

February 26, 2020 Public Work Group Meeting Discussion Paper
Consumer Product Regulation Amendments (2020 Rulemaking)

Agenda Item 1: Welcome and Introductions

Agenda Item 2: Consumer Product Regulation Possible Definition Updates

Industrial and Institutional Products

The definition of “Institutional Product” or “Industrial and Institutional (I&I) Product” is found in Consumer Product Regulation, Section 94508(a):

- (77) “Institutional Product” or “Industrial and Institutional (I&I) Product” means a consumer product that is designed for use in the maintenance or operation of an establishment that: (A) manufactures, transports, or sells goods or commodities, or provides services for profit; or (B) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. “Establishments” include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. “Institutional Product” does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

California Air Resources Board (CARB) Enforcement Advisory Number 307 (at: <https://ww3.arb.ca.gov/enf/advs/advs307.pdf>) published in 2002, provides examples of “household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.” This Enforcement Advisory does not specifically address products that maintain or operate equipment used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

At Public Work Group meetings on July 17 and October 4, 2019, and in subsequent discussions with interested stakeholders, manufacturers have requested that CARB specify that products used exclusively to maintain or operate equipment used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment are not Institutional Products, and are therefore not subject to the Consumer Product Regulation. These stakeholders seem to concur with CARB staff that a product used for *general maintenance* in an industrial setting is an Institutional Product subject to the Consumer Product Regulation. CARB staff looks forward to continuing to work with interested stakeholders regarding this issue, and how it might be addressed as part of the current rulemaking.

Retail Sale of Products Used Exclusively to Manufacture Good or Commodities.

As part of possible Consumer Product Regulation definition updates to address I & I Products, as described above, CARB staff believe it is also important to specify that products sold, supplied, or offered for sale at California retail establishments are considered Industrial Products subject to the Consumer Product Regulation. CARB staff believes it is challenging to ensure that a product purchased at a retail establishment is used exclusively in the manufacturing process.

Energized Electrical Cleaner

CARB's 2015 Consumer and Commercial Product Survey data indicates that the Energized Electrical Cleaner category is responsible for over 75 percent of the perchloroethylene emissions and over 50 percent of the trichloroethylene emissions from Consumer Products. While both compounds are classified as human carcinogens, CARB staff is unaware at this time of safer alternatives that ensure safe and effective cleaning of energized electrical equipment. However, a significant quantity of Energized Electrical Cleaner is also being sold at automotive maintenance retailers, presumably to be used as a clean-up solvent for both professional and DIY automotive maintenance and repair. Staff intends to evaluate opportunities to further restrict retail sale of energized electrical cleaner in order to limit uncontrolled, excess emissions of trichloroethylene and perchloroethylene. Such a regulatory update was discussed conceptually with interested stakeholders at July 17 and October 4, 2019 Public Work Group meetings.

CARB staff has developed, and welcomes stakeholder feedback on, the following potential regulatory language to meet this goal:

Consumer Product Regulation, Section 94508(a):

- (39) "Energized Electrical Cleaner" means an "Electrical Cleaner" product that meets ~~both~~ all three of the following criteria:
- 1) the product is labeled to clean and/or degrease electrical equipment, where cleaning and/or degreasing ~~is accomplished~~ can only be performed when electrical current exists, or when there is a residual electrical potential from a component such as a capacitor;
 - 2) the product label clearly displays the statements: "Energized Equipment use only. Not to be used for motorized vehicle maintenance, or their parts."
 - 3) the product is exclusively sold directly or through distributors to establishments which operate or maintain energized electrical equipment. Sales to automotive repair establishments are prohibited.

- (40) “Energized Electronic Cleaner” means an “Electronic Cleaner” product that meets all three of the following criteria:
- 1) the product is labeled to clean and/or degrease electronic equipment, where cleaning and/or degreasing can only be accomplished when electrical current exists or when there is a residual electrical potential from a component such as a capacitor;
 - 2) the product label clearly displays the statements: “Energized Electronic Equipment use only. Not to be used for motorized vehicle maintenance, or their parts.”
 - 3) the product is exclusively sold directly or through distributors to establishments which operate or maintain energized electronic equipment. Sales to automotive repair establishments are prohibited.

Section 94510(n):

Neither the VOC limits specified in Section 94509(a), nor the prohibition of Methylene Chloride, Perchloroethylene, and Trichloroethylene listed in 94509(m)(1) shall apply to Energized Electronic Cleaners and Energized Electrical Cleaner.

The potential retail sales restriction in Section 94508(a)(39(3), above, mirrors the sales restriction in the Consumer Product Regulation “Lubricant” definition.

Paint Thinner

Consumer Product Regulation, Section 94508(a):

- (99)(B) “Paint Thinner” does not include any of the following products...
4. products labeled and used exclusively as an ingredient in a specific coating or coating brand line, whereby the coating would not be complete or useable without the specific ingredient;...

Industry stakeholders have indicated that some manufacturers may misunderstand Section 94508(a)(99)(B)(4), above, believing that it exempts all automotive or marine thinners, regardless of whether they are used exclusively as an ingredient in a specific coating or coating brand line. While CARB staff recognizes that automotive or marine thinners and coatings may be more likely to be used together (as part of a coating system), the above language does not provide a blanket exemption for all automotive and marine thinners, and does apply to thinners that fail to meet the criteria above.

CARB staff looks forward to discussing with stakeholders possible approaches to help ensure product manufacturers understand and comply with Consumer Product Regulation, Section 94508(a)(99)(B)(4).

Agenda Item 3: Alternative Control Plan and Innovative Product Exemption

Alternative Control Plan (ACP)

An increasing number of ACP products fall just below the Consumer Product Regulation VOC Standard for the applicable product category (sometimes by as little as 0.1 percent VOC). While the number of these products remains low, these products present enforcement challenges, and provide uncertain air quality benefits. CARB welcomes public comment on the following approach to address this issue:

Section 94547(b)(11)

Beginning on January 1, 2023, in order to generate surplus reductions, the VOC Content of an ACP Product must either: 1) be equal to or less than ninety percent of the product's applicable VOC Standard, or 2) be equal to or less than the applicable VOC Standard minus five percent.

For example, if the ACP Product Category VOC Standard is 20%:

1. The ACP Product cannot exceed 18% VOC to be eligible (i.e. 20 percent multiplied by 0.9).
2. The ACP Product cannot exceed 15% VOC to be eligible (i.e., 20 percent minus 5 percent)

This dual eligibility pathway described above is intended to ensure a reasonable eligibility pathway for ACP products subject to either high or low VOC Standards.

Innovative Product Exemption (IPE)

Some stakeholders have requested that CARB staff consider in-use VOC reductions due to product combustion as being eligible for an IPE. While combustion may result in reduced VOC, it may also generate increased oxides of nitrogen, particulate matter, and air toxic emissions. CARB does not believe it is an appropriate trade-off for IPE eligibility, due to potential for adverse air quality or public health impacts. CARB staff welcomes stakeholder input on the following draft regulatory language, intended to ensure that products that demonstrate reduced VOC emissions due to combustion are ineligible for an IPE.

Section 94511(c):

A consumer product which reduces VOC emissions relative to the representative consumer product due to VOC combustion (including, but not limited to, catalytic combustion) shall be ineligible for an exemption provided per section 94511(a).

Agenda Item 4: Web-Based or Other Marketing Claims as Part of Product Label

Web-Based or Other Product Claims

As more consumer products are marketed and sold over the internet, consumers are receiving increasing product information on-line in lieu of or in addition to the physical product label. For a product purchased over the internet, the physical product label may not be a primary source of information regarding a product's intended use and functionality. While the vast majority of product information found on a manufacturer's website is consistent with that found on the physical product label, CARB staff sees an increase in contradictions or inconsistencies between product information found on a manufacturer's website versus what is found on the physical label. Some product manufacturers have directed CARB staff to competitors' websites that include product claims or instructions that are inconsistent with the physical product label. Product instructions, claims, or recommended uses that are inconsistent with the product label can result in increased VOC emissions if consumers are directed to use products with higher or uncontrolled VOC content in applications subject to lower VOC limits.

As discussed at the July 17 and October 4, 2019 Public Work Group meetings, CARB staff believes that it will be increasingly important to consider a manufacturer's web-based claims in defining a product category, as consumers receive increasing amount product information from the internet. The draft updated Consumer Product Regulation language below is intended to address these concerns, and are intended to only apply to internet claims on websites under the control of the product manufacturer.

The potential new definition for "Labeled" shown below follows the example of the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA) definition for "Labelling" (U.S. Code, Title 7, Chapter 6, Subchapter II, Section 136(p)). More information regarding the FIFRA definitions for "Label" and "Labeling" and their applicability can be found in Attachment A of this handout.

CARB staff also believes that additional language would be needed in Consumer Product Regulation Most Stringent Limit criteria to specify that any product information that would exempt a product from regulation or result in a less stringent VOC Standard must be found on the physical product label, and may not be hidden on a manufacturer's website. For example, a "Disinfectant" product would only be exempt based on medical use claims if these claims were also

found on the physical product label. A medical use claim made somewhere on the manufacturer's website would not be enough to exempt the product. This approach is also included in the draft regulatory language, below.

CARB staff understands that any change of this nature will require significant discussion with, and input from, product manufacturers and other interested stakeholders. Are there implementation challenges that staff may have overlooked or underestimated? What might be some unintended consequences of this approach, if any? Are there other options (besides the FIFRA model) for addressing manufacturer internet claims that contradict physical product label claims? CARB staff look forward to examining these and other questions with interested stakeholders as we consider this issue. The staff draft language below is intended to help initiate these discussions.

Consumer Product Regulation, Section 94508(a):

- (78) "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, 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.
- (79) "Labeled" means all labels and other written, printed, video, graphic, or other materials: 1) that accompanies or is referenced by or on the product, 2) that is part of or connected with the product's marketing, and controlled, directly or indirectly, by the manufacturer, and 3) that is referenced on the label or in literature with or on the product, including but not limited to any reference whatsoever to a website.

Consumer Product Regulation, Section 94512(a):

- (3) Where a manufacturer's claims regarding a product differ across different materials, such as between the label and the website, the product shall fall into the product category with the most stringent limit for the claims made in any of the materials.
- (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 VOC limit.

Agenda Item 5: Topics for Upcoming Work Group Meetings

March 10, 2020

- Sunset of 2% Fragrance Exemption
- Personal Fragrance Products with < 20% Fragrance
- Manual Aerosol Air Fresheners
- Hair Care Products, including Hair Shine, Temporary Hair Color, Hair Finishing Spray, No Rinse Shampoo, and Dry Conditioner

March 19, 2020 (tentative)

- Charcoal Lighter Material Certification
- Chlorinated Compound Prohibitions in Regulated Categories
- Addition of Select New Compounds in MIR Table
- Phase-Out of HFC-152a in Regulated Categories (post-2030)
- Options for Compressed Gas Propellant VOC Content Calculation
- Reflection of CaSNAP in Consumer Product Regulation
- Method 310 Updates and Associated Consumer Product Regulation Clarifications

**ATTACHMENT A:
How Other Regulations Address Manufacturer Product Claims**

Federal Insecticide, Rodenticide and Fungicide Act, Definitions:

- (1) LABEL.—The term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- (2) LABELING.—The term “labeling” means all labels and all other written, printed, or graphic matter—
 - (A) accompanying the pesticide or device at any time; or
 - (B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

US EPA FIFRA Label Review Manual¹

Chapter 3, Section II(J): Websites

If a label references a company’s website, either by listing a web address or URL, including a Quick Response Code (QR Code), or using similar identifiers that direct to a website, then the website becomes “labeling” under FIFRA and is subject to EPA review. PR Notice 2014-1. If the website contains false or misleading information, then the product may be considered misbranded and unlawful to sell or distribute under FIFRA 12(a)(1)(E). 40 CFR 156.10(a)(5) list examples of statements EPA considers misbranding. Also, regardless of whether a website is referenced on a product’s label, claims made on the website may not substantially differ from approved claims related to that product. Claims that do substantially differ from what was approved may result in a pesticide product that is unlawful to sell or distribute under FIFRA 12(a)(1)(B).

1 - https://www.epa.gov/sites/production/files/2018-04/documents/chap-03-mar-2018_1.pdf .