General/Overall Concerns

Comment 1: The Household & Commercial Products Association (HCPA) submitted comments supporting adoption of regionally consistent consumer products regulations based on the OTC Model Rule along with several specific comments and suggestions. The full comment letter can be found at the end of this document. [Nicholas B. Georges, HCPA]

Response 1: Thank you for your comments. Excerpts from specific comments along with Ohio EPA’s responses may be found below.

Comment 2: HCPA requests that the drafted revisions become effective one year after the date of publication of the final rule. [Nicholas B. Georges, HCPA]

Response 2: The implementation date of the revisions has been revised to July 1, 2023.

Comment 3: HCPA recommends DAPC undo the replacement of “shall” with “do” or “does” throughout the drafted revisions. As currently drafted, DAPC has replaced “shall” with either “do” or “does”. HCPA requests that DAPC undo this edit to both remain consistent with neighboring states, as well to avoid any potential confusion by industry. Manufacturers and marketers know and understand that when a regulation states “shall”, whatever comes afterwards must be done. While many will understand that change to “do” or “does” means the same, because the regulated community typically does not see regulations written in this manner, it may cause confusion. To avoid this confusion, HCPA
requests that this drafted amendment be undone and future revisions continue to use the word “shall.” [Nicholas B. Georges, HCPA]

Response 3: Ohio Revised Code (ORC) 121.95(F) requires that a state agency wishing to adopt a new rule restriction must remove “...two or more other existing regulatory restrictions.” A regulatory restriction is defined in OAC 121.95(B) as “Rules that include the words "shall," "must," "require," "shall not," "may not," and "prohibit" ...”. Because Ohio EPA is adding new restrictions as a part of this rulemaking, Ohio EPA is removing existing rule restrictions to comply with ORC 121.95(F).

Ohio EPA is replacing the word “shall” with the word “do” or “does” at multiple locations in OAC rule 3745-112-04, “Exemptions.” Because this rule language only describes how the exemptions work and does not actually require the regulated community to perform an action, Ohio EPA removed the regulatory restriction language, the “shall”, to comply with ORC 121.95(F) and replaced them with “do” and “does”. As these were not restrictions in the first place, the removal of the restriction language does not change the intent of the exemption and Ohio EPA intends to keep these amendments as presented in the draft rule.

Comment 4: HCPA recommends DAPC undo the replacement of “and/or” with “or” throughout the drafted revisions. As currently drafted, DAPC has replaced instances where the definition says “and/or” with “or.” The reason that the definitions use “and/or” instead of just “or” is that in cases where a product is designed and labeled for all possible uses, a manufacturer or marketer may interpret the “or” to mean that the definition does not apply. The use of “and/or” ensures that no manufacturer or marketer misinterpret the definition and ensures that compliant product is sold in Ohio. [Nicholas B. Georges, HCPA]

Response 4: In English grammar, the use of “and/or” has the same meaning as “or”. It is Ohio EPA’s standard practice to replace “and/or” with the word “or” in rule language.

In follow-up discussions, HPCA identified a specific instance where the replacement of “and/or” with “or” as drafted may result in confusion or create issues with rule interpretation. Therefore, the definition of hair spray in OAC rule 3745-112(B)(81)(b) has been reverted to be consistent with the definition in the OTC model rule.

Comment 5: HCPA recommend DAPC replace “per cent” with “percent” throughout the drafted revisions. The current regulation, as well as the drafted regulation, use the two-word spelling of “per cent” rather than the one-word spelling. While both are correct, as the one-word spelling “percent” is typically used in the United States, HCPA requests that the drafted revisions be updated to utilize the one-word spelling. [Nicholas B. Georges, HCPA]

Response 5: The Ohio Legislative Services Commission (LSC) sets formatting standards for administrative rules. LSC dictates that, for consistency, administrative rule language in
Ohio use the two-word “per cent” spelling of the word. DAPC is not able to use the one-word spelling in our rules.

OAC 3745-112-01 Definitions

Comment 6: The definition of “adhesive” should be revised to include exclusion of product that consists of more than one gallon. [Nicholas B. Georges, HCPA]

Response 6: Agreed. This definition has been revised to be consistent with the OTC model rule.

Comment 7: DAPC should maintain the current definition of the product category “Air Freshener”. HCPA requests that DAPC not proceed with the drafted revised definition for the product category “Air Freshener.” The draft revision omits multiple exclusions from the OTC Model Rule, as well as language as to how this product category is determined. Thus, HCPA recommends proceeding with the current definition for the product category to maintain consistency with the OTC Model Rule. [Nicholas B. Georges, HCPA]

Response 7: The rule as drafted is consistent with the 2013 Technical Update of the OTC model rule, which revised the definition for the term “Air Freshener” to be consistent with CARB’s definition for this product category. Ohio EPA has confirmed the drafted language is consistent with other states that have adopted the 2013 Technical Update, including Delaware and New Hampshire.

Comment 8: HCPA recommends removing the reference to the FDA in the current definition of the product category “Antimicrobial Hand or Body Cleaner or Soap”. [Nicholas B. Georges, HCPA]

Response 8: Agreed. This definition has been revised to be consistent with the OTC model rule.

Comment 9: DAPC should keep the current definition of the product category “Bug and Tar Remover”. The current definition for “Bug and Tar Remover” is not only consistent with the definition found within the OTC Model Rule, but the drafted revision creates the potential for confusion. By deleting the “...or both...” following either, it creates the possibility for a company that produces and markets a product that is both a bug remover and tar remover to believe that the VOC limit would not apply because their product is both applications. HCPA recommends that DAPC keeps the current definition and undo the changes so that no manufacturer or marketer misinterprets the definition and ensures compliant product is sold in Ohio. [Nicholas B. Georges, HCPA]

Response 9: Agreed. This definition has been revised to reinsert the phrase “either or both” for clarity.

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Comment 10:  HCPA recommends DAPC correct a typo within the draft revision definition of the product category “Electronic Cleaner” as well as update to maintain consistency with the OTC Model Rule. [Nicholas B. Georges, HCPA]

Response 10:  The typo has been corrected. As noted in Response 4, it is Ohio EPA’s standard practice to replace “and/or” with the word “or” in rule language.

Comment 11:  The definition of “Lawn and Garden Insecticide” needs the exclusion from the Most Restrictive Limit. [Nicholas B. Georges, HCPA]

Response 11:  Agreed. This definition has been revised to be consistent with the OTC model rule.

OAC 3745-112-03 Standards

Comment 12:  HCPA supports the addition of the product category “toilet/urinal care”; however, with this addition, HCPA requests OAC 3745-112-04(I) be modified to read: “The VOC limits specified in paragraph (A) of the rule 3745-112-03 of the Administrative Code shall not apply to solid air fresheners, insecticides, and toilet/urinal care products containing at least 98% paradichlorobenzene by weight.” [Nicholas B. Georges, HCPA]

Willert Home Products provided comments that the proposed 3% VOC limit for non-aerosol “Toilet/Urinal Care Products” would in effect prohibit the sale and use of paradichlorobenzene (PDCB) in Ohio. “Willert respectfully urges the Division to continue to include an exemption in the Consumer Products VOC rules for air fresheners and toilet/urinal care products that contain at least 98% paradichlorobenzene (“PDCB”). The full comment letter can be found at the end of this document. [Kelly Webster, Willert Home Products]

Fresh Products provided comments indicating that “this proposal would reverse the decision that Ohio EPA made in 2007 to exclude consumer products in the toilet/urinal care products category from VOC control. The justification for excluding this category remains and we ask that Ohio EPA again exclude the toilet/urinal care products category from this revised rule.” The full comment letter can be found at the end of this document. [Dr. Jeff Smith, Fresh Products, LLC]

Response 12:  Thank you for your comments. In the public notice for the draft rules, Ohio EPA specifically requested comment as to whether the toilet/urinal care category should be included for consistency with the OTC model rules. The comments received indicate the justification for excluding this category remains appropriate and as such, the draft rule has been revised to remove the toilet/urinal care category.

Comment 13:  “Willert is also concerned that the Business Impact Assessment required by Ohio’s Common Sense Initiative does not consider the effect of reversing the exemption for the toilet/urinal care product category.” [Kelly Webster, Willert Home Products]
Response 13: As noted in Response 12, this category has been removed. Therefore, the Business Impact Assessment does not need to be revised to account for costs related to this category.

Comment 14: DAPC should correct a typo in the additional requirements for multi-purpose solvent and paint thinner. [Nicholas B. Georges, HCPA]

Response 14: The typo has been corrected.

OAC 3745-112-05 Administrative Requirements

Comment 15: HCPA requests modification to the “Additional Product Dating Requirements,” OAC 3745-112-05(B).

Under the current regulation, companies that use a code other than “YY DDD” to indicate the date of manufacture are subject to additional product dating requirements for any consumer product subject to an applicable standard specified in the table of rule 3745-112-03. An explanation of the code must be filed with the Ohio EPA prior to the effective date of the applicable standard, as well as submit a new explanation before any changes to the code can be made to products that are sold, supplied, or offered for sale in Ohio.

Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential. Thus, when the date code is part of a larger code that a manufacturer may use to better track various information for improved internal transparency if the lot ever comes into question, they may not want to reveal the entire code.

Multiple states require manufacturers provide an explanation of the date code(s) only upon request. HCPA requests that the additional product dating requirement, OAC 3745-112-05(B), be revised such that an explanation of the date code be submitted to Ohio EPA upon request. This approach would allow Ohio EPA not to store the date codes currently on file and still have the information needed in a timely manner when necessary. [Nicholas B. Georges, HCPA]

Response 15: As discussed in the OTC model rule, it is Ohio EPA’s intention that if the date code explanation includes information other than the date of manufacture that may be confidential, then the manufacturer should modify the explanation prior to submitting it so that the date code explanation only includes non-confidential date code information. Ohio EPA believes this approach should satisfy the concern expressed in the comment and therefore has not made a revision to the rule.

OAC 3745-112-06 Reporting Requirements

Comment 16: HCPA suggests removing duplicative information from the Reporting Requirement (A)(3) and align with the language used in the OTC Model Rule. [Nicholas B. Georges, HCPA]
Response 16:  Agreed. This provision has been revised to be consistent with the OTC model rule.

OAC 3745-112-07 Variances

Comment 17:  HCPA recommends including a provision that was omitted from OAC 3745-112-07.  
[Nicholas B. Georges, HCPA]

Response 17:  Agreed. This provision has been added to be consistent with the OTC model rule.

Other Comments

Comment 18:  “HCPA suggests updating the list of substances that are excluded from the regulatory definition of a “Volatile Organic Compound” or “VOC” in OAC 3745-21-01”. HCPA greatly appreciates that within the definition of a VOC contains within the table of excluded compounds the inclusion of “any organic compound listed in 40 CFR 51.100(s)(1) or (s)(5)” as this ensures that any substance added to exclusions for the federal definition are automatically excluded in Ohio. However, HCPA would like to request that this table be updated to include the last several compounds added to the federal list of excluded compounds, which include:

HFE-7300 (1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane)
1,3,3,3-tetrafluoropropene
HFE-134 (HCF2OCF2H)
HFE-236cal2 (HCF2OCF2OCF2H)
HFE-338pcc13 (HCF2OCF2CF2OCF2H)
H-Galden 1040x or H-Galden ZT 130 (or 150 or 180) (HCF2OCF2OCF2CF2OCF2H)
trans 1-chloro-3,3,3-trifluoroprop-1-ene
2,3,3,3-tetrafluoropropene
2-amino-2-methyl-1-propanol
t-butyl acetate
1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy)ethane
HFO-1336mzz-Z (cis-1,1,1,4,4,4-hexafluorobut-2-ene)  
[Nicholas B. Georges, HCPA]

Response 18:  OAC rule 3745-21-01 is not included in this current rulemaking. Ohio EPA suggests making this comment when the rule is next open for revision. In the meantime, the existing rule ensures that substances added to the exclusions for the federal definition are accounted for in Ohio.

End of Response to Comments