



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

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### Business Impact Analysis

Agency, Board, or Commission Name: Ohio EPA

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

OAC Chapter 3745-112, Consumer Products Rules

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

Date of Submission for CSI Review: December 22, 2021

Public Comment Period End Date: January 25, 2022

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/\_\_\_8\_\_\_ rules (FYR? \_Y\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

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

Ohio Administrative Code Chapter 3745-112 contains regulations for the content of volatile organic compounds (VOCs) in consumer products sold, supplied, offered for sale, or manufactured for use in the state of Ohio.

These rules are based on and similar to, rules initially adopted by states involved with the Ozone Transport Commission (OTC), such as Virginia, New York and Pennsylvania. The OTC develops model rules for states to consider when adopting Consumer Products Regulations, and has also provided updated versions of the model rules, called “phases”, for states to consider in subsequent adoption or revision of Consumer Products standards.

OAC Chapter 3745-112 is currently based on the 2006 Phase II OTC model rule for Consumer Products. Ohio EPA is updating these rules to adopt more recent versions of the OTC model rule; specifically, up through the 2012 Phase IV OTC model rule (this includes adopting the limits in the 2010 Phase III model rule, as well as the 2013 technical update).

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Ohio EPA has also completed a review of the rules in this chapter to fulfill the requirements of Ohio Revised Code (ORC) Section 106.03 and 106.031 (5-year review). Ohio EPA is making various minor changes to correct typos and update the rule language in this chapter to meet legislative service commission (LSC) and agency style and formatting guidelines. Ohio EPA is also making changes to OAC rule 3745-112-01 to update information on referenced materials. These changes are minor in nature, and do not affect the scope or intent of the rules.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

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:

<b>Rule Number</b>	<b>Authorizing Statute</b>	<b>Proposed Action</b>
3745-112-01	3704.03(E)	Amend
3745-112-02	3704.03(E)	Amend
3745-112-03	3704.03(E)	Amend
3745-112-04	3704.03(E)	Amend
3745-112-05	3704.03(E)	Amend
3745-112-06	3704.03(E)	Amend
3745-112-07	3704.03(E)	Amend
3745-112-08	3704.03(E)	Amend

**4. 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 maintenance of the 1997 and 2008 ozone NAAQS. The updates to these rules would help to provide for attainment and maintenance of the 2015 ozone NAAQS.

**5. 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.

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**6. 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 1997 ozone NAAQS and became an official part of Ohio's SIP on October 13, 2009 (74 FR 40745). Updates to these rules would help to provide for attainment and maintenance of the 2015 ozone NAAQS.

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.

Under Section 184 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.

**7. 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. Currently, all counties in Ohio are in attainment with the 1997 and 2008 NAAQS for ozone.

As Ohio attempts to attain the more stringent 2015 ozone NAAQS, Ohio EPA will continue to rely on existing control strategies, such as the regulations in this chapter. Updates to these rules would help to provide for additional emissions reductions needed to attain the 2015 ozone standard.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

These rules are not being proposed pursuant to any of these statutes.

## **Development of the Regulation**

**9. 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 September 8, 2021. Ohio EPA Division of Air Pollution Control (DAPC) sent notice of our request for comments electronically to the 3,000+ 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.

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

Ohio EPA received four sets of comments during the Early Stakeholder comment period. The comments were from the American Coatings Association (ACA), Household & Commercial Products Association (HPCA), Raymond Regulatory Resources (3R), LLC, and the Ohio Manufacturers' Association (OMA). The ACA and HPCA support updating the rules to be consistent with the Phase IV OTC model rule and requested at least a one-year compliance date. 3R suggests Ohio stay consistent with neighboring states, or if moving forward with updating the regulations, being consistent with OTC states which have moved to Phase IV. The OMA looks forward to reviewing the draft rule language. After reviewing these comments, Ohio has drafted amendments consistent with the model rules up through the 2012 Phase IV OTC model rule (this includes adopting the limits in the 2010 Phase III model rule, as well as the 2013 technical update) with a compliance date of January 1, 2023.

**11. 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 VOCs in consumer products. The OTC provides updated versions of the model rules, called "phases", for states to consider in subsequent adoption or revision of Consumer Products standards.

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OAC Chapter 3745-112 is currently based on the 2006 Phase II OTC model rule for Consumer Products. Ohio EPA is updating these rules to adopt more recent versions of the OTC model rule; specifically, up through the 2012 Phase IV OTC model rule (this includes adopting the limits in the 2010 Phase III model rule, as well as the 2013 technical update).

**12. 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?**

Ohio considered the most recent version of the OTC model rule, Phase V. However, based on comments received during the Early Stakeholder comment period and because Phase V has not yet been adopted by any other state (including OTC states), Ohio determined it was not appropriate to adopt Phase V at this time.

**13. 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.

**14. 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.

**15. 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 notifies the consumer product trade organizations as a part of the rulemaking process, and they ensure manufacturers and distributors are aware of any changes to the requirements. Ohio EPA has and will continue to perform a limited number of random, spot checks, and responds to verified complaints when they are made.



### **Adverse Impact to Business**

**16. 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; and**
- b. Identify the nature of all adverse impact (e.g., 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 (R & D) associated with reformulating consumer products, redesigning product labeling, and on-going testing to assure that products 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 OTC provided an estimate of costs in the “OTC Model Regulations for the Nitrogen Oxides (NOx) and Photo-reactive Volatile Organic Compounds (VOCs) – Technical Support Document”, revised August 25, 2016 (available at [https://otcair.org/upload/Documents/Reports/TSD\\_All\\_Final\\_10182016.pdf](https://otcair.org/upload/Documents/Reports/TSD_All_Final_10182016.pdf)). The OTC model rules for consumer products are based on the California Air Resources Board’s (CARB) regulations. The cost of compliance with the regulations referenced below was also originally estimated by CARB.

The 2010 Phase III OTC model rule is based on the CARB 2006 Consumer Products Regulatory Amendments. The 2010 OTC model rule amendments have more restrictive VOC limits for 14 existing consumer product categories (15, including subcategories), and 3 new categories (5, including subcategories; disinfectant, sanitizer, and temporary hair color) will be regulated for the first time with VOC limits. CARB estimated the cost effectiveness of the proposed VOC limits in the 2010 OTC model rule to be about \$2.35 per pound of VOC reduced and the total cost incurred by industry to comply with this regulation to be about \$20 million per year. The estimated average increase in cost per unit to the manufacturer to be about \$0.06 and CARB expects most manufacturers to be able to absorb such added cost without an adverse impact on their profitability.

The 2012 Phase IV OTC model rule is based on the CARB 2009 Consumer Products Regulatory Amendments and includes CARB’s limits for multi-purpose solvents and paint thinners. CARB estimated the cost effectiveness of the proposed VOC limits for their 2009 amendments (including double phase air fresheners, which are not included in the OTC model rule) to be about \$0.29 per pound of VOC reduced which is significantly lower than other control measures for consumer product and paint. The total cost incurred by industry to comply

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with the products in the OTC model rule (multipurpose solvents and paint thinners) is estimated by CARB to be \$2.2 million per year for 10 years. CARB estimates a potential increase in cost to the consumer of about \$0.75 per unit or \$1.50 per gallon.

In 2013, the OTC revised the model rule with a minor technical amendment that did not affect emissions calculations, and therefore is not expected to affect costs. The "dual purpose air freshener/disinfectant, aerosol" category was added to the OTC model rule to make it consistent with the CARB Consumer Product rule. The dual purpose air freshener/disinfectant category had been regulated in California since 1994 at a 60% VOC limit.

As a majority of the consumer products sold nationally or regionally are likely already compliant with the CARB and/or OTC regulations, the costs referenced above are expected to be an over-estimate. While no specific data is available as to the percentage of the market share that is already compliant, a focused survey of product formulations was conducted which estimates these products represent 70-90% of the market. The focused survey is available at [https://epa.ohio.gov/portals/27/SIP/ozone/LADCO\\_VCP\\_Focus\\_Survey\\_Final\\_Memo\\_08Jun2021.pdf](https://epa.ohio.gov/portals/27/SIP/ozone/LADCO_VCP_Focus_Survey_Final_Memo_08Jun2021.pdf).

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

As mentioned above, these rules were a part of Ohio's strategies to attain the 1997 ozone NAAQS and are now necessary to maintain the 1997 and 2008 NAAQS. The updates to the rules are part of Ohio's strategy to attain the newer 2015 ozone NAAQS. It is 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**

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

OAC rule 3745-112-04 contains the 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.

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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.

**19. 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.

**20. 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 (<https://epa.ohio.gov/wps/portal/gov/epa/stay-compliant/get-help/permit-assistance>) 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 eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.

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- 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 SIP Development section through which SIP related rulemaking is performed. DAPC rule writer Holly Kaloz, the primary contact for the Consumer Product Rules in OAC Chapter 3745-112, is available to answer questions. She can be reached by calling 614-644-3632 or by e-mail at [holly.kaloz@epa.ohio.gov](mailto:holly.kaloz@epa.ohio.gov).

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