

UPDATED INFORMATIVE DIGEST

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

Sections Affected: Amendments to sections 94508, 94509, 94510, 94512, 94513, and 94515 to title 17, California Code of Regulations (CCR) and amendments to Method 310, adopted September 25, 1997, as last amended May 5, 2005, which is incorporated by reference in section 94515, title 17, CCR to add new sections 3.3.7; 4.3; 4.3.1; and 4.3.2.

Background: Section 41712 of the California Health and Safety Code requires the Air Resources Board (Board or 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 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 achieve an additional 30 to 40 tons per day of VOC reductions from consumer products statewide by January 1, 2014. The amendments approved by the Board at its June 26, 2008, hearing constitute the first 4.5 tons per day in meeting this commitment. Achieving additional VOC reductions from consumer products is a critical 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.

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 emission reduction measures. A subset of these early action measures was identified as Discrete Early Action Measures. Discrete Early Action measures 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 is to reduce the use of compounds with high global warming potentials in consumer products. The goal of this measure is to achieve, at a minimum, an emissions reduction equivalent to reducing 0.25 million metric tons of carbon dioxide per year. The amendments approved at the June 26, 2008, hearing will provide about 0.23 million metric tons of CO₂ equivalents per year toward meeting the emission reduction target. The adopted amendments for this rulemaking will prevent the potential increased use of high global warming potential (GWP) compounds as products are reformulated to meet the new VOC limits for Double Phase Aerosol Air Freshener, Paint Thinner, and Multi-purpose Solvent products.

Description of Adopted Regulatory Action: On September 24, 2009, the ARB approved, and subsequently adopted after two 15-day public comment periods, 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 three categories: 1) Double Phase Aerosol Air Fresheners, 2) Multi-Purpose Solvents and 3) Paint Thinners. For Double Phase Aerosol Air Fresheners, the amendments will reduce the VOC limit from 25 to 20 percent by weight effective December 31, 2012. For the Multi-purpose Solvent and Paint Thinner categories, the Board adopted two tiers of VOC limits. For both categories, the first tier limit is 30 percent by weight effective December 31, 2010, and the second tier limit is 3 percent by weight effective December 31, 2013. For all three categories, the adopted limits will achieve a total VOC reduction of 14.7 tons per day statewide, excluding the South Coast Air Quality Management District, by January 1, 2014. This represents a 54 percent reduction in emissions from these categories.

To ensure that the reductions achieved by the Discrete Early Action Measure for consumer products occur, and GHG emissions do not increase, the amendments limit the use of compounds with high GWP in the three product categories for which VOC limits were adopted. These products could only use compounds with GWP factors below 150. The GWP values to be used in determining compliance are those set forth in the Intergovernmental Panel on Climate Change, Second Assessment Report.

New definitions and modifications to existing definitions were also made to the existing regulatory language. New definitions include "Aromatic Compound," "Artist's Solvent/Thinner," "High Temperature Coating," "Industrial Maintenance Coating," "Paint Clean-up," and "Zinc-Rich Primer." These new definitions are in support of the new paint thinner standards to clarify the amendments. Modified definitions include "ASTM," "Multi-purpose Solvent," and "Paint Thinner." The ASTM definition was changed to reflect the revised name of the organization that sets the ASTM methods. The Multi-purpose Solvent and Paint Thinner definitions were modified to identify products which

are exempt from, or included, in the categories and to improve enforcement of the regulation. In addition, there are size modifications in the definitions of both dilutable and pre-mixed Automotive Windshield Washer Fluids. The definitions now state that Dilutable Windshield Washer Fluids are sold in containers greater than 10 gallons or one quart or less, while Pre-mixed Automotive Windshield Washer Fluids are sold in containers greater than one quart but less than 10 gallons.

The adopted regulatory action has other requirements for Multi-purpose Solvents and Paint Thinners. One is to prohibit the use of the toxic air contaminants methylene chloride, perchloroethylene, and trichloroethylene. Another provision is to temporarily prohibit manufacturers of flammable or extremely flammable products from using generic product names such as "Multi-purpose Solvent," "Paint Thinner," or "Paint Clean-up." Exceptions to this prohibition include two options, either providing a hang tag or sticker with the statement "Formulated to meet California VOC limits, see warnings on label;" or displaying the name of the chemical that results in the product meeting criteria for flammable, such as "Acetone" in a font size at least as large as all other words on the principle display panel. This prohibition would be effective December 31, 2010, through December 31, 2015. This prohibition is intended to alert the consumer that Multi-purpose Solvents and Paint Thinners have been reformulated and may have different characteristics than older products.

Further, the amendments will limit the aromatic compound content in these categories, to address possible ozone forming potential increases and maximize air quality benefits. Finally, the Board adopted new reporting requirements for Multi-purpose Solvents and Paint Thinners, which will provide the authority for ARB staff to use to perform a technical assessment of the progress of reformulation efforts in advance of the second tier VOC limits.

The amendments to Method 310 include analytical methods already being used and/or are needed to enhance the enforceability of the new, lower VOC limits that will become effective by 2010. The modifications also include new VOC content calculations for products with high water content or low VOC content.

The Board also adopted a number of minor changes to various provisions of the regulation in order to correct errors or improve clarity.

Comparable Federal Regulations: The U.S. Environmental Protection Agency (U.S. EPA) has promulgated a national consumer products rule under section 183(e) of the federal Clean Air Act (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.

Although the national regulation is similar in many aspects to the California regulation, it is 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. Because California has unique air quality problems, we must reduce VOC emissions from all 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 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.