

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-113, "AIM Coatings"

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

Date: April 8, 2013

Rule Type:

New

Amended

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Rescinded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.

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. The rules serve as part of Ohio's plan to attain and maintain the national ambient air quality standard (NAAQS) for ozone. VOC's are a precursor compound that lead to the formation of ozone. The rules are not yet an official part of Ohio state implementation plan (SIP) under Section 110 of the Clean Air Act.

These rules have been reviewed as part of the requirements of ORC 119.032 (5-year review). The changes to the rules are primarily minor such as corrections of typos, fixes to formatting to conform with LSC conventions, and updating of items referenced in the chapter (Version and availability as required in ORC 121.74).

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

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

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.

Section 110 of the Clean Air Act (CAA) requires all states to develop a plan for attaining and maintaining the national ambient air quality standards (NAAQS). The rules in OAC chapter 3745-113 are intended to assist Ohio in attaining and maintaining the NAAQS for ozone. Volatile organic compounds (VOCs) are a precursor to ozone and can be used to control ozone levels. The rules in this chapter have not yet been officially accepted as part of Ohio's SIP.

4. 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. These rules are a control method chosen by Ohio to assist in the control of ozone to help the state attain and maintain the NAAQS. The text of the rules were based on a model rule developed by the ozone transport

commission (OTC) states and similarly adopted by neighboring states including New York and Pennsylvania.

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. Although the rules are effective statewide, the public purpose of these rules is to assist Ohio in attaining the ozone NAAQS in the Cleveland/Akron/Lorain metropolitan area. 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.

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

The fact that the entire state of Ohio is now attaining and maintaining the 1997 8-hr ozone NAAQS is, in part, a measure of the success these rules and Ohio's strategy for attaining the NAAQS in general.

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 ending March 23, 2012. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 1,248 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.

Ohio EPA has also been working with various stakeholder parties in the development of the proposed rule language.

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 1 set of comments during the Early Stakeholder outreach comment period. The commenter suggested eliminating the "automatic" annual reporting requirements in paragraphs (C) to (E) of OAC rule 3745-113-05. Ohio EPA agreed with this comment since Ohio EPA has been waiving the requirements through director's discretion since 2008.

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?

As mentioned above, the rules were originally promulgated using a model rule developed by the OTC. The changes for this rulemaking are not scientifically based. They are primarily administrative to correct typos and formatting errors and to make clarifications of rule language as necessary.

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?

The rules in this chapter are one of several different control methods promulgated by Ohio EPA for attaining and maintaining the ozone NAAQS. All of these regulations form Ohio's SIP, even though some of the rules, such as the rules in this chapter, are not yet federally enforceable. These rules are all, however, necessary and have been successful in, attaining the 1997 8-hr ozone standard 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.*

This rule is performance based. This rule sets VOC content levels for AIM coatings, but does not specifically dictate how a facility complies with the content limits.

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 regulations from other agencies to determine if duplication was being made. These regulations do not represent a duplication of the regulations of Ohio EPA or any other agencies.

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 were originally promulgated in 2007 and compliance with these rules has been required since January 1, 2009. Distributors wishing to sell or distribute these coatings have been in compliance with these rules since that time. Continued compliance with these rules will be checked through random audits and self-reporting of manufacturers and distributors.

Adverse 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.

Ohio EPA prepared a cost analysis for these rules when originally promulgated in 2006. The cost analysis anticipated that the rules in this chapter would cost between \$1.20 to \$1.70 per gallon for reformulation, resulting in a 12% to 30% increase in cost of the coatings to consumers. While this seemed quite a high cost, it should be noted that these costs were based on reformulating for a single state, however, because states surrounding Ohio also adopted these standards, the costs of reformulation were spread out over the several states and were actually much lower than the estimate.

These rules were originally promulgated in 2007 and reformulation of coatings was required to be complete by 2009. The costs of compliance with this rule are now a part of the everyday cost of the coatings.

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

As mentioned above, these rules are 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.**

There are 3 exemptions to the VOC content requirements in these rules including: 1) Coatings manufactured for sales/distribution outside the state of Ohio, 2) Aerosol products, 3) Coatings sold in volumes of 1 liter or less. For manufacturers or distributors

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wishing to sell paints that do not meet these exemption requirements, the rules do not offer any true alternatives.

During the promulgation of these rules, Ohio EPA did allow one exemption for Tung Oils. During the rule development, the manufacturer of this product contacted Ohio EPA and produced evidence that their product could not be effective at the default VOC content level that the rule provided, so Ohio EPA created a category specifically for Tung Oil. Ohio EPA has not received any additional requests from manufacturers of this nature and has not created any additional categories since the original promulgation of these rules.

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 Ohio EPA uses enforcement discretion regarding fines and penalties for facilities committing a first-time violation are typically waived. The procedures specified in the agency's "Compliance Assurance through Enforcement" program are used to ensure implementation of the regulations.

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 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 State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Paul Braun, 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.state.oh.us.
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