



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information: Amanda Payton, Ohio Environmental Protection Agency

Regulation/Package Title: Surface Water Treatment 2018

Rule Number(s): 3745-81-65, 3745 81-66 and 3745-81-71

Date of Submission for CSI Review: September 27, 2018

Public Comment Period End Date: October 27, 2018

Rule Type/Number of Rules:

New/___ rules

No Change/ ☒ 3 rules (FYR? ☒)

Amended/ _ rules (FYR? _)

Rescinded/___ rules (FYR? __)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Rules in Chapter 3745-81 of the Ohio Administrative Code (OAC) establish requirements for surface water treatment. Rule 3745-81-65 establishes the type and frequency of source water monitoring requirements as part of the Long Term 2 Enhanced Surface Water Treatment Rule. Rule 3745-81-66 sets forth requirements for systems to complete following their source water monitoring for E. coli and/or Cryptosporidium. The rule also incorporates standards for data collected prior to adoption to this rule (or grandfathered data). These requirements supplement those previously established in rules 3745-81-71 to 3745-81-75 of the Administrative Code. OAC Rule 3745-81-71 establishes general requirements for filtration and disinfection of surface water sources. These rules have been reviewed pursuant to the five-year rule requirements set forth in ORC 106.03 and the division is not proposing changes.

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- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

ORC Section 6109.04 authorize the Agency to adopt this regulation and states that the director shall “adopt, amend, and rescind such rules in accordance with Chapter 119 of the Revised Code as may be necessary or desirable to...govern public water systems to protect the public welfare, including rules governing contaminants in water that may adversely affect the sustainability of the water for its intended uses or that may otherwise adversely affect the public health or welfare.”

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

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

Yes, these regulations enable Ohio EPA to administer the Safe Drinking Water Act (SDWA), as well as retain primary enforcement authority from the Federal Government. These rules are used by Ohio EPA to protect drinking water sources from potential contaminants as outlined in the SDWA. The Federal counterpart to these rules can be found in Title 40 of the Code of Federal Regulations (CFR), Part 141 (National Primary Drinking Water Regulations).

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

OAC Rule 3745-81-71 exceeds the federal requirement by requiring systems using a new surface water source to sample for specific contaminants and report the results. This requirement ensures that the new source is safe for consumption prior to placing it online for a PWS and also helps determine appropriate treatment if needed. The requirement is currently effective and there are no impacts on costs in this rule making. OAC rules 3745-81-65 and 3745-81-66 do not exceed the federal requirement.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The Ohio-specific public policy goals (as stated in ORC 6109.03 and ORC 6109.04) are 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 (SDWA) and by adopting rules that regulate contaminants in water that may adversely affect the public health or welfare. These rules are required for Ohio to maintain SDWA primacy and

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protect the public from harmful microbes (such as *Cryptosporidium*) through the filtration and removal of pathogens found in drinking water prior to distribution for public consumption.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of the rules in Chapter 3745-81 is based on compliance rates. Compliance may be determined through monitoring and reporting results, review of plans and confirmation of installation, during sanitary surveys (onsite inspections) or a combination thereof.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Stakeholders include public water system owners and operators, consultants, environmental organizations, other state agencies and in general, the public at large. The only measure someone has to take to be notified of DDAGW's potential rule activity is to request to be added to our electronic or hard-copy mailing list. In fact, stakeholders may sign-up themselves up for this notification.

Stakeholders were notified of DDAGW's plans to review rules on March 21, 2018 by electronic or regular mail in accordance with their request. The rules were placed into interested party review (IPR) on September 27, 2018. OAC Rule 3745-81-71 was placed as an amendment to clarify a requirement of having “properly operating processes” to meet the treatment technique requirement. The agency received several comments on this draft rule language and based on discussions with USEPA and the regulated community, the agency is now proposing to file this rule as “no change”. The agency has developed a response to comments document to address comments and explain the rationale of filing the rule as “no change”. OAC 3745-81-65 and 3745-81-66 were placed

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into IPR as “no change”. No comments were received on the proposal to file them as “no change”.

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

The rules were placed into interested party review on September 27, 2018. OAC Rule 3745-81-71 was placed as an amendment to clarify a requirement of having “properly operating processes” to meet the treatment technique requirement. The agency received several comments on this draft rule language and based on discussions with USEPA and the regulated community, the agency is now proposing to file this rule as “no change”. The agency has developed a response to comments document to address comments and explain the rationale of filing the rule as “no change”. OAC 3745-81-65 and 3745-81-66 were placed into IPR as “no change”. No comments were received on the proposal to file them as “no change”.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Statutory authority for these rules is established in Section 6109. of the Revised Code and Ohio EPA promulgated these rules under OAC Chapter 3745-81. References used include the latest revisions to the Federal Surface Water Treatment Rules are found in Title 40 of the CFR Parts 141 and 142 (National Primary Drinking Water Regulations Implementation). The federal counterparts, which include the SDWA Amendments of 1996, are the foundation for these rules.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

In order to retain primary enforcement authority, Ohio EPA is required to adopt the federal counterparts of rules. Therefore, Ohio EPA could not consider alternatives to rules in Chapter 3745-81.

13. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules in this package are performance-based and will demonstrate the overall effectiveness of scientifically developed surface water treatment processes to reduce pathogens, such as Cryptosporidium in public drinking water.

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

Ohio EPA has reviewed internal regulations and determined there are no duplications.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Ohio EPA provides draft rule revisions to staff for internal review and comment. Additionally, training may be provided, and all effective rule revisions are distributed to staff. Implementation of these rule includes the following:

- Seeking input from staff on implementation problems and developing solutions.
- Involving staff in developing the rule amendments.
- Developing internal procedures and guidance documents for staff to use in implementing rules.
- Regularly notifying staff of rule changes.
- Giving presentations on rule updates.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The cost of compliance impact of all rules in this rules package would fall upon surface water PWSs.

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

3745-81-65 and 3745-81-66: The impact will include any monitoring costs for surface water PWSs who either have not completed an initial and second round of source water monitoring; for those who do not provide a total of at least 5.5-log treatment for the inactivation of viruses; or for PWSs not able to meet grandfathering requirements.

OAC Rule 3745-81-71 The costs associated with providing adequate filtration, disinfection sampling, and analysis of surface water to ensure treatments meet Safe Drinking Water Act standards. The cost of surface water treatment rules is distributed among several rules.

c. Quantify the expected adverse impact from the regulation

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

3745-81-65 and 3745-81-66: The lack of amendment will not affect the cost to comply. The source of information for the estimated financial impact was derived from U.S. EPA's Long Term 2 (LT2) Enhanced Surface Water Treatment Rule. The costs included cover annual, steady costs required to maintain treatment and monitoring compliance with LT2 requirements. Under the current rule, PWSs are required to complete initial and future monitoring for E. coli and Cryptosporidium (depending on the E. coli results). All of the systems have completed their first round of monitoring and therefore there is no cost of initial monitoring associated in this rule making. Some PWS may experience a one-time cost of installing treatment following the second round of source water monitoring. Currently there are 8 systems that are required to conduct second round of monitoring. The table demonstrates the one-time cost for systems that are required to monitor and install treatment. The figures are based on 2003 data and inflated to the present year per the Bureau of Labor statistics calculator.

System Size	Monitoring and Treatment
Serving<10,000 persons	47,906/system
Serving > 10,000 persons	1,349,692/system

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Note: Above costs include both monitoring and treatment costs. Less than 10 percent of the public water systems in Ohio have been required to provide treatment because their monitoring results were low enough. However, we still have 8 systems that have the potential to need treatment because they haven't completed monitoring.

Systems will also be expected to accrue a total on-going annual cost of \$31,035.00 with inflation¹ regardless of system size. These costs cover the additional water system functions, such as operation and maintenance, reporting costs, and wages for technical and managerial support that are likely to occur in result of the LT2 rule. These estimates are per year costs and are estimated for a 25-year time span at a 7% discounted rate (prior to having to make any capital improvements). The figures are based on 2003 data and inflated to the present year per the Bureau of Labor Statistics calculator.

¹U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar.

3745-81-71: The cost of the surface water treatment rules is distributed among rules OAC Rule 3745-81-71 through 3745-81-75: The cost of compliance with 3745-81-71 through 3745-81-75 was derived from U.S. EPA's Surface Water Treatment Rule and Long Term 1 (LT1) and Long Term 2 (LT2) Enhanced Surface Water Treatment Rules. Most of the costs for PWSs serving a population of 10,000 or more persons were established in rule for at least a decade. The costs of compliance listed below do not include capital costs, as all existing surface water systems have met the initial requirements, but they do cover provisions that currently apply to these systems. Under these rules, approximately 113 surface water systems in Ohio are required to monitor and report turbidity to the Agency. The average annual cost per system is \$1089.53¹ with inflation¹ and the statewide annual cost is approximately \$123,116.89¹.

The rules also require PWSs proposing a change to their disinfection process to complete an evaluation of the existing process and consult with Ohio EPA about how their new one will affect disinfection performance. The cost to comply is approximately \$5,393.69.00 to \$6,472.43 (with inflation)¹ for the development of a disinfection profile, calculating a benchmark and consultation with the Agency. The requirements are currently effective and there are no impacts on costs in this rule making. The rule also requires systems using a new surface water source to sample for specific contaminants and report the results in order to determine appropriate treatment. The cost for monitoring for *Cryptosporidium* is accounted for in OAC rule 3745-81-65 and 3745-81-66. Based on information gathered by Ohio EPA from several laboratories, the average cost of analysis

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for a single sample of volatile organic compounds, synthetic organic compounds, inorganics and bacteria is \$112, \$134.3, \$173.67 and \$28 respectively. The requirements are currently effective and there are no impacts on costs in this rule making.

¹U.S. Department of Labor, Bureau of Labor Statistics Inflation Calculator (2013-2018)

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

The Agency considers the overall cost for complying with these regulations to be minor in comparison with ensuring that underground sources of drinking water are protected for public consumption.

Regulatory Flexibility

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

No exemptions or alternative means of compliance for small businesses have been written into the rules being filed in this package.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Ohio EPA does not assign fines and penalties for first-time offenders and prefers to obtain compliance through outreach first and if needed, written notice of violations prior to any type of formal enforcement.

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

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 can help small business 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

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- supply;
- Developing and/or completing their capability assurance plan.

RCAP also sponsors training seminars such as utility board training, financial management, asset management and budget and rate setting training. Ohio EPA also provides both administrative and technical training for PWSs at low to no-cost. In addition to these informational resources, financial assistance may be available through Ohio EPA's Drinking Water Assistance Fund (DWAF).