

**TITLE 252. OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION**

RULE IMPACT STATEMENT

Before the Water Quality Management Advisory Council on January 12, 2016
Before the Environmental Quality Board on February 19, 2016

1. **DESCRIPTION:** The proposed regulations will: (1) delete the term “CFU [colony forming units]” from this rule, which will allow the permit holder to choose from additional methods for bacteria testing and is in accordance with changes to Oklahoma’s Water Quality Standards made by the Oklahoma Water Resources Board; (2) update the date of incorporation by reference of federal rules from July 1, 2014 to July 1, 2015, which will include the cooling water intake rule and the sufficiently sensitive method rule (SSMR) update for tests performed on wastewater effluent (For more discussion on the federal rule updates, see the Rule Impact Statement for OAC 252:606, before the Water Quality Management Advisory Council on January 12, 2016); (3) revoke “Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening” and replace with an amended version of Appendix B that includes updated minimum quantification levels (MQLs) for measuring the presence and level of various pollutants in wastewater discharges. DEQ has determined that updating the MQLs is the least burdensome way of implementing the SSMR for both DEQ and the regulated community. The SSMR is included in this proposed incorporation by reference as well as the incorporation by reference proposed in the rulemaking for OAC 252:606 and is intended to allow detection of pollutants at levels that will give a more accurate indication of compliance with water quality standards.
2. **CLASSES OF PERSONS AFFECTED:** The deletion of CFU (colony forming units) will affect everyone who reports bacteriological test results to DEQ as part of their OPDES permit. CFU is a measuring and reporting unit for the number of bacteria in a water or wastewater sample, and is associated with certain analytical methods.

The classes of persons affected by the SSMR and Appendix B updates will be accredited laboratories and any entity or individual who obtains an OPDES discharge permit from DEQ in the future.

3. **CLASSES OF PERSONS WHO WILL BEAR COSTS:** Deleting CFU from this rule will not cause an increase in costs, but will allow a permittee to choose from a greater variety of bacteriological tests when complying with their OPDES permit.

The class of persons bearing the costs of the SSMR and the Appendix B updates will be OPDES permittees and the labs servicing the permit holders. DEQ anticipates that these costs will be passed on to the customers of the accredited labs or of the permittees.

4. **INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** DEQ has not received information from public or private entities regarding the cost impacts of deleting CFU.

DEQ has reached out to stake holders in Oklahoma regarding the changes to Appendix B as well as the SSMR. Through its outreach, DEQ received written and verbal comments from both privately and publicly run laboratories regarding their reported costs of compliance. Some labs indicated that they currently have the capabilities of meeting the proposed MQLs. However, other labs indicated that complying with the rule updates would cause an increase in their costs. The costs were conveyed to DEQ in several ways. Some labs put the costs in terms of price increases per test that will be passed onto its customers. Depending on the test, these labs guessed the price increases ranged anywhere from \$50 to \$1,000 per test. Other labs reported cost increases in terms of purchasing new equipment, developing new procedures, and spending more man hours on each tests. Although these cost increases were not presented in exact dollar figures, the labs did report various costs for new equipment ranging from \$30,000 to \$250,000.

Some of the labs who commented are associated with entities that hold an OPDES permit, such as a city's lab or a company's lab. However, DEQ received no comments from the OPDES permit holders who solely use a third-party lab.

5. **CLASSES OF PERSONS BENEFITTED:** Any future OPDES permit holders or any current OPDES permit holder who renews their permit and who must perform bacteriological tests will benefit from the deletion of CFU because they will have greater flexibility in choosing a bacteria test method that may be a faster and less expensive method than methods previously required.

The SSMR Rule and Appendix B updates will benefit all Oklahomans because it will further protect Oklahoma's water bodies from pollution. These rule updates will better ensure that OPDES dischargers are meeting Oklahoma's water quality standards and doing their part to maintain the beneficial uses of Oklahoma's water bodies. This rule also ensures that laboratories servicing those dischargers are using a sufficiently sensitive method of testing on the discharge samples.

6. **PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** DEQ anticipates deleting CFU will reduce costs because it will allow permit holders to utilize faster and less expensive bacteriological test methods than previously required.

DEQ understands that those affected by the SSMR and Appendix B updates will likely incur costs to comply, but DEQ has chosen the path of implementation that will result in the least cost increase and greatest flexibility to both laboratories and OPDES permit holders. With the Appendix B update, DEQ is providing to the regulated community updated MQLs that DEQ has determined to be sufficiently sensitive in light of the SSMR. The proposed update to Appendix B will save both DEQ and the regulated community time and costs by providing greater clarity and certainty in complying with EPA's SSMR while also providing flexibility in choosing the most economical method that will meet the MQL.

7. **PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** Political subdivisions subject to the deletion of CFU from these rules and to the SSMR include publicly-owned (e.g., owned by municipalities, counties, state trusts, rural water districts, public works authorities, etc.) water and wastewater treatment facilities that discharge treated wastewater to Oklahoma's water bodies. DEQ does not anticipate the proposed rules changes to have any economic impact that will be unique to political subdivisions. Any political subdivision that falls under these regulations will be expected to comply with these regulations just as a private entity would need to comply.
8. **POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** For the SSMR and Appendix B updates, DEQ anticipates that small laboratories and OPDES permit holders will incur increased costs that may be disproportionate to revenue. The options they have for managing these increased costs include passing the costs on to customers or outsourcing some chemical analyses rather than investing in additional capital equipment expenditures as a way of mitigating adverse effects. However, because SSMR is a federally mandated provision, the DEQ has no discretion to consider less costly alternatives except the updates to the MQLs in Appendix B.
9. **LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** The proposed rule does not include any changes to the current fee structure.
10. **PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** The deletion of CFU will not create any costs to DEQ.

DEQ will incur costs to implement the SSMR and Appendix B updates due to increased staff time and resources that will need to be devoted to implementation development, training, permit application review, permit drafting, compliance tracking, technical assistance, outreach, and potential enforcement. DEQ estimates it will incur roughly \$39,000 in one-time costs for development of rule implementation and training; \$3,700 for travel, outreach, training, and general supplies; and \$47,000 (or 0.6 FTE) for annual program implementation and enforcement.

11. **PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** The proposed rules will not cause any other agencies to incur implementation or enforcement costs. However, any state agency (e.g., Oklahoma State Department of Corrections) that obtains an OPDES permit from DEQ will likely experience the same types of increases experienced by any other regulated entity.
12. **SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** The proposed rule will be implemented and enforced using existing sources of revenue. Current funding sources include federal grant funds, user fees, and general revenue appropriations.
13. **PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** None anticipated.

14. **COOPERATION OF POLITICAL SUBDIVISION REQUIRED TO IMPLEMENT OR ENFORCE RULE:** This rule will be implemented and enforced by DEQ alone.
15. **EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** No measures were necessary to minimize the cost of deleting CFU from the rule.

For the SSMR and Appendix B updates, DEQ has taken several measures to minimize compliance costs. DEQ has been in dialogue with EPA concerning this rule update for more than 10 years. Once EPA passed the national rule in 2014, DEQ analyzed the different methods of implementation and chose the method that provides the greatest flexibility and least increase in costs to both DEQ and the affected classes of people. DEQ's implementation method provides the affected classes a clear standard to achieve compliance by updating the minimum quantification levels (MQLs) in Appendix B for various pollutants. When updating the MQLs, the Water Quality Division (WQD) and the State Environmental Lab Services (SELS) at DEQ analyzed the MQLs proposed by EPA, Oklahoma's MQLs, Oklahoma's water quality criteria, and the proposed/updated MQLs from other states. The proposed MQLs are set at levels that the SELS has been able to achieve on a consistent basis, indicating that private labs should be able to routinely achieve these levels with relatively low cost expenditures. After identifying the proposed MQLs, DEQ performed outreach to the stakeholders in Oklahoma seeking their feedback. After receiving feedback from stakeholders, DEQ altered several of the proposed MQLs to alleviate problems raised in the comments received.

16. **DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** DEQ has determined that the proposed rule updates are the least costly and least intrusive methods for achieving the purpose of the proposed rule.
17. **DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** Promulgating these rules will further protect the public health, safety, and environment of Oklahoma.
18. **IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** For the SSMR and Appendix B updates, there is existing risk to public health, safety and the environment when pollutants are present in Oklahoma's water bodies at levels which may be above water quality numeric criteria but below the levels that can be reliably measured by certain analytical methods allowed by the current rules. By requiring the use of sufficiently sensitive analytical methods, the proposed rule ensures that permit holders and laboratories are capable of detecting pollutants at levels which more accurately determine compliance with water quality numeric criteria. DEQ can then establish more appropriate wastewater discharge permit limits that ensure water quality standards are maintained and that public health and the environment are protected.

19. **DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** Failure to pass the proposed rules could create confusion for the regulated community as to compliance between DEQ regulations, the water quality standards passed by the OWRB, and the federal regulations. Non-compliance on the part of the regulated community could have a detrimental effect on public health and safety or the environment.

If the proposed SSMR and Appendix B updates are not implemented, there will continue to be potential detrimental effects on public health, safety and the environment where analytical methods are not sufficiently sensitive to determine whether wastewater discharges meet and maintain Oklahoma's water quality standards.

20. **PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** DEQ has not received any quantifiable or qualitative data of the impacts of deleting the CFU from the rules.

DEQ has reached out to stake holders in Oklahoma regarding the SSMR update and the changes to Appendix B. Through its outreach, DEQ received written and verbal comments from both privately and publicly run laboratories regarding their reported costs of compliance. Some labs indicated that they currently have the capabilities of meeting the proposed MQLs. However, other labs indicated that complying with the rule updates would cause an increase in their costs.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: December 21, 2015