

August 28, 2020

Via Electronic Mail

Joe Calavita
Manager, Consumer Products Implementation Division
California Air Resources Board
Sacramento, CA 95812-0806
Joe.calavita@arb.ca.gov

Comments on California ARB's Proposed Amendments to the Consumer Products Regulation

Dear Mr. Calavita:

The Personal Care Products Council (PCPC)¹ is pleased to submit the following comments on the California Air Resources Board (CARB) proposed amendments to its Consumer Products Regulation, as presented in its webinar on July 28, 2020. Our more than 600 member companies, that range from large manufacturers and marketers to independent producers, are involved in the manufacture and distribution of cosmetics, toiletries, fragrances, over-the-counter (OTC) drug products and ingredients in California and throughout the United States, and therefore have a strong interest in the scope and applicability of this regulation.

We greatly appreciate the amount of time and resources that CARB staff have given us, both providing guidance and answering queries made by PCPC and its member companies. This dialogue has been helpful to our member companies in assessing the overall impact of the proposal on our products.

INTRODUCTION

Since the inception of California's Consumer Product Regulations in 1989, PCPC and its members have continuously provided thoughtful feedback on CARB's rulemaking proposals to limit VOC emissions. PCPC submitted formal comments on May 28, 2020 and February 10, 2020 as part of this dialogue. PCPC's comments are submitted in an effort to help lead the discussion toward a practical and effective

¹Based in Washington, D.C., the Council is the leading national trade association representing the global cosmetic and personal care products industry. Founded in 1894, the Council's more than 600 member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the United States. As the makers of a diverse range of products that millions of consumers rely on every day, from sunscreens, toothpaste, and shampoo to moisturizer, lipstick, and fragrance, member companies are global leaders committed to product safety, quality, and innovation.

regulatory framework that promotes sustainable innovation while making meaningful improvements to the protection of human health and the environment.

CARB's proposed amendments seek to establish or reduce VOC emission levels for important personal care product categories and make important changes to other areas, including revisions of current definitions. In addition to achieving significant reductions in VOC emissions, CARB has stated that a secondary goal is to improve the "transparency, effectiveness, and enforceability" of its regulations and regulatory processes.

Any significant change in regulations represents equally significant challenges to the formulating companies, as each new product must be evaluated for product integrity, stability, safety, and ultimately consumer acceptability. PCPC member companies also must ensure that a new regulation does not lead to the substitution of potentially more toxic or environmentally damaging ingredients. PCPC respectfully submits the following comments for your consideration on the proposed amendments which impact the personal care categories.

Hair Finishing Spray

Hair Finishing Sprays, more commonly known as hair sprays, hold styled hair in place typically by applying a film former, or resin, to the hair. While the primary goal is to hold and keep the hair style in place while engaging in daily activities, consumers are known to touch up the style in the few seconds after application to ensure that the spray did not alter the previously styled hair. "Hair Finishing Spray" does not include products labeled for hair styling only.

From a technology point of view, it is critical to ensure that the resin in the product is solubilized and can be sprayed out evenly to provide the thinnest and most even layer possible. Because of the need to cover the hair completely, a spray format, either pump or aerosol, is the optimum method for evenly distributing the resin.

1. Proposed VOC Limit

a. 50% VOC limit by 1/1/2023

CARB has proposed a VOC limit of 50% for hair finishing spray, which CARB calculates will result VOC savings of 0.94 tons per day (tpd) by 2023 and 1.11 tpd by 2031. There will be no further reduction in the VOC maximum for the 2031 deadline. The lowering of the maximum VOC from 55% to 50% will, for the majority of hair finishing products, require reformulation of a large number of products because of the preponderance of products in the 50-55% VOC range. As CARB has been made aware from previous comments and discussions, such a reduction will

likely result in an increased use of propellants such as the hydrofluorocarbon HFC-152a, which is a greenhouse gas.

PCPC supports CARB's proposal to maintain the VOC level at 50% for 2031. For reasons detailed in our earlier 2020 comments, any lowering of the VOC level further will require more significant formulation changes and not provide the hold that consumers desire with the current 55% VOC formulations. In today's market, it is typically only products with low-medium hold which are able to meet VOC targets of less than 50%, primarily due to the need for less resin in the product. Most high hold products, which represent the majority of products, will need significant reformulation just to meet the 2023 target. Not having to reformulate again for the 2031 timetable is thus supported by PCPC and its membership.

2. Proposed Definition Update

PCPC supports the updated definition for Hair Finishing Spray, which allows for finishing and styling claims to be made as long as the product is labeled for application to hair once styling is complete.

No Rinse Shampoo (Dry Shampoo)

Currently without a VOC standard, Dry Shampoo Aerosol sprays are typically formulated with hydrocarbon propellants for various reasons, including the need to dry very quickly without using water in the product. Absorbent clays used in many formulations will clump together if any water is introduced to the product. It is recognized that an increased use of HFC-152a, a greenhouse gas, represents a likely route for meeting the proposed VOC standards.

1. VOC Limits

a. 55% by 2023

As CARB is aware from the survey data, the vast majority of VOC emissions emanate from products with $\geq 90\%$ VOC, which are primarily aerosols that provide the dry shampoo with properties desirable to consumers.

For reasons outlined in previous submissions, PCPC recommended a step-wise approach for VOC reductions in this category, with a gradual reduction in VOC's over time to allow for innovation and acclimation by consumers over time.

The technical challenges for obtaining the proposed VOC limits of 55% and then 50%, in addition to the potential for a significant increase in the use of hydrofluorocarbons such as HFC-152a, include:

- For aerosol spray products, formulators cannot introduce water because the formulations are anhydrous (any water will prevent the product from performing as required).
- The solvents used must quickly evaporate, in order for each technology to avoid ruining the existing style of the hair. Replacing propellant with slower evaporating solvent will make the hair wet and potentially ruin the style.
- There is a significant safety risk when lowering the VOC of the current products because of increased pressure in the can. This result is dictated by the fact that these current aerosol products:
 - have a higher propellant level to replace (than hairspray, for example), and
 - the excluded propellant options (e.g. HFC-152a) are at a higher vapor pressure than the current propellants used.

b. 50% VOC limit to be implemented by 1/1/ 2029

For Dry Shampoos, the potential savings of 0.2 tpd VOC over the products formulated for the 2023 deadline could entail significant, expensive reformulations for a relatively small benefit. PCPC is aware that CARB, for simplicity and efficiency reasons, wants to harmonize the VOC standard for the many hair product categories. We appreciate that CARB has proposed a 50% VOC level, instead of the originally proposed 45% limit.

2. Definitions

PCPC supports the updated definition provide by CARB on July 28, 2020, which contains important changes to the originally proposed version. We thank CARB for working together with industry to ensure that this definition is as accurate and precise as possible.

The current No Rinse Shampoo definition does not apply to the Dry Conditioner product category or technologies; therefore, separate definitions should be developed and agreed to during the rulemaking process.

Dry Conditioner

While not covered by the definition of dry shampoo, CARB noted that Dry Conditioners which make styling claims will still be considered to be styling aids. PCPC wants to ensure that dry conditioners can still make claims which focus on conditioning of hair, without being automatically regulated as styling aids. Conditioning to provide hair smoothness, manageability/detangling, softness, moisture and refreshing/improving hair's overall condition are claims often used in the category.

PCPC commits to working with CARB to further delineate these differences.

Temporary Hair Color and Hair Shine Products

CARB has proposed a reduction of VOC in these products from the current 55% to 50% by 1/1/2029. PCPC appreciates that CARB has settled on a 50% limit instead of the previously proposed 45% limit; this will provide manufacturers with enough time to meet the new target for these relatively small tonnage products. PCPC is committed to working with CARB on any future proposals for these categories.

PCPC has no objections to CARB's proposed modifications to the definition for Hair Shine products.

Personal Fragrance Products (PFP)

The PFP category includes several types of consumer products ranging from deodorant body sprays to aftershave to fine fragrance products. Extensive comments, including discussions on the technical elements of these products, have been previously provided to CARB.

a. Proposed VOC Limits for 2023

Currently the category is divided into two parts based on fragrance level (fragrance "threshold") in the product: products with <20% fragrance have a 75% VOC limit, and those with >20% fragrance have a 65% limit. CARB had previously proposed a reduction of the fragrance threshold to 10%, with products below 10% having to reduce VOC levels from 75% to 68% by 2023 and 50% by 2027. Products with fragrance levels above the 10% fragrance threshold would have a 75% VOC limit.

PCPC had previously proposed that the fragrance threshold be set at 5% so as to include the majority of iconic fine fragrance products.

PCPC appreciates that the proposed fragrance threshold has now been reduced from 10% to 7% for 2023 for all non-aerosol products. The 7% threshold will cover significantly more of these iconic fragrance products than the 10% level initially proposed. In addition, for non-aerosol products with fragrance levels below 7% and all aerosol products, the proposed VOC maximum has now been changed to 70% for 2023. PCPC accepts CARB's proposals for this level, including the splitting of the PFP category into aerosol and non-aerosol product formats, as a workable compromise for 2023. For fine fragrance products with fragrance levels below 7%, companies will discuss ramifications and potential solutions directly with CARB. In addition, CARB should consider setting criteria for grandfathering fine fragrance products which cannot meet the revised standard with a product that is acceptable to consumers.

b. Resolution of Differences in Information presented in Webinar with that of the "Proposed Amendments to the Regulation...."

During its "Public Webinar for Proposed Amendments to the Consumer Products Regulations" held on July 28, 2020, CARB proposed a differentiation in the regulatory requirements for aerosol products vs. non-aerosol products. As shown in the slide in Appendix 1, beginning in 2031, there is

to be no fragrance threshold for products which are marketed as aerosol. Thus, an aerosol product with more than 10% fragrance would still be subject to a 50% VOC maximum.

As shown in Appendix 2, taken from CARB's document entitled "Proposed Amendments to the Regulation for Reducing Emissions from Consumer Products, Regulation for Reducing the Ozone Formed from Aerosol Coating Product Emissions, and Alternative Control Plan Regulation for Consumer Products and Aerosol Coating Products", no mention of aerosols is made for the Personal Fragrance Product Category. According to this proposal, an aerosol product with more than 10% fragrance would be permitted to have a maximum VOC of 75%.

PCPC requests that CARB clarify this apparent discrepancy and that CARB continue to use its current definition of an "Aerosol Product", as detailed in Appendix 3.

c. Proposed VOC Limits for 2031: 50% VOC Maximum with a 10% Fragrance Threshold

The primary impact of the change in VOC maximum and threshold will be to force manufacturers to change products with fragrance levels of 0-10%, including those in the 7-10% fragrance levels, to comply with a maximum VOC level of 50% instead of 75%. PCPC supports the change in implementation date from 1/1/2027 to 1/1 2031.

In its presentation of July 28, CARB further split the PFP category into aerosol and non-aerosol product forms. Regardless of the fragrance level, all aerosol products would be subject to a 50% VOC maximum by 2031; only non-aerosol PFP's would have the 75% VOC limit when formulated with $\geq 10\%$ fragrance. In our comments of May 28, 2020, PCPC stated: "The draft proposed rulemaking presents a number of formulation challenges across multiple cosmetic categories for our industry, and meeting the 2023 limits as currently proposed will be difficult, much less the 2027 limits." Because all new VOC regulations be "commercially and technologically feasible" for each product category, PCPC requested that a technology assessment be conducted by CARB and that the implementation date be delayed.

The increase of the threshold for non-aerosol PFP's from 7% in 2023 to 10% by 2031 will have a deleterious impact on many iconic fine fragrances. PCPC and its members will continue to maintain a robust dialogue with CARB to discuss potential solutions to this issue.

Product Survey and Technology Assessment

CARB has proposed a product survey and technology assessment be conducted, starting in approximately 2026 and concluding in 2028, to determine if the 50% VOC limit for the PFPF category is feasible. PCPC fully supports CARB's decision to conduct such assessment and will work with CARB staff to provide necessary information so that an informed, valid decision on the viability of the 50% limit can be made. The technology assessment should include all products within the PFP category, including fine fragrances.

CARB should inform industry as soon as possible about the scope of the product survey, including whether CARB will require surveys to be done on categories other than PFP's. PCPC members would also appreciate knowing whether CARB will ask for surveys of all PFP products or on specific product types within the PFP portfolio. The goal is to ensure that manufacturers have adequate time to prepare and obtain the necessary data.

Sunset of 2% Fragrance Exemption by 2031

In its earlier comments, PCPC requested that CARB withdraw the proposal to "sunset" the 2% fragrance exemption for Article 2 products only in 2027, in part because the VOC savings are minute and that unintended consequences could occur. It has also been pointed out that the elimination of the fragrance exemption amounts to a *de facto* reduction of the maximum VOC level in most Article 2 product categories.

On July 28, 2020, CARB reaffirmed its goal of eliminating the exemption because it will "increase transparency and equity, facilitate enforcement, and help address public health concerns". PCPC and its members object to the inference that the fragrances in its products cause public health concerns, as all cosmetic products currently on the market need to have undergone a safety assessment *as per* U.S. FDA regulations. PCPC also does not understand how the elimination of the exemption will increase transparency and equity, since CARB has concluded that most products do not make use of the exemption. Nothing will change for these products.

While the relative impact of the elimination may be minimal for products with relatively high VOC maxima, products with low VOC standards may need to significantly reduce each product's VOC content via reformulation efforts or eliminate much of the fragrance in the product, which may impact product performance or consumer acceptance. PCPC therefore asks that the exemption be maintained, in full or in part, for the following product categories which currently have VOC maxima of $\leq 6\%$: Hair Mousse, Hair Styling Products, Shaving Cream, and Shaving Gel.

Compressed Gas Technology for Aerosols

PCPC supports CARB's proposal to increase regulatory flexibility for aerosol products which use compressed gas [air, nitrogen, etc.]. CARB's current methods for determining product VOC, in effect, prevent the use of many of these formulations since the weight of the compressed gas is inconsequential, meaning that the VOC weight of the actual product typically exceeds the allowable VOC level. Using a heavier propellant, such as HFC-152a, would turn the same product into a compliant one.

Streamlining the Innovation Product Exemption process is one way that CARB could increase the use of these systems, which ultimately can provide significant benefits to California without detracting from product efficacy.

Change in the Definition of a “Label”

CARB has proposed a modified definition of “Label” and “Labelled” (Appendix 4) which expands the scope of the consumer product regulation to include information provided by the manufacturer on websites and other media, in addition to that provided directly on actual product.

Because some manufacturers may not be ultimately responsible for information on the product label and accompanying website, the revised regulation should refer to the “Responsible Party”, as defined in Article 2, § 94508 (a) (110), instead of only naming the product ‘manufacturer’. Such Responsible Parties include other entities such as importers, distributors, retailers, as well as the manufacturers/marketers, who are responsible for the information on the label and website.

PCPC member companies have concerns that the scope of the final draft proposed regulation goes beyond that which is necessary to achieve CARB’s goal of ensuring that product claims on a manufacturer’s or Responsible Party’s website are consistent with the claims on the physical label. It is also important that the specific website address for each product be the one which is provided on the physical label of the product itself.

As such, PCPC recommends that the following revisions be made to the proposed definitions of “Label” and “Labeled”:

- A. PCPC asks CARB to make the following revisions to the definition of the term “label” and “labeled” to remedy the vague and overly language of the draft proposal.

Section. 94508 Definitions.

(77) “Label” means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed into, molded into, embossed on, referenced on, appearing upon, or accompanying ~~or connected with~~ any consumer product or consumer product package for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

CARB should delete the words “or connected with” because this term is not defined and would be subject to broad interpretations which could be significantly different from the agency’s goal in implementing these changes.

- B. Section. 94508 Definitions.

(78) “Labeled” means the “label” ~~all labels and other written, printed, video, or graphic, or other material:~~

- 1) that accompanies or is referenced by or on the product, including ~~but not limited to~~ any reference on the label ~~whatsoever~~ to a website controlled directly by the Responsible Party for that product, and

- 2) that is part of ~~or connected with~~ the product's marketing of a product for sale, supply or offer for sale in the state of California, is referenced within the physical label, is controlled directly by the Responsible Party for that product.

Phrases "but not limited to" and "whatsoever" should be deleted, as they are overly broad and too subjective to be applied consistently and fairly.

The text of the regulation should reflect CARB's stated intention to review claims on products' websites by adding the phrase "controlled directly by the" Responsible Party" after the word "website." It is also important that any product website be the one which is specifically reference on the label of the physical product itself.

CARB must also reinforce its stated intention that the label claim review would not include third-party websites and customer product reviews. With this stated goal, CARB would thus ensure that the new regulatory provision applies only to marketing claims that are controlled by the manufacturer or the Responsible Party.

C. Revisions to the Proposed New Sections of the Most Restrictive Limit Proposal.

PCPC's comments on this section reflect many of the comments on this subject provided to CARB by the Household and Commercial Products Association.

CARB needs to make the following revisions to the proposed new Section 94512(a)(3) of the Most Restrictive Limit provision to ensure that the exercise of CARB's authority will be consistent with the clearly defined applicability requirements set forth in Section 94507. The following modifications are recommended.

94512. Administrative Requirements.

(a) Most Restrictive Limit.

- (3) Where a claim regarding a consumer product manufactured on or after January 1, 2025 for sale, supply or offer for sale in the State of California differs materially across different materials, such as between the product label and the website controlled directly by the Responsibility Party for that product, the product shall fall into the product category as defined in Section 94508(a) with the ~~most stringent~~ lowest limit for the claims made in any of the materials as specified in Section 94509(a).

CARB should modify the word "differ" to clarify that the Most Restrictive Limit would apply in a situation where there is "material" difference between product claims appearing on a product label and product claims on the website controlled by the Responsible Party. The term "material" should be interpreted to mean something that affects a person's decision to buy a

product that is sold, supplied or offered for sale in the State of California. Therefore, CARB should add the word “materially” to modify “differ.”

The phrase “across different materials, such as” is overly broad and should be deleted.

CARB must once again clarify their stated intention that the Most Restrictive Limit provision would not apply to statements appearing on third-party websites and customer reviews by adding the words “controlled directly by the Responsible Party for that product”.

The new provision should clearly state that it applies only to product categories that are defined in the regulation by adding the words “as defined in Section 94508(a).”

CARB should delete the phrase “most stringent” and replace it with the word “lowest,” since this word is consistent with the word “lower” that is used in the current text of Section 94512(a)(1). It is critically important that the most powerful enforcement provision in CARB’s Consumer Products Regulations use internally consistent language.

CARB should delete the overly broad phrase “for the claims made in any of the materials.”

Finally, CARB should ensure that the new provision clearly refers to the VOC limits set forth in the Table of Standards by adding “as specified in Section 94509(a).”

D. 94512. Administrative Requirements.

(a) Most Restrictive Limit.

* * * *

- (4) Product claims ~~or other information~~ must be found on the physical product label to exempt a product from a regulated category with a ~~more stringent~~ lower VOC limit.

The phrase “or other information” is too broad and should be deleted

Finally, for reasons stated above, CARB should delete the phrase “more stringent” and replace it with the word “lower,” since this is the word that is used in the current text of Section 94512(a)(1).

Maximum Incremental Reactivity (MIR)

With a goal of anticipating future regulatory activity on the ozone forming potential for consumer products, PCPC will continue to engage with CARB staff to evaluate the benefits of using a reactivity model for the evaluation of the potential of a consumer product to form ground level ozone.

Replacing the current VOC model with a MIR approach for selected product categories could provide significant, innovative reductions in ozone forming potential as well as greenhouse gas generation. In an effort to provide the most flexibility to companies and formulators, CARB should allow companies to choose between reactivity *or* mass-based VOC limits as compliance options.

An evaluation of the MIR approach should be included in the technical assessment program to be conducted for the personal fragrance category.

CONCLUSION

The modified proposals made by CARB on July 28, 2020 represent significant progress toward reducing VOC emissions from consumer products. PCPC appreciates that the CARB staff have shown a strong commitment to working with all stakeholders to ensure that the regulations are based on valid technical and commercial information. PCPC and its members continue to be committed to working closely with CARB staff to achieve the optimum results.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas F. Myers". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thomas F. Myers
EVP-Legal & General Counsel
Personal Care Products Council

Cc: Ravi Ramalingam, CARB (Ravi.Ramalingam@arb.ca.gov)
Josh Berghouse, CARB (josh.berghouse@arb.ca.gov)
Dr. Jack Linard, Linard Advisors, LLC (drjelinard@gmail.com)

APPENDIX 1: Personal Fragrance Product Slide from July 28, 2020 Presentation by CARB

Personal Fragrance Products Updated Proposal (cont.)

- ❖ 50% VOC Standard by January 1, 2031 for:
 - ❖ Aerosol Personal Fragrance Products
 (regardless of fragrance content)
 - ❖ Non-aerosol products with less than or equal to
 10% fragrance
- ❖ Provides additional time for products between
 7% and 10% fragrance to reduce VOC
- ❖ Discourages companies from increasing fragrance
 content as compliance option

APPENDIX 2: Proposed Personal Fragrance Product Amendment to Article 2, section 94509 (a):

<u>Personal Fragrance Product</u> <u>(manufactured on or after January 1, 2023)*#</u>		
<u>products with 7% or less fragrance</u>	<u>1/1/2023</u>	<u>70</u>
<u>products with more than 7% fragrance</u>	<u>1/1/2023</u>	<u>75</u>
<u>products with 10% or less fragrance</u>	<u>1/1/2031</u>	<u>50</u>
<u>products with more than 10% fragrance</u>	<u>1/1/2031</u>	<u>75</u>
[*See sections 94510(h), 94510(j), and 94510(l) for exemptions and requirements that apply to Personal Fragrance Product.]		
[#See subsection 94509(m)(1)(A), 94509(m)(1)(B) and 94509(n)(1) for additional requirements that apply to Personal Fragrance Product.]		

APPENDIX 3: CARB Definition of Aerosol Product

“Aerosol Product’ means a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product's container, or by means of a mechanically induced force. “Aerosol Product” does not include ‘Pump Spray.’”

APPENDIX 4: Proposed Change in the Definition of “Label” and “Labeled”

The proposed label definition is as follows:

“Label” means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, referenced on, or appearing upon, accompanying or connected with any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

“Labeled” means all labels and other written, printed, video, graphic, or other material: 1) that accompanies or is referenced by or on the product, including but not limited to any reference whatsoever to a website, and 2) that is part of or connected with the product’s marketing, and is controlled by the manufacturer.