



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

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: Primary Drinking Water Standards 2020 NC

Rule Number(s): 3745-81-26, 3745-81-64, 3745-81-69, 3745-81-76 and 3745-81-77

Date of Submission for CSI Review: 02/26/2020

Public Comment Period End Date: 03/30/2020

Rule Type/Number of Rules:

New/___ rules

No Change/ x_5 rules (FYR? x_5_)

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Rescinded/___ rules (FYR?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.

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. These rules establish the following:

- General requirements of the Long Term 2 (LT2) Enhanced Surface Water Treatment Rule.
- Reporting and recording requirements for public water systems affected by the LT2 rule.
- Treatment technique requirements for the control of disinfection byproduct (DBP) precursors.
- Requirements for designating water sources as surface water or ground water
- Radionuclide monitoring requirements.

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

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. OAC rules 3745-81-64, and 3745-81-69 of the OAC assist the state with implementing the federal LT2 Enhanced Surface Water Treatment Rule and OAC rule 3745-81-77, the federal Disinfectants/Disinfection Byproducts Rule. OAC Rule 3745-81-76 fulfills a primary requirement to establish how Ohio will designate water sources. 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 3745-81-64 exceeds the federal requirement by requiring all PWSs using surface water, in whole or in part, to provide filtration treatment This requirement ensures that the new source is safe for consumption prior to placing it online for a PWS. The requirement is currently effective and there are no impacts on costs in this rule making

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

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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 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 revise rules 3745-81-26, 3745-81-64, 3745-81-69 and 3745-81-76 on October 3, 2018 by electronic or regular mail in accordance with their request. The division had initially proposed to amend these rules to make minor grammar correction, however on further review, it was determined that no

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corrections are needed at this time. No comments were received during early stakeholder outreach.

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?

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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?

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.*

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Rules in Chapter 3745-81 are performance-based in that they require monitoring and reporting of the water to help determine whether it will exceed public health thresholds established for various drinking water contaminants. The rules demonstrate the overall effectiveness of scientifically developed surface water treatment processes to reduce contaminants 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;

Public water systems in the state of Ohio of all population sizes and types are impacted by at least some of these rules. OAC Rules 3745-81-64, 3745-81-69 and 4745-81-77 will impact PWSs with a surface water source. OAC Rule 3745-81-26 will impact PWSs that are required to monitor for radionuclide contaminants in drinking water.

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

OAC Rule 3745-81-26 the cost associated with monitoring for radionuclide contaminants in drinking water.

OAC 3745-81- 77- the cost associated with complying with the Stage 2 Disinfectants/Disinfection Byproducts Rule

OAC rule 3745-81-76 affect public water systems using well water as part of or as their entire water source. PWS are required to provide information to facilitate source designation that include information about the construction of the water wells used by the system, and existing results from contaminant analysis.

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.

3745-81-64 and 3745-81-69: The lack of amendment will not affect the cost to comply. These rules were adopted in response to the federal Long Term 2 Enhanced Surface Water Treatment Rule (LT2). The rules supplement existing microbial treatment regulations and targets public water systems (PWS) with higher potential risk from Cryptosporidium. 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 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. 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. 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 in Ohio have

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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

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.

3745-81-77: The lack of amendment will not affect the cost to comply. This cost estimate is based on an economic analysis conducted by USEPA as it applies to public water systems in Ohio. 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. These costs include nontreatment costs of rule implementation, Stage 2 DBPR monitoring plans, additional routine monitoring, operational evaluations, and treatment installation as well as operation and maintenance for systems required to install treatment to comply with the maximum contaminant levels (MCLs). These cost estimates may be inflated because they include Initial Distribution

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System Evaluations or IDSEs, which are no longer required but were included in U.S. EPA's economic analysis

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.

Table 1 provides a summary of the federal analysis broken down according to system size and type of source water (i.e., surface water or ground water).

System Type, Source Water and Population Served	Cost per System by PWS Size and Type*
Community surface water >10,000	\$18,217.76
Community ground water >10,000	\$8,928.37
Community surface water <10,000	\$ 1,248.73
Community ground water <10,000	\$1,385.75
Nontransient noncommunity surface water >10,000	\$16,207.21
Nontransient noncommunity ground water >10,000	\$8,103.00
Nontransient noncommunity surface water <10,000	\$1,635.09
Nontransient noncommunity ground water <10,000	\$490.86

*U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar used to account for inflation from 2009 - 2019.

3745-81-26: The rule is currently effective and there are no impacts on costs in this rulemaking. The cost associated with monitoring for radionuclide contaminants in drinking water. Based on information collected by EPA from various laboratories, the average cost of analysis of a sample for Gross Alpha and Radium 228 activity is \$87.50 and \$120 respectively.

3745-81-76: The rule is currently effective and there are no impacts on costs in this rulemaking. PWSs using well water as part or as their entire water source are required to provide information to facilitate source designation that include information about the construction of the water wells used by the system, and existing results from contaminant analysis. The estimated cost of information gathering efforts ranges from few dollars to make copies available and as high as approximately \$1,099.57* for paying someone to

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evaluate a well's construction. The cost is an estimate from Ohio EPA staff and their experience working with PWSs that had their well's construction evaluated.

*U.S. Department of Labor, Bureau of Labor Statistics Inflation Calendar used to account for inflation from 2009 - 2019.

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 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?

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:

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- 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.

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).

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.