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.
   *Please include the key provisions of the regulation as well as any proposed amendments.*

   This rulemaking concerns the numeric water quality criteria for the protection of human health in the Ohio River Mainstem, Ohio River Basin, and Lake Erie Basin.
Under the Clean Water Act (CWA) states are required to have water quality standards that protect lakes, rivers, streams or other surface waters from pollution. Ohio’s water quality standards are in OAC Chapter 3745-1. The required components of a water quality standard include beneficial use designations; narrative and numeric criteria protective of the use designations; and implementation procedures used to evaluate decisions that could result in the lowering of water quality (referred to as the antidegradation or rule). Water quality standards are then used in other CWA programs such as the National Pollutant Discharge Elimination System (NPDES) permits, Section 401 Water Quality Certifications and the establishment of Total Maximum Daily Loads (TMDLs). Any impacts to the business community are realized only through the implementation of water quality standards in these other regulatory programs.

The NPDES program prohibits discharges of pollutants from any point source (a discrete conveyance such as a pipe or ditch) into the nation’s waters unless authorized under an NPDES permit. The program gives U.S. EPA the authority to regulate discharges into the nation’s waters by setting limits on the effluent that can be discharged to a body of water. The NPDES program is closely intertwined with this rulemaking and is how we will quantify the effect of these new numerical criteria in this analysis.

These rules are being updated to reflect the most recent human health numbers from U.S. EPA’s 2015 updated chemical criteria, ORSANCO’s 2015 Pollution Control Standards (PCS), and maximum contaminant levels (MCLs) promulgated under the Safe Drinking Water Act.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Ohio Revised Code 6111.041.

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, the regulations implement federal requirements in the CWA and Title 40 of the Code of Federal Regulations (CFR) Parts 131 Water Quality Standards and 132 Water Quality Guidance for the Great Lakes System. 40 CFR 131.20 further stipulates that the State shall adopt new or revised criteria for parameters for which US EPA has published. If the state does not adopt new or revised criteria, then the State shall provide an explanation of why the criteria have not been adopted.
4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Rule 3745-1-34 will be amended to apply maximum contaminant levels (MCLs) statewide. MCLs are National Primary Drinking Water Regulations (NPDWRs) established by U.S. EPA under the Safe Drinking Water Act (SDWA). NPDWRs are legally enforceable primary standards and treatment techniques that apply to public water systems. Primary standards and treatment techniques protect public health by limiting the levels of contaminants in drinking water.

Ohio EPA’s Division of Drinking and Ground Water has also promulgated these MCLs into regulations to cover drinking water and ground water. Ohio EPA Division of Surface Water currently applies these MCLs only to the Ohio River basin and with this rulemaking extending this protection statewide (to the Lake Erie basin). The Division of Surface Water is promulgating these standards as a way to protect the treatment technology at the intakes of the drinking water plants in the Lake Erie basin as well. This is an extension of the applicability of the MCL to surface water within five hundred yards of an intake in the Lake Erie basin, as Ohio’s drinking water supply is a very important resource. The extension of these MCLs is a common sense regulatory change.

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 CWA section 303(c)(2)(A) requires that water quality standards protect “public health or welfare, enhance the quality of the water and serve the purposes of [the Act].” The CWA section 101(a)(2) establishes as a national goal “water quality which provides for protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, wherever attainable.” 40 C.F.R. Part 131.11 specifies that states must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use.

The value of clean water as a public resource is a well-established fact. Ohio is an economically important and diverse state with strong manufacturing and agricultural industries that depend upon abundant and clean water. Ohio’s economy also depends upon the tourism that its waters attract. The program ensures that Ohio’s streams, rivers and lakes can be used for purposes such as industrial and agricultural production, recreation, and as a source of drinking water. These regulations are necessary in order to adequately protect public health and the environment.
6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Success can be measured in two ways: 1) tracking various administrative milestones in the programs that implement the water quality standards; and 2) monitoring the conditions of streams, rivers and lakes over time. The NPDES permit program routinely provides data and annual reports that describe the compliance performance of the regulated community. The Agency sets targets for achieving compliance with permit terms and conditions.

As described in the response to question # 11 the water quality standards regulations are performance based expectations regarding the quality of Ohio’s surface water. Ohio EPA measures the success of the State’s overall pollution control efforts through biological and chemical monitoring that determines whether or not a water body is attaining its designated uses. The status or health of Ohio’s streams, rivers and lakes is reported every two years in the Integrated Water Quality Monitoring and Assessment Report, which is available on Ohio EPA’s website at: [http://epa.ohio.gov/dsw/tmdl/OhioIntegratedReport.aspx](http://epa.ohio.gov/dsw/tmdl/OhioIntegratedReport.aspx).

**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.*

Ohio EPA sent electronic notification of the beginning of the Triennial WQS Review to the Division of Surface Water’s rulemaking interested party list and posted the Early Stakeholder Outreach fact sheet on the Division’s website on September 14, 2016. The comment period deadline was November 14, 2016. Ohio EPA also held a webinar and public hearing on this matter on September 28, 2016 and November 9, 2016, respectively. Six comment letters were received during the comment period from The Nature Conservancy, Ohio Department of Transportation, Ohio Environmental Council, Midwest Biodiversity institute, City of Columbus, and Ohio Utility Group.

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

The only feedback provided on these rules stated that Ohio EPA should adopt US EPA’s, and/or ORSANCO’s updated criteria into rule.
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?

These numerical criteria were taken directly from U.S. EPA’s 2015 Updated Human Health Criteria, U.S. EPA’s list of Maximum Contaminant Levels (also referred to as National Primary Drinking Water Regulations), and ORSANCO’s 2015 Pollution Control Standards update. Links to these documents are provided below.


https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations

http://www.orsanco.org/programs/pollution-control-standards/

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?

The Agency reviewed revisions to the recommended federal water quality criteria and ORSANCO’s pollution control standards (PCS) since the last review and determined that revisions were necessary to bring consistency between state regulations, ORSANCO PCS, and federal water quality criteria.

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.*

Water quality standards function as a performance-based regulation because for each beneficial use defined in the rules there are measurable water quality criteria for determining if a water body meets its designated beneficial uses. Ohio’s water quality standards include numeric criteria for many chemical substances to protect human health and aquatic life, bacteria indicators to protect water based recreation and biological criteria used to gauge attainment of certain aquatic life use designations.

The business community is affected by these standards when they are used to establish conditions in permits that regulate how much pollution can be safely discharged into a receiving stream. Any business that discharges pollutants to waters of the State must comply with permits designed to ensure the standards are met. The Agency does not specify the technology that must be used to comply with permits.
12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Ohio EPA is the delegated state agency for the water quality standards program. Only a review of existing Ohio EPA rules was necessary, and no duplication was found.

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.

The Agency will put the effective date of the adopted rules three months out from the date of adoption, which provides for U.S. EPA’s review and approval and gives the Agency time to update web pages.

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;
   b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
   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 water quality standards affect the business community indirectly through other regulatory programs that are designed to assure compliance with requirements based on meeting the water quality standards. These requirements take the form of effluent limits imposed by Ohio EPA through the NPDES permit program or 401 certifications. Though there is no direct cost associated with this water quality standards rulemaking, the Agency has evaluated potential costs or impacts the business community might incur through other CWA programs.

The Agency has determined that 151 of the 3,250 permitted dischargers in Ohio could potentially be negatively impacted by the adoption of these criteria. Of these 151 dischargers, 60 already have limits for one or more of these chemicals that could impact them. The remaining 91 dischargers monitor for one or more of these chemicals but do not currently have limits. Some dischargers could receive less stringent limits from these numerical changes as well. Permit limits are dependent on
a multitude of factors and may not always be directly correlated to this specific type
water quality criterion, therefore the impact on stakeholders is somewhat varied and
difficult to estimate.

a. The impacted business community primarily includes those regulated through the
NPDES program.

Existing NPDES permit dischargers with current effluent limits for the draft criteria
that could have the potential to be negatively affected by the adoption of these rules
were notified by mail that these rules are available for comment.

b. There is no cost directly associated with these amended rules. However, the cost
associated with implementing these water quality criteria through the NPDES
program will vary widely based on factors such as volume of wastewater treated,
complexity of treatment system, stringency of the effluent limitations, effluent
monitoring requirements, and treatment technology installed at the point source. Most
facilities should not be impacted by these updated water quality criteria, but if a
discharger receives a more stringent permit limit or a permit limit for a new chemical,
or additional monitoring requirements, the nature of the adverse impact may include
the treatment of the wastewater, any cost to maintain or operate the equipment,
sampling, and time for paperwork completion.

c. As previously stated, there is no cost directly associated with these rule updates,
however there may be cost associated with the implementation of these water quality
criteria. The cost of compliance with these rules for a facility is site specific and will
vary greatly based on the type of treatment, the amount of sludge generated, amount
of water discharged, the types of samples and the amount of sampling required, and
the amount of treatment that would be required to satisfy the limitations. Most
facilities should not be impacted by these updated water quality criteria, but if a
discharger receives a more stringent permit limit or a permit limit for a new criterion,
the nature of the adverse impact may include the treatment of the wastewater, any
cost to maintain or operate the equipment, sampling, and time for paperwork
completion.

If a revision to a permittee’s effluent limitations due to these water quality criteria is
necessary upon permit renewal, the Agency will include a schedule of compliance in
the permit to allow the permittee the time to plan and construct or modify any
necessary treatment to comply with the NPDES permit.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to
the regulated business community?
The water quality standards program and these draft rule revisions are the primary means of ensuring that the quality of water in Ohio’s streams, rivers and lakes is improved, maintained and remains suitable for swimming, drinking and fishing. The basic goal of meeting all numeric and narrative criteria established under the CWA is the normal requirement mandated by federal regulations. Deviation from that expectation is allowed in only a handful of extraordinary circumstances, one of which is imposition of widespread social and economic impact. Thus, it is incumbent upon states to establish the proper balance between the water quality goals and the costs to society of attaining those goals. The Agency believes the draft rules are supported by the need to protect public health, safety, and the environment.

**Regulatory Flexibility**

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

With regard to the implementation programs impacted by this rulemaking, the regulations do not provide exemptions for small businesses. Corresponding federal regulations and the Ohio Revised Code do not provide for exemptions or alternative means of compliance for any permittees. The regulations are applied evenly regardless of the size of the treatment works. Smaller facilities are typically required to sample less frequently, which will cost them less money.

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?

The first time paperwork violation waiver is not applicable to this rule package. The rules in OAC Chapter 3745-1 contain standards for CWA permitting programs to enforce. No paperwork or permits are required by the standards themselves.

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

- Ohio EPA Division of Environmental and Financial Assistance’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 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:
http://epa.ohio.gov/ocapp/ComplianceAssistanceandPollutionPrevention.aspx

• Ohio EPA also has a Customer Support Center web page
  (https://ohioepacusthelp.com/app/home/session/L3RpbWUvMTQ0NTg2NTYzNi9zaWQvX1hTRkZWem0%3D)
  that contains links to several items to help businesses navigate the
  permit process, including the Permit Wizard, Frequently Asked Questions (FAQ), training
  and subscription to various program listservs.
• Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from
  8:00 a.m. to 5:00 p.m.
• Ohio EPA, Division of Environmental and Financial Assistance’s Compliance Assistance
  Unit provides technical support to small (less than 0.5 million gallons per day) wastewater
  treatment plants. Additional information is available at:
  http://epa.ohio.gov/dsw/compl_assist/compassat.aspx
• U.S. EPA Small Business Gateway also has information on environmental regulations for
  small businesses available at: http://www.epa.gov/smallbusiness/ and a Small Business
  Ombudsman Hotline 800-368-5888.
• U.S. EPA’s Policy and Guidance: Reference Library contains an index of EPA documents
  related to water quality standards, including those referenced in the WQS Handbook. You
  can sort the index alphabetically, by publication date, or by topic. Available at:
• The Division of Surface Water’s Water Quality Standards program web page contains
  background information and direct links to sections of the regulations. Additional
  information is available at: http://epa.ohio.gov/dsw/wqs/index.aspx.