

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Primary Drinking Water Standards and Source Water Protection – No Change 2019

Rule Number(s): OAC Rules 3745-81-10, 3745-81-11, 3745-81-15, 3745-81-19, 3745-81-28, 3745-81-82, 3745-81-83, 3745-81-88 and 3745-91-10

Date: 04/01/2019

Rule Type:

New

☒ 5-Year Review

Amended

Rescinded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.

Rules in OAC chapter 3745-81 set forth the primary drinking water standards for public water systems (PWS), as set forth in the federal Safe Drinking Water Act Amendments. OAC Rules in Chapter 3745-81 are proposed to be filed with no change and establish the following requirements:

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- OAC Rule 3745-81-10 establishes maximum residual disinfectant level requirements.
- OAC Rule 3745-81-11 establishes maximum contaminant level requirements and best available technologies for inorganic contaminants.
- OAC 3745-81-15 establishes maximum contaminant level requirements and best available technologies for radionuclide contaminants.
- OAC 3745-81-19 established requirements for use of bottled water and point-of-use or point-of-entry treatment devices.
- OAC Rule 3745-81-28 establishes the requirement for all analytical results used to determine compliance with the rules in Chapter 3745-81 of the Administrative Code to be determined and reported by a laboratory certified by or otherwise acceptable to the director of Ohio EPA, except for measurements for chlorine residual.
- OAC Rule 3745-81-82 establishes requirements for installing optimal corrosion control treatment and conducting corrosion control studies to control for lead and copper. The rule also establishes requirements for approval, installation, operation and monitoring of optimal corrosion control treatment.
- OAC Rule 3745-81-83 establishes deadlines and requirements for source water treatment to control for lead and copper.
- OAC Rule 3745-81-88 describes the requirements for monitoring for lead and copper in water entering the distribution system of a PWS.

Chapter 3745-91 establishes requirements for submission of plans for construction of PWSs or for making significant alterations to existing PWSs. OAC Rule 3745-91-10 establishes that PWSs are required to develop and submit a source water protection plan.

The rules have been reviewed pursuant to the five-year rule review requirements set forth in Section 106.031 and no changes have been proposed at this time.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

ORC Section 6109.04 authorizes 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.”

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?

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If yes, please briefly explain the source and substance of the federal requirement.

Yes, the rules in Chapter 3745-81 of the OAC help the State to administer the Safe Drinking Water Act (SDWA), as well as retain the primary enforcement authority from the federal government. These rules are used by Ohio EPA to protect the drinking water supplies from potential contaminants as outlined in SDWA. OAC Rules 3745-81-82, 3745-81-83 and 3745-81-88 assist the state with implementing the federal Lead and Copper Rule.

OAC Rule 3745-91-10 of the Administrative Code does not specifically implement a federal requirement, but it protects public health by ensuring systems develop a plan for the long-term protection of their source water.

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

OAC 3745-81-11 exceeds the federal requirement by establishing maximum contaminant levels (MCLs) for fluoride for both community and non-transient community PWSs. Ohio EPA considers that establishing an MCL for non-transient non-community PWSs is protective of public health since it prevents exposure to the contaminant, specifically to susceptible populations (children).

OAC 3745-81-83 This rule is different from the federal counterpart in that it omits "other interested parties" to request a modification to source water treatment plans. 40 CFR 141.83 provides for such requests without describing who may be an "interested party". DDAGW believes that the role of an interested party in 40 C.F.R. 141.83 is already accommodated by other provisions in Ohio's statutes and rules and does not need to be included in these paragraphs. A treatment decision is made as an action of the Director and is, therefore, subject to appeal to the Environmental Review and Appeals Commission (ERAC) by someone who wishes to dispute the decision. Also, ORC 6109.11 requires the Director of Ohio EPA to investigate any written complaint of water provided by a PWS believed to be impure or dangerous to health. Ohio EPA believes these mechanisms adequately address potential concerns and conflicts of interested parties.

OAC 3745-81-82: The rule requires medium-sized systems to complete a corrosion control study. Ohio EPA considered this approach to be more protective of public health and allows for identification of optimal corrosion treatment to control for lead and copper.

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 for adopting these regulations is to ensure the availability of safe and adequate supply of public drinking water. The rules help achieve this purpose by developing a long-term protection plan for source water and by ensuring that PWSs monitor drinking water for contaminants and that the design and treatment of drinking water meet the industry and public health standards.

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 the rules in this package based on PWS compliance rates within various drinking water and ground water programs. PWS compliance rates are usually discovered during reported data or during sanitary surveys.

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 PWS owners and operators, consultants, environmental organizations, other state agencies, businesses and in general, the public at large. The only measure a person has to take to be notified of the Division of Drinking and Ground Water's (DDAGW) potential rule activity is to request to be added to our electronic or hard copy mailing list. Stakeholders were notified of DDAGW's plans to file Primary Drinking Water Standards rules in Chapter 3745-81 and OAC Rule 3745-91-10: Drinking Water Source Protection Plan rule on October 3rd, 2018 and September 21, 2018 respectively by electronic or regular mail. OAC Rules 3745-81-82, 3745-81-83 and 3745-81-88 were originally placed in early stakeholder outreach with minor revisions however, the agency has determined that no revisions are necessary at this time. In addition, the rules were placed into Interested party review as "no change" from January 9, 2019 through February 8, 2019. No external comments were received during the comment period.

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

Stakeholders provided no comments on Ohio EPA's intent to file these rules with no changes.

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?

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The federal counterpart, which include the SDWA amendments of 1996, are the foundation of Primary drinking water standard rules in Chapter 3745-81. References to these rules include title 40 of the Code of Federal Regulations part 141. SDWA Amendments of 1996 are the foundation of OAC Rule 3745-91-10. Ohio EPA obtained statutory authority in Chapter 6109 of the Ohio Revised Code and promulgated these rules under OAC Chapters 3745-81 and 3745-91.

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?

In order to retain primary enforcement authority, Ohio EPA is required to adopt the federal counterpart of rules. Therefore, Ohio EPA could not consider alternates to the rules in Chapter 3745-81. For OAC Rule 3745-91-10, there are currently no regulatory alternatives to obtain compliance. Moreover, these regulations only govern PWSs 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 SDWA in Ohio, therefore no alternate regulation was considered by the Agency.

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.*

Yes, the Primary Drinking Water Standards rules in Chapter 3745-81 are performance based as they require monitoring and reporting to determine when drinking water exceeds the public health thresholds established for drinking water contaminants. The rules also provide treatment options for reducing contaminants, if need be, to achieve compliance. OAC Rule 3745-91-10 is not performance based however, it indirectly influences compliance with other rules that are performance based.

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

The agency has reviewed internal regulations and has determined that 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 implementation of this rule includes the following:

- Seeking input from staff on implementation problems and developing solutions.
- Involving staff in developing rule amendments.

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- Working with the stakeholders to develop appropriate notification templates and language.
- Conducting staff training throughout the state before and continuing after the rule becomes effective.
- Developing internal procedures and guidance documents for staff to use in implementing rules.

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;

Public water systems in the State of Ohio of all population sizes and types are impacted by these rules.

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

OAC Rules 3545-81-10, 3745-81-11, 3745-81-15, 3745-81-19 and 3745-81-28: the majority of the cost to PWSs will be the cost of conducting monitoring for contaminants and obtaining plan approval and installing or replacing treatment equipment when necessary to achieve compliance with MCLs.

OAC Rules 3745-81-82, 3745-81-83, 3745-81-88- The cost of conducting corrosion control studies and submission of plans, installation and monitoring for corrosion control treatment and source water treatment.

Rule 3745-91-10 requires community PWSs to develop a source water protection plan.

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.

OAC Rule 3745-81-10: The rule requires community and non-transient non-community PWS to limit the amount of disinfecting chemicals added to drinking water. For systems that have the practice of adding excessive amounts of disinfectant, the rule may result in cost savings by limiting the amount of disinfectant added. The rule is currently effective and will add no additional cost to PWSs.

OAC Rule 3745-81-11: The cost of compliance with the rule is the cost of monitoring and installing treatment, if needed, to achieve compliance with the MCLs. Based on the information obtained by Ohio EPA from various laboratories, the average costs for analyzing a single sample of inorganics, nitrate and nitrite are \$173.67, \$24.05 and \$18.99, respectively. Costs will be incurred by PWSs that have to install best available technology (BAT) to achieve compliance with MCLs. Installing a different treatment technology, other than BAT, would require a PWS to submit plans for plan approval. The costs associated with submitting plans include the costs of developing plans, providing required copies of plan drawings and specifications and submitting associated application fees. Approvable plans must meet the engineering standards established in Chapter 3645-91 of the Ohio Administrative Code, which are more stringent than would otherwise be required for similar projects that involve the practice of engineering.

The formula for calculating plan approval fees authorized by section 3745.11 of the Revised Code is \$150 plus 0.35% of the estimated project cost, not to exceed \$20,000. The cost of treatment varies widely with the type of treatment installed and the size of the system.

OAC Rule 3745-81-15: The cost of compliance with the rule is the cost of conducting monitoring and installation of treatment, if needed, to achieve compliance with the MCLs. Based on the information obtained by Ohio EPA from various laboratories, the average cost for analyzing a single sample for gross alpha particle activity and Radium 228 is \$87.50 and \$120, respectively. *For a system that needs to install treatment to achieve compliance, the initial cost to install an iron exchange water softening system is \$ 8,801.30. *The annual operating costs account to \$ 6,499.42, which includes the cost of the material and personnel. The cost of compliance was based on a small community water system therefore, the cost of the rule will vary depending on the type and complexity of the system.

* US Department of Labor, Bureau of Labor Statistics Inflation Calculator used to account for the inflation from 2013-2018.

OAC Rule 3745-81-19: There is no requirement for a PWS to install point of entry or point of use devices specifically however, to achieve compliance with arsenic MCL, as required by OAC 3745-81-11, PWSs may be required to install such treatment.* It is estimated that the cost of compliance with the requirement is between \$12,624.94 and \$ 132,545.20 per year depending of the size of the system and the type of treatment installed. For non-transient non-community systems that choose one of these alternatives to the centralized treatment, the

annual cost of compliance may be less than the estimate provided above, especially for smaller systems.

* US Department of Labor, Bureau of Labor Statistics Inflation Calculator used to account for the inflation from 2014-2018.

OAC Rule 3745-81-28: There are no costs of compliance with this rule. The cost for conducting analysis by a certified laboratory has been accounted for in Chapter 3745-89 of the Ohio Administrative Code.

OAC Rule 3745-81-82: The cost of conducting corrosion control studies, submission of plans and installation of optimal corrosion control treatment. The costs related to the plan submission are existing fees found in ORC § 3745.11 and part of the plan approval process established in OAC Chapter 3745-91. The cost is \$150 plus thirty-five hundredths of 1% of the estimated project cost (not to exceed \$20,000).

Costs of installing corrosion control treatment will vary upon PWS size and the type of treatment to be installed, and will include a capital cost and possibly, annual costs. *According to the National Primary Drinking Water Regulations for the Lead and Copper Final Rule (FR Vol. 56 No. 110, June 7, 1991), the capital cost for systems installing corrosion control treatment would be \$46,814.40 and annual costs of \$10,403.20. (These figures also include costs of corrosion control studies and installing corrosion control for systems with lead solder and lead pipes. The actual costs may be lower depending on the type of treatment installed, whether they conduct a corrosion control study and install control for systems with lead solder and lead pipes.)

* The estimates presented were updated using the U.S. Bureau of Labor Statistics inflation calculator (1991 to 2018).

OAC Rules 3745-81-83: The cost of the rule includes the cost of submission of plans, installation and operations of source water treatment. Costs of installing source water treatment will vary upon PWS size and the type of treatment to be installed.

OAC Rule 3745-81-88: The cost of the rule includes the cost of monitoring and analysis of lead and copper samples in the source water at the entry point. Based on the information obtained by Ohio EPA from various laboratories, the average cost for analyzing a single sample is \$29.39.

OAC Rule 3745-91-10: The cost of compliance for rule 3745-91-10 includes costs associated with developing a drinking water source protection plan. *Based on data obtained by Ohio EPA in 2004 and 2005, the cost to counties, townships

or municipal corporations operating a community public water system to develop a drinking water source protection plan ranges from approximately \$1,190.92 to \$47,636.79. The variability in the cost is dependent in large part on how the entity chooses to develop the drinking water source protection plan.

Ohio EPA offers workshops presented by trained agency staff to assist counties, townships or municipal corporations operating community PWSs to develop a drinking water source protection plan. Ohio EPA has also developed materials for use in preparing the drinking water source protection plan. If the PWS collaborates with Ohio EPA to develop the plan, the cost to the entity can be kept to staffing time and supplies. *Information provided by several small municipal corporation PWSs that participated in a workshop series indicated the cost to these systems was between \$1,624.67 and \$1,429.11, primarily in staff time, to develop a drinking water source protection plan. *If the PWS decides to hire a consulting or engineering firm to develop or assist in developing the drinking water source protection plan the costs will be higher, between \$8,336.44 and \$47,636.79. Cost sharing by water systems in the same geographic area, such as a county can reduce these costs substantially.

*U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar used to account for inflation from 2013 - 2018.

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

The Agency considers the costs for complying with the rules in this rule package minor in comparison with ensuring that public is supplied by a safe and reliable source of drinking water.

Regulatory Flexibility

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

There are no alternate means of compliance or exemptions for small businesses. For the rules in Chapter 3745-81, Ohio must adopt rules that are as stringent as the federal counterpart therefore there are no alternatives. OAC Rule 3745-91-10 does not have a federal counterpart but it protects public health by ensuring systems develop a plan for the long-term protection of their source water.

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?

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Ohio EPA does not assign fines and penalties to first time offenders and prefers to obtain compliance through outreach first, and if needed, a written notice of violation before any formal enforcement action.

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

Small businesses PWSs can turn to their Ohio EPA District Office Inspector or Rural Community Assistance Program (RCAP) for technical assistance. Ohio EPA contracts with RCAP to provide assistance for PWSs with a population of 10,000 or less. RCAP sponsors training seminars such as utility board training, financial management, asset management and budget and rate setting training. In addition to these informational resources, financial assistance may be available through Ohio EPA's Drinking Water Assistance Fund (DWAF).

Ohio EPA also has the authority under the 1996 amendments of the SDWA to help fund infrastructure improvements, through capitalization grants, needed to comply with the State requirements. These grants fund the Water Supply Revolving Loan Fund, which provides low interest loans to community and non-profit systems.