



Common Sense Initiative

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Business Impact Analysis

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

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Regulation/Package Title: Primary Drinking Water Rules- Amendments

Rule Number(s): 3745-81-23, 3745-81-31, 3745-81-33, 3745 -81-67 and 3745-81-68

Date of Submission for CSI Review: 09/04/2019

Public Comment Period End Date: 10/07/2019

Rule Type/Number of Rules:

New/___ rules

No Change/ _ rules (FYR? __)

Amended/ x_ rules (FYR? x_)

Rescinded/___ rules (FYR?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) set forth primary drinking water standards for public water systems (PWS), as set forth in the federal Safe Drinking Water Act Amendments. Rules in chapter 3745-81 establish the following requirements:

- Inorganic chemical monitoring requirements.
- Reporting requirements for PWSs
- Record keeping requirements for PWSs.
- LT2 bin classification (Cryptosporidium bin concentration for water treatment plant) and treatment technique requirements.
- Microbial toolbox options for meeting Cryptosporidium treatment requirements.

Ohio EPA has reviewed these rules pursuant to the five-year rule requirements set forth in ORC Section 106.03 and is proposing the following minor revisions:

- OAC Rule 3745-81-23 making minor grammar corrections.
- OAC Rule 3745-81-31 including references to OAC Rule 3745-89-08.
- OAC Rule 3745-81-33 minor revisions for identification of sample requirements.

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- OAC Rule 3745-81-67 clarifying that failure to comply with reporting requirements except for the requirement to submit a general plan is a treatment technique violation.
- OAC Rule 3745-81-68 adding a reference to “Guidance for Implementing Action Spectra Correction with Medium Pressure UV Disinfection (Web Report #4376)”

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. OAC Rules 3745-81-23, 3745-81-31 and 3745-81-33 are used by Ohio EPA to protect drinking water sources from potential contaminants as outlined in the SDWA and include reporting requirements for PWSs. OAC Rules 3745-81-67 and 3745-81-68 assist the state with implementing the federal LT2 Enhanced Surface Water Treatment Rule.

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

OAC Rules 3745-81-67 and 3745-81-68: Ohio requires all PWSs using surface water, in whole or in part, to provide filtration treatment.

OAC Rules 3745-81-67 and 3745-81-68: Ohio requires all PWSs to obtain approval of plans prior to any substantial change or modification to their system, such as treatment design or operation. OAC Rule 3745-81-68: Requires systems to monitor turbidity, maintain daily logs and assure an operator of record is signing operator logs, which is consistent with established requirements in OAC Chapter 3745-7 and Chapter 3745-81. The draft amendment to the rule incorporates a reference that is not included in the federal rule. This guidance document recommends a safety factor be applied to medium pressure UV reactors based on new information observed in research by the UV industry.

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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 public purpose for adopting such regulations is ensuring the availability of a safe and adequate supply of public drinking water. These rules help to achieve this purpose by ensuring PWSs monitor for contaminants and have drinking water sources that are protected from contaminants through the implementation the LT2 Enhanced Surface Water Treatment Rule.

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 PWS owners and operators, consultants, environmental organizations and the general public. 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.

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

10. 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 this rules package during early stakeholder outreach.

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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?

Ohio EPA obtained statutory authority in Chapters 6109 of the Revised Code and promulgated these rules under OAC Chapter 3745-81. References used include the latest revisions to 40 CFR Parts 141. 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. In addition, 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 Safe Drinking Water Act in Ohio therefore no alternate regulations were considered.

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.

Yes, the rules in this package are performance-based. OAC Chapter 3745-81 establishes the required outcome for meeting public drinking water standards, including monitoring and reporting for contaminants and providing treatment for reducing them if needed to achieve compliance.

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.

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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;

PWSs in the state of Ohio of all population sizes and types are impacted by at least some of these rules. Rules 3745-81-67 and 3745-81-68 will impact PWSs with a surface water source. OAC Rule 3745-81-68 will specifically impact those systems that use UV treatment. Rule 3745-81-31 directly impacts laboratories, which may or may not also be a PWS. Rule 3745-81-33 will impact all PWSs, requiring them to retain records pertaining to their system.

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

OAC Rule 3745-81-23: The cost associated with this rule is the cost of conducting monitoring for inorganic contaminants to determine compliance with maximum contaminant levels. The rule includes provisions that would allow for reduced monitoring.

OAC Rule 3745-81-31: The cost of reporting the results of analysis. Laboratories are provided with software and forms from the Agency to submit data, so they should not acquire an additional expense outside of normal business operations.

OAC Rule 3745-81-33: The cost of maintaining various records pertaining to their PWSs.

OAC Rules 3745-81-67 and 3745-81-68: The cost for monitoring for cryptosporidium and if needed the cost of treatment.

The amendments proposed in the rule package is not expected to impact the cost of the 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.

OAC Rule 3745-81-23: The rule requires PWSs to conduct monitoring for inorganic contaminants. Based on information gathered by Ohio EPA from various laboratories, the average costs of analysis of a single sample of inorganics, nitrate and nitrite are \$173.67, \$24.05 and \$18.99 respectively. The rule also requires monitoring for disinfection by products for PWSs that treat with ozone and chlorine dioxide. This cost estimate is based

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on an economic analysis conducted by USEPA. The federal economic analysis was published with the final Stage 2 Disinfectants/Disinfection Byproducts Rule (DBPR) on January 4, 2006 in Volume 71, Number 388 of the Federal Register. That cost estimate represented total annualized capital and operational costs to comply with all requirements of the Stage 2 DBPR. These costs include non-treatment costs of rule implementation, Initial Distribution System Evaluations (IDSEs), Stage 2 DBPR monitoring plans, additional routine monitoring, and operational evaluations. Systems required to install treatment to comply with the maximum contaminant levels (MCLs) will accrue additional costs of treatment installation as well as operation and maintenance. Because the requirements associated with the Stage 2 DBPR are distributed among multiple rules, this cost estimate represents costs associated with OAC rules 3745-81- 12, 3745-81-22, 3745-81-23, 3745-81-24, 3745-81-70 and 3745-81-77. This table provides a summary of the federal analysis broken down according to PWS size and type of source water (e.g., surface or ground water) as follows:

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

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

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

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monitoring costs. The draft amendment is not expected to have an effect on the current cost of the rule.

OAC Rule 3745-81-31: The cost to comply with this rule is negligible because Ohio EPA provides each laboratory with software and forms and therefore the majority of the laboratories do not charge the PWSs for reporting their monitoring results. The draft amendment is not expected to have an effect on the current negligible cost of compliance.

OAC Rule 3745-81-33: The estimated cost of compliance for this rule is associated with the cost of storing required records, which will depend on the volume of records to be maintained. The volume of records will vary depending on the size of the system, from one filing cabinet's worth of records to an entire filing room. The cost of complying with this rule could therefore range from \$360 to \$ 1200 (a one-time cost for a standard 5-drawer filing cabinet, depending on the type and a couple of boxes of file folders and hanging filing folders at Staples.com), to an annual cost of \$1642* (approximate cost for maintaining an account with National Records Centers, who have off-site locations in five cities in Ohio). The draft amendment will not affect the cost of the current rule.

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

OAC Rules 3745-81-67 to 3745-81-68: These rules were previously adopted in response to the federal Long Term 2 Enhanced Surface Water Treatment Rule. The rules supplement existing microbial treatment regulations and targets PWSs with higher potential risk from Cryptosporidium. Existing regulations require most PWS that filter to remove at least 99% of the Cryptosporidium. However, there are a subset of systems with a greater vulnerability to Cryptosporidium and require additional treatment. The rules require surface water systems or ground water systems under the direct influence of surface water to monitor their source water to determine an average Cryptosporidium level. In addition, these systems will likely have to adopt new practices and/or install more treatment for Cryptosporidium. Cost estimates are derived from the National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule; Final Rule and are annualized over 25 years at a 7% discount rate. The costs include one-time costs that occur near the beginning of rule implementation and annual, steady costs that systems (and the State Agency) will incur after systems have made necessary changes to treatment and/or monitoring to comply with the LT2 rule.

Annualized Total Costs

Total on-going annual costs are expected to be \$29,346 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). This figure is based on 2003 data and inflated to the present year

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per the U.S. Department of Labor, Bureau of Labor Statistics calculator. The draft amendment will not affect the cost of the rule.

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.

The federal rules on which these rules are based include monitoring requirements that are based on population. Additional exemptions or alternative means of compliance for small businesses have been written into this rules package, as Ohio must adopt rules that are no less stringent than the federal counterpart.

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?

For technical assistance, small business PWSs can turn to Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP), their Ohio EPA District Office Inspector, or the Rural Community Assistance Program (RCAP). OCAPP is a non-regulatory program that can help small businesses comply with regulations. Ohio EPA contracts with RCAP to provide assistance for PWS with a population of 10,000 or less. Ohio EPA also has the authority from the 1996 Amendments to the Safe Drinking Water Act to help fund infrastructure improvements, through capitalization grants, needed to comply with state requirements. These grants fund the Water Supply Revolving Fund, which provides low-interest loans to community and not for profit water systems. Loans can provide support design work in addition to 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.

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