# CSI - Ohio
The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** Ohio EPA

**Regulation/Package Title:** OAC Chapter 3745-112, Consumer Products

**Rule Number(s):** OAC Rules 3745-112-01 to 3745-112-08

**Date:** July 23, 2012

**Rule Type:**

- ☐ New
- X Amended
- X 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- ☐ Rescinded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.**
   ***Please include the key provisions of the regulation as well as any proposed amendments.***

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Ohio Administrative Code contains regulations for the content of volatile compounds in consumer products sold, supplied, offered for sale, or manufactured for use in the state of Ohio.

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

These rules are authorized under Ohio Revised Code 3704.03(E) and amplify Ohio Revised Code 3704.03(A) and 3704.03(E). The rules in this rulemaking are as follows:

| Rule Number | Authorizing Statute | Proposed Action |
|---|---|---|
| 3745-112-01 | 3704.03(E) | Amended |
| 3745-112-02 | 3704.03(E) | Amended |
| 3745-112-03 | 3704.03(E) | Amended |
| 3745-112-04 | 3704.03(E) | No Change - 5YRR |
| 3745-112-05 | 3704.03(E) | Amended |
| 3745-112-06 | 3704.03(E) | No Change - 5YRR |
| 3745-112-07 | 3704.03(E) | No Change - 5YRR |
| 3745-112-08 | 3704.03(E) | No Change - 5YRR |

**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.***

The rules in this chapter are a part of Ohio's State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS) as required under Section 110 of the Clean Air Act. The rules were adopted at the federal level as part of Ohio's SIP on August 13, 2009 (74 FR 40745). These rules serve as one of Ohio's control strategies for the attainment and maintenance of the 1997 8-hr Ozone Standard.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

These rules do not exceed federal requirements. The rules in this chapter are intended to assist Ohio in attaining and maintaining the NAAQS for ozone and are similar in scope and intent to Consumer product rules in other states including Indiana, Pennsylvania, New York and Virginia.

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)?**

   These rules were originally adopted in 2007 as part of Ohio's strategy for the attainment and maintenance of the ozone NAAQS and became an official part of Ohio's SIP on October 13, 2009 (74 FR 40745). The public purpose of these rules is to assist Ohio in attaining the ozone NAAQS. Attainment of the NAAQS for ozone is mandated by the Clean Air Act and enforced by the U.S. EPA. If a state does not achieve attainment within a certain mandated timeframe, U.S. EPA can begin a sanctions clock which can lead to, among other things, loss of federal highway funds in non-attaining areas.

   On May 11, 2010, U.S. EPA redesignated the Cincinnati-Hamilton area to attainment of the 1997 8-hr ozone NAAQS (75 FR 26118) bringing the entire state of Ohio into attainment of the standard. Under Section 110 of the Clean Air Act, any control strategies that a state enacts to achieve attainment of a standard must remain in force to assist in maintaining the standard. Because these rules are part of Ohio's federally adopted control strategy to attain the standard, these rules must remain in effect to avoid sanctions for back-sliding.

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

   The rules in this chapter are a part of Ohio's control strategies to attain and maintain the NAAQS for ozone. The success of these rules is in the attainment and maintenance of the ozone standard in the state of Ohio. On May 11, 2010 (75 FR 26118), the Cincinnati-Hamilton Area gained attainment of the 1997 8-hr National standard for ozone, thereby bringing the entire state of Ohio into attainment for the ozone NAAQS. Ohio EPA credits all of our control strategies, including the rules in OAC chapter 3745-112, with helping to achieve this milestone.

   Going forward as Ohio attempts to attain the more stringent 2008 8-hr ozone NAAQS, Ohio EPA will continue to rely on existing control strategies, such as the regulations in this chapter, to provide the base after which future controls can be modeled and upon which Ohio can attain the new standard.

## 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 established a 30-day early stakeholder comment period and requested comments from potentially affected parties. The comment period ended as of March 16, 2012. Ohio EPA Division of Air Pollution Control (DAPC) sent notice of our request for comments electronically to the 636 members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

   One set of comments was received from a potentially affected entity.

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

   Ohio EPA received one set of comments during the Early Stakeholder comment period. The comments were from the Consumer Specialty Products Association (CSPA). The CSPA supported Ohio EPA's rulemaking effort and suggested two minor changes for clarification to the existing rule language. Ohio EPA agreed with both of their suggestions and made the changes.

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?**

   The rules in this chapter were originally promulgated in 2007 using a model rule prepared by the Ozone Transport Commission (OTC). The OTC is a multi-state consortium of states in the northeastern united states including New York, Massachusetts, Virginia, Pennsylvania, and others. OTC developed their model rule based on regulations already in existence in the state of California, in addition to their own technical research and development

   States surrounding Ohio including Indiana, Pennsylvania and Wisconsin have all used the OTC model rule as a basis for their consumer products rule. The OTC model rule is the consensus "state of the art" for regulating volatile organic compounds in consumer products.

Using the OTC model rule also standardized Ohio's regulations with those of neighboring states, greatly easing the regulatory burden on manufacturers since they do not have to make "special" formulations for Ohio, but can develop a regional formulation to sell in states whose rules are based on the OTC model.

There have been no changes to any federal requirements or modifications to the OTC model rule, therefore Ohio EPA did not make any changes to the rules in this chapter for this rulemaking effort that would affect the scope or intent of the original rules. Some changes were made to the rules for clarification or to remedy typographical errors and information was added regarding documents referenced in these rules. Any rules in this chapter that were not amended as part of this rulemaking effort will be submitted to the JCARR as "no-change" rules to fulfill the requirements of ORC 119.032.

**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?**

These rules were originally promulgated in 2007 as part of a larger effort to establish controls on Volatile Organic Compounds to assist in attaining the 1997 8-hr ozone standard in the state of Ohio. In addition to the rules in this chapter, Ohio EPA also adopted rules regulation volatile organic compounds (VOC) in Architectural and industrial Maintenance (AIM) Coatings (OAC Chapter 3745-113). At the time, the combination of these two control strategies provided the best "bang for the buck" in the sense that they provided the largest reduction in VOC emissions with the least amount of impact to the regulated community. In addition, it allowed Ohio to standardize our regulations with the regulations of surrounding states to reduce the impact of the regulations on affected entities.

At the time that these rules were adopted, Ohio EPA already had many regulations in effect for the control of VOCs which are still part of Ohio's control strategy for our Ozone SIP. These rules joined that suite, as discussed above, to achieve attainment of the 1997 ozone NAAQS in the state of Ohio.

**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.***

The rules in this chapter are performance based regulations. These rules set limits on the quantity of VOCs which may be contained in each listed product category. Producers of

these products are allowed to determine their own method for achieving the VOC content limit.

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

Ohio EPA reviewed our own regulations and performed a search of regulation from other agencies to determine if duplication was being made. To our knowledge, Ohio EPA is not duplicating another existing Ohio regulation.

**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.**

These rules have been in effect since September 15, 2007 and the regulated community has been required to comply with them since January 1, 2009. Ohio EPA has performed a limited number of random, spot checks, and responds to a verified complaints when they are made.

## 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.***

  There is a cost of compliance with the rules in this chapter. The cost of compliance 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

In developing the model rule upon which Ohio EPA modeled these rules, OTC estimated that the increase in cost associated with these rules would be between $0.00 and $0.60 per piece, i.e. per individual product unit, with an average cost of approximately $0.03 per piece overall. The total cost of compliance with these rules at initial adoption (in 2007) was estimated to be about $7 million statewide per year. These costs are based on 2002 dollars and would be slightly higher today adjusted for inflation (approximately $0.038 per piece). However, it should be noted that the primary cost of compliance discussed above was associated with reformulating products to meet the new requirements. Products developed after January 1, 2009 and products meeting these standards should not have any extra costs for reformulating going forward, and therefore, the cost of compliance should be much less now that these rules have been established.

Finally, because Ohio used the OTC model rule which was also used in neighboring states, the cost of reformulating can be split among the states as the product can be sold in that formulation in more than one state. This would mean that the actual $0.038 per unit cost to Ohioans should be much less than the prices discussed above because it is spread over the several states in which the product is distributed and sold.

**15. Why did the Agency determine that the regulatory intent justifies the impact to the regulated business community?**

As mentioned above, these rules were a part of Ohio's strategies to attain the ozone NAAQS. It was necessary to attain this NAAQS as it is required under the Clean Air Act and can lead to potential fiscal sanctions if the standard is not attained.

Additionally, Reducing emissions benefits the state by providing a cost savings and economic benefit to the citizens through reduced pollution. Not only does reducing pollution provide for better enjoyment of the state's resources through cleaner air but also reduces property damage caused by pollution; reduces illnesses and reduces health care costs. These results, while impossible to quantify, are indeed much greater than the costs of compliance with these regulations.

## Regulatory Flexibility

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

OAC rule 3745-112-04 contains and procedures for certifying products as "innovative products." An innovative product may exceed the VOC requirements in OAC rule 3745-112-03 if the manufacturer can demonstrate by "…clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems, or other factor, the use of the product will result in less VOC emissions…" when compared to either a complying product or a non-complying product that has been reformulated to comply with the rule.

OAC rule 3745-112-07 contains procedures through which a manufacturer can receive a variance from the requirements of this chapter. Variances are available for manufacturers who, due to "extraordinary circumstances," cannot bring their products into compliance. As stated in the rule, all variances must include a timeline for bringing the product into compliance with the requirements of this chapter.

**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 failure to comply with the VOC content requirements in OAC rule 3745-112-03 would not be considered a paperwork violation and would not fall under the scope of ORC 119.14. However, the Ohio EPA uses enforcement discretion and fines and penalties for manufacturers committing a first-time violation are typically waived.

Manufacturers are also required under OAC rule 3745-112-05 to submit their date coding information for compliant products to Ohio EPA. Violations of this rule would be treated as paperwork violations and would be addressed under the scope of ORC 119.14.

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

The following resources are available:

- Ohio EPA'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://www.epa.ohio.gov/ocapp.

- Ohio EPA also has a permit assistance web page (http://www.epa.ohio.gov/dir/permit_assistance.aspx) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiuess Center.

- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.

- US. 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 800-368-5883.

- Ohio EPA's Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Alan Harness, the primary contact for the Consumer Product Rules in OAC Chapter 3745-112, is available to answer questions. He can be reached by calling 614-644-4838 or by e-mail at alan.harness@epa.state.oh.us.