

*** DRAFT – NOT FOR FILING ***

3745-112-04 **Exemptions.**

[Comment: For dates on non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see ~~the last~~ paragraph (C) of rule 3745-112-01 of the Administrative Code titled "~~Incorporation by reference~~[Referenced Materials](#)."]]

- (A) This rule shall not apply to any consumer product manufactured in the state of Ohio solely for shipment and use outside of the state of Ohio.
- (B) The provisions of this rule shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in the state of Ohio a consumer product that does not comply with the VOC standards specified in paragraph (A) of rule 3745-112-03 of the Administrative Code, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the state of Ohio, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed or used in the state of Ohio. The requirement of this paragraph does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the state of Ohio.
- (C) The MVOC content standards specified in paragraph (A) of rule 3745-112-03 of the Administrative Code for antiperspirants or deodorants, shall not apply to ethanol.
- (D) The VOC limits specified in paragraph (A) of rule 3745-112-03 of the Administrative Code shall not apply to fragrances up to a combined level of two per cent, by weight, contained in any consumer product and shall not apply to colorants up to a combined level of two per cent, by weight, contained in any antiperspirant or deodorant.
- (E) The VOC limits specified in paragraph (A) of rule 3745-112-03 of the Administrative Code shall not apply to any LVP-VOC.
- (F) The requirements in paragraph (A) of rule 3745-112-03 of the Administrative Code for antiperspirants or deodorants shall not apply to those VOCs that contain more than ten carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two millimeters of mercury or less at twenty degrees Celsius.
- (G) The requirements specified in paragraph (A) of rule 3745-112-05 of the Administrative Code shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act.
- (H) The VOC limits specified in paragraph (A) of rule 3745-112-03 of the Administrative Code shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs in rule 3745-112-01 of the Administrative Code or

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exempted pursuant to paragraph (D) of [this rule](#) ~~3745-112-04 of the Administrative Code~~.

- (I) The VOC limits specified in paragraph (A) of rule 3745-112-03 of the Administrative Code shall not apply to insecticides containing at least ninety-eight per cent par-dichlorobenzene, by weight.
- (J) The VOC limits specified in paragraph (A) of rule 3745-112-03 of the Administrative Code shall not apply to adhesives sold in containers of one fluid ounce or less.
- (K) The VOC limits specified in paragraph (A) of rule 3745-112-03 of the Administrative Code shall not apply to bait station insecticides. For the purpose of this ~~section-~~[paragraph](#), bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce, by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five per cent active ingredients.
- (L) A chemically formulated consumer product is exempt from the requirements of paragraph (A) of rule 3745-112-03 of the Administrative Code if:
 - (1) CARB, pursuant to its consumer products regulations (including all amendments and supplements) at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations, or the air pollution control agency of another state that has adopted a consumer product rule based on or substantially equivalent to the OTC "Model Rule for Consumer Products" has granted to the product's manufacturer an innovative products exemption or ACP for the product; and
 - (2) The innovative products exemption or ACP is valid for use in Ohio pursuant to paragraph (M) of this rule.
- (M) An innovative products exemption or ACP as outlined in paragraph (L) of this rule shall not be valid for use in Ohio unless all the following requirements ~~of paragraphs (M)(1) to (M)(4) of this rule~~ are met:
 - (1) The director determines that the exemption is still in effect and, after consideration of information provided pursuant to paragraphs (M)(2) to- (M)(4) of this rule, the director determines that the exemption is acceptable ~~to him or her~~;
 - (2) The product (including its form) for which the innovative products exemption or ACP is being used to comply with ~~this section~~[paragraph \(M\) of this rule](#) meets the following:

***** DRAFT – NOT FOR FILING *****

- (a) The product belongs to a chemically formulated consumer product category that is subject to a VOC content limit set in paragraph (A) of rule 3745-112-03 of the Administrative Code~~;~~.
 - (b) The VOC content limit promulgated for this product by the agency that issued the innovative products exemption or ACP is equal to or more stringent than the most stringent applicable VOC content limit contained in paragraph (A) of rule 3745-112-03 of the Administrative Code~~;~~~~and~~.
 - (c) All ACP products used for emission credits within the approved ACP agreement are contained in paragraph (A) of rule 3745-112-03 of the Administrative Code.
- (3) For an innovative product exemption, the manufacturer demonstrates to the director 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 as compared to either the VOC emissions from a representative chemically formulated consumer product that complies with the VOC content limits specified in paragraph (A) of rule 3745-112-03 of the Administrative Code, or as compared to the calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC limits specified in paragraph (A) of rule 3745-112-03 of the Administrative Code.
- (4) Prior to relying on an innovative products exemption or ACP for compliance, the manufacturer has submitted to the director, in accordance with paragraph (N) of this rule, the following:
- (a) A statement that, for a specified chemically formulated consumer product that it manufactures, it intends to comply with this section under an innovative products exemption or ACP rather than meet the applicable VOC content standards in paragraph (A) of rule 3745-112-03 of the Administrative Code~~;~~.
 - (b) The brand name of the consumer product, and the specific chemically formulated consumer product category in paragraph (A) of rule 3745-112-03 of the Administrative Code to which the product belongs, including its form(s) (if applicable)~~;~~.
 - (c) A copy of the document(s) setting forth the innovative products exemption or ACP; the issuing agency's approval; the issuing agency's conditions of its approval; the demonstration of paragraph (M)(3) of this rule if an innovative products exemption; and any documents from the issuing agency that subsequently modify or terminate its conditions of approval; documentation demonstrating compliance with the innovative products exemption or ACP~~;~~~~and~~.

***** DRAFT – NOT FOR FILING *****

(d) A statement that the innovative products exemption or ACP, as well as the product for which the innovative products exemption or ACP is being used, conforms with the requirements of paragraphs (M)(1) to (M)(3) of this rule, as applicable.

(N) Any submittal made pursuant to paragraph (M)(4) of this rule shall be sent to the director and the envelope or package shall be labeled as follows:

(1) For an innovative products exemption, "Attention: Consumer Product Innovative Product Exemption".

(2) For an ACP, "Attention: Consumer Product Alternative Control Plan".

Submittals of the above-mentioned documents may be sent to the following address:

"State Emergency Response Commission c/o Ohio Environmental Protection Agency P.O. Box 1049 Columbus, Ohio 43216-0149."

[Comment: Any packages and/or certified mail not acceptable for post office box delivery should be sent to street address "50 West Town Street, Suite 700, Columbus, Ohio 43215."]