Ohio | Common Sense Initiative

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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Revised Total Coliform Rules (RTCR)

Rule Number(s): 3745-81-14, 3745-81-21, 3745-81-50, 3745-81-51, 3745-81-52, 3745-81-53, 3745-81-54, 3745-81-55

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/___2_ rule (FYR? Yes, 2)

Amended/_4 rules (FYR? Yes, 4)

Rescinded/__2__ rules (FYR? Yes, 2)

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.

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.

   Ohio EPA's Division of Drinking and Ground Waters (DDAGW) is reviewing and considering revisions of OAC Rules 3745-81-50 through 3745-81-55 of the Ohio Administrative Code (OAC) to satisfy the five-year rule review requirements of section 106.03 of the Ohio Revised Code (ORC). These rules set forth regulations for monitoring requirements for total coliform (TC) bacteria and how public water systems (PWSs) must respond when samples show that TC bacteria are present within a water supply.

   DDAGW is proposing that OAC rules 3745-81-54 and 3745-81-53 be filed with no changes and that rules 3745-81-14 and 3745-81-21 which cover the maximum contaminant levels for microbial contaminants and the monitoring requirements for coliform, respectively, be rescinded.

DDAGW is also proposing to file rules 3745-81-50, 3745-81-51, 3745-81-52, 3745-81-53 and 3745-81-55 with revisions, most notably in rules 3745-81-50 and 3745-81-51. For instance, adding a new paragraph to rule 3745-81-50 to reiterate that TC sample collection must be done under "normal operating conditions." PWSs cannot disinfect prior to collecting routine and repeat samples. Within rule 3745-81-51 the agency is proposing to clarify that start-up resamples for seasonal systems under Appendix A section 5.2.1 must be 2 consecutive samples at least 30 minutes apart since the only way for these small noncommunity systems to disinfect their PWS is to feed chlorine into their well and pull it through their entire PWS into the distribution system. This also aligns with the well disinfection requirements in rule 3745-9-08. The agency is also recommending that the "5 days prior to serving water to the public" requirement in rule 3745-81-51 Appendix A section 6.1 3745-81-55(A)(5) be removed and replaced with "submit on or before the first day of the primary operating season" Also within rule 3745-81-51, it is also proposed that the name of Start-Up checklist in Appendix A within the rule be changed from "Seasonal Public Water System Start-Up Requirements and Checklist" to the shorter "seasonal start-up checklist". The agency also proposes to clarify the monitoring requirements of fully pressurized seasonal systems in 3745-81-51(B)(5)(d). Lastly, the agency proposes to move 3745-81-14 paragraph (H) to 3745-81-50 then rescind 81-14 to minimize duplicated language.

OAC rule 3745-81-52 addresses repeat monitoring requirements for E. coli and contains only one proposed spelling correction. Rule 3745-81-55, which covers coliform record keeping and reporting requirements, similarly received a small proposed amendment to clarify when PWS must certify they have complied with the start up procedure.

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 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."

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 rules adopt the Revised Total Coliform Rule (RTCR) 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.

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

OAC Rule 3745-81-51(B)(4): This paragraph specifies criteria for that a small ground water system must meet to be able to return to baseline routine monitoring schedule of one sample per quarter after it has triggered an increase to one sample per month. The Ohio EPA have provisions in place that exceed federal requirements within this rule, specifically they require compliance with requirements for nitrate and nitrite Maximum Contaminant Levels (MCL) and monitoring requirements. Nitrate levels that exceed the MCL can cause adverse effects to humans' circulatory system, with infants being acutely at risk. Therefore, the Ohio EPA believes it is appropriate to coordinate compliance efforts with expectations in these program areas.

OAC Rule 3745-81-51(D)(1): This paragraph provides 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. Whereas the Ohio EPA requires all these systems with varying populations to still sample 4 times a month. 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 TC samples per month in the distribution system are appropriate to monitor the continuing effectiveness of the treatment processes within these smaller water systems.

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 (as stated in ORC Section 6109.04) is ensuring the availability of a safe and adequate supply of public drinking water. These rule amendments help achieve this purpose by ensuring that the monitoring and testing for total

coliform at PWSs is done correctly and will result in an accurate measure of contaminant's concentration within the system.

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

   The Ohio EPA will measure the success of these rules on PWS compliance rates within our various drinking and ground water programs. PWS compliance rates are typically discovered through reported data and during sanitary surveys of said system.

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 must 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 for this notification.

   Stakeholders were notified of the DDAGW's intent to file these proposed changes on October 10th, 2020 by electronic mail. Stakeholders were able to comment on the proposed changes in Early Stakeholder Outreach phase from October 10, 2020 to November 10, 2020.

   In addition, DDAGW will be seeking comment from stakeholders during the division's interested party review period. The interested party review period occurs before the rules are filed with JCARR and is used to address any concerns or questions from staff and our stakeholders.

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

    Stakeholders were notified of the DDAGW's intent to file these rules as Amended on October 10th, 2020 by electronic mail. There were 3 comments received in response to the

proposed changes, all of which were requests to clarify the disinfection requirement amendments made to rule 3745-81-50.

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 rules 3745-81-50 through 3745-81-55. References used include the latest revisions to 40 CFR Part 141 Subpart Y. Based on past data collected by the Ohio EPA and under previously stated authority of Chapter 6109 of the Ohio Revised Code, the agency determined that the amendments to be made are appropriate. These rules allow the state to ensure that total coliform testing is done correctly, and free from user or procedural error that might lead to an inaccurate measure of TC within a PWS. For example, rule 3745-81-51 has been amended to emphasize that testing must take place under "normal operating conditions", limiting the likelihood that a sample is contaminated by disinfection products or other contaminants. The federal counterparts, which include the SDWA Amendments of 1996, are the foundation for these rules. For Ohio to have primacy with the National Primary Drinking Water Regulations these regulations are required to be enforced at all PWSs.

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 an alternative to these rules.

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.***

    Rules 3745-81-50 through 3745-81-55 are performance-based regulation because they set a required outcome that must be met. Specifically, the rules set monitoring requirements when testing for total coliform, as well as outline how a PWS must respond when said monitoring reveals TC is present in the water system.

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

The agency reviewed the regulation alongside existing regulatory documents and determined they did not duplicate. Rules 3745-81-14 and 3745-81-21 are both being rescinded to avoid duplicated language that has since been included in rules 3745-81-50 and 3745-81-51.

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 rules include 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; and

All public water sources in the state of Ohio will be subject to regulation under these rules.

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

Rule 3745-81-50 details what is required of a PWS when they are sampling the water for total coliform in the system. The rule requires all PWSs to use "the best technology available" to ensure the contaminant does not exceed the Maximum Contaminant Level (MCL). This can be exemplified by proper well placement, construction and then protection once it is built. The requirements in rule 3745-81-50 are also satisfied by proper pipe maintenance within the PWS distribution system and adhering to disinfection and filtration requirements. Rule 3745-81-51 covers the varying monitoring requirements for different kinds of PWSs. For example, required monitoring may increase from quarterly sampling to monthly sampling if TC has been detected. Rule 3745-81-52

outlines the procedure after a positive TC test as well, specifically the required repeat sampling that must take place after a positive sample. Rule 3745-81-53 discusses what kind of results from required monitoring would trigger an in-depth assessment of the PWS. Rule 3745-81-54 further outlines what may trigger a MCL violation and what a PWS must do if it incurs a violation. Finally, rule 3745-81-55 summarizes the requirements for the reporting of a positive TC contamination within a PWS, including the stringent timelines of when the director and public must be notified of the contamination.

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.

Rules 3745-81-50 through 3745-81-55 summarize the monitoring requirements and regulations for total coliform (TC) for bacteria and how public water systems (PWSs) must respond when samples show that TC bacteria are present within a water supply. The amended rules package language does not introduce new standards that PWSs must comply with including increased or altered monitoring. Therefore, the additional financial impact on the PWS and surrounding businesses will be minimal due to these exclusively procedural changes. Rule 3745-81-52, which outlines the repeated sampling requirements if a positive TC test is found, is the only rule in the package that calls for additional testing, and only in the event of a previous positive TC test. A majority of PWS will not be subject to pay for the repeated sampling because most PWS will not have a positive TC sample. The PWS that do find positive TC samples within their source will have to pay for repeat sampling. It will cost PWS approximately $25 for each TC sample conducted.

The rest of the rules 3745-81-50 through 3745-81-55 all have costs that are consistent with standard testing and monitoring techniques and do not put additional financial strain on the PWSs. The greatest proportion of any additional costs will be coming from corrective actions to fix the problems that were found during the PWS assessment.

The previous cost to comply with the requirements of these rules were found to be approximately $86 per PWS when the rule package was last amended in 2007. Since the amendments made to this rules package do not alter the set Maximum Contaminant Level for TC or call for more stringent and frequent monitoring by PWSs, we can safely predict that the cost associated to comply with the rules is has not changed and needs to be adjusted only for inflation. Once adjusted for the current year, the price to comply with these rules will average to $112 for all PWSs in Ohio.

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

The agency determined that the regulatory intent justified the adverse impacts as the additional costs are insignificant when compared to ensuring the public has drinking water free of contaminants. Much of the costs mandated by the rule are a part of routine monitoring practices already**.**

Regulatory Flexibility

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

There are some exemptions and alternative means of compliance built into the rules package. Specifically, rule 3745-81-51 contains multiple provisions where certain allowances are made to allow greater flexibility for PWSs in the form of when they must take their repeat samples to check for total coliform (TC).

3745-81-51(B)(5) – This paragraph provides routine monitoring requirements and start-up procedures for seasonal systems. The text includes discretionary authority possessed by the director that allows them to determine whether to allow reduced monitoring and modified start-up procedures for year-round fully-pressurized seasonal systems. The Federal RTCR does not require states to adopt this discretionary authority.

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 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.

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 that may allow for an extension of the 24-hour time limit up to as long as 96 hours 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.

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 business PWSs can go to their Ohio EPA District Office Inspector or Rural Community Assistance Program (RCAP) for technical assistance. Ohio EPA contracts with RCAP to aid PWSs with a population of 10,000 or less to address their drinking water and wastewater treatment needs. OCAPP (Ohio EPA's Office of Compliance Assistance and Pollution Prevention) is another resource available to help small business owners. OCAPP is a nonregulatory 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 epa.ohio.gov/ocapp