



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):

Primary Drinking Water Standard

Amendments – 3745-81-24 (Organic Chemical Monitoring Requirements)

Rule Number(s): 3745-81-24

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/_1_ rules (FYR? _Y_)

Rescinded/___ rules (FYR?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):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- 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 is proposing to amend OAC rule 3745-81-24, which establishes organic chemical monitoring requirements. This rule has been reviewed pursuant to the five-year rule requirements set forth in ORC 116.03 and the division is proposing changes. The goal of the proposed changes is to set forth in rule a triggered approach to diagnosing the best treatment options for consecutive systems who have elevated Disinfection byproduct (DBP) levels. The proposed language has been added to section (C)(21)(b) and (C)(22)(a) through (C)(22)(d) to ensure and outline the following:

- If a consecutive PWS has two Operational Evaluation Level (OEL) exceedances or two Maximum Contaminant Level (MCL) exceedances within a 12-month period, the consecutive PWS will begin monitoring the quarter following the second exceedance at a master meter monitoring location acceptable to the director and will continue to monitor every quarter for at least four consecutive quarters unless otherwise directed
- If at any point the consecutive system has an individual result at their master meter monitoring location that is greater than the Total Trihalomethane (TTHM) or

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Haloacetic Acid Five (HAA5) MCL, the wholesaler and any system conveying water to the consecutive PWS will begin monitoring at or as close as possible to their respective master meters which serves the consecutive with the exceedance. The system will then monitor for a minimum of four consecutive quarters unless otherwise directed as determined by the director.

- Once the wholesaler(s) have begun monitoring at their master meter location, and an individual sample result exceeds the TTHM or HAA5 MCL, the consecutive PWS, the wholesaler, and any PWSs conveying water to the consecutive must complete their applicable sections of an OEL report. OEL reports will continue to be completed by all parties as long as individual results at any of the master meter monitoring location(s) continue to be above the TTHM or HAA5 MCL
- Once a Locational Running Annual Arithmetic Average (LRAA) is established for the wholesaler(s), if the LRAA exceeds the TTHM or HAA5 MCL, that location shall become an additional DBP compliance monitoring location.

In addition, the rule has also been revised to correct the paragraph citations to correspond to OAC Rule 3745-81-12.

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 paragraph (B)(2), “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 system to protect the public welfare, including rules governing contaminants in water that may adversely affect the suitability 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, rule 3745-81-24 enables Ohio EPA to administer the Safe Drinking Water Act (SDWA), as well as retain primary enforcement authority from the Federal Government. This rule is used to protect the public from potential contaminants found in drinking water as outlined in the SDWA.

In addition to the general authorities cited above, SDWA 1412(b)(2)(C) requires specifically that EPA promulgate the Stage 2 Disinfection Byproducts Rule (DBPR).

“The Administrator shall promulgate an Interim Enhanced Surface Water Treatment Rule, a Final Enhanced Surface Water Treatment Rule, a Stage 1 Disinfectants and Disinfection Byproducts Rule, and a Stage 2 Disinfectants and Disinfection Byproducts Rule in

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accordance with the schedule published in Volume 29, Federal Register, Page 6361 (February 10, 1994), in Table III.13 of the proposed Information Collection Rule.” (SDWA 1412(b)(2)(C))

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

Rule 3745-81-24 exceeds the federal counterpart, as the federal counterpart to this rule does not address wholesaler PWS accountability for conveying water to consecutive systems with elevated TTHM or HAA5 levels. Ohio EPA believes it is necessary for the wholesale PWS to be responsible for conveying water that is below the MCL which allows the consecutive to be able to maintain compliance with the SDWA. It is integral for wholesale PWSs and consecutive systems to work together through the completion of OEL reports to address the location and source of the elevated DBP levels throughout the system. These additions make the rule more stringent.

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 purpose for adopting such regulations is ensuring the availability of a safe and adequate supply of public drinking water by addressing and diagnosing consecutive system elevated DBP levels. This rules help to achieve this purpose by ensuring consecutive PWSs with elevated DBP levels work with their wholesaler and conveying systems to analyze the source of elevated levels by completing comprehensive OEL reports, triggered monitoring of drinking water for Total Trihalomethanes (TTHMs) and Haloacetic Acids 5 (HAA5), and ensuring the design and treatment of drinking water meet industry and public health standards.

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

The Agency will base success of this rules on public water system compliance rates regarding triggered DBP monitoring, and the completion of applicable OEL report sections. PWS compliance rates are typically discovered through reported data and during sanitary surveys of said system, and will also be made evident by the completion of comprehensive OEL reports.

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

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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 included public water system owners and operators, industry consultants, environmental organizations, other state agencies, and the public at large. In order to be notified of DDAGW's potential rule activity, the request to be added to our electronic or hard-copy mailing list must be completed. These rule activities are also publicly posted on the divisions rule-making webpage.

Stakeholders were originally notified of DDAGW's plans to revise rules on October 3, 2018 by electronic or regular mail in accordance with their request. Based on comments received during the commenting period of October 3, 2018 to November 5, 2018, a secondary Early Stakeholder Outreach period was conducted between the dates of January 8, 2019 and February 1, 2019, with an updated approach to the proposed rule.

In addition, DDAGW will be seeking comment from stakeholders during the division's interested party review period, and comments from staff during the internal review period held between April 29, 2019 and May 20, 2019. 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, including representatives from multiple systems across the state of Ohio, were very vocal during the initial Early Stakeholder Outreach period from October 3, 2018 to November 5, 2018. The comments from these systems mostly addressed concerns regarding the stringency of the initial proposed regulations, and resulted in Ohio EPA adjusting its approach to addressing elevated DBP levels in consecutive systems. Resultantly, a secondary Early Stakeholder Outreach period addressing this approach change was conducted from January 3rd, 2019 to February 1, 2019 during which comments were received from Cleveland, Cincinnati, and Columbus PWS. These comments were taken into consideration when drafting the language for the updated proposed amendments to 3745-81-24.

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?

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Scientific research was performed and analyzed by U.S. EPA in conjunction with data collection efforts derived from the Information Collection Rule (ICR) and the ICR Supplemental Survey (ICRSS). In addition, under a joint effort between EPA and the National Rural Water Association (NRWA), NRWA State chapters conducted a survey of disinfection byproduct and treatment information at small PWSs and used in the development of the federal counterpart Stage 1 and Stage 2 Disinfectants and Disinfection Byproducts Rules (DBPRs). DBPRs are part of the suite of Microbial and Disinfection Byproducts Rules (MDBPs) - a series of interrelated regulations that address risks from microbial pathogens and disinfectants/disinfection byproducts.

The Stage 2 DBPR improves on public health protection by limiting exposure to Disinfection Byproducts (DBPs), specifically Total trihalomethanes (TTHM), and Five haloacetic acids (HAA5), and was developed based on the U.S. EPA Occurrence assessment (<https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1005ED2.txt>) for the final stage 2 disinfectants and disinfection byproducts rule.

Analysis was also completed by Ohio EPA compliance staff to summarize the percentage of consecutive systems in Ohio that have been impacted by an exceedance of the maximum contaminant level for disinfection byproducts. 25% of all consecutive systems have been impacted.

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.

The regulations in OAC Chapter 3745-81 maintain consistency with existing industry and agency-wide standards and create some flexibility in rule to use approved alternatives.

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, this rule is performance-based. 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 completion of OEL reporting will also be a performance-based measure.

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

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Ohio EPA 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 implementation of this 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; and

3745-81-24: The impact would be to community and nontransient noncommunity PWSs which deliver water that has been treated with any combination of primary or residual disinfectant, and are therefore required to monitor for disinfection byproducts. The monitoring frequency is dependent upon varying factors at each system (e.g., type of source water and population). The draft amendments will impact consecutive and whole sale systems that experience disinfection byproduct exceedances (specifically TTHMs and HAA5s), resulting in increased monitoring and, if applicable, the completion of an OEL report.

This amendment will be beneficial for consecutive PWS who exceed DBP levels as a result of high levels from the wholesaler. The rule amendment will allow for wholesaler accountability and the requirement to complete a joint OEL will allow both wholesaler and consecutive system to evaluate their systems holistically to determine the cause of an exceedances. Also, this approach allows both systems to evaluate operational changes that may be effective in reducing DBP levels.

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

The costs related to this rule changes include monitoring for organic contaminants, analyzing the samples, submission of results to Ohio EPA, and maintaining records

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pertaining to their PWS. This amendment will result in the consecutive system and wholesaler that have MCL or OEL exceedances to conduct additional monitoring and may require completion and submission of a joint OEL report.

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.

3745-81-24: The cost estimate is based on U.S. EPA’s nationwide economic impact analysis of the D/DBP Rule on PWSs. The cost of 3745-24 specifically includes monitoring and analysis for organic contaminants and submission of an OEL report in case of DBP exceedances. The rule has provisions that would allow for reduced monitoring. Based on information gathered by Ohio EPA from various labs, the average cost of analysis of a single sample of TTHMs is 61.77 and HAA5s is 114.49.

The following summarizes additional compliance cost for 3745-81-24 (C)(22)(a) - 3745-81-24 (C)(22)(d): The cost estimate is based on Ohio EPA data analysis reports ran based on the total incurred laboratory cost for sampling for DBPs. This includes incurred cost of materials required to collect, hold, and analyze the samples at a certified laboratory. Additional costs of compliance include the total cost of man hours required to travel to the site, collect the sample, and deliver samples to the lab*. Depending on pay scale, distance to the site and lab, and the experience of the data collector, this value may vary largely – however would likely average between \$36-100 per sample based on certified operator hourly wages, and the number of hours required.

Averaged Analytical Costs for Public Water System DBP reporting**		
	TTHMs – cost per sample	HAAs – cost per sample
Lab 1	\$70.00	\$150.00
Lab 3	\$60.00	\$150.00
Lab 4	\$50.00	\$100.00
Lab 5	\$55.00	
Lab 7	\$84.13	\$126.46
Lab 8	\$50.00	\$60.00
Lab 9	\$75.00	\$130.00
Lab 10	\$50.00	\$85.00
Average	\$61.77	\$114.49

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* Some samples may have to be delivered by the PWS to the lab, others may need to be mailed on ice to the lab. Some instances the lab will schedule pick up of samples from the PWS. It is also unclear if this cost may be covered by the lab in some contractual agreements with PWSs. **This average cost analysis is based on economic data reported by 10 labs across the state of Ohio over in 2018, to create a comprehensive average of cost per sample.

Additional cost for the man hours required to accurately and successfully complete a comprehensive OEL report must also be taken into consideration. On average, these reports take

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 the public is supplied with a safe and reliable source of drinking water.

Regulatory Flexibility

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

There are provisions in the D/DBP rule for PWSs to be placed on reduced monitoring or to be granted a waiver from monitoring for some contaminants when the systems meet certain criteria.

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 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, and sponsors training seminars. Ohio EPA also provides both administrative and technical training for PWSs at low to no-cost. In addition to these informational resources, financial assistance, if needed, may be available through Ohio EPA's Drinking Water Assistance Fund (DWAF).

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