

Rule Summary and Fiscal Analysis (Part A)**Ohio Environmental Protection Agency**

Agency Name

Division of Air Pollution Control (DAPC)

Division

Alan Harness

Contact

**50 West Town Street, Suite 700 PO Box 1049
Columbus OH 43216-1049**

Agency Mailing Address (Plus Zip)

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Phone

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3745-112-08

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Test methods.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **3704.03(E)**

5. Statute(s) the rule, as filed, amplifies or implements: **3704.03(A), 3704.03(E)**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This new rule is being proposed to address volatile organic compound (VOC) emissions from consumer products, as part of Ohio's State Implementation Plan (SIP) to achieve the National Ambient Air Quality Standards (NAAQS) of the Clean Air Act.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule specifies the "test methods" to be employed to demonstrate compliance with the applicable VOC emission limitations for consumer products regulated under Chapter 3745-112 of the Administrative Code.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule contains references to the Ohio Administrative Code (OAC) and Ohio Revised Code (ORC). While copies of these rules and statutes are generally available to the public through libraries and on-line sources, including the Ohio EPA website, ORC 121.76(A) exempts such references from the provisions of ORC 121.71 through 121.75.

The rule also contains references to analytical test methods used to determine parameters for materials subject to this rule or other materials utilized by regulators and impacted parties to determine or achieve compliance with these rules. These test methods and materials are commonly known and utilized by laboratories performing this type of analytical work. Copies of these test methods are available in libraries and the website for (ASTM and CARB).

Referenced materials are cited, dated and availability noted in paragraph (C) of this rule.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

Not Applicable.

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0

No cost to the Ohio EPA.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

See attached fiscal analysis.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

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Rule Number: 3745-112-08

Environmental Rule Adoption/Amendment Form

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
 - (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
 - (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
 - (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.
-

(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted ? **Yes**

Please list each contact.

See attached list.

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered ? **Yes**

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

In developing the proposed rule Ohio EPA reviewed both the Ozone Transport Commission (OTC) model rule and the Midwest Regional Planning Organization (MRPO) interim white paper for consumer products.

(C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program ?

Yes

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **No**

(D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **No**

Not applicable.

3745-112 Draft Rule Language - Interested Party E-mail and Notification List

Notice is hereby given that the Ohio Environmental Protection Agency, Division of Air Pollution Control ("DAPC") has drafted the following new rules for the Ohio Administrative Code ("OAC") related to the control of volatile organic compound (VOC) emissions from consumer products.

The draft rules are:

OAC rule 3745-112-01 (definitions);
OAC rule 3745-112-02 (applicability);
OAC rule 3745-112-03 (standards);
OAC rule 3745-112-04 (exemptions);
OAC rule 3745-112-05 (innovative products);
OAC rule 3745-112-06 (administrative requirements);
OAC rule 3745-112-07 (reporting requirements);
OAC rule 3745-112-08 (variances);
OAC rule 3745-112-09 (test methods); and
OAC rule 3745-112-10 (alternative control plan for consumer products).

As an on-going project Ohio EPA is evaluating emission control strategies for the control of ozone through VOC and NOx emission reductions. VOCs and NOx are precursors to ozone formation. The purpose of these new rules is to aid in the reduction of VOC emissions from consumer products so that measured ozone levels throughout the state of Ohio may be reduced to achieve and/or maintain the applicable 8-hour ground level ozone standard of 0.08 ppm as established by the U.S. EPA.

The draft rules under this Chapter will apply state-wide.

As part of the rule-making process, DAPC is required by Section 121.39 of the Ohio Revised Code to consult with organizations that represent political subdivisions, environmental interests, business interests, and others affected by the rules. The DAPC is offering your organization the opportunity to comment on these rules before the division formally proposes them.

Attached, please find copies of the draft rule language for new OAC rules 3745-112-01 to 3745-112-10 and a detailed synopsis of the rules. These rules are also available at: <http://www.epa.state.oh.us/dapc/regs/regs.html>. We request that you provide us with any comments you may have to the changes that have been recommended by Monday, January 29, 2007.

Please e-mail or mail your comments or suggestions to the following addresses:

E-mail: alan.harness@epa.state.oh.us

Mailing address: Alan L. Harness
Ohio Environmental Protection Agency, DAPC
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Phone: (614) 644-4838

Thank you,















Robert Hodanbosi, Chief
Division of Air Pollution Control








Ohio Environmental Protection Agency
















Message Id: 4593B339.DE0 : 194 : 56837
Subject: Ohio EPA DAPC Rulemaking - New OAC Chapter 3745-112 "Consumer Products" - Draft Rule Language
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BC: Edward Kitchen (Ekitchen)	Read	1/2/2007 8:38 AM
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BC: Gary Engler (Gengler)	Read	12/28/2006 1:43 PM
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BC: Jeffrey Bratko (Bratko.Jeffrey)		
BC: Richard Anglebech (Angelbeck.Richard)		
BC: Stacey Colburn (Coburn.Stacey)		
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BC: Heidi Griesmer (Hgriesme)	Read	12/29/2006 10:29 AM
BC: Jeanne Mallett (Jmallett)	Read	12/28/2006 12:35 PM
BC: Jeff Beattie (Jbeattie)	Read	1/2/2007 6:25 AM
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BC: Karen Haight (Khaight)		
BC: Lee Burkleca (Lburklec)	Read	12/28/2006 1:02 PM
BC: Marcus Glasgow (mglasgow)	Read	12/29/2006 7:29 AM
BC: Michael Kelley (Mkelley)	Read	12/29/2006 6:33 AM
BC: Mike Ahern (Mahern)		
BC: Mike Baker (MBAKER)		
BC: Mike Hopkins (Mhopkins)	Read	12/28/2006 1:50 PM
BC: Mike Matney (Mmatney)		
BC: Mike Savage (MSAVAGE)	Read	12/28/2006 1:13 PM
BC: Mike VanMatre (Mvanmatr)	Read	2/8/2007 12:19 PM
BC: Misty Parsons (Mparsons)	Read	12/28/2006 1:17 PM
BC: Muhammad Elsalahat (Msalahat)	Read	12/28/2006 1:54 PM
BC: Paul Braun (Pbruan)	Read	12/28/2006 12:08 PM
BC: Paul Koval (Pkoval)	Read	12/28/2006 12:08 PM
BC: Randy Hock (Rhock)		
BC: Rick Carleski (Rcarlesk)	Read	1/2/2007 9:21 AM
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BC: Sherri Swihart (Sswihart)		
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BC: Kenneth Hardesty (khardesty)		
BC: Stephanie Reynolds (sreynolds)		
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BC: Steve Felton (sfelton)		















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BC: Laura Bartling (laura.bartling)		
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BC: Brian Mensinger		












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BC: Don Clark (clarkd)		
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BC: Robert Delarm		
















(robert.w.delarm)			
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BC: Terri Sexton (terri.sexton)			
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BC: Tammy VanWalsen (tammy.vanwalsen)			
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BC: Bernard Mount (bernard.f.mount)		




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BC: Mike Born (mborn)		
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BC: Lane H. Nemirow, Esq (LHN)			
BC: Rima Idzelis (ri)			
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BC: Mary Beth Holley (holley)			
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Notify Recipients:	Yes
Priority:	Standard
Reply requested by	None
Security:	Standard
To Be Delivered:	Immediate

Fiscal Analysis
Chapter 3745-112 of the Ohio Administrative Code (OAC)
“Consumer Products”

Background and general estimated cost of compliance to all affected persons:

The following analysis details the cost of compliance for affected parties with Ohio's new consumer product rules. These new rules include OAC 3745-112-01 thru OAC 3745-112-08. Consumer products include adhesives, aerosols, air fresheners, bug & tar remover, deodorants, wood floor wax, etc.

These rules are intended to help Ohio attain and maintain the 8-hour national ambient air quality standard (NAAQS) for ozone through the reduction of emissions of volatile organic compounds (VOCs) from these products. VOCs are a precursor to ozone. The rules specifically assist attainment of the standard in the 8 County Cleveland/Akron metropolitan areas, but are also applicable statewide.

Ohio's new proposed state-wide consumer product rules are based on the Ozone Transport Commission's (OTC) model rule that is currently in effect throughout various OTC member states in the northeastern U.S. Ohio specifically reviewed consumer product rules from the states of New York and Pennsylvania.

Ohio's consumer product rules are estimated to achieve a total VOC reduction in the amount of 21% based on projected uncontrolled limits. These reductions are necessary for Ohio's demonstration of attainment/maintenance of the 8-hr ozone NAAQS.

Cost of Compliance

Ohio EPA has evaluated the cost of compliance for regulated parties based on the Lake Michigan Air Directors Consortium (LADCO) & Midwest Regional Planning Organization (MRPO)'s Interim White Paper document for consumer products.¹ The Interim White Paper describes available control technologies and their respective cost effectiveness. Cost effectiveness is the total annualized cost of control divided by the annual calculated emission reduction, expressed in dollars per ton. The White Paper study offers and accepts the OTC model rule, which includes the northeastern and Mid-Atlantic States down to Virginia. It is expected that manufacturers of consumer products have already reformulated some of their product lines for sale in the OTC states.

The following is a list of the specific rules in this rulemaking effort with a brief discussion of the cost of compliance to all affected entities including, manufacturers, distributors, retailers, and consumers (including school districts, counties, townships and municipal corporations). This chapter affects a wide variety of regulated entities that

¹http://www.ladco.org/reports/rpo/Regional%20Air%20Quality/White%20Papers%20March%202006/Consumer_SolventsVer5.pdf

have the potential to emit volatile organic compounds (VOCs). The following will offer a discussion to the cost to those affected by OAC 3745-113.

3745-112-01 Definitions

There is no cost of compliance associated with this rule. This rule contains definitions applicable to OAC chapter 3745-112.

3745-112-02 Applicability

There is no cost of compliance with this rule. This rule outlines the applicability of the rules in OAC chapter 3745-112 to affected parties and presents exceptions to that applicability.

3745-112-03 Standards

There is a cost of compliance with this rule. The cost of compliance with this rule affects parties including consumer product manufacturers, distributors, and consumers. Costs to manufacturers are associated with research and development associated with reformulating consumer products, redesigning product labeling, and on-going testing to assure that coatings meet the requirements of this chapter. Costs to distributors and consumers include a pass-through markup of the initial costs of R&D and any additional costs for more expensive components needed for the reformulated consumer product lines.

The LADCO/MRPO's Interim White Paper estimates the cost to manufactures affected by the rule. The industries addressed by the White Paper are similar to industries found in Ohio and industries selling their products in Ohio. The White paper estimates the cost of compliance, as cost effectiveness, to be \$800 per ton of VOC reduced per year, which equates to an estimated \$7 million/year. The Interim White Paper does explain the items included within their cost effectiveness amount, which includes the capital and labor costs for reformulation and retooling to produce the new consumer products. It also includes the Indirect & Misc. costs for redesign of labeling, and product testing to assure that the consumer products meet the requirements of this chapter.

In order to estimate the potential increase in the cost per unit; the California Air Quality Board (CARB) calculated the projected annual costs divided by the number of product units sold to result in a cost per unit. Within the Interim White Paper it is estimated that the cost-effectiveness in dollars per pound of VOC reduced, and estimated cost in dollars per unit. When considering the cost increase per piece, it is estimated to range for \$0.00 to \$0.60 per piece,² with an average of approximately \$0.03 per piece.

It should be noted that Ohio's consumer product rules are based on the OTC model rule which has been in effect in several northeastern states, including New York and Pennsylvania, for many years. A similar consumer product rule is also in effect in the

² New Jersey Air Quality Management, <http://www.state.nj.us/dep/aqm/sub24v2004-05-12.pdf>

state of California. Many of the national consumer product manufacturers have already developed reformulated consumer products for sale in these states that would meet the requirements of the state of Ohio; therefore, no reformulation costs will be required for these consumer products to meet Ohio standards.

3745-112-04 Exemptions

There is no associated cost to this rule. This rule specifies parties and products that are exempt from the requirements of OAC chapter 3745-112.

3745-112-05 Administrative requirements

This rule specifies the general labeling requirements that are applicable to all consumer products listed in the Table of OAC rule 3745-112-03. However, Ohio EPA is only requiring small changes the manufacturers existing label; therefore, there are no estimated costs associated with this rule. Because manufactures already sell consumer products to the OTC states and California, it is assumed that their cost will not increase.

3745-112-06 Reporting requirements

This rule specifies the information that needs to be reported for all persons subject to the requirements of OAC Chapter 3745-112. Manufacturing facilities supplying consumer products in or into Ohio will be subject to this rule and will be required to comply with the reporting requirements set forth in this rule. Manufacturers will be required to keep records and, if Ohio EPA requests, the facility will have 90 days to produce them. The activities associated with the reporting requirements will result in a **personnel cost** only. Ohio EPA estimates this will require 20-40 hours of work per year at a rate of \$50 per hour or approximately \$1,000 to \$2,000. This rule will not result in any capital, operational, indirect or other cost. Furthermore, because manufactures already sell consumer products to the OTC states and California, it is likely that their cost, under this rule, will not increase.

3745-112-07 Variances

There is no cost associated with this rule. This rule specifies the procedures by which a person may apply for a variance from the requirements of OAC rule 3745-112-03.

3745-112-08 Test methods

This rule specifies the test methods and/or specific methodology that shall be employed to show compliance with the VOC contents of consumer products. There is a cost of compliance associated with this rule. The LADCO/MRPO's White Paper indicated that ongoing product compliance testing costs were included with the "cost per ton" cost effectiveness number discussed above for compliance with rule 3745-113-03.