe drinking water supply;

- Developing and/or completing their capability assurance plan.

Ohio EPA also offers free on-line training to become a Class A or Class 1 certified operator. Many small systems are not required to have a certified operator; however, the training can also be helpful to those systems.

Small systems may contract with a service provider to collect compliance samples and maintain the water system. This is not a free alternative; however, it helps ensure sampling is done correctly and relieves the owner of many of the tasks associated with compliance obligations.

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 http://www.epa.ohio.gov/ocapp.

Ohio EPA also has a permit assistance web page that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center. The web page address is: (http://www.epa.ohio.gov/dir/permit_assistance.aspx)

Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.