

OhioEPA
Division of Drinking and Ground Waters

**Response to Comments
July 23, 2009**

Draft Laboratory Certification rules

OAC Rule Number	Rule Title	Action
3745-89-06	Director's actions for laboratory certification	Amend
3745-89-08	Reporting of analytical results	Amend

Agency Contact for this Package

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Ohio EPA issued public notice and requested comments on draft revisions to the laboratory certification rules for the period of January 22 through February 27, 2009. This document summarizes the comments and questions received during the interested party comment period.

Ohio EPA reviewed and considered all comments received during the interested party comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format.

Introduction

Ohio EPA Division of Drinking and Ground Waters drafted amendments to two laboratory certification rules. The draft revisions to OAC rule 3745-89-06 will allow the division to deny, suspend or revoke an analyst's laboratory certificate if their operator certificate is suspended or revoked for reasons other than falsification, and will require revocation of an analyst's laboratory certificate if their operator certificate is suspended or revoked for falsification. The draft revisions to OAC rule 3745-89-08 will require certified laboratories to report data electronically and submit lead and copper data on individual sample reports beginning July 1, 2010.

Draft Rule 3745-89-06

Comment 1: The Division of Drinking and Ground Waters (DDAGW) received a comment that there does not appear to be an opportunity for recourse for laboratory analysts or operators that might be wrongfully accused or wish to protest the decision to revoke their certificate. (Robert Ettinger)

Response 1: Actions of the director affecting the status of a laboratory's certification are taken in accordance with Chapter 3745-47 of the Administrative Code which provides for the filings of requests for adjudication hearings and/ or appeals to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code.

Draft Rule 3745-89-08

Comment 2: DDAGW received a comment that since results will be required to be submitted electronically, it is imperative that security be maintained in a manner that ensures the data cannot be altered either intentionally or unintentionally by anyone other than the those entities charged with submitting the data. (Bill Fromme, Greater Cincinnati Water Works)

Response 2: Data submitted electronically is secured in accordance with the Cross-Media Electronic Reporting Regulation (CROMERR), which provides the legal framework for electronic reporting under all of the U.S.EPA environmental regulations. Security measures to ensure data is original and un-altered include verification of reports via PIN authentication, username and passwords, and securely storing original "Copies of Record".

Miscellaneous Comments

Comment 3: A comment was received questioning the process of certifying an individual in connection with a laboratory. It was suggested that the certificate should belong to the analyst and be transferrable to another laboratory. (Daniel Haehn, Village of Minster)

Response 3: When an analyst leaves one laboratory and moves to another, Ohio EPA requires him or her to go through an on-site survey to ensure that they are proficient with the methods and equipment used at the new laboratory. Testing

equipment and methodologies can vary from laboratory to laboratory. If there is a need to get the new analyst approved in a short period of time, they can go through the interim authorization approval process. Once an analyst has been assigned an analyst number, that analyst retains that number even if he becomes approved at a different laboratory.

Comment 4: A comment was received recommending that individuals who have earned a college degree in a science-related field, such as microbiology or chemistry, should automatically be considered certified to perform laboratory analyses. (Daniel Haehn, Village of Minster)

Response 4: Accurate laboratory analyses are essential to the integrity of the safe drinking water program, as many decisions based on these analyses have health-related and financial consequences. Ohio EPA is responsible for ensuring that laboratory analysts are qualified to perform accurate testing. While a college degree is valuable, it does not automatically ensure a person has the knowledge and experience needed to perform accurate testing.

Comment 5: A comment was received recommending consideration of circumstances and remorse for each case when action may be taken against an operator or laboratory certificate. (Daniel Haehn, Village of Minster)

Response 5: Enforcement of certified operator and laboratory regulations is always dealt with on a case by case basis, taking into account any mitigating circumstances.

Comment 6: A comment was received that requirements related to laboratory size and bench space are unreasonable when multiple people work in the lab, but only one at a time. (Daniel Haehn, Village of Minster)

Response 6: Bench space requirements are as follows: Six feet per approved analyst, up to three analysts. Approval of additional analysts for this bench space is taken into account considering that not all of the analysts will be working in the laboratory at the same time.

End of Response to Comments