



September 30, 2024

VIA ELECTRONIC SUBMISSION

Mr. Alexander Hoehn-Saric  
Chair  
U.S. Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, MD 20814

**Re: Banned Hazardous Substances: Aerosol Duster Products Containing More than 18 mg in Any Combination of HFC-152a and/or HFC-134a (Docket No. CPSC–2021–0015)**

Dear Mr. Hoehn-Saric:

On July 31, 2024, the U.S. Consumer Product Safety Commission (CPSC) published a proposed rule entitled “Banned Hazardous Substances: Aerosol Duster Products Containing More than 18 mg in Any Combination of HFC-152a and/or HFC-134a.”<sup>1</sup> This letter constitutes the Office of Advocacy’s (Advocacy) public comments on the proposed rule.

Advocacy submits this letter to relay concerns and feedback from small businesses and recommends an extension of the compliance deadline for small entities from 30 days to 180 days after final rule promulgation.

## **I. Background**

### **A. The Office of Advocacy**

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

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<sup>1</sup> 89 Fed. Reg. 61363 (proposed July 31, 2024).

The Regulatory Flexibility Act (RFA),<sup>2</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>3</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.<sup>4</sup> If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify the rule.<sup>5</sup> The agency must provide a statement of factual basis that adequately supports its certification.<sup>6</sup>

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>7</sup> The agency must include a response to these written comments in any explanation or discussion accompanying the final rule’s publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.<sup>8</sup>

Advocacy’s comments are consistent with Congressional intent underlying the RFA, that “[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.”<sup>9</sup>

## **B. The Proposed Rule**

Section 2(q)(1)(B) of the Federal Hazardous Substances Act (FHSA) defines a “banned hazardous substance” to include any hazardous substance intended, or packaged in a form suitable, for household use which, notwithstanding the precautionary labeling required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate means to protect the public health and safety.<sup>10</sup>

Pursuant to Section 3(a) of the FHSA, the CPSC is proposing to declare that any aerosol duster products that contain more than 18 mg in any combination of HFC–152a and/or HFC–134a are banned hazardous substances under the FHSA.<sup>11</sup> Specifically, the proposed rule would amend current regulations to add a new provision declaring any canister of aerosol duster product containing more than 18 mg in any combination of HFC–152a and/or HFC–134a to be a banned hazardous substance under the FHSA.<sup>12</sup> These products are commonly used to clean computer keyboards. Additionally, the proposed rule will prohibit a manufacturer from “stockpiling” or substantially increasing manufacturing or importation of such aerosol duster products between the publication date and the effective date of the final rule.<sup>13</sup>

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<sup>2</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>3</sup> Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

<sup>4</sup> 5 U.S.C. § 603.

<sup>5</sup> *Id.* § 605(b).

<sup>6</sup> *Id.*

<sup>7</sup> Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

<sup>8</sup> *Id.*

<sup>9</sup> Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

<sup>10</sup> 15 U.S.C. § 1261(q)(1)(B).

<sup>11</sup> 89 Fed. Reg. 61363 (proposed July 31, 2024).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Many manufactures and importers of aerosol duster products that will be regulated by this proposed rule are small entities. In fact, the CPSC conducted an initial regulatory flexibility analysis (IRFA), which found that among the 26 manufacturers of aerosol duster products, 20 would be considered small entities according to SBA thresholds.<sup>14</sup> Further, three small importers of aerosol duster products will be impacted by this proposed rule.<sup>15</sup> The IRFA concluded that given the significant impact that the proposed rule would have on the aerosol duster market overall, it would have a significant impact on a substantial number of small entities.<sup>16</sup>

## **II. Advocacy's Small Business Concerns**

Advocacy conducted outreach to small entities that would be regulated by the CPSC's proposed rule and received the following feedback from several small manufacturers and importers concerned with the potential impacts of the rule.

### **A. Concerns of Small Entities.**

As the CPSC's IRFA states, "[t]he proposed rule is expected to increase the price of a canister of aerosol duster product more than threefold, and subsequently cause a steep decline in demand."<sup>17</sup> Such a steep decline in demand for aerosol duster products will undoubtedly have a significant economic impact on the 23 identified small entities that manufacture and import aerosol duster products.

Several small manufacturers stated that their sales revenue would be greatly impacted by this proposed rule. One small manufacturer stated that it will likely lose nearly 60 percent of its sales revenue, the loss of which will force the small entity to close a production facility and distribution center. Additionally, the loss of revenue and closure of facilities will potentially lead to the loss of approximately 100 jobs, including manufacturing jobs related to the production of aerosol duster products.

Another small manufacturer stated that their business would be forced to close if the proposed rule were to go into effect, as the production of aerosol duster products constitutes the majority of the work done at the facility.

### **B. The CPSC Should Extend the Proposed Rule's Compliance Deadline.**

Based on feedback from small entities, Advocacy recommends the CPSC extend the compliance timeline for small entities from 30 days to 180 days after final rule promulgation. The RFA identifies differing compliance timelines for small entities as an alternative that a regulating agency must consider in an IRFA.<sup>18</sup> However, the CPSC did not explicitly consider differing compliance timelines for small entities as a potential alternative in its RFA analysis.<sup>19</sup>

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<sup>14</sup> *Id.* at 61377.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 5 U.S.C. § 603(c)(1).

<sup>19</sup> 89 Fed. Reg. 61376.

The current 30-day compliance timeline is likely to increase costs for small entities associated with the disposal of already produced products, as well as supply chain disruption for aerosol duster products. Small entities have fewer resources than their larger counterparts to quickly alter their production processes or to stay in business while production is changed to an alternative hydrofluorocarbon (HFC). Longer compliance timelines will help make the transition more seamless. Importantly, the cost difference between the current HFC and the proposed alternative (HFO-1234ze) is too great to transition prematurely while this proposed rule proceeds through the regulatory process. These small business impacts are reasons to amend the compliance timeline to 180 days.

Further, HFCs are also being regulated by the U.S. Environmental Protection Agency (EPA) at the same time.<sup>20</sup> While none of the EPA's rules regulating HFC-152a and HFC-134a overlap or conflict with this proposed rule, they further complicate the ability of small entities to comply quickly with the CPSC's proposed rule.

### **III. Conclusion**

The significant economic impact that this proposed rule will have on small entities as well as the serious concerns of small businesses warrant the CPSC to thoroughly consider the small business impacts of this proposal. At the very least, Advocacy recommends an extension of the compliance deadline for small entities from 30 days to 180 days after final rule promulgation.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Brody Haverly-Johndro at (202) 389-6579 or by email at brody.haverly-johndro@sba.gov.

Sincerely,

/s/

Major L. Clark, III  
Deputy Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

/s/

Brody J. Haverly-Johndro  
Assistant Chief Counsel  
Office of Advocacy  
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<sup>20</sup> *Id.* at 61,377.

Copy to: The Honorable Richard L. Revesz, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget