

UPDATED INFORMATIVE DIGEST

PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO THE CALIFORNIA CONSUMER PRODUCTS REGULATION

Sections Affected: Amendments to sections 94508, 94509, 94510, 94512, 94513, and 94515 to title 17, California Code of Regulations (CCR).

Background:

California Health and Safety Code, section 41712 requires the Air Resources Board (ARB) to achieve the maximum feasible reduction in Volatile Organic Compound (VOC) emissions from consumer products. As part of the regulatory process, ARB must determine that adequate data exist for it to adopt the regulations. ARB must also determine that the regulations are technologically and commercially feasible, and necessary to carry out the Board's responsibilities under Division 26 of the Health and Safety Code. In addition, Health and Safety Code section 41712(c) provides that no regulation shall be adopted which requires the elimination of a product form. Section 41712 is primarily directed at attaining the State and federal ozone standards.

Pursuant to Health and Safety Code section 41712, ARB has adopted the Regulation for Reducing VOC Emissions from Consumer Products (the "Consumer Products Regulation;" title 17, CCR, sections 94507-94517).

On September 25, 2007, ARB adopted the State Strategy for California's 2007 State Implementation Plan (2007 SIP). The 2007 SIP serves as California's overall plan to provide the emission reductions necessary to meet the federal ozone standard of 0.08 parts per million averaged over eight hours. As part of the 2007 SIP, ARB has committed to an additional 30 to 40 tons per day VOC reduction from consumer products by 2014. Under the commitment, rulemakings are to occur in 2007 and 2008 with reductions occurring in the 2010 to 2012 timeframe. Further rulemakings between 2010 and 2012, with implementation dates between 2012 and 2014, are to complete the emission reduction commitment. Achieving additional VOC reductions from consumer products is an important element of the 2007 SIP and is necessary to attain State and federal air quality standards.

In 2006, Assembly Bill 32, The California Global Warming Solutions Act of 2006 (AB 32), was signed into law. This law created a comprehensive, multi-year program requiring the reduction of global warming compound emissions in California. Assembly Bill 32 added section 1, division 25.5 (commencing with section 38500) to the Health and Safety Code. Among other things, AB 32 required ARB to design and adopt an overall Scoping Plan, by January 1, 2009, that identifies how greenhouse gas (GHG)

emissions can be reduced back to 1990 levels, a 30 percent reduction from business as usual emission levels, by 2020.

AB 32 additionally recognizes that immediate progress in reducing GHG emissions can and should be made. In October 2007, the ARB approved a list of early action GHG reduction measures. A subset of these early action measures was identified as Discrete Early Action Measures. Discrete Early Actions are Board adopted regulations to reduce GHG emissions, which are to be legally effective by January 1, 2010. One of the approved Discrete Early Action Measures, designated in the Early Action Report, pertains to reducing the use of compounds with high global warming potentials in consumer products. The goal of this measure is to ultimately achieve, at a minimum, an emissions reduction equivalent to reducing 0.25 million metric tons of carbon dioxide per year.

Description of Adopted Regulatory Action:

On June 26, 2008, the ARB approved, and subsequently adopted after a 15-day public comment period, amendments to the existing Consumer Products Regulation. The Consumer Products Regulation was amended by adding and modifying product category definitions and by establishing new or lower VOC limits for 19 product categories. For some of the categories, separate VOC limits are specified for different product forms. All of these VOC limits, except one, are specified as percent by weight VOC. For one category, a gram of VOC per use limit was adopted. This mass limit was adopted for fabric softener products used in clothes dryers. An additional amendment removed the “grandfather” clause that pertains to Personal Fragrance Products with 20 percent or less fragrance. Removal of this clause requires all Personal Fragrance Products with 20 percent or less fragrance to meet a single VOC limit. The new or modified VOC limits become effective between December 31, 2010 and December 31, 2015. The adopted regulatory action also prohibits the use of three toxic air contaminants--methylene chloride, perchloroethylene, and trichloroethylene--in the following product categories: “Carpet/Upholstery Cleaner,” “Fabric Protectant,” “Multi-Purpose Lubricant,” “Penetrant,” “Sealant or Caulking Compound,” and “Spot Remover.” Use of methylene chloride and perchloroethylene are also prohibited in “Pressurized Gas Duster” products.

To partially fulfill the Discrete Early Action Measure for consumer products, the amendments will reduce the use of compounds with high GWP in Pressurized Gas Duster products. These products can only use compounds with GWP factors below 150. The GWP values used to determine compliance are those set forth in the Intergovernmental Panel on Climate Change, Second Assessment Report.

The Board also adopted a modification to the definition of VOC. This modification excludes hydrofluoroether 7200 from the definition based on its negligible impacts on ground-level ozone formation.

In addition, a number of other modifications or clarifications were made to the existing regulatory language. These include modifications to product date-coding requirements, product “sell-through” provisions, requirements for dilutable products, reporting requirements for “Multi-Purpose Lubricant” and “Penetrant” products, and additional labeling requirements for certain specified categories.

COMPARABLE FEDERAL REGULATIONS

The United States Environmental Protection Agency (U.S. EPA) has promulgated a national consumer products rule under section 183(e) of the federal Clean Air Act: *National Volatile Organic Compound Emission Standards for Consumer Products*. (40 CFR Part 59, subpart C, sections 59.201 et seq.) The rule specifies VOC limits for a number of consumer product categories, and is similar in format to ARB’s Consumer Products Regulation. U.S. EPA is amending their consumer products rule based on amendments to ARB’s Consumer Products Regulation that occurred in 2004. In the 2004 rulemaking, VOC limits for 15 categories were adopted. U.S. EPA’s amendments are expected to become effective in December 2009.

The U.S. EPA’s regulation is similar in many aspects to the ARB’s regulation. However, even after U.S. EPA’s 2009 amendments become effective, it will still be less effective in reducing VOC emissions from consumer products. The U.S. EPA’s rule does not regulate a number of product categories that are currently regulated under the ARB regulation. For the categories that are regulated under both rules, many of ARB’s limits are more stringent than the U.S. EPA’s limits. Therefore, ARB’s consumer products rules have achieved significant additional reductions over those that would be achieved by the federal rule alone. Because California has unique air quality problems, we must continue to reduce VOC emissions from all source categories, including consumer products, to the maximum extent feasible, to attain the federal and State ambient air quality standards for ozone.

The U.S. EPA’s rule also differs in that it applies nationwide to consumer product manufacturers, importers and distributors (but not retailers), while the ARB regulation applies to any person (including retailers) who “sells, supplies, offers for sale, or manufactures consumer products for use in the State of California.” Finally, the U.S. EPA’s rule has an unlimited “sell-through” period for non-complying products manufactured before the effective date of the limits, whereas California law limits the sell-through period to three years.

U.S. EPA’s consumer products rule also does not prohibit the use of certain toxic air contaminants. In aggregate, ARB’s consumer products regulations, including these adopted amendments, have prohibited the use of certain chlorinated toxic air contaminants in 70 categories, resulting in emission reductions of over 13 tons per day.

There is no comparable federal regulation related to reducing GHG emissions in consumer products.