



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Amanda Payton, Ohio Environmental Protection Agency

FROM: Joseph Baker, Business Advocate

DATE: March 14, 2022

RE: **CSI Review – Consumer Products Rules (OAC 3745-112-01, 3745-112-02, 3745-112-03, 3745-112-04, 3745-112-05, 3745-112-06, 3745-112-07, and 3745-112-08)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of eight amended rules proposed by the Ohio Environmental Protection Agency (Agency). This rule package was submitted to the CSI Office on December 23, 2021, and the public comment period was held open through January 25, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on December 23, 2021.

The rules in this package outline standards for volatile organic compounds (VOCs) contained in Ohio consumer products.

Ohio Administrative Code (OAC) 3745-112-01 specifies definitions related to VOC standards and has been amended to incorporate definitions for aromatic compounds, artist's solvents, automotive windshield cleaners, zinc rich primers, and industrial maintenance coatings, to establish a new definition for fabric protectants, floor polishes, multi-purpose solvents, and rubber/vinyl protectants effective in 2023, to update externally reference materials, and to make other definitional updates. OAC 3745-112-02 states that the rules in the chapter apply to any individual

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who sells, supplies, offers for sale, or manufactures consumer products in Ohio and has been amended to update a calendar reference. OAC 3745-112-03 outlines specific VOC content limits for various types of consumer goods and has been amended to incorporate requirements for paint thinner and multi-purpose solvents, and to update various content limits and effective dates. OAC 3745-112-04 outlines exemptions from the rules, including goods produced in Ohio for sale and use outside of the state, among others. The rule has been amended to streamline language. OAC 3745-112-05 sets forth the responsibilities of manufacturers of VOC-containing consumer products to label products with various information, such as the date the product was manufactured, the applicable VOC standard for the product, and others, depending on the type of product. The rule is amended to streamline language and update a calendar reference.

OAC 3745-112-06 sets forth the requirements for responsible parties to provide information to the Director of the Agency regarding the consumer products for which the party is responsible. The rule is amended to streamline language. OAC 3745-112-07 permits individuals who are unable to comply with VOC content standards to apply to the Director of the Agency for a waiver and sets forth the criteria for considering such an appeal. The rule is amended to simplify language. Finally, OAC 3756-112-08 prescribes the testing methods for evaluating consumer products for VOC content and has been amended to update references and streamline language.

During early stakeholder outreach, the Agency provided the proposed rules to approximately 3,000 members of the Agency's electronic interested parties list. The Agency received four comments during that time from the American Coatings Association, Household and Commercial Products Association, Raymond Regulatory Resources, and the Ohio Manufacturers' Association. In response to the comments provided, the Agency determined to apply a compliance date of January 1, 2023, to allow for appropriate time to respond to the rule changes and to better align with standards in other states. Three comments were received during the CSI public comment period. Willert Home Products, Fresh Products LLC, and the Household Consumer Products Association (HCPA) requested that the Division of Air Pollution Control (Division) continue an exemption for air fresheners and toilet care products that contain at least 98% paradichlorobenzene. In response to the request, the Agency determined to renew the exemption. The HCPA also requested that changes to the rules be delayed to one year after the date of publication of the final rule. In response, the Agency delayed the implementation date to July 2023. The HCPA also recommended changes to better align the definition of adhesive and air freshener with the Ozone Transport Commission model law, remove an unnecessary reference to the Food and Drug Administration, retain the existing definition for bug and tar remover, correct various typos, include a limit exclusion for lawn and garden insecticides, and remove duplicative reporting information requirements. The Agency determined to adopt the recommended changes in response to the comments.

The business community impacted by the rules includes consumer products manufacturers, distributors and consumers. The adverse impact to business includes additional costs to comply with the VOC standards prescribed in the rules, including research and development expenses, product labeling costs, and ongoing testing expenses and associated administrative costs. The Agency notes in the BIA that these costs are likely to be passed on to purchasers of consumer products and that the cost effectiveness of VOC requirements ranges from \$0.29 to \$2.35/pound or from \$0.75 to \$1.50/gallon depending on the substance. The Agency states that the adverse impact to business is necessary to comply with National Ambient Air Quality Standards and the Clean Air Act, and to reduce pollution, provide cleaner air, reduce property damage due to pollution, reduce illnesses, and reduce healthcare costs.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Agency should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.