



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 (a general description of the rules' substantive content):

Lead and Copper Rules

Rule Number(s): 3745-81-80, 3745-81-81, 3745-81-82, 3745-81-83, 3745-81-84, 3745-81-85, 3745-81-86, 3745-81-87, 3745-81-88, 3745-81-89, 3745-81-90

Date of Submission for CSI Review: 9/19/22_____

Public Comment Period End Date: 10/19/22_____

Rule Type/Number of Rules:

New/___ rules

No Change/ 11__rules (FYR?11)

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Rescinded/____rules (FYR?)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

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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 Ohio Administrative Code (OAC) Rules 3745-81-80 through 3745-81-90 of the OAC to satisfy the five-year rule review requirements of section 106.03 of the Ohio Revised Code (ORC). The rules establish regulations for primary drinking water standard requirements, including those governing lead and copper.

The content of the effective rules includes chapter definitions, general lead and copper rule requirements, corrosion control application and treatment, lead service line replacement, public education, consumer notification and lead public notification, monitoring for lead, copper and water quality parameters, analytical methods, and reporting and recordkeeping. Ohio EPA is proposing that No Changes be made to OAC rules 3745-81-80 thru 3745-81-90

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during this five-year rule review, due to the plan for the US EPA to release improvements to their Federal Lead and Copper rules in 2023. The Ohio EPA therefore decided to wait until such federal regulations were made public, before making any revisions to the OAC.

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.

The Lead and Copper regulations do implement federal requirements into the OAC 3745-81-80 thru 3745-81-90. However, no new federal regulations are being implemented during this “No Change” filing. The new federal requirements will be implemented into the Ohio EPA’s regulations once the US EPA releases their improvements to the federal lead and copper rules, which are scheduled to be released in 2023. These rules will then be amended and adopted so that the Ohio EPA can maintain primacy and continue to enforce the federal and state regulations.

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

The proposed regulations do not implement any new requirements that exceed the federal governments statutes.

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 to ensure the availability of a safe and adequate supply of public drinking water. The adopted regulations help to achieve this purpose by ensuring PWSs identify areas of their system at risk to lead contamination, notify their consumers of the potential for contamination during water main replacement activities, optimize their corrosion control treatment, notify their consumers of contamination more quickly, and that PWSs and certified

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laboratories report results more quickly after sample analysis has been completed.

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

Ohio EPA will base success of the rules in this package on PWS and certified laboratory compliance rates within Ohio's drinking water programs. PWS compliance rates are typically discovered through reported data, during surveys of the system and review of the corrosion control treatment plan. Ohio EPA will also base the success of these rules on the timeliness of reporting results (for PWSs and certified laboratories), the timeliness of consumer notification, identification of potential or actual problems in water quality corrosion control and through optimal corrosion control treatment.

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 June 1st, 2022, by electronic mail. The early stakeholder outreach period was from June 1st, 2022, until July 1st, 2022.

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.

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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 No Change on June 1st, 2022, by electronic mail. The agency received one comment from stakeholders during this period, from the Ohio Environmental Council regarding what they would like to see during the next Lead and Copper rule revision set to take place in 2023.

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 3745-81-80 through 3745-81-90. References used include the latest revisions to 40 CFR Part 141 Subpart I, 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 previously adopted regulations are appropriate.

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?

To retain primary enforcement authority, Ohio EPA is required to adopt the federal counterparts to the primary drinking water standards, including the Lead and Copper rules found in OAC 3745-81-80 thru 3745-81-90. Due to the U.S. EPA planning on releasing improvements to the Federal Lead and Copper rules in 2023, the Ohio EPA opted to wait until those amendments have been released, and file these rules as No Change, until the improvements have been made public.

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.*

ORC § 6109.121 does include some performance-based regulations, such as establishing timeframes for when notification of lead results or lead action level exceedances have to be delivered to consumers and what must be included as part of the notification. The currently effective rules expand on, but do not limit the methods for delivery acceptable to Ohio EPA. No new performance-based regulations were considered for this filing due to the decision to not change these rules until the US EPA releases their improvements to the Lead and Copper rule next year.

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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 an existing regulation.

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 update

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

While no changes are being proposed in OAC rules 3745-81-80 thru 3745-81-90, the currently effective rules contain regulations that will predominantly impact community and non-transient, non-community PWSs.

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

The adverse impacts to community and non-transient non-community PWSs caused by rules 3745-81-80 through 3745-81-90 are based on the requirements for monitoring and reporting lead and copper to Ohio EPA, installing corrosion control treatment if needed, lead service line replacement, as well as public education and consumer notification of monitoring results.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other

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factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

While PWSs will continue to incur costs based on the requirements within these rules, no increase in costs will be introduced, as the rules are to be filed without changes.

3745-81-81 + 3745-81-82: The associated costs that will arise from the requirements within these rules, come from utilized corrosion control treatment techniques and the submittal of plans to the director. The formula for calculating plan approval fees authorized by section 3745.11 of the Revised Code is a \$150 fee plus 0.35% of the estimated project cost, not to exceed \$15,000. The fee will likely vary, corresponding to the project’s size.

Costs of installing corrosion control treatment will vary upon PWS size and the type of treatment to be installed, and will include a capital cost and possibly, annual costs. *According to the National Primary Drinking Water Regulations for the Lead and Copper Final Rule (FR Vol. 56 No. 110, June 7, 1991), the capital cost for systems installing corrosion control treatment would be \$54,281.86* and annual costs of \$12,061.64. * (These figures also include costs of corrosion control studies and installing corrosion control for systems with lead solder and lead pipes. The actual costs may be lower depending on the type of treatment installed, whether they conduct a corrosion control study and install control for systems with lead solder and lead pipes.)

* The estimates presented were updated using the U.S. Bureau of Labor Statistics inflation calculator (1991 to 2022).

3745-81-83: The costs associated with this rule includes the cost of submission of plans, installation, and operations of source water treatment. Costs of installing source water treatment will vary upon PWS size and the type of treatment to be installed.

3745-81-84: The costs associated with this rule requires PWSs to offer to the home/building owner to replace their portion of the line at cost when the system is going to be replacing their own portion of the lead service line. According to U.S. EPA’s, Strategies to Achieve Full Lead Service Line Replacement, published Oct. 2019, the cost of full LSLRs [lead service line replacements] has been estimated to be \$5,400* per line, with a range of \$1,400 to 14,150 per line replaced. During this time of replacement, water systems shall offer and provide consumer with drinking water treatment filters for up to 3 months in the area impacted by the line replacement. The average cost for these water filters would be \$40 a unit.

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The rule also requires, that when the water system plans to replace a lead service line, but does not own the entirety of the line, to notify the owner and offer to replace their portion of the service line as well. The cost to notify owners is negligible.

* The estimates presented were updated using the U.S. Bureau of Labor Statistics inflation calculator (2019 to 2022).

3745-81-85: The associated costs from this rule come from the time it takes to draft the consumer notices, public education materials, monitoring results and the resources required to make this information available. Either thru direct delivery or thru the posting of the information. The exact cost will be determined by the wage of the employees who draft and send out these consumer materials, and the time it takes to complete the work.

3745-81-86: The cost of mapping the water systems lead service lines will depend on the resources available to the system. If the PWS has access to a GIS software, then the time and resources to map the distribution system will be significantly reduced. If the mapping is all done manually, by PWS staff, the mapping cost will be much higher based on the wages and hours of the employees at the PWS. This could range from a few hundred dollars for a system with GIS, to a few thousand if the mapping is all done by staff members. The cost of the collection of samples from taps for lead and copper monitoring will also vary based on the size and nature of the PWS, which will affect the number of sites where samples must be collected, as well as how frequently monitoring will take place. Lead and copper monitoring may cost as little as \$2,000 every 3 years to as much as \$50,000 every 6 months. PWS may decide to test more than what is required by the rule.

3745-81-87: The costs associated with this rule are derived from the required monitoring of water quality parameters, and the collection of the samples. The size of the PWS and the number of consumers it serves will determine how many sites the system will have to collect samples at. Public water systems are also required to monitor at different frequencies, which could result in monitoring costs to range from \$300 every 6 months, to as much as \$15,000 every 6 months.

3745-81-88 and 3745-81-89: The costs associated with this rule comes from the cost of monitoring and analysis of lead and copper samples in the source water at the entry point. Based on the information obtained by Ohio EPA from various laboratories, the average cost for analyzing a single sample at an Ohio certified

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laboratory is \$34.08*.

*The estimates presented were updated using the U.S. Bureau of Labor Statistics inflation calculator

3745-81-90: The costs related to this rule would be for employee wages for reporting data and information to the Agency. The actual reporting time and associated cost should be minimal when considering the overall cost to comply with OAC rules 3745-81-80 to 3745-81-90. Additional costs could be factored into impact of the rule if the PWS decides to keep hardcopy records and they decide they need a certain amount of space to store their records.

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.

In some instances, Ohio EPA will not require small systems to complete a corrosion control treatment study and instead requires a recommendation for treatment and to submit plans to the Agency.

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?

The following resources are available:

Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement

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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 <https://epa.ohio.gov/divisions-and-offices/environmental-financial-assistance/about-defa/office-of-compliance-assistance-and-pollution-prevention>.

- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 pm and a permit assistance webpage <https://epa.ohio.gov/stay-compliant/get-help/permit-assistance> that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.

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