



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio EPA

Rule Contact Name and Contact Information:

Mandi Payton, amanda.payton@epa.ohio.gov or 614-644-3134

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

OAC Chapter 3745-113, AIM Coatings Rules

Rule Number(s): OAC Rules 3745-113-01 to 3745-113-06

Date of Submission for CSI Review: April 20, 2022

Public Comment Period End Date: May 24, 2022

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/___6___ 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Rescinded/___ rules (FYR?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 (OAC) Chapter 3745-113 contains rules on the allowable content of volatile organic compounds (VOC) in architectural and industrial maintenance (AIM) coatings. VOCs are a precursor compound that leads to the formation of ozone. The rules serve as part of Ohio's plan to attain and maintain the national ambient air quality standard (NAAQS) for ozone. At this time, the rules are not an official part of Ohio's state implementation plan (SIP) under section 110 of the Clean Air Act (CAA).

When Ohio originally adopted these rules, several other Midwest states also adopted similar rules, including Illinois and Indiana. 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 AIM coatings regulations and since then has provided an updated version, called "Phase II", of the model rule for states to consider in subsequent adoption or revision of AIM coatings standards.

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OAC Chapter 3745-113 is currently based on the 2001 Phase I OTC model rule for AIM coatings. Ohio EPA is updating these rules to adopt the more recent 2011 Phase II version of the OTC model rule.

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 3745-113-01 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:

Rule Number	Authorizing Statute	Proposed Action
3745-113-01	3704.03(E)	Amend
3745-113-02	3704.03(E)	Amend
3745-113-03	3704.03(E)	Amend
3745-113-04	3704.03(E)	Amend
3745-113-05	3704.03(E)	Amend
3745-113-06	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.

Section 110 of the CAA requires all states to develop a plan for attaining and maintaining the NAAQS. Although the rules are not an official part of Ohio's SIP, the rules in OAC Chapter 3745-113 are intended to assist Ohio in attaining and maintaining the NAAQS for ozone. VOCs are a precursor to ozone and can be used to control ozone levels. 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.

There are no specific federal counterparts to these rules. 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 AIM coatings 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. 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.

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 October 26, 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 three sets of comments during the Early Stakeholder comment period. The comments were from the American Coatings Association (ACA), the Ohio Manufacturers' Association (OMA) and the Columbus Department of Public Utilities (Columbus DPU).

The ACA suggested Ohio be as consistent with the OTC Phase II model rule as possible, with a one year compliance date and a three year sell-through provision.

OMA submitted comments indicating that the Phase II rule would significantly impact smaller, more regional manufacturers and put them at a significant competitive disadvantage. OMA further indicated that if Ohio EPA did adopt the Phase II rule, consistency with other states that have already adopted this rule will be key, and the rules should include a one year compliance date and a three year sell-through provision. Ohio EPA has discussed these comments with OMA, who agreed to work with their membership during the interested party review process to identify specific affected parties and their specific concerns for further discussion.

Columbus DPU provided several suggestions to clarify the requirements applicable to solicitors of application and improve product labeling. These comments are similar to comments received during a previous rulemaking on this chapter and Ohio EPA's response remains unchanged since that time. In addition, Ohio is attempting to follow the OTC model rule as closely as possible. Other commenters (ACA and OMA, as noted above) have indicated it is critical to maintain consistency with other states that have adopted the OTC model rule.

Columbus DPU provided several suggestions to clarify and limit the responsibility of solicitors of application to the requirements of this Chapter. The responsibilities for the solicitor of application are integral to effective administration and enforcement of the rules. Each of the groups listed in OAC Rule 3745-113-02 is responsible for ensuring the rules are complied with

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and limiting responsibility for any one group would affect Ohio's ability to enforce the standards.

Columbus DPU also provided suggestions regarding labeling requirements. Ohio EPA believes that the labeling requirements in OAC 3745-113-04 are sufficient and establishing unique Ohio-specific requirements for product labels would cause undue burden to manufacturers that sell products in multiple states.

Columbus DPU also suggested eliminating the sell-through provisions as they are obsolete. With the adoption of the Phase II model rule, the sell-through provisions are critical to implementation of the updated standards, as noted in the previous comments.

After reviewing these comments, Ohio has drafted amendments consistent with the Phase II OTC model rule with a compliance date of January 1, 2024, and a three year sell-through provision.

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 and Illinois have used the OTC model rule as a basis for their AIM coatings rules.

The OTC model rule is the consensus "state of the art" for regulating VOCs in AIM coatings. In 2011, the OTC provided an updated version of the AIM coatings model rule, called "Phase II", for states to consider in subsequent adoption or revision of AIM coatings standards.

OAC Chapter 3745-113 is currently based on the 2001 Phase I OTC model rule for AIM coatings. Ohio EPA is updating these rules to adopt the more recent 2011 Phase II version of the OTC model rule.

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?

As noted above, OTC developed their model rules based on regulations already in existence in the state of California. California has since updated their AIM coatings standards. Ohio considered adopting the more stringent California standards, but determined it was more appropriate to be consistent with other states that have adopted the OTC model rule.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

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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 regulations 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 were originally promulgated in 2007 and compliance with these rules has been required since January 1, 2009. Distributors wishing to sell or distribute AIM coatings have been in compliance with these rules since that time. Ohio EPA notifies trade organizations as a part of the rulemaking process, and they ensure manufacturers and distributors are aware of any changes to the requirements. Continued compliance with these rules will be checked through random audits and self-reporting of manufacturers and distributors.

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 manufacturers, distributors, and consumers. Costs to manufacturers are associated with research and development (R & D) associated with reformulating 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 product lines.

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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). The OTC model rules for AIM coatings 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 2011 Phase II OTC model rule is based on the CARB 2007 suggested control measure (SCM). The model rule eliminates 15 coating categories and sub-categories and combines them with other categories, adds 12 coating categories and lowers the VOC limits on 12 coating categories, along with other updates and clarifications. In addition to the limits in the 2007 CARB SCM, the OTC model rule also includes a more stringent VOC limit for the Industrial Maintenance (IM) coating category that was included in the 2000 CARB SCM.

CARB estimates a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based on the assumption that companies absorbed all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1% decline in return on owner’s return on equity (ROE—calculated by dividing net profit by net worth), and used this to gauge economic impact. CARB felt that this should not significantly impact the profitability of most businesses, although it may have a serious impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected.

In addition to CARB’s estimated costs related to the 2007 SCM, companies that sell coatings in OTC states will incur costs associated with lowering the VOC limit of the IM coating category. The 2000 CARB SCM calculated the cost-effectiveness of lowering the IM coating VOC limit from 340 g/L to 240 g/L to be \$5.59 per pound of VOC reduced.

As a majority of the AIM coatings 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 70-80% of the market. The focused survey is available at https://epa.ohio.gov/static/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

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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.

There are three exemptions to the VOC content requirements in these rules including: 1) Coatings manufactured for sale/distribution outside the state of Ohio, 2) Aerosol products, and 3) Coatings sold in volumes of 1 liter or less. For manufacturers or distributors wishing to sell paints that do not meet these exemptions, the rules do not offer any true alternatives.

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 Ohio EPA uses enforcement discretion regarding fines; and penalties for facilities committing a first-time violation are typically waived.

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 <https://epa.ohio.gov/wps/portal/gov/epa/divisions-and-offices/environmental-financial-assistance/environmental-financial-and-assistance>.
- 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

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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.
- U.S. 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 sections through which SIP related rulemaking is performed. Paul Braun, DAPC Rules Coordinator, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at paul.braun@epa.ohio.gov.

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