

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Monitoring for compliance with secondary maximum contaminant levels.

Rule Number(s): 3745-82-03

Date: 11/18/2015

**Rule Type:**

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

Ohio EPA is proposing to amend a rule in Chapter 3745-82 of the Ohio Administrative Code (OAC), which contains secondary drinking water standards.

OAC Rule 3745-82-03 establishes monitoring requirements and compliance determination for parameters with secondary maximum contaminant levels (MCLs).

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This rule has been reviewed pursuant to the five-year rule requirements set forth in Ohio Revised Code (ORC) Section 106.03 and the division is proposing changes. OAC Rule 3745-82-03 was previously included in a no-change rule package. However, during the Early Stakeholder Outreach period for the rule package, relevant comments were received and it was determined that revisions were needed.

Proposed revisions to OAC Rule 3745-82-03 include changing the way compliance with the fluoride operating range is determined. Public water systems (PWSs) that add fluoride are required to maintain an operating range of 0.8 mg/L to 1.3 mg/L. The Centers for Disease Control and Prevention (CDC) recently recommended an optimal fluoride level of 0.7 mg/L. If the proposed revisions to this rule are accepted, compliance will be determined with a monthly average instead of individual samples. This will allow PWSs to operate with fluoride levels closer to 0.7 mg/L, but still maintain compliance with the fluoride range through the overall monthly average. The fluoride operating range cannot be edited within OAC Rule 3745-82-03 at this time because it is still required by ORC Section 6109.20.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**  
ORC Section 6109.04 authorizes the Agency to adopt the regulations in this rules package.
3. **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, rules in OAC Chapter 3745-82 enable Ohio EPA to administer the Safe Drinking Water Act (SDWA), as well as retain primary enforcement authority (40 CFR Part 143) from the Federal Government.
4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**  
OAC Rule 3745-82-03 has a federal counterpart but does not exceed the federal requirement.
5. **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. This rule helps achieve this purpose by establishing monitoring requirements and compliance determination for parameters with secondary MCLs.

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

The Agency will base success of this rule 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.

**Development of the Regulation**

**7. 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 a person 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.

OAC Rule 3745-82-03 was originally included in the "Secondary Drinking Water Standards & Emergency Loans" rules package, which was to be filed with no changes. Stakeholders were notified of this rules package on May 11, 2015.

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

During the Early Stakeholder Outreach period, Ohio EPA received a comment that the CDC now recommends a level of 0.7 mg/L as the optimal level for fluoride in drinking water, but OAC Rule 3745-82-03 requires PWSs to keep fluoride levels between 0.8 mg/L and 1.3 mg/L. A recommendation was made to change the rule so that compliance with the range can be determined with a monthly average, which will allow PWSs to operate with fluoride levels closer to 0.7 mg/L but still maintain compliance with the fluoride range through the overall monthly average. The recommendation was accepted and the rule was edited accordingly.

Upon the close of the interested parties draft comment period, Ohio EPA will consider any additional comments and prepare a "response to comments" document detailing Ohio EPA's response to the comments and outlining any changes made to the draft language as a result of the comments.

**9. 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 Chapter 6109 of the Revised Code and promulgated this rule under OAC Chapter 3745-82. References used include the latest revisions to 40 CFR Parts 143. The federal counterparts, which include the SDWA Amendments of 1996, are the foundation for this rule.

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- 10. 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 OAC Rule 3745-82-03.

- 11. 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.***

OAC Rule 3745-82-03 is performance-based because it specifies a required outcome. The rule requires monitoring and compliance with secondary MCLs.

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

Ohio EPA reviewed current regulations and determined there are no duplications.

- 13. 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. When needed, procedures, guidance and policy are developed to support consistent application. Additionally, training may be provided and all effective rule revisions are distributed to staff.

#### **Adverse Impact to Business**

- 14. 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 this rule.

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

OAC Rule 3745-82-03 addresses how PWSs are required to monitor for compliance with secondary drinking water standards. The adverse impacts of OAC Rule 3745-82-03 are the costs associated with monitoring for iron, manganese and fluoride.

- 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.***

The cost of compliance for OAC Rule 3745-82-03 is the cost of monitoring for those parameters with secondary MCLs established in Rule 3745-82-02 of the Administrative Code. Of those, most PWSs are generally only required to monitor for iron, manganese and fluoride. The costs associated with fluoride monitoring are already established in OAC Chapters 3745-81 and 3745-83. The costs associated with iron and manganese monitoring are already established in OAC Chapter 3745-83. Therefore, there is no additional cost of compliance for this rule.

**15. 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**

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

This rule does not provide any exemptions or alternative means of compliance for small businesses.

**17. 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.

**18. What resources are available to assist small businesses with compliance of the regulation?**

Small business PWSs can turn to the Office of Compliance Assistance and Pollution Prevention (OCAPP) or to their Ohio EPA District Office Inspector for technical assistance.